

THE TRAGEDY OF MARX AND JUSTICE: A CRITIQUE OF MARX'S FAILED ATTEMPT
TO DISPENSE WITH PRINCIPLES OF JUSTICE

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Abstract

In *The Tragedy of Marx and Justice: A Critique of Marx's Failed Attempt to Dispense with Principles of Justice*, I critique Marx's belief that his theory of history, as well as the socialist society it would help to bring about, are beyond the need for justice. Although there have been three waves of debate about the relation between Marxism and ethics (1890-1900s; 1950-70s; 1970-90s), no one has yet provided the definitive interpretation of Marx on the question of justice. Furthermore, each of these debates ended in the same basic impasse between consequentialism and deontology, both of which Marx explicitly rejects. This occurred for three reasons. First, they misinterpreted Marx's immanent critique, which demonstrates how capitalism systematically contradicts its own principles. I explore Marx's use of this method with regard to principles of justice. Second, they not only neglected the use of immanent critique *in* Marx, but also *of* Marx. They do not critique him according to his own standards. They fail to subject Marx to a historical materialist critique which roots his evasive relation to justice in the transformations of the theory and practice of justice in the transitions to capitalism. I discuss the major aspects of these transformations, the most important of which is the devaluation of justice relative to the ethical systems of non-capitalist class societies. I contend that Marx's dismissal of justice is an uncritical absorption of the capitalist social relations that, otherwise, he did so much to critique. Third, the debates tended to focus on one or another aspect of justice, and in particular, the question of exploitation. Conversely, I argue that we need a comprehensive theory of justice that includes commutative justice, distributive justice, corrective justice, and complete justice. Only then can we appreciate the full ethical implications of the silence on justice in Marx and many Marxisms. Indeed, this more robust theory is necessary if justice is to be not only a principle of judgement by which we assign praise or blame, but also as a guide to activity, especially for those who aspire to something as dangerous as dramatic societal transformation.

For Mom and Dad.

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Pessimism of the intellect...

— *Antonio Gramsci*

Franz shook his head. “When a society is rich, its people don’t need to work with their hands; they can devote themselves to activities of the spirit. We have more and more universities and more and more students. If students are going to earn degrees, they’ve got to come up with dissertation topics. And since dissertations can be written about everything under the sun, the number of topics is infinite. Sheets of paper covered with words pile up in archives sadder than cemeteries, because no one ever visits them on All Souls’ Day. Culture is perishing in overproduction, in an avalanche of words, in the madness of quantity.”

— *Milan Kundera, The Unbearable Lightness of Being*

What is published now depends on the publisher’s and the editor’s need to fill the journal and the author’s need to be published in time for tenure review, a job hunt, or a raise. The question rarely arises, ‘Is this publication necessary?’ Therefore, a significant part of the much-cited information explosion is really a noise explosion.

— *Richard Levins and Richard Lewontin, The Dialectical Biologist*

hundreds of presses, thousands of titles.
who is to survive out of all this mulch?
it’s almost improper to ask.

— *Charles Bukowski, the last generation*

No one can read two thousand books. In the four hundred years I have lived, I’ve not read more than half a dozen. And in any case, it is not the reading that matters, but the rereading. Printing, which is now forbidden, was one of the worst evils of mankind, for it tended to multiply unnecessary texts to a dizzying degree.

— *Jorge Luis Borges, A Weary Man’s Utopia*

...optimism of the will.

— *Antonio Gramsci*

Part 1: The Problem of Justice in Capitalist Modernity

Chapter 1: Introduction

Karl Marx is the most famous, indeed, infamous critic of capitalism. But does he deem capitalism unjust? The answer is by no means clear. Marx explicitly asserts that capitalist exploitation is not unjust. And yet, he also describes it as extortion, robbery, and theft. Marx seems to espouse moral relativism when he asserts: “Right can never be higher than the economic structure of society and the cultural development thereby determined.”¹ Nevertheless, he also seems to appeal to a theory of natural right when he speaks of the social conditions that are “most worthy” for our “human nature.”² Marx’s relationship with ethics is deeply ambiguous. So too are the political movements that have acted and are acting in his name. Whether it was the parliamentary elitism of the Second International or the insurrectionary authoritarianism of the Communist International, these movements have neglected the need for the long-term and widespread cultivation of the ethical and political capacities necessary to create anything remotely resembling a genuinely democratic socialism. This goes back to Marx himself.

These ambiguities have inspired a number of debates about the relation between Marxism and ethics. We can distinguish these debates into three broad waves. The first occurred during the 1890-1900s. The two major sides were the neo-Kantian revisionists and the consequentialist ‘orthodox Marxists.’ The second took place in the 1950-70s. It pitted Marxist-humanism against structuralist-Marxism. The third debate emerged in the 1970-90s. It took place largely within Anglo-American analytical Marxism. Inspired by the widespread impact of Rawls’s *A Theory of Justice*, this debate focused specifically on the question of justice. It would not be unfair to describe the two most influential camps in this most recent debate as neo-revisionist and neo-orthodox.

Despite the different historical periods and social contexts of these debates, all three ended in the same basic impasse. Commentators usually divided into two forms of ethics, both of

¹ Karl Marx, *Critique of the Gotha Programme* (New York: International Publishers, 1938), 10.

² Karl Marx, *Capital: A Critique of Political Economy: Volume Three*, trans. David Fernbach (London: Penguin Books Ltd., 1991), 959.

which Marx explicitly rejects: the consequentialism typical of utilitarianism or the deontology typical of Kantianism. In other words, each of the three debates became mired in irreconcilable oppositions between what I will describe as determinism and formalism. Indeed, there is still no consensus about whether or not Marx condemns capitalism as unjust and affirms socialism as just. It is a goal of this dissertation to explain why each of these debates have ended in a similar impasse.

Before I discuss what is original in this dissertation, I must first concede that, given that there have been three waves of debate about Marxism and ethics, this dissertation necessarily treads some familiar ground. There are at least three significant aspects of my argument that, although I say some original things about them, are not themselves novel: (i) explaining the theories of Marx's intellectual influences and the role they play in the interpretation of Marx; (ii) showing how his method shapes his theories of ethics and justice; and (iii) engaging in an exegesis that situates Marx's sparse comments on ethics in terms of his entire corpus in order to understand him on his own terms. I will briefly summarize my findings.

First, I argue that commentators have neglected or misinterpreted the theories of Marx's intellectual influences, especially Hegel. I attempt to remedy this by applying a deep textual reading of Hegel's dialectical method to my interpretation of his writings. I not only look at his most famous works, but also more obscure texts throughout his entire career, including his early theological writings, his lectures on aesthetics, and his late lectures on religion. There are at least four original things I contribute to the understanding of Hegel's influence on Marx. First, I prove that Marx was intimately familiar with Hegel's early essay on 'Natural Law,' which has crucial bearing on the question of justice in Marx. Second, I show that Hegel's theory of tragedy is a crucial precursor to Marx's critique of liberal rights. Indeed, I demonstrate that Marx was not the first to say the famous statement that is often attributed to him, 'Between equal rights, force decides.' It is said in a number of places, sometimes explicitly, by Hegel. Third, I prove that Marx's alternative to corrective justice is based upon a theory of forgiveness that he acquires from Hegel. Fourth, I solve the mystery of the principle, 'From each according to their abilities, to each according to their needs.' It is my contention that no one has yet understood from whom Marx gets the famous needs principle, and with whom he is most in dialogue in the development of his own version of that principle. Most have speculated that it is Blanc, Bakunin, or even less plausible candidates. I show that, not only is it impossible that Marx could have attained the

needs principle from these theorists, but that the theorist from whom he does receive it, Hegel, is crucial for our understanding of what Marx is attempting to accomplish with the needs principle.

Second, with regard to the significance of Marx's method for a proper interpretation of his theory of justice, I show the importance of Marx's much neglected use of immanent critique in his otherwise unintelligible assertions about justice. Put succinctly, immanent critique attempts to show how someone or something becomes mired in contradictions according to their own standards or principles. It is the fundamental method of the dialectic, which exposes the incomplete character of our theories and practices by demonstrating how they necessarily become their opposite. In an exegesis of Marx's *Capital*, I show how his critique of Proudhon's clumsy use of the dialectic, and how Marx's own more sophisticated use of it, helps to explain why he describes exploitation both as 'not unjust' and as 'theft.' Furthermore, this explanation does not rely on crude notions of dialectical resolutions as tenuous syntheses based in a 'both/and' approach—something endemic to the dialectical method in Marxism in general. Instead, I explain this in a way that cannot be accused of 'dialectical wizardry.'

Third, with regard to the exegesis of Marx's corpus, I attempt to counter something that is quite prevalent in these debates. It is often the case that commentators force their interpretations of Marx into their own particular assumptions or agendas because they do not show enough fidelity to Marx's intended meanings. This occurs in a number of ways. Commentators are often flippant in their attributing latent or implicit meaning to Marx when, for example, they support their interpretations by excusing certain inconvenient passages as instances of Marx's 'sarcasm' or 'irony.' This also occurs in more sophisticated forms when commentators impute to Marx what I call here 'saving distinctions.' When Marx explicitly says something about capitalism that has bearing on the question of justice, commentators frequently assert that Marx is referring only to the everyday and mystified experience of surface phenomena. These commentators argue that, in actuality, Marx thinks the opposite about what is deeper or more essential to capitalist society. For example, if Marx says that the distribution of commodities under capitalism is just according to the only possible standards, for some interpretations, this must mean that he deems the more fundamental distribution of the conditions of production as unjust. These are 'saving' distinctions because they impute to Marx something that *saves* the particular interpretation against potential counter-evidence. All of these tactics fail

to ask, if Marx believes what is being attributed to him as a latent or implicit meaning, why does he fail to state it explicitly?

In my interpretation of Marx, I read him literally. I ask if everything that Marx says about justice can be made consistent without needing to impute anything to him. I try to show that this is in fact the case. Without diverging from what he says explicitly, all of his assertions about justice, no matter how contradictory they may at first appear, can be made compatible without straining their intended meaning or our own credulity. Nevertheless, even if everything that Marx says about justice is internally consistent, the way in which Marx separates justice from other ethical values may point to a deeper and more profound inconsistency. This is the basis of what I think is the unique contribution of my dissertation.

As I noted before, each of the three waves of the debate about Marxism and ethics ended in the same basic impasse. It is my contention that this has occurred because none of these debates began with the right question. They went directly to the problem without first studying its conditions of possibility. They did not ask why there is a debate in the first place. The first question is not about whether or not Marx condemns capitalism as unjust. Rather, our starting point must be, why is Marx so evasive about ethics in general and justice in particular? It is because I begin from this question that this commentary offers three novel contributions to these debates.

The first is surprisingly simple. This dissertation points to the significance of immanent critique not only *in* Marx's work, but *of* Marx's work. With regard to the question of Marx and justice, to my knowledge, no one has yet attempted an immanent critique of Marx. No one has applied the method to the master. None of the commentators have attempted to understand Marx according to a properly Marxist method. They have not asked whether or not Marx's ambiguous relationship with justice, and for some commentators, Marx's shortcomings in these respects, can be rooted in his historical conditions. They have not asked whether or not Marx's assertions about justice are *ideological* in Marx's sense of that term. In other words, they have applied historical materialism to everyone but Marx himself. Therefore, even when these Marxists substantively disagree with Marx, their approach is basically dogmatic. Conversely, I engage in the beginnings of a historical materialist critique of justice. Throughout the development of capitalist society, justice, in both theory and practice, has undergone significant transformations. I situate Marx's ambiguous relation to justice in the context of these material developments. It is

only through this method that we can begin to determine if Marx critically accepts or uncritically absorbs these broader trends of capitalist modernity.

The second novel aspect of this dissertation is that it has a more comprehensive notion of justice than any previous commentary. Much attention has been focused on the relation between Marx and questions of ‘distributive justice.’ Few have thought to distinguish it from what is traditionally called ‘commutative justice,’ or fairness in exchange. Even fewer commentators have explored the relationships between Marx and ‘corrective justice,’ or questions of crime and punishment, as well as ‘general,’ ‘legal,’ or ‘complete’ justice, the ethical disposition of individuals toward the common ends of the social whole. No one has yet developed an interpretation of Marx that integrates all of these most significant aspects of justice into a single theory.

I combine this comprehensive theory of justice with a historical materialist critique of justice to show the most significant changes undergone by justice in capitalist modernity, the most important of which is the devaluation of justice relative to the ethical systems of pre-capitalist societies. Amid capitalist modernity, justice has been supplanted by freedom or liberty as the apex of the table of values. When we consider these historical developments, it becomes much easier to contextualize and understand Marx’s evasive relationship with justice.

Briefly stated, I argue that all of the apparent inconsistencies of Marx’s theory of justice are resolved when we understand that, for Marx, the trajectory of human history, and therefore, the character of his own theory, is beyond justice itself. Marx believes that the need for justice is not a permanent feature of human existence. Like so much else in the ‘pre-history’ of humankind, he believes that justice will wither away. Marx’s attempt to get beyond justice is much easier to understand when we situate it within the widespread devaluation of justice under capitalist modernity. Ultimately, I argue that Marx’s attempts to transcend justice fail and that this reflects the fact that, with regard to questions of justice, Marx has uncritically absorbed significant trends within a capitalist modernity that, otherwise, he did so much to critique.

The full implications of this are only apparent when we explore these transformations of justice in all of its most significant aspects. Only then is justice not merely a principle of judgement by which to assign praise or blame, but also a guide to activity. If all we do is focus on isolated aspects of justice, as has been common in these debates, we gain a basis by which to condemn one or another feature of capitalism as unjust. With the comprehensive theory of

justice, however, we can begin to develop a practice in which our attempts to dramatically transform these unjust social conditions do not establish injustice in another form.

The third and final original contribution in this dissertation is to establish a new research agenda. One reason I have decided to focus on justice is because it is a taproot to the rest of ethics. Marx's work is certainly normative, but this does not yet entail a formal ethical theory. Justice is not only a crucial aspect of any systematic ethics, but theorizing the dramatic transformations undergone by justice under capitalist modernity provokes questions about the ways in which capitalist social conditions fundamentally change ethics in general. Those who have attempted to construct a Marxist ethics have often pursued an idealist method that is strangely unsuited to the basic premises of Marxism. They have typically done one of two things. They have either attempted to cobble together all of Marx's disparate statements about ethics into a more systematic ethics, or they have attempted to synthesize Marx with other moral philosophers, such as Aristotle, Spinoza, or Kant. Conversely, my dissertation puts on the agenda a full-scale historical materialist critique of capitalist ethics. It is only in this way that we can liberate the method from the master. Before we can begin that project, however, we must first understand the master. It is to this interpretation that I now turn.

Chapter 2: The Three Waves of Debate About Marxism and Ethics

There have been a number of debates about the relation between Marx and ethics.³ This is due primarily to the ambiguous, seemingly inconsistent things that Marx says on the rare occasions when he explicitly addresses ethics at all. Particularly illustrative in this respect are Marx's deeply ambiguous statements about '*Recht*' or justice. In the German philosophical tradition we must distinguish between *Recht*, which means justice proper, and *Gesetz*, which means the law.⁴ We should also distinguish between *Recht*, which has the connotation of natural right or natural law, and *Gerechtigkeit*, which refers more to positive law, to a specific juridical authority. In general, *Recht* includes (i) the corpus of laws as distinct from particular laws; (ii) 'rights' in the sense of claims against others; and (iii) justice in the sense of moral rightness.

Marx was not always so vague about ethics and justice. As a young man, for example, he used terms like 'right' quite freely, even going so far as to make the standard distinction between natural and positive law: "Therefore the *press law* is the *legal recognition of freedom of the press*. It constitutes right, because it is the positive existence of freedom. It must therefore exist, even if it is never put into application, as in North America, whereas censorship, like slavery, can never become lawful, even if it exists a thousand times over as a law."⁵ Nevertheless, after 1844, when Marx becomes a *Marxist*, he never again speaks in such terms. Does he retain all, some, or none of these early sentiments?

While it is obvious that the mature Marx condemns capitalism, it is unclear whether or not he does so according to a principle of justice. Marx does not explicitly condemn capitalism as unjust. In fact, he occasionally asserts that capitalist exploitation is not unjust:

On the one hand the daily sustenance of labour-power costs only half a day's labour, while on the other hand the very same labour-power can remain effective, can work, during a whole day, and consequently the value which its use during

³ I presented an early draft of this chapter at the 73rd Annual Conference of the Midwest Political Science Association, Chicago, Illinois, April 16, 2015. I thank David F. Ericson and Robert W. Mickey for their helpful comments.

⁴ This is derived from Ladd's excellent explanation in John Ladd, 'Translator's Introduction,' in Immanuel Kant, *The Metaphysical Elements of Justice: Part I of The Metaphysics of Morals*, trans. John Ladd (Indianapolis, New York, Kansas City: The Bobbs-Merrill Company, Inc., 1965), xv-xviii.

⁵ Karl Marx and Friedrich Engels, *Karl Marx, Friedrich Engels: Collected Works: Volume One* (Moscow: Progress Publishers, 1975), 162.

one day creates is double what the capitalist pays for that use; this circumstance is a piece of good luck for the buyer, but by no means an injustice towards the seller.⁶

Nevertheless, Marx also describes exploitation in numerous places as theft, extortion, and robbery. Take, for example, the following representative passage from the same text:

The means of production with which the additional labour-power is incorporated, as well as the necessaries with which the workers are sustained, are nothing but component parts of the surplus product, parts of the tribute annually exacted from the working class by the capitalist class. Even if the latter uses a portion of that tribute to purchase the additional labour-power at its full price, so that equivalent is exchanged for equivalent, the whole thing still remains the age-old activity of the conqueror, who buys commodities from the conquered with the money he has stolen from them.⁷

This would seem to imply that Marx deems exploitation unjust, but if so, why does he fail to explicitly assert this?

If Marx's condemnation of capitalism is obvious, so too is his praise of socialism as the only viable societal alternative. Nevertheless, it is not clear if Marx's advocacy of socialism is based primarily in a principle of justice. Marx offers an explicit principle of distributive justice in the first phase of socialism: 'From each according to their ability, to each according to their contribution.' Nevertheless, he also criticizes this principle of justice because its abstract character reproduces certain inequalities between individuals: "It recognises no class differences, because everyone is only a worker like everyone else; but it tacitly recognises unequal individual endowment and thus productive capacity as natural privileges. *It is therefore a right of inequality in its content, like every right.*"⁸ Marx seems to assert that all rights are necessarily self-contradictory. Therefore, when he articulates the standard of distribution for the second phase of

⁶ Karl Marx, *Capital: A Critique of Political Economy: Volume One*, trans. Ben Fowkes (New York: Vintage Books, 1977), 301.

⁷ *Ibid.*, 728.

⁸ Karl Marx, *Critique of the Gotha Programme*, op. cit., 9.

socialism, ‘to each according to their needs,’ it is unclear whether or not he regards this as a principle of justice or beyond justice as such.

It is also unclear whether or not Marx deems the principle of distributive justice in the first phase of socialism a plausible standard by which to critique any other mode of production, including capitalism. After all, Marx asserts that “Right can never be higher than the economic structure of society and the cultural development thereby determined.”⁹ It appears that Marx deems principles of justice and right to be historically relative. Nevertheless, Marx also makes appeals to human nature in ways that have direct normative implications. For example, Marx argues that because socialism creates the social conditions necessary for everyone to express themselves through free creative activity, it is “most worthy and appropriate” for our “human nature.”¹⁰ Indeed, Marx seems to hint toward a theory of natural right, of permanent ethical rules based in more or less fixed aspects of human nature, when he asserts that the liability of all who are able to labour, namely, working with both head and hands in order to eat, is a “general law of nature.”¹¹ If this is the case, however, it is unclear what role, if any, justice plays in his conception of human nature.

Finally, all of these ambiguities are refracted through Marx’s dialectical method. One of its peculiar features is that it rejects the fact-value distinction. Therefore, he does not recognize any strict separation between the *explanation* of ethical phenomena and the *evaluation* of them. In other words, he does not distinguish between, on the one hand, the sociology of ethics, of how certain ethical norms arise from specific historical conditions, and on the other hand, ethics proper, the evaluation of whether or not we should accept these norms. We can contrast Marx’s method with that of Weber¹² on the one hand and Strauss¹³ on the other.

Like Weber, Marx thinks that ethical phenomena are historically-determined. Our ethical values arise from our location in specific social conditions. It is the task of historical science to explain how this occurs, a precondition of which is that the scientist recognize her situated position within historical development. Nevertheless, unlike Weber, Marx does not think that

⁹ Ibid., 10.

¹⁰ Marx, *Capital: Volume Three*, op. cit., 959.

¹¹ Karl Marx, *The First International and After: Political Writings: Volume Three*, ed. David Fernbach (London: Penguin Books, Ltd., 1974), 88.

¹² Max Weber, *Sociological Writings*, ed. Wolf Heydebrand (New York: Continuum, 1999), 248-59; Max Weber, *The Vocation Lectures*, eds. David Owen and Tracy B. Strong; trans. Rodney Livingstone (Indianapolis: Hackett Publishing Company, Inc., 2004), 291-95.

¹³ Leo Strauss, *Natural Right and History* (Chicago: The University of Chicago Press, 1953), 35-80.

these ethical norms are thereby purely subjective. Like Strauss, Marx believes that ethical systems can be comparatively evaluated and that certain norms prove to be objectively better than others.¹⁴ Both Marx and Strauss contend that there are objective goods of human nature that provide a factual basis for values irrespective of whether or not particular individuals recognize them as such. Therefore, we cannot be, and should not try to be, neutral toward conflicting conceptions of the good life, or as Marx would describe it, the actualization of our species-being.¹⁵ Nevertheless, there are also substantial disagreements between these two theorists. Strauss argues that objective human goods are rooted in a permanent or trans-historical nature. Indeed, Strauss contends that trans-historical ethical principles are *more* objective than any narrowly historical norms. Conversely, Marx argues that objective human goods are rooted in history, in the way that human nature develops over the course of history. This avoids Weber's value-relativism only because Marx has a 'universal history,' a theory of the fundamental meaning of human history as a whole.

Marx thinks that his location in history, capitalist modernity, reveals the direction of history in its entirety. It is in that sense that the explanation of how certain ethical norms arise in specific historical conditions is at one and the same time an evaluation of how those norms are situated in, and contribute to, the struggle to fully realize our objective human goods throughout history, a process that culminates in an end to these struggles. The role that justice plays in Marx's account of history remains an open question, but misinterpretations of Marx's method have confused matters. As we will see, many commentators debate over whether one or another of Marx's statements is a sociology of ethics or a statement of ethics proper, of Marx's own ethical convictions. This often imposes the fact-value distinction on him. Indeed, the debate frequently bifurcates to such a point that some commentators impute to Marx a value-relativism more akin to that of Weber, while others attribute to Marx a theory of natural right typical of Strauss. As we explore Marx's work, we must always remember that, for him, the theory of the objective human good is no less scientific than the theory of historical development because they are one and the same. Marx deems us eminently historical beings. Indeed, as we will see, for

¹⁴ For example, see: Karl Marx, 'The British Rule in India,' in *Dispatches for the New York Tribune: Selected Journalism of Karl Marx*, ed. James Ledbetter (London: Penguin Books, 2007), 215-19. I cite this not because Marx deems British society morally superior to Indian society, but rather, because he deems a socialist society morally superior to both.

¹⁵ For example, see: Karl Marx, *Early Writings*, trans. Rodney Livingstone and Gregor Benton (London: Penguin, 1992), 385-86.

Marx, our essence is actualized when we make our history in a conscious way. As a first approximation, for Marx, our objective good is inherently social and is based in the unique and universal human capacity for free and creative activity as an end in itself. For example, Marx expresses both of these sentiments when he asserts, “When a worker co-operates in a planned way with others, he strips off the fetters of his individuality, and develops the capabilities of his species.”¹⁶

The debate about the relation between Marxism and ethics has occurred substantively three times. The first debate took place at the turn of the twentieth-century in Germany, Austria, and Russia. It pitted “orthodox” Marxists against neo-Kantian “revisionist” Marxists, foreshadowing the collapse of the Second International in the lead up to the First World War. The second debate occurred in the 1950-70s. In the West, it was a part of the larger debates between structuralist and humanist Marxists amid the revelations of Stalin’s crimes as well as the suppression of revolution in Hungary. In the East, the debate occurred between Marxist-Leninist scholars in the Soviet Union. While we can describe the Marxist-Leninist contributions as a debate within orthodox Marxism, it would be inaccurate to describe the humanist or structuralist Marxists as ‘neo-revisionist’ or ‘neo-orthodox.’ Nevertheless, many of the arguments familiar to the first wave of the debate reappeared in the second wave in both the East and the West. The third and most recent debate began in the late 1970s and continued until the early 1990s. It gave rise to what can be fairly described as ‘neo-orthodox’ and ‘neo-revisionist’ positions. Most of the contributors abandoned the dialectical methodology, as had the revisionists in the first debate and the structuralists in the second. This was a debate between mostly Anglo-American analytical philosophers who often described themselves as ‘No Bullshit’ Marxists. Perhaps. We will see.

Despite their different contexts, each of the three waves of debate resulted in the same impasse. None of the debates were able to offer the definitive interpretation of Marx’s theories of ethics in general and justice in particular because each bifurcated into either determinism or formalism. In other words, each side in the various debates tended to recede into either a consequentialist morality typical of utilitarianism or a deontological morality typical of Kantianism, both of which Marx rejected.¹⁷ Indeed, we can express these impasses as an inability

¹⁶ Marx, *Capital: Volume One*, op. cit., 447.

¹⁷ For some of Marx and Engels’s most sustained criticisms of utilitarianism and deontology in their Benthamite and Kantian forms, see: Karl Marx and Friedrich Engels, *The German Ideology* (Amherst: Prometheus Books, 1998), 208-12; 432-38.

to reconcile the scientific conception of history with the ethical justification of socialism. Of the three waves, the last debate focused most on questions of justice. Since that is our topic, the third wave will occupy most of our attention. For our purposes here, this commentary on the three waves of debates is necessarily schematic.¹⁸ Nevertheless, this brief overview is crucial if we are to truly understand the most recent debate and where we stand now. Addressing the impasse of the three waves of debate is all the more important because, with the publication of two new texts on Marxism and ethics, Michael J. Thompson's *Constructing Marxist Ethics* and Norman Fischer's *Marxist Ethics within Western Political Theory*, a fourth wave of debates may be in the offing.¹⁹

2. 1: The Debate of the 1890s-1900s

Toward the end of the nineteenth century increasing tensions between the reformist and insurrectionist wings of the Second International gave rise to a debate about the relations between historical materialism, socialism, and ethics. Despite their differences, both sides of this debate were influenced by the rise of positivism.²⁰ Most tended to read Marx's theories of economic laws and historical change in deeply determinist ways. For example, Eduard Bernstein, the most prominent theorist of the reformist wing, criticized Marx's assertion that the concentration of capital is a precondition of socialism:

If the victory of socialism depended on the number of capitalist magnates constantly shrinking, the logical course for Social Democracy would be, if not to support by all possible means the heaping up of capital in ever fewer hands, then

¹⁸ For a comprehensive survey of the history of debates about Marx, Marxism, and ethics, see: Paul Blackledge, *Marxism and Ethics: Freedom, Desire, and Revolution* (Albany: State University of New York Press, 2012). For my critique of certain aspects of Blackledge's book, see: Paul Christopher Gray, 'Doves Devoured, the Serpent Remains: On the Need for a Scientific Ethics,' *Socialist Studies*, 8.2 (2012): 202-214.

¹⁹ Michael J. Thompson, *Constructing Marxist Ethics: Critique, Normativity, Praxis* (Leiden: Brill, 2015); Norman Fischer, *Marxist Ethics within Western Political Theory: A Dialogue with Republicanism, Communitarianism, and Liberalism* (New York: Palgrave Macmillan, 2015).

²⁰ There were certain theorists, such as Luxemburg, who did not embrace positivism in the way typical of reformists like Bernstein or insurrectionists like Kautsky. We can distinguish between 'insurrectionism' and the form of revolution articulated by Luxemburg because she expresses the integral relation between reform and revolution (Rosa Luxemburg, 'Social Reform or Revolution (1898-99),' *The Rosa Luxemburg Reader*, eds. Peter Hudis and Kevin B. Anderson (New York: Monthly Review Press, 2004), 129.

at least to refrain from anything that could impede it. In fact, Social Democracy more often than not does the opposite. These considerations, for instance, do not govern its votes on questions of taxation. From the standpoint of the theory of collapse, a great part of the practical activity of Social Democracy is a matter of undoing work that ought to be left alone. But it is not Social Democracy which is at fault in this respect. The fault lies in the doctrine which incorporates the idea that progress depends on a worsening of circumstances.²¹

Bernstein has an extremely deterministic interpretation of Marx's theory of the crisis and collapse of capitalism. On a less determinist reading, if in the struggle to meet certain human needs we confront not only the political obstacles of what the ruling classes will concede but also the structural barriers of what the system can bear, then we have not only made more immediate and tangible the limits of capitalism, but in doing so, have developed the relations, institutions, and practices, that pose a viable alternative and inspire confidence in the plunges beyond those limits. Irrespective of whether we accept few, most, or even all of Marx's predictions for the deepest long-term tendencies of capitalism, this was always the correct reading of Marx's strategic orientation.

Beyond this, Bernstein argues that historical events have disproven fundamental aspects of historical materialism, and in particular, its predictions of the simplification of class structures, the immiseration of the working class, and the imminence of cataclysmic crisis. Having called into question the self-proclaimed scientific status of historical materialism and the supposed inevitability of the proletarian victory, Bernstein rejects Marx's assertion that revolutionary workers "have no ideals to realise but to set free the elements of the new society with which old collapsing society itself is pregnant."²² Bernstein sought to develop not only a practice of reformism toward a more gradual, 'evolutionary' approach to socialism, but also a theory of the ethical justification for socialism.

Bernstein seizes on Marx's claim that, even though labour creates more value than the capitalist pays for it, "this circumstance is a piece of good luck for the buyer, but by no means an

²¹ Eduard Bernstein, *The Preconditions of Socialism*, ed. Henry Tudor (Cambridge: The University of Cambridge Press, 1993), 201.

²² Karl Marx, *Civil War in France: The Paris Commune* (New York: International Publishers Co., Inc., 1969), 61-62.

injustice towards the seller.”²³ Bernstein argues that Marx’s description of exploitation as “robbery,” but not as unjust, “leaves the reader with the impression of an insoluble logical paradox.”²⁴ There is in Marx a dualism between his attempts to be scientific and to maintain the formulas laid down by his utopian predecessors.²⁵ For Bernstein, the distinction between Marx and the utopian socialists is only one of degree.²⁶ To deny the necessarily utopian character of socialism is self-deception.

Bernstein attributed these shortcomings to the influence of Hegel, and, in particular, his attempted reconciliation of theoretical and practical reason. This entailed the rejection of the distinction between ‘what is’ and ‘what ought to be.’ Bernstein rejects the dialectic and advocates for a return to Kant. According to Bernstein, socialism always has *ideals*, is always a movement toward a “beyond” or “what ought to be.”²⁷ Nevertheless, we must distinguish between, on the one hand, “cognition,” the objective knowledge of science, and on the other hand, “volition,” the doctrines, programmes, and theories of political parties.²⁸ The scientific aspects of socialism must be “objective” and therefore non-partisan. Consequently, the only specifically socialist element is its conception of ethics and of justice, which can never be scientific.²⁹ Bernstein’s appeal to Kant is taken up most enthusiastically by the ‘Austrian Marxists,’ such as Max Adler and Otto Bauer.³⁰ They assert that the inevitability of socialism does not entail its desirability. This is an important point. As we will see, this argument returns time and again in the debates about Marxism and ethics. For the Austrian Marxists, socialism is justified because it alone can realize the Kantian imperative to treat every individual not merely as a means but an end.

The rise of revisionism, neo-Kantianism, and ‘Ethical Socialism’ provoked a reaction from prominent members of the Second International. In response, theorists like Kautsky and Plekhanov adopted the mantle of “orthodox” Marxism. Since Marx has so little to say about ethics, much of their critique rests on statements by Engels, who we could describe as the first

²³ Marx, *Capital: Volume One*, op. cit., 301.

²⁴ Eduard Bernstein, *Selected Writings of Eduard Bernstein: 1900-1921*, ed. Manfred Steger (New Jersey: Humanities Press International, Inc., 1996), 91.

²⁵ Bernstein, *The Preconditions of Socialism*, op. cit., 198-99.

²⁶ Bernstein, *Selected Writings*, op. cit., 97.

²⁷ *Ibid.*, 95.

²⁸ *Ibid.*, 98-99.

²⁹ *Ibid.*, 117.

³⁰ For a good account, see: Leszek Kolakowski, *Main Currents of Marxism: Volume II. The Golden Age*, trans. P.S. Falla (Oxford: Oxford University Press, 1985), chapter 12.

orthodox Marxist. Engels asserts that all morality heretofore has necessarily been a class morality. A “really human morality” is only possible “at a stage of society which has not only overcome class contradictions but has even forgotten them in practical life.”³¹ Similarly, Kautsky argues that morality is merely an ideological weapon in the class struggle whose social significance depends entirely on the promotion of economic and social development.³²

Kautsky and Plekhanov were quite influenced by Darwinism and positivism.³³ Kautsky argues that the only trans-historical aspect of ethics is the “social instinct” inherited from the gregarious animals.³⁴ Nevertheless, the specifically human dimension of ethics, the “moral precepts,” are historically relative.³⁵ Class struggle brings about a development of the social instinct. In an ascendant class, this “deep-rooted social need” will elicit a “burning desire” for something different than what currently exists.³⁶ This, however, is “a purely negative phenomenon, nothing more than opposition to the prevailing morality.”³⁷ For the orthodox Marxists, the question of morality, both within capitalism and in the future socialist society, becomes less significant because our fate is known: “Socialism is inevitable because the class struggle, the victory of the proletariat is inevitable.”³⁸ Indeed, as important as morality is in the class struggle it has no place in the scientific investigation of history. Science is amoral. It stands above morality because it is solely concerned with “the recognition of the necessary.”³⁹ The scientific perspective recognizes that morality is only a means, not the end or goal:

It is of course true that under socialism the scientist is also a fighter, for a human being cannot be divided into two parts, one of which has nothing to do with the other. In a man like Marx, for example, the presence of a moral ideal occasionally breaks through into his scientific investigation. But he is continually aiming, and

³¹ Frederick Engels, *Herr Eugen Dühring's Revolution in Science (Anti-Dühring)* (New York: International Publishers, 1976), 105.

³² Karl Kautsky, *Selected Political Writings*, ed. Patrick Goode (London: The MacMillan Press, 1983), 43.

³³ For example, see: Georgi Plekhanov, *Georgi Plekhanov: Selected Philosophical Works: Volume III* (London: Lawrence & Wishart, 1974), 193.

³⁴ Kautsky, *op. cit.*, 38.

³⁵ *Ibid.*

³⁶ *Ibid.*, 39.

³⁷ *Ibid.*

³⁸ *Ibid.*, 45.

³⁹ *Ibid.*, 43.

rightly, to banish it wherever possible. For in science a moral ideal becomes a source of error if it gets to the stage of attempting to dictate goals.⁴⁰

Many of the subsequent iterations of this orthodox standpoint also feel the need to reconcile Marx the social scientist with Marx the moralist. As we will soon see, they are unconvincing.

Despite his claims to orthodoxy, Kautsky affirms a fact-value distinction foreign to Marx. Consequently, he does not address the crux of Bernstein's critique, namely, that a deterministic theory of history and the inevitability of socialism could permit only the most denuded, voluntarist ethics. Conversely, Bernstein, like most revisionists both old and new, refuted only a positivist, determinist, mechanical understanding of historical materialism. In this, Bernstein only 'revised' the likes of Kautsky, not Marx. Ultimately, there remained the tension between fact and value, between science and ethics.⁴¹ Failing to overcome this impasse, the first debate ended inconclusively:

On the whole no intellectual resolution of this dispute over the role of Kantian ethics in Marxism emerged during this period, apart from the organizational 'resolution' which Kautsky brought about in 1905, when he pushed those inclined toward neo-Kantianism off the editorial board of *Vorwärts*.⁴²

In its aftermath, Lukács asserted that the more deterministic and mechanistic the theory of history, the more utopian must ethics be.⁴³ He attributes this opposition between positivist and neo-Kantian Marxism to the standpoint of civil society, which fails to see the social whole in its historical development. Lukács argues that to understand Marx we must return to Hegel. Nevertheless, Lukács' own attempt to construct a Marxist ethics failed. At the time of his death it remained unfinished.⁴⁴

⁴⁰ Ibid.

⁴¹ Kolakowski, op. cit., 254; Lucio Colletti, *From Rousseau to Lenin: Studies in Ideology and Society*, trans. John Merrington and Judith White (London: NLB, 1972), 76; Kai Nielsen, *Marxism and the Moral Point of View: Morality, Ideology, and Historical Materialism* (Boulder, Colorado: Westview Press, Inc., 1989), 28-31; Blackledge, op. cit., 114.

⁴² Philip T. Grier, *Marxist Ethical Theory in the Soviet Union* (Dordrecht, Holland: D. Reidel Publishing Company, 1978), 31.

⁴³ Blackledge, op. cit., 119-20.

⁴⁴ Lukács's early work on ethics, as well as Trotsky's essay on ethics written between the first and second waves of debate, are not essentially different from the ethical theories of orthodox Marxism (Georg Lukács, *Tactics and*

2. 2: The Debate of the 1950s-70s

The second substantive debate about the relations between Marxism and ethics began in the 1950s. It was inspired by a number of events, including the death of Stalin (1953); Khrushchev's revelations of Stalin's atrocities at the Twentieth Congress (1956); the USSR's suppression of revolution in Hungary (1956); the use of the language of humanism in the Hundred Flowers campaign in China (1957) and in the 'Third World' revolutions in the 1960s; the rise of the New Left; and the publication of Marx's early, more philosophical writings, especially *The Economic and Philosophical Manuscripts* of 1844.⁴⁵ Familiar oppositions between ethics and science re-emerged. Humanist Marxists like E. P. Thompson, Erich Fromm, and Mihailo Markovic emphasized the young, 'philosophical' Marx, and in particular, his theory of alienation. Conversely, structuralist Marxists like Louis Althusser, Maurice Godelier, and Paul Hirst emphasized the mature, 'scientific' Marx, the theorist of objective structural laws. Of the three waves of debates, this one was the least concerned with matters specific to justice.

In general, the Marxist-humanists de-emphasized the determinism of the objective laws of history in favour of a more active human subject impelled toward revolution by the alienation of our creative human essence. Nevertheless, for some of them, the critique of the Soviet Union and the affirmation of 'socialism with a human face' were not the only motivations. Like the revisionists before them, some of the Marxist-humanists argued that developments in capitalism had falsified significant aspects of Marx's historical materialism. This required the adaptation of Marxism to new social realities, including a more robust role for ethics.

Ethics: Political Essays, 1919-1929, ed. Rodney Livingstone; trans. Michael McColgan (New York: Harper and Row, Publishers Inc., 1975); Leon Trotsky, *Their Morals and Ours: Marxist vs. Liberal Views on Morality* (New York: Pathfinders Press, Inc., 1973). Both the early Lukács and Trotsky argue that, first, the problem of the ends justifying the means is resolved when we think of means and ends dialectically, namely, when ethics is situated in, and made effective through, the contemporary class struggle (Lukács, op. cit., 5; Trotsky, op. cit., 48-49); second, each historical epoch, and within them, each class, have their own specific morality (Lukács, op. cit., 48-49; Trotsky, op. cit., 24); third, the closest thing to a universal ethics within capitalism is the solidarity expressed by the working class (Lukács, op. cit., 49; Trotsky, op. cit., 22); fourth, that ethics can only really be consummated in a classless, namely, socialist society (Lukács, op. cit., 49; Trotsky, op. cit., 48); and fifth, that the personal morality of individual workers is not in conflict with, and must be fused to, the communist parties (Lukács, op. cit., 50, 66; Trotsky, op. cit., 44).

⁴⁵ Raya Dunayevskaya, 'Marx's Humanism Today,' in *Socialist Humanism: An International Symposium*, ed. Erich Fromm (New York: Anchor Books, 1966), 70.

Lucien Goldmann, for example, argues that, in light of our experience since 1917, Marx's theory requires two corrections. First, the theory of "progressive pauperization" and the evolution toward revolutionary class consciousness has been disproven because, in the West, there has been a dramatic expansion of productive forces and a rising standard of living for the working class.⁴⁶ Second, the theory of commodity fetishism—in which value seems to reside in the material qualities of the commodity itself, thereby effacing its true source, human productive activity—has not only been proven correct, but is more significant than previously thought.⁴⁷ Thus, the terrain of struggle has shifted from the economic 'base,' which has proved adept at incorporating workers into the existing order, to a superstructural battle over the class-consciousness of the working class, namely, the realm of culture.⁴⁸ Citing attempts to counter Stalinist bureaucratization and centralization in Yugoslavia, Goldmann argues that the consummation of humanist values requires the dialectical reconciliation of socialist self-management with production for the market.⁴⁹

Attempted 'reconciliations' of this kind are common among Marxist-humanists. Although he does not advocate for market socialism, Mihailo Markovic, another prominent socialist-humanist, argues for 'reconciliation' in a similar manner:

In material production and other objective forms of social life one of the greatest problems contemporary socialism faces is how to build a social system in which self-management will be combined with flexible planning by some central, truly democratic, representative bodies. This may seem contradictory; that is why those who prefer a simple way of thinking and who are unhappy with one side of the contradiction between centralism and decentralization quickly jump to the other. However the (dialectical) solution seems to lie in a transformation of both such that they can be reconciled and mutually adjusted.⁵⁰

⁴⁶ Lucien Goldmann, 'Socialism and Humanism,' in Fromm, op. cit., 44.

⁴⁷ Ibid., 43.

⁴⁸ Ibid., 45.

⁴⁹ Ibid., 49-50.

⁵⁰ Mihailo Markovic, 'Humanism and Dialectic,' in Fromm, op. cit., 95; emphasis in the original.

These ‘reconciliations’ amount to a mere balancing of opposites. This maintains them in their tense unity without resolving the contradiction. If this is all the dialectical method could accomplish it would deserve the criticisms it so often receives.

Despite this, the Hegelian notion that contradictions are the basis for historical development proved uncomfortable for the rulers of the Soviet regime who had declared the successful establishment of socialism. As Dunayevskaya notes: “In 1947 Andrei Zhdanov dramatically (or at least loudly) demanded that ‘the philosophical workers’ replace the Hegelian dialectic with ‘a new dialectical law’: criticism and self-criticism. By 1955 the critique of Marxian concepts concerned his humanism.”⁵¹ Althusser, the most influential theorist in the French Communist Party, enthusiastically embraced Zhdanov’s call. For Althusser, the humanist demand for “socialism with a human face” was in fact a market-socialism with a proletarian mask concealing a petty-bourgeois face.

According to Althusser, Marx’s humanism was a youthful excess while he was still under the fleeting influence of Hegel. By 1845, however, Marx breaks with every theory that bases history on the essence of man. Instead, Marx offers a theoretical anti-humanism.⁵² For Althusser, the concept of socialism is scientific, but the concept of humanism is ideological.⁵³ This is echoed by Hirst.⁵⁴ He argues that some of Marx’s early articles criticize the enclosure of communal property in terms of principles of distributive justice. The young Marx bases this critique in a theory of the natural rights of individuals. Nevertheless, by the time he writes ‘The Critique of the Gotha Programme’ in 1875, “Marx rejects the notion that socialism is a matter of distributive justice.”⁵⁵ Marx’s perspective, having long abandoned his youthful humanism, is beyond justice as such.

The structuralists heaped scorn not only on humanism, but also on the dialectical method, deeming it another of Marx’s youthful follies. According to Maurice Godelier, Marx only uses the language of the dialectic metaphorically. Hegel’s theory of the ‘identity of opposites’ is merely a “magic device” required to justify his claim to “absolute knowledge.”⁵⁶ Conversely, for the mature Marx, capitalist exploitation does not require the dialectic. The criterion for the

⁵¹ Dunayevskaya, op. cit., 75.

⁵² Louis Althusser, *For Marx*, trans. Ben Brewster (Middlesex: Penguin Books Ltd, 1969), 226; 227.

⁵³ *Ibid.*, 223.

⁵⁴ Paul Q. Hirst, ‘Marx and Engels on Law, Crime and Morality,’ *Economy and Society*, 1.1 (1972): 28-56.

⁵⁵ *Ibid.*, 37.

⁵⁶ Maurice Godelier, *Rationality and Irrationality in Economics*, trans. Brian Pearce (London: New Left Books, 1972), 88-89.

superiority of a certain mode of production is not the realization of eternal justice or overcoming the alienation of the human essence. Rather, it is that socialist production relations more functionally correspond to the increasingly socialized productive forces created by capitalism.⁵⁷ In this, the structuralists rejected a Marxist ethics on the basis of a theory of historical development that is as functionalist and determinist as the ‘orthodox’ Marxists. Unlike them, however, the structuralists abandoned the language of the dialectic.

Meanwhile, in the Soviet Union, Khrushchev endorsed the development of a specifically Marxist-Leninist theory of socialist humanism at the Twenty-First Congress in 1959. Familiar tensions arose in the debates between Soviet scholars:

One of the most significant, and most elusive, features of Soviet ethical theory lies in the relation asserted between this specific theory of history and the moral principles which are viewed as a lawful product of that history. The relation in question is understood by many Soviet philosophers to *justify* or demonstrate the rationality of specific moral principles. Explaining precisely how this justification occurs could be viewed as the central task and challenge of Marxist-Leninist ethical theory.⁵⁸

This gave rise to shortcomings similar to those that beset Kautsky. Right and wrong were defined entirely in terms of what is progressive and regressive according to what are deemed to be objective historical tendencies. Consequently, no question of the intrinsic worth of ethical activity can arise. If ethics is merely functional for a particular set of social relations at a given stage in history, ethics becomes a form of consequentialism whose grounding principle is, quite abstractly, whatever leads to full communism.

Even the most respected of the Soviet ethicists, critical of both the “abstract humanism” of Fromm⁵⁹ and the “estranged” science of Althusser,⁶⁰ could not get beyond the tension between a scientific theory of history and the ethical justification of socialism: “Adherence to the norms of communist humanism is just as much part of modern Marxist-Leninist politics as is a sober,

⁵⁷ Ibid., 82.

⁵⁸ Grier, op. cit., 100.

⁵⁹ Alexander Ivanovich Titarenko, *Morality and Politics: Critical Essays on Contemporary Views About the Relation Between Morality and Politics in Bourgeois Sociology* (Moscow: Progress Publishers, 1972), 120.

⁶⁰ Ibid., 179.

scientific consideration of the clashing socio-political interests, the correlation of the class forces, of all the ups and downs and contradictions of the struggle.”⁶¹ These dialectical ‘reconciliations’ are as abstract as are those of Goldmann and Markovic. As De George notes, the debate within Soviet Marxist-Leninism did not substantively address the question of justice.⁶² Neither is it a major theme in Grier’s later account of these debates.

Marcuse, in his critique of Soviet moral philosophy, argues that Marxism does not have an independent ethics. Rather, Marxism constitutes an extension of Hegel’s social theory and the realization of the humanism expressed by the Enlightenment.⁶³ Marcuse argues that “there is no special discipline of ‘ethics’ in the otherwise all-embracing Hegelian system” because it is ultimately trumped by “*History*.”⁶⁴ Soviet moral philosophy adopted this interpretation. Instead of establishing something wholly external to Western morality, they saw Soviet society as the development of this morality into a ‘higher’ form. This allowed the suppression of what were deemed false liberties in the name of ‘security,’ of freedom from want.⁶⁵ In other words, the freedoms espoused by Western morality must be deferred until the successful development of the economic conditions which are the precondition of the realization of those freedoms without contradiction:

Soviet ethics here contains a ‘safety valve’: the image of the future seems to perform a function corresponding to that of the transcendental elements of Western ethics—in this image we seem to have a real Soviet substitute for religion. However, there is an essential difference from which Soviet ethics derives much of its appeal. The transcendental goal in Soviet ethics is a historical one, and the road to its attainment a historical process—the result of a concrete social and political development. Final human fulfillment and gratification are not oriented on the ‘inner self’ or the hereafter, but on the ‘next stage’ of the actual

⁶¹ Ibid., 206-07.

⁶² Richard T. De George, *Soviet Ethics and Morality* (Ann Arbor: The University of Michigan Press, 1969), 81; Grier, op. cit.

⁶³ Herbert Marcuse, *Soviet Marxism: A Critical Analysis* (New York: Columbia University Press, 1985), 200-01.

⁶⁴ Ibid., 222.

⁶⁵ Ibid., 205.

development of society. And the truth of this conception is to be, not a matter of faith, but a matter of scientific analysis and reason—of necessity.⁶⁶

In his immanent critique of Soviet moral philosophy, Marcuse contends that, ultimately, it becomes its opposite, adopting much of the Western morality that it seeks to transcend: “Care, responsibility, love patriotism, diligence, honesty, industriousness, the injunctions against transgressing the happiness of one’s fellow men, consideration for the common interest—there is nothing in this catalogue of values that could not be included in the ethics of the Western tradition.”⁶⁷

While the structuralist and Marxist-Leninist criticisms are cogent with regard to certain forms of humanist Marxism, they do not apply to its best representatives, such as Raya Dunayevskaya. She rejected the structuralist assertions that Marx abandons his theories of humanism or alienation in his later work.⁶⁸ She argues that the opposition between centralized planning and self-management could not be resolved within the social relations of the USSR, but rather, that this identity of opposites requires a negation of the negation, a social revolution as profound as that which is required for the overthrow of capitalism. Nevertheless, she also rejects the dichotomy between commodity fetishism and immiseration formulated by other humanists such as Goldmann. Both are forms of the domination of wage-labourers by capital, of living labour by dead labour.⁶⁹ This is also true of the so-called objective laws of capitalism, such as the rising organic composition of capital and the falling rate of profit. Due to the significance of the domination of living by dead labour, the fundamental aspect of socialism is not the collective ownership of the means of production, which, as in the USSR, is a merely juridical ownership that masks persisting class domination. Rather, the most fundamental aspect is the elimination of alienated labour. Thus, her humanist Marxism is not a ‘petty-bourgeois’ market-socialism. It calls for the abolition of the market, and in particular, the market in labour-power.

Another example of a sophisticated socialist humanism that had no inclinations toward market socialism is that of E. P. Thompson. In an article for the first volume of *The New Reasoner*, the journal of the new left in Britain, Thompson initiated a debate featuring a number

⁶⁶ Ibid., 217-18.

⁶⁷ Ibid., 232.

⁶⁸ Dunayevskaya, op. cit., 75.

⁶⁹ Ibid., 73.

of contributors.⁷⁰ Against the dialectical materialism of Stalinist orthodoxy with its “belittling of conscious human agency in the making of history,” Thompson called for a socialist humanism.⁷¹ Much of the ensuing debate was not only concerned with the role of ethics in historical action. It also concerned what can be attributed directly to Marx in contrast to Stalinist caricatures. For Thompson, that Marxism reduces all morality to class morality has some evidence in Marx and Engels, more in Lenin, but more accurately describes the Stalinist distortion of Marxism.⁷² In his subsequent article, Thompson argues that the current state of socialism cannot be entirely attributed to Stalinist ideology. It has some basis in certain ambiguities in Marx, Engels, and in particular Lenin, especially when they refer to human consciousness as a mere reflection of social circumstances.⁷³ Ultimately, Thompson affirms a historical materialism that provides space for moral agency. He concedes that compassion is seriously constrained in certain historical circumstances, say, in the struggle against fascism. “Nevertheless,” Thompson continues, “the methods of violence inescapable in such contingencies must never be glorified; the Christian precept, ‘Forgive them, for they know not what they do,’ must re-assert itself whenever and to the degree that contingencies allow.”⁷⁴

Thompson’s articles elicited a number of responses. Some decried his lapse into utopian socialism. Harry Hanson, for example, argues that, contrary to Thompson’s interpretation, Marx espouses ‘moral futurism.’⁷⁵ Echoing Engels and Kautsky, Hanson asserts:

We cannot be ‘really human’ under conditions of increasing immiseration. Our only alternative is militancy, as by doing so we speed the advent of the classless society, when all the moral ultimates we have been keeping tucked away in our kit-bags while the battle is raging can be released in an atmosphere which will no longer turn them to dust and ashes. But while the battle does rage, class militancy

⁷⁰ E. P. Thompson, ‘Socialist Humanism: An Epistle to the Philistines,’ *The New Reasoner*, No. 1 (Summer 1957): 105-123.

⁷¹ *Ibid.*, 115.

⁷² *Ibid.*, 120.

⁷³ E. P. Thompson, ‘Socialist Humanism: An Epistle to the Philistines: Part II,’ *The New Reasoner*, No. 1 (Summer 1957): 124-143; 132-33.

⁷⁴ *Ibid.*, 128.

⁷⁵ Harry Hanson, ‘An Open Letter to Edward Thompson,’ *The New Reasoner*, No. 2 (Autumn 1957): 79-91; 80.

is the only moral principle that is worth anything. As long as what we do contributes to the victory of the revolution, we can be satisfied that it is right.⁷⁶

Hanson attributes the rise of socialist humanism to a situation in which the living standards of the working class are getting better, not worse.⁷⁷ He argues that, ultimately, Thompson is a utopian socialist who denies the dialectic of history.⁷⁸ Tim Enright criticizes Thompson on similar grounds: “The logic of the situation is inexorable. The time-machine of Russian Communism metamorphosed the Middle Ages into the Twentieth Century in the space of forty years. In its path obstacles external and internal were crushed to dust. Accepting the goal, human suffering was inevitable”⁷⁹ In other words, the ends justify the means.

Others criticize Thompson from the other side. Charles Taylor, for example, argues that Thompson pins too much on Stalinist distortions and therefore underestimates the inadequacies of genuine Marxism: “A really consequent critique of Stalinism cannot be a simple return to the original tradition, it must also involve a critique of the values of Marxist communism.”⁸⁰ If Stalin distorts Marx it is because, in certain respects, Marx is quite amenable pulled in these directions. In one of the last contributions to the debate within *The New Reasoner*, Thompson comes around to Taylor’s critique:

I can now see more clearly that if Stalinism is a mutation of Marx’s ideas, the very fact that they are capable of undergoing such a mutation while still remaining in a direct line of relationship indicates an original weakness which goes beyond mere ambiguity – and especially at the point where the crucial distinction between determinism and agency is to be found.⁸¹

If there is not a straight line between Marx and Stalin, neither is there an insurmountably thick line separating them.

⁷⁶ Ibid., 80-81.

⁷⁷ Ibid., 86.

⁷⁸ Ibid., 87.

⁷⁹ Tim Enright, ‘Materialism or Eclecticism?’ *The New Reasoner*, No. 3 (Winter 1957): 105-112; 109.

⁸⁰ Charles Taylor, ‘Marxism and Humanism,’ *The New Reasoner*, No. 2 (Autumn 1957): 92-98; 98.

⁸¹ E. P. Thompson, ‘Agency and Choice—I: A Reply to Criticism,’ *The New Reasoner*, No. 5 (Summer 1958): 89-106; 96.

One of the most important contributors to this debate, Alasdair MacIntyre, would later go on to become one of the most influential moral philosophers of the latter-half of the twentieth-century.⁸² He argues that we must find the dialectical middle-ground between, on the one hand, the Stalinist perspective in which the ‘ought’ of morality is swallowed by the ‘is’ of history, and on the other hand, the “isolated moral hero” who invokes moral principles independently of historical processes.⁸³ Without making these historical processes sovereign, nonetheless, there is emerging a set of moral standards whereby duty can be reconciled with desire. MacIntyre argues that “industrial working-class life” provokes the inclination toward our common human nature among the proletariat: “Capitalism provides a form of life in which men rediscover desire in a number of ways. They discover above all that what they want most is what they want in common with others; and more than this that a sharing of human life is not just a means to the accomplishment of what they desire.”⁸⁴ For this reason, communist morality is not futurist. It is about our common needs, duties, and desires in the here and now.

Even though MacIntyre’s essays are probably the most sophisticated in this particular debate within *The New Reasoner*, he too is dependent on the notion of capitalism as unproblematically producing its own gravediggers. Written in the postwar era, MacIntyre would later repudiate these views amid the decline of the labour movement. Three decades later, MacIntyre, in his seminal work, *After Virtue*, argues that “the claim of Marxism to a morally distinctive standpoint is undermined by Marxism’s own moral history. In all those crises in which Marxists have had to take explicit moral stances [...] Marxists have always fallen back into relatively straightforward versions of Kantianism or utilitarianism.”⁸⁵ Similarly, Thompson would later assert that with regard to ethics, “the silence of Marx, and most *Marxisms*, is so loud as to be deafening.”⁸⁶ Thompson’s fellow British historian and sometime antagonist Perry Anderson agrees: “Marx and Engels left no Ethics, and the resultant gap was never made good in the Marxism which ensued after their deaths—to the danger of historical materialism as a theory and of the socialist movement as a practice.”⁸⁷

⁸² Although MacIntyre’s original contributions were published in *The New Reasoner*, they along with other essays have been republished in a recent anthology: Alasdair MacIntyre, *Alasdair MacIntyre’s Engagement With Marxism*, eds. Paul Blackledge and Neil Davidson (Chicago: Haymarket Books, 2006). I will cite from it.

⁸³ *Ibid.*, 46-47.

⁸⁴ *Ibid.*, 65.

⁸⁵ Alasdair MacIntyre, *After Virtue* (Indiana: University of Notre Dame Press, 1984), 261.

⁸⁶ E. P. Thompson, *The Poverty of Theory and Other Essays* (London: Merlin Press Ltd., 1978), 171.

⁸⁷ Quoted in Steven Lukes, *Marxism and Morality* (New York: Oxford University Press, 1987), 26.

Despite these more cogent versions of Marxist-humanism and the calls for a return to Hegel, none of these theorists were able to produce a full-fledged and definitive ethics based in the concept of alienation. Sartre, who attempted to reconcile his existentialist commitments with Marxism, including its dialectical method and theory of history, proposed a grand treatise on ethics. Like Lukács before him, he failed to complete it.

The debate ended in the familiar impasse. In the first debate a mechanistic application of the dialectical method provoked an idealist renunciation of the dialectic. In the second debate an idealist reading of the dialectic provoked a structuralist rejection of the dialectic. The idealist moment of the first debate and the structuralist moment of the second merged in the “analytical” Marxists, who, in their repudiation of the dialectic, applied the methods of analytical philosophy and rational choice economic theory to questions of justice, exploitation, and Marxism.⁸⁸ This instigated the third debate.

2. 3: The Debate of the 1970s-90s

The most recent debate began in the late 1970s and lasted until the early 1990s. Much more than the previous two waves, this debate focused specifically on whether or not Marx condemns capitalism as unjust. It will therefore take up a considerable amount of our discussion. The debate focused on Marx’s seemingly contradictory statements about exploitation. This intensified the scrutiny of the paradox of justice and theft noted by Bernstein decades earlier. In this brief overview, I will go into less detail here than with the previous two waves because, in later chapters, I give the participants in the third wave of debates a much more detailed treatment.

Some of the most influential participants in the third wave of debates actually began addressing the relation between Marx and justice before the end of the second wave of debate. Nevertheless, their concern is not the question of Marx’s humanism or structuralism, but rather, his relation to questions of justice. Two of the most influential participants in the third wave are Robert Tucker and Allen Wood. Indeed, their perspective has often been described as the

⁸⁸ As Blackledge notes, “Analytical Marxists accepted Althusser’s ‘expulsion of Hegelian modes of thinking from Marxist theory,’ while reversing his attempt to expunge ethical and moral concerns from Marxism” (Blackledge, op. cit., 151).

‘Tucker-Wood thesis.’ Nevertheless, both of them published their first contributions long before the debate began. Tucker published his works *Philosophy and Myth in Karl Marx*⁸⁹ and *The Marxian Revolutionary Idea*⁹⁰ in 1961 and 1972. He criticizes a few thinkers who argue that Marx deems capitalism unjust. These include Harold Laski, A. D. Lindsay, E. H. Carr, and Sidney Hook, who, in general commentaries on Marx, do not focus specifically on the question of justice. Tucker’s books did not stimulate a broader debate. Although Wood, in his 1972 article, ‘The Marxian Critique of Justice,’⁹¹ raises Tucker’s arguments to a higher level of sophistication, he did not elicit any immediate responses. Tucker and Wood did not receive their first major rebuttal until 1978 with Ziyad Husami’s ‘Marx on Distributive Justice.’⁹² It is only then that the debate explodes into its third wave. What intervenes between 1972 and 1978? The landmark work of Rawls and the widespread debate about justice in liberal political philosophy. As we will see, liberal political philosophy proved hugely influential. Indeed, many participants attempted to synthesize Marx and Rawls. As with idealism and positivism in the first wave, and structuralism and humanism in the second, the third wave was often incorporated into the hegemony of liberal political philosophy.

The third wave of debates featured three major sides. The first group is comprised of theorists like Tucker, Wood, Levine, and Reiman, who argue that Marx deems capitalism just; he criticizes it on other grounds. The second group is comprised of theorists like Husami, Cohen, and Geras, who argue that Marx criticizes capitalism because, among other things, it is unjust. The third group is comprised of theorists like Miller, Buchanan, and Lukes, who argue that Marx deems capitalism neither just nor unjust because he regards his own critique to be beyond justice as such.

Among those who argue that Marx deems capitalism just according to the only possible standards under capitalism, namely, bourgeois justice, some approve, as do Tucker and Wood, and some disapprove, as do Levine and Reiman. Members of the latter sub-camp articulate versions of a Marxist theory of justice that are remarkably similar to the versions offered by those in the opposed camp who do think that Marx condemns capitalism as unjust. Everyone in

⁸⁹ Robert C. Tucker, *Philosophy and Myth in Karl Marx* (New York: Cambridge University Press, 1961).

⁹⁰ Robert C. Tucker, *The Marxian Revolutionary Idea* (New York: W. W. Norton & Company, 1969).

⁹¹ This is reprinted in Allen W. Wood, ‘The Marxian Critique of Justice,’ *Marx, Justice, and History: A Philosophy & Public Affairs Reader*, eds. Marshall Cohen, Thomas Nagel, and Thomas Scanlon (Princeton: Princeton University Press, 1980).

⁹² Ziyad I. Husami, ‘Marx on Distributive Justice,’ in Marshall Cohen, et al, op. cit.

the second group, which argues that Marx deems capitalism unjust, agrees that he was right to do so. The major debate within this camp is whether or not Marx is consistent. In other words, the question is whether Marx's critique of capitalism as unjust is done knowingly, as is argued by Husami, or unknowingly, as is argued by Cohen and Geras. For those in the latter sub-camp the question becomes: why did Marx hold this principle unconsciously? Among those in the third group who argue that Marx does not regard capitalism as just or unjust because he attempts to go beyond justice as such, the major difference is whether they approve, as does Miller, or disapprove, as do Buchanan and Lukes.

Ultimately, as we will see in later chapters, the third debate became mired in an impasse similar to the first two. It could not resolve the mutually reinforcing tensions between determinism and formalism, of which orthodox and revisionist Marxism are the classical examples. What neither tendency in these three waves of debate could establish is when an affirmation of agency crosses over into voluntarism, and conversely, when an acknowledgement of historical and structural tendencies becomes determinism. Therefore, the debates often bifurcated into dichotomies between instrumental reason and formalistic reason, between consequentialism and deontology. The determinist tendency rejects the notion that ethics is an end in itself because it assumes that this necessarily entails utopian socialism. Similarly, although the formalist tendency rejects the deterministic reduction of ethics to a means, it also assumes that the only alternative to this 'scientific socialism' is utopian socialism. This provokes the question, is it possible to have a socialism for which ethics is an end but which is not utopian?

Since these are two general tendencies with innumerable shades within them, not everyone within one or the other tendency can be criticized for all of the things that are generally true about that tendency.⁹³ Nevertheless, the persistence of these tendencies throughout the three waves is profound. Like Bernstein before them, both Cohen and Geras argue that, in light of the refutation of the Marxist theory of history, Marxism must reclaim its ethics by affirming an explicitly utopian socialism. Similarly, like Kautsky and Althusser before him, Wood reduces ethics to a weapon in the class war and derides the humanist-Marxists. Although a third group of commentators argue that Marx's theory attempts to go beyond justice, insofar as they agree with

⁹³ For example, as we will see, Geras is, in many respects, an exception to the utopian socialism he identifies with, although his particular criticisms of Marx do not necessitate the utopian socialism and theories of natural right he embraces.

Marx, as does Miller, they risk the consequentialism typical of Kautsky, Althusser, and Wood; if they disagree with Marx, as do Buchanan and Lukes, they are in danger of replicating the deontology of Bernstein, Goldman, and Cohen. Indeed, these two general tendencies have proven so persistent, it provokes questions about the extent to which they are reflections of deeper imperatives in capitalist social conditions. I will address this in the next chapter.

In actual practice, both formalism and determinism led to elitism in their own ways. Whether it was the gradualist parliamentarism of the Second International or the insurrectionary vanguardism of the Third International, what Marx describes as the ‘transforming of circumstances and people’⁹⁴ became the purview of a privileged minority that claimed to represent the working class.⁹⁵ There was no long-term and widespread cultivation of the democratic capacities necessary for the self-determination of the majority of workers and their allies.⁹⁶

As we saw, revisionism reduces historical materialism to its deterministic caricatures. Consequently, in their rejection of determinism, this ‘ethical socialism’ dismisses many of the insights that historical materialism provides about the structural limits of capitalism, its inherent tendencies, as well as the dynamics of class struggle. As a result, Bernstein and his progeny throughout the three waves often uncritically absorb significant features of capitalism. Therefore, their socialist politics risks being incorporated back into capitalism, as has been the tendency among the varieties of revisionism. This is the case in the first wave with the parliamentary elitism of evolutionary socialism;⁹⁷ in the second wave with the adoption of market socialism;⁹⁸ and in the third wave with the widespread rejection of the labour theory of value.⁹⁹

When the determinist tendency has avoided being incorporated into capitalism it is only because they replaced it with something as bad or worse. The ‘orthodox’ Marxists and successive generations of vanguardists neglect that a key part of Marx’s critique of the utopian socialists was not merely what must be abolished to bring an end to capital, but what must be

⁹⁴ Marx, *The Civil War in France*, op. cit., 61-62.

⁹⁵ For a comprehensive explanation of these historical trajectories, see: Geoff Eley, *Forging Democracy: The History of the Left in Europe, 1850-2000* (New York: Oxford University Press, Inc., 2002), 81-82; 118; 194; 218-19; 249-60; 304-11.

⁹⁶ For an important contribution to theories of building democratic capacities, see: C. B. Macpherson, *Democratic Theory: Essays in Retrieval* (Oxford: Clarendon Press, 1973), 3-76.

⁹⁷ Eduard Bernstein, *Evolutionary Socialism: A Criticism and Affirmation*, trans. Edith C. Harvey (New York: Schocken Books, 1961).

⁹⁸ Lucien Goldman, ‘Socialism and Humanism,’ in Fromm, op. cit., 49-50.

⁹⁹ Jon Elster, *Making Sense of Marx* (Cambridge: Cambridge University Press, 1987), 167; 202-4.

established to create a genuine socialism. Indeed, some of Marx's most trenchant criticisms of utopian socialism involved its elitism, the belief of certain individuals that they could decree a new social order to which everyone else will adhere. This is precisely what many of the determinists replicated in their practice, even while describing themselves as 'orthodox' Marxists.

Of course, the revisionist insistence on a universal ethics risks naiveté about the nature of class societies, but this need not necessarily be so. Conversely, the determinist assertion that any truly human morality is impossible within class societies is much more dangerous. This claim is related to the similar assertion that until the classless society is realized, human nature remains latent. This too often leads to the notion that, in current conditions, we cannot be fully human, and therefore, we are not obliged to act fully human. Furthermore, the determinist tendency often assumes that social conflict is basically reducible to class conflict. Therefore, with the abolition of class differences, social conflict will come to an end. In other words, with the founding of the classless society, ethics will become more or less straightforward. When this set of beliefs is combined with deterministic notions of historical development, the content of ethics is neglected in both its ends and its means. Therefore, this disregards the fact that the ethics of socialism, which is not merely a set of social conditions but also of relations and practices, must be cultivated in the present if we are to become the kinds of people necessary to make something like a genuinely democratic socialism possible. Nevertheless, revisionism is no less deterministic than the orthodox Marxism to which it is opposed. It can rely on the gradualism of 'evolutionary' socialism precisely because it believes that the development of socialism is inevitable. Indeed, its interest in ethics is in large part an attempt to create order, to prevent the class conflict that it believes will disrupt the gradual achievement of socialism through parliamentary politics. Revisionism neglects that, for Marx, an integral part of class struggle is its agonism, its educative function, its fundamental role in developing democratic capacities. Marx contends that it is through struggle and revolution alone that workers "become fitted to found society anew."¹⁰⁰

Put succinctly, the formalist tendency is capable of little more than principled inaction, whereas the determinist tendency engages in action that too readily sheds all principles. Whereas the formalists have a robust notion of the end but are devoid of the means to achieve it, the determinists have an excess of means precisely because they deny all independent status, all

¹⁰⁰ Marx and Engels, *The German Ideology*, op. cit., 60.

substantive content, to the end. The question of means and ends can be helpfully theorized in general ways, but these dilemmas cannot be resolved entirely before the fact in philosophical treatises or political programmes. It also requires a socialist politics that fosters an extensive, and therefore, a de-centralized maturation of the ability to subtly reason about how to pursue the right ends, even if these require means we would not use otherwise, while maintaining the balance between means and ends, such that these means do not undermine the ends. The elitism shared by the revisionist and orthodox Marxists treat the question of means and ends as a set of principles to be adopted and applied, not as the development of a certain character, of specific capacities, in the majority of workers and their allies. This is inexcusable given the importance of *praxis*, of testing theory through experimental practice and struggle, in the Marxist theory of revolution:

proletarian revolutions like those of the nineteenth century constantly criticize themselves, constantly interrupt themselves in their own course, return to the apparently accomplished, in order to begin anew; they deride with cruel thoroughness the half-measures, weaknesses, and paltriness of their first attempts, seem to throw down their opponents only so the latter may draw new strength from the earth and rise before them again more dramatic than ever, recoil constantly from the indefinite colossalness of their own goals—until a situation is created which makes all turning back impossible, and the conditions themselves call out: *Hic Rhodus, hic salta!*¹⁰¹

Keeping in mind the need for the widespread development of a certain kind of character or disposition, we can begin to address the impasse struck in these debates by drawing out the connections between *praxis* and ethics. One such connection is what I will refer to throughout this text as ‘practical reason.’ This is a disposition that is as much ethical as it is intellectual, in which the understanding of how society functions and should function is a condition of connecting our own individual good to the common good of the social whole. Luxemburg asserts something similar to this when she states that socialism demands, among other things, “a

¹⁰¹ Karl Marx, ‘The Eighteenth Brumaire of Napoleon Bonaparte,’ in Karl Marx and Friedrich Engels, *The Karl Marx Library Volume I: On Revolution*, ed. Saul K. Padover (New York: McGraw-Hill Book Company, 1971), 247-8.

complete spiritual transformation,” and that “the only way to a rebirth is the school of public life itself, the most unlimited, the broadest democracy and public opinion.”¹⁰² Practical reason is a process by which we cultivate ourselves as ethical persons who are habitually disposed to use both intelligence and integrity to adeptly read the complexity of circumstances, including the social barriers to cooperation, and develop our knowledge of the intricate interrelations between our own individual good and the goods of others, even if they do not recognize them as such. This does not avoid the potential need for violence or the dangers associated with its use, but it begins to develop a standard of the good that is independent of what has been expressed too abstractly heretofore, namely, whatever is ‘historically progressive.’ We should recall that history does nothing; it is we who act.¹⁰³

The idea of a robust practical reason oriented toward objective human goods is often deemed to be inherently paternalistic. For example, Heller asserts that any theorist who attempts to distinguish between objective or ‘real’ needs and imaginary or ‘false’ needs adopts the position of a god: “If the theoretician assumes that society is being objectively fetishized, he disqualifies his own knowledge as being ‘the’ correct one since his consciousness, too, is a product of society. As a consequence, the division of needs into ‘true’ and ‘false’ proves to be nonsensical.”¹⁰⁴ Nevertheless, this renounces any potential scientific understanding of capitalist society. The way to avoid elitism is not by rejecting real needs or objective human goods. After all, the idea that human goods are necessarily subjective bolsters the elitism of capital, which, in its quest for profits, demands the neutrality of, and autonomy from, political regulations and social obligations. Rather, navigating the risks of elitism requires the cultivation of the understanding and pursuit of these objective goods on a mass-scale by the majority of workers and their allies. It requires the understanding of practical reason as a universal human capacity. This is one of the more significant connections between *praxis* and ethics.

At the end of each of the first two debates there were theorists who rejected the common assumptions held by the formalists and the determinists. They often called for a return to Hegel

¹⁰² Rosa Luxemburg, ‘The Russian Revolution (1918),’ in *The Rosa Luxemburg Reader*, eds. Peter Hudis and Kevin B. Anderson (New York: Monthly Review Press, 2004), 306-7. Geras provides an excellent discussion of these passages: Norman Geras, ‘Bourgeois Power and Socialist Democracy: On the Relation of Ends and Means,’ *The Legacy of Rosa Luxemburg* (Thetford, Norfolk: Verso, 1985), 182-83.

¹⁰³ Karl Marx and Friedrich Engels, *The Holy Family or Critique of Critical Criticism* (Moscow: Foreign Languages Publishing House, 1956), 125.

¹⁰⁴ Agnes Heller, ‘Can ‘True’ or ‘False’ Needs be Posited?’ in *Human Needs: A Contribution to Current Debate*, ed. Katrin Lederer (Cambridge, Massachusetts: Oelgeschlager, Gunn & Hain, Publishers, Inc., 1980), 213-14.

and to properly dialectical critique. As we will soon see, I am certainly sympathetic to this. I too attempt a return to Hegel as a precondition for the interpretation of Marx. Clearly, however, this return to Hegel has not been enough. As I have noted, both Lukács and Sartre left their treatises on ethics unfinished. One of the most important aspects of these debates is whether the ambiguities, and some would say, the downright contradictions, of Marx's ethics arise from mere caricatures of his theory or from Marx himself. In other words, is the historical determinism that leads to a denuded ethics the product only of misinterpretations of Marx, or is it inherent to Marx's historical materialism as Marx himself understood it? This raises the broader question of whether or not the dialectical method and its account of historical development necessarily leads to a dangerous consequentialism when it is used by those who, against all moral objections, claim to harness the progressive movement of history.

To understand and properly interpret Marx on his own terms requires not only returning to what Marx says and the method he offers. It also requires that we use this method in our interpretation of Marx. I hope to prove throughout this text that if the impasse struck by the three waves of debate has any chance of being resolved, it will require that we turn Marx's method on what Marx says about ethics. This, I believe, is the major shortcoming of all of these debates. In attempting to answer the questions about the relation between Marx and justice, they have used a distinctly non-Marxist, indeed, an *idealist* method. I therefore propose that the only way these conundrums can be resolved, if indeed any resolution is possible, is through a historical materialist critique of Marx. Nevertheless, we must hold out for the possibility that the dialectical method, the 'circle of circles,' cannot close upon ethics. This is what is ultimately at stake in these debates. Perhaps we must not only call into question Marx's statements about ethics, but the historical materialist method as a whole. Perhaps ethics is the rock against which the dialectic breaks.

Chapter 3: Toward A Historical Materialist Critique of Justice

When we approach Marxism for the first time, usually one of the first things we learn is that it is a form of materialism. Marxism contends that human consciousness and practice is conditioned by material social relations, by the intersection between natural and historical laws, the comprehension of which is a precondition of our self-determination, of our ability to transform these conditions according to consciously held ends. For this reason, Marxism considers itself a science that engages in the critique of ideology, namely, that which generalizes what is merely particular, naturalizes what is historical, and casts as the common good what is only the particular interest of a ruling class. Furthermore, this is a critique of idealism, which separates ideas from their historical context and therefore acts as if history has been governed by the development of the best ideas rather than ruling classes that produce the dominant ideas that best conform to their interests. Given these theoretical commitments, when one reviews the extensive debates within Marxism on the relationship between Marx and justice, we should be immediately struck by their idealist character. Often the explanations of Marx's theory of justice do little more than discuss his interactions with intellectual influences. Those commentators who are critical of Marx's position usually explain it in terms of a theoretical or logical error. It is peculiar that self-described Marxist commentators rarely, if ever, explain Marx's theoretical errors in terms of his historical conditions. They do not ask whether or not Marx uncritically absorbs significant features of capitalist society. They do not ask if Marx engages in *ideology*.

G. A. Cohen provides an illustrative example of this in an essay on Marxist interpretations of freedom and justice.¹⁰⁵ In this article, Cohen anticipates potential objections to his method: analytical philosophy. He notes how some might argue that the precise techniques of analytical philosophy, which are adept at examining conceptual error, are not the appropriate way to critique ideology, which has its origins not in 'intellectual malfunctioning' but in class interests. Cohen rejects this contrast: "For the truth is that class interest generates ideology precisely by instilling a propensity to errors of reasoning about ideologically sensitive issues."¹⁰⁶ This is true. Nevertheless, among innumerable potential examples, I focus on Cohen's essay here

¹⁰⁵ G. A. Cohen, 'Freedom, Justice and Capitalism,' *New Left Review*, I.126 (March-April 1981): 3-16.

¹⁰⁶ *Ibid.*, 6-7.

because, given what he says, he more than any other commentator should have avoided the aforementioned idealist approach. Alas, he does not.

Cohen first discusses freedom. He exposes the ideological aspects of libertarianism by rooting its notion of liberty in the specific private property relations of capitalism. Cohen then moves to a discussion of justice in which he describes capitalism as an unjust society because he deems private ownership of the means of production, of the most essential conditions of life, as unjust. He asserts that all socialists fundamentally believe this whether or not they know it. Although many Marxists deny this, deeming justice illusory and irrelevant, Cohen asserts: “Revolutionary Marxist belief often misdescribes itself, out of lack of clear awareness of its own nature, and Marxist disparagement of the idea of justice is a good example of that deficient self-understanding.”¹⁰⁷ Indeed, Cohen attributes the denial of justice by revolutionaries to “ill-conceived philosophical commitments.”¹⁰⁸ It is evident that Cohen regards this ‘deficient self-understanding’ as ‘conceptual error’ and ‘intellectual malfunctioning,’ but does he deem it...ideological? He does not say. Despite everything he says about the links between analytical philosophy and the critique of ideology, Cohen does not ask whether or not this popular belief among revolutionaries has its origins in the uncritical absorption of specific social conditions.

In this essay, Cohen offers an interpretation of Marx’s view of justice. He notes how Marx, in his ‘Critique of the Gotha Programme,’ criticizes socialists who argue for fair and equitable distribution. Cohen quotes Marx’s assertion that “any distribution whatever of the means of consumption is only a consequence of the distribution of the conditions (or means) of production themselves.”¹⁰⁹ Cohen then offers his analysis of Marx’s assertions:

Yet the standard Marxist view of the passage, a product of hasty reading, is that here Marx says that it is production, not distribution, which matters; and this misreading is one source of Marxist hostility to the idea of justice. So I want to emphasize that Marx is not saying: ‘Give up your obsession with just distribution.’ He is saying: ‘Prosecute your concern about distribution at the appropriately fundamental level.’¹¹⁰

¹⁰⁷ Ibid., 12.

¹⁰⁸ Ibid., 13.

¹⁰⁹ Ibid., 13-14.

¹¹⁰ Ibid., 15, n. 7.

Although I withhold judgement for now about Marx's view on justice, I agree with Cohen's assertions about focusing on fundamental causes. It is precisely for this reason that Cohen's idealist analysis of justice is so inadequate. This is not due entirely to his analytical philosophical approach. As we will see, most commentators are guilty of these shortcomings irrespective of their methodology. They have not applied Marxism consistently. They have applied historical materialism to everyone...except Marx himself.

In order to engage in a historical materialist critique of Marx on the question of justice, we must understand the development of ethics in general and justice in particular throughout the course of human history. Otherwise, it would be impossible to comprehend the transformation of justice throughout the development of capitalism and the extent to which Marx has uncritically accepted these changes. In other words, we must compare historically the practices and theories of justice in capitalist and non-capitalist societies. We look in vain, however, when we try to find a Marxist critique of ethics on the scale of Marx's critique of political economy in the four volumes of *Capital*. There is no specifically historical materialist account of ethics and religion on the scale of Weber's *The Sociology of Religion* or Durkheim's *The Elementary Forms of Religious Life*. While many Marxist commentators have critically discussed bourgeois ethics and justice, few have done so *self-critically* in a way that interrogates whether or not Marx and Marxism have absorbed aspects of the changes to justice under capitalism.

It is beyond the scope of this dissertation to provide a full-fledged historical materialist critique of justice, let alone of ethics. Nevertheless, in order to begin to engage in a historical materialist critique of Marx, we must be able to understand what is unique to justice under capitalism. This requires a paradigm of pre-capitalist practices and theories of justice by which to compare and contrast our current circumstances. This, to a certain extent, is necessarily inadequate, because no theory of justice can provide an all-encompassing paradigm for all of the manifold forms of pre-capitalist societies. Depending on the choice of paradigm, however, this is the best way to proceed in the absence of a full-fledged historical materialist critique of justice. Indeed, a goal of this dissertation is to show the need for this broader critique.

The paradigm of pre-capitalist justice I have chosen is the schema originated by Plato and Aristotle and formalized by Aquinas. There are four compelling reasons to make this tradition the paradigm with which to contrast the transformations of justice under capitalism.

First, it attempts to be comprehensive. It includes ‘distributive justice,’ ‘commutative justice,’ ‘corrective justice,’ and ‘complete justice.’ This fourfold schema addresses most, if not all, of the major aspects of justice. This comprehensiveness makes it more difficult to take for granted anything about our own commonly-held assumptions about justice. Indeed, as we will soon see, it is much broader than most contemporary notions of justice. Furthermore, commentaries about the relation between Marx and justice have often focused on distributive justice, and, unwittingly, commutative justice, but very few have addressed the potential roles of corrective justice and complete justice in Marx’s work. This is also why I have structured this book in terms of the fourfold schema.

Second, the schema has been incredibly influential, not only in Western, but also in Eastern philosophy.¹¹¹ Until the early modern period, Aristotle’s theory of justice often set the terms of the discussion. The theory was supplemented, amended, and adapted to specific societal conditions, but it nonetheless remained dominant.¹¹²

Third, because of these two factors, it was often the theory against which early modern theorists rebelled in their formulation of the specifically modern theories of justice.¹¹³ As we will soon see, Hobbes is a paradigmatic case. Therefore, the schema developed by Plato, Aristotle, and Aquinas is a good contrast to what have become the common-sense notions of justice today.

Fourth, despite the rebellions against this notion of justice, there have been a number of periodic returns to Aristotle in modern thought. Indeed, we could say that Aristotelianism is the ‘bad conscience’ of modern political theory. This has occurred within liberal thought, whether it is J.S. Mill’s revised utilitarianism in the nineteenth century or Sen and Nussbaum’s capabilities approach in the twentieth century. A number of seminal works were published in 1958 that inaugurated a prominent neo-Aristotelianism, including Arendt’s *The Human Condition*, Hans-Georg Gadamer’s *Truth and Method*, G.E.M. Anscombe’s essay, ‘Modern Moral Philosophy,’¹¹⁴ which launched modern virtue ethics. Indeed, the most famous virtue ethicist is Alasdair

¹¹¹ For example, see: Alfarabi, *Alfarabi: The Political Writings: Selected Aphorisms and Other Texts*, trans. Charles E. Butterworth (Ithaca: Cornell University Press, 2001), 40-42; 132; 141-142; 166.

¹¹² Giorgio Del Vecchio, *Justice: An Historical and Philosophical Essay*, ed. A. H. Campbell (New York: Philosophical Library, 1953), 55.

¹¹³ Istvan Hont and Michael Ignatieff, ‘Needs and Justice in the *Wealth of Nations*: an introductory essay,’ in *Wealth and Virtue: The Shaping of Political Economy in the Scottish Enlightenment*, eds. Istvan Hont and Michael Ignatieff (Cambridge: Cambridge University Press, 1983), 26.

¹¹⁴ G. E. M. Anscombe, ‘Modern Moral Philosophy,’ in *Virtue Ethics*, eds. Roger Crisp and Michael Slote (New York: Oxford University Press, Inc., 1998).

MacIntyre, a former Marxist, and a number of Marxist theorists—we could call them ‘NicoMarxians’—are attempting to develop a Marxist virtue ethics.¹¹⁵

It is for these reasons that the schema of justice developed by Plato, Aristotle, and Aquinas throws into relief the transformations of justice, in both theory and practice, in the transitions to capitalism, and therefore, our common-sense assumptions about justice within capitalism. Although the schema of justice is quite complex, for our purposes here, a brief overview will suffice.

For Aristotle, justice is a unique virtue. It contains within itself all of the other virtues. More than any other virtue it is directed toward the good of others.¹¹⁶ Therefore, it is a distinctly social virtue. Furthermore, for Aristotle, contrary to the sophists, not all justice is conventional justice.¹¹⁷ It is not reducible to the prevailing laws and customs. It also has a natural part. Since it is a virtue, it is an ontological part of our human nature. It exists in all humans irrespective of their social context. Indeed, it prescribes certain actions regardless of the prevailing conventions. Aquinas later describes this as the distinction between natural law and positive law.¹¹⁸ Natural law is based in nature, in human nature and in the broader cosmos. Its standards are true everywhere and at all times. Positive law is the particular body of laws adapted to specific societal circumstances. The natural law is the basis by which we judge the validity of the positive law.

Let us now turn to the four major dimensions of Aristotle’s theory of justice. The first aspect of justice is ‘distributive justice.’ This involves the distribution of commonly-held things to individuals according to some notion of merit. The second aspect, ‘corrective justice,’ addresses crime and punishment. Corrective justice rectifies wrongs committed during transactions, whether they are initially voluntary, such as trades and loans, or involuntary, such as theft and adultery.¹¹⁹ The third aspect of justice concerns market exchange, which Aristotle describes as ‘reciprocity’ and which Aquinas later calls ‘commutative justice.’¹²⁰ It has to do with the exchange of privately-held goods of equivalent worth. The final aspect, the capstone of

¹¹⁵ For example, see: Paul Blackledge, ‘Alasdair MacIntyre: Social Practices, Marxism and Ethical Anti-Capitalism,’ *Political Studies*, Vol. 57 (2009): 866-884.

¹¹⁶ Aristotle, *Aristotle’s Nicomachean Ethics*, trans. Robert C. Bartlett and Susan D. Collins (Chicago: The University of Chicago Press, 2011), 1129b27-29.

¹¹⁷ *Ibid.*, 1134b18-19.

¹¹⁸ Thomas Aquinas, *On Law, Morality, and Politics*, eds., William P. Baumgarth and Richard J. Regan, S. J. (Cambridge: Avatar Books, 1988), 44-55; 56-63.

¹¹⁹ Aristotle, *op. cit.*, book V, chapter 2.

¹²⁰ Aquinas, *op. cit.*, 164-65; 192-194.

justice to which the other aspects are subordinate, is ‘complete justice.’ This is the individual’s ethical orientation to the common ends of the social whole and the objective goods of human nature. Aristotle deems it essential that we understand justice in all of its aspects. He asserts that most people focus on one or another facet of justice, but not justice as a whole in its authoritative sense. The political community is not merely for living together, for engaging in compacts to prevent injustice. Rather, it is for living well, for making its citizens good and just. Those who have the greater part in the city are not the most free, wealthiest, or best born, but those who contribute the most to the community on the basis of political virtue.¹²¹ Justice as a whole is *the* political good and its basis is the common good of society.¹²²

The two proprietary forms of justice are distributive and commutative justice. They are distinct from the non-proprietary aspects of justice, namely, corrective and complete justice. These latter are certainly concerned with property in a variety of ways. Nevertheless, unlike distributive and commutative justice, they are not primarily concerned with how individuals relate to each other through their property. In order to see why the proper distinction between distributive justice and commutative justice is crucial for our understanding of the dramatic changes undergone by justice as a whole throughout capitalist modernity, we must take a more detailed look at proprietary justice.

Distributive justice is concerned with publicly-owned and commonly-held goods distributed by non-market institutions, such as the family or the state. In other words, distributive justice pertains to things divisible among those who share in a regime, such as public wealth, offices, and honours. This form of justice takes into account the status or merit of the people involved. Aristotle argues that distributive justice, like all justice, is concerned with equality. Nevertheless, this is not strict equality. Rather, it is a proportionate equality according to the different merits of the individuals involved. Aristotle contends that distribution is just when it is proportionate to these respective merits.¹²³ In other words, this is equality between equals and proportionate inequality between unequals. Someone acts unjustly when she has more of the good things and less of the bad things relative to her merit, and conversely, she suffers injustice when she has less of the good and more of the bad things relative to her merit.¹²⁴

¹²¹ Aristotle, *Aristotle’s Politics*, trans. Carnes Lord (Chicago: The University of Chicago Press, 2013), 1281a2-9.

¹²² *Ibid.*, 1282b15-19.

¹²³ Aristotle, *Aristotle’s Nicomachean Ethics*, op. cit., 1131a25-32.

¹²⁴ *Ibid.*, 1131b20-21.

Aristotle argues that social conflict arises because there are disagreements over what should constitute the standards of merit.¹²⁵ The oligarchs argue that the primary standard is wealth. Some aristocrats argue that it is good birth and good education. Other aristocrats, Aristotle's true aristocrats, argue that the standard is virtue. The *demos* argues that the standard is free-birth or citizen-equality because anyone who is a citizen deserves an equal share of the commonly-held things. Therefore, there is an integral relation between distributive justice and complete justice.¹²⁶ As Strauss notes, "There is a meaning of justice which is not exhausted by the principles of commutative and distributive justice in particular. Prior to being the commutatively and distributively just, the just is the common good."¹²⁷ The dominant standard typically observed at any given time is based on the nature of the regime. In oligarchies, the supreme good or the common end of the regime is wealth; in aristocracies, it is good birth or education; in democracies, equality; and in Aristotle's true aristocracy, it is virtue. These different regimes with their distinct conceptions of the supreme good provide the content for complete justice, the individual's ethical orientation to the social whole.

Justice is not only a judgement in the sense of evaluating when someone or something deserves praise or blame. It is also a guide to our own activity. Aristotle makes a distinction between, on the one hand, the just or unjust act, and on the other hand, the just or unjust person.¹²⁸ A person may engage in a just or unjust act without thereby being a just or unjust person. It is only when justice or injustice become a stable, recurring aspect of our character that we can be described as just or unjust persons. This is why there is an intimate relation between complete justice and 'prudence' or practical reason. The just person has cultivated this capacity to such an extent that they are not overwhelmed by the complexity of circumstances and are capable of making innumerable minute judgements about what these circumstances require. Indeed, it is a character trait that becomes so integral to our personal identities and associations that it provides a stable compass even in the face of great personal danger and dramatic social change. For Plato and Aristotle, the better the regime, the more this capacity is cultivated in the citizenry.

¹²⁵ Ibid., 1131a25-32.

¹²⁶ Del Vecchio, op. cit., 55.

¹²⁷ Strauss, *Natural Right and History*, op. cit., 160.

¹²⁸ Aristotle, *Aristotle's Nicomachean Ethics*, op. cit., 1135b17-26.

In Plato's best regime, property, offices, and tasks will be distributed according to whomever is most 'suited' to them, and therefore, can use them most virtuously according to their proper purpose.¹²⁹ Aristotle agrees:

If someone were preeminent in flute playing, but very deficient in good birth or fine looks, even if each of those goods is greater than flute playing (I mean good birth and fine looks), and even if they are proportionately more preeminent with respect to flute playing than he is preeminent in flute playing, the outstanding flutes nevertheless ought to be given to him.¹³⁰

In this way, the content of the standard of merit for distributive justice is provided by the character of complete justice, of whatever the ultimate purpose of the community is deemed to be. For Plato, this is not merely peace and stability, but the happiness of the whole. Therefore, the natural rulers are those who are most concerned with the common good and who use the state and its laws to educate the citizenry toward the good. The objective goods of human nature and the common ends of the societal whole do not necessarily demand sheer homogeneity. Rather, Plato and Aristotle aspire to a situation in which there are diverse paths to what nonetheless remains a single and coherent notion of the good life.

Aristotle describes market exchange as 'reciprocity,' the root meaning of which is 'to suffer in turn,' or the *lex talionis*.¹³¹ Aquinas will later define this as 'commutative' justice. This form of justice has primarily to do with exchanges between individuals of their privately-held goods. Aristotle attempts to solve how different products are made commensurable. For example, he asks how one house can be made into the equivalent of five couches. Aristotle does not settle on a definitive answer. (As we will see, Marx argues that the basis of this commensurability is labour.) Nevertheless, the standard, whatever the basis of its commensurability, is a standard of equivalence. The question is how a certain kind of one thing

¹²⁹ Plato, *The Republic of Plato*, trans. Allan Bloom (New York: Basic Books, 1991), 420b-421a.

¹³⁰ Aristotle, *Aristotle's Politics*, op. cit., 1282b37-1283a1.

¹³¹ Some have attempted to collapse Aristotle's notions of corrective and commutative justice together, but as Ritchie points out, this is a misinterpretation (D. G. Ritchie, 'Aristotle's Subdivisions of 'Particular Justice,'' *The Classical Review*, 8.5 (May 1894): 185-192; 192). This is also why matters of exchange are sometimes referred to with terms that, as we will see, are more appropriate for corrective justice, namely, retribution or retributive justice.

is made equal in value to another.¹³² This standard of equality, sheer equivalence, is distinct from the proportionate equality of distributive justice. Some have argued that Aristotle deems commutative justice a question of proportionate equality. Nevertheless, this misinterprets some of Aristotle's admittedly opaque remarks. As Meikle notes,

In the distribution of honours and public property, 'if the people involved are not equal, they will not [justly] receive equal shares; indeed, whenever equals receive unequal shares, or unequals equal shares, in a distribution, that is a source of quarrels and accusations.' Private property could not conceivably be exchanged in anything like this way, if, for reasons of hierarchy, one man could command in the market more for his goods than another, who would choose, without compulsion, to exchange with him, except someone of his own status on whom he could not pull rank? Even this person would try to avoid his equal because exchange with an inferior would be more advantageous. The idea is absurd, and Aristotle understood exchange far too well [...] ever to have entertained it.¹³³

Therefore, commutative justice entails the exchange of things of equal value irrespective of the status or the merits of the individuals involved. In contrast to proportionate equality, its typical standard is arithmetic equality. In other words, the standard of commutative justice is 'to each their due,' if by due we mean sheer equivalence.

Commutative justice is subordinate to distributive justice and both forms of proprietary justice are subordinate to complete justice. This means that commutative justice is bound within significant constraints. As Tawney notes, traditional theories of commutative justice cast transactions in terms of personal morality.¹³⁴ A crucial dimension of this was to protect the peasant and the craftsman from money-lenders. This is most evident in Aquinas's theory of the 'just price.'¹³⁵ In periods of dearth, no one should profit from the necessity of others because this is an affront to the common ends of the organic whole within which all legitimate interests must be integrated. Indeed, Aristotle describes buying cheap in order to sell dear as 'unnatural'

¹³² This question is explored in Aristotle, *Aristotle's Nicomachean Ethics*, op. cit., book V, chapter 5.

¹³³ Scott Meikle, *Aristotle's Economic Thought* (Oxford: Clarendon Press, 1995), 136.

¹³⁴ R. H. Tawney, *Religion and the Rise of Capitalism* (Middlesex, England: Penguin Books Ltd, 1975), 57.

¹³⁵ Aquinas, op. cit., 192-94.

precisely because it undermines the integrity of the political community.¹³⁶ This is significant because, as we will see, under capitalist modernity, it is distributive justice that becomes subordinate. Furthermore, the increasing predominance of commutative justice is such that many come to deny the very existence of complete justice, of an objective human good by which one could distinguish the ‘natural’ from the ‘unnatural’ use of products.

As we have just seen, there are two fundamental differences between commutative and distributive justice. First, they are concerned with different kinds of property. Commutative justice is concerned with private property. Distributive justice is concerned with public or communal property. Second, these two forms of proprietary justice have different standards of equality. The standard of commutative justice is ‘arithmetical equality.’ In other words, this is an exact equivalence between the values of things. Conversely, the standard of distributive justice is ‘geometric equality.’ This is the proportionate equality between persons according to their respective status or merit. From now on, I will often refer to these two standards as ‘equivalence’ and ‘proportionality.’

Even though the vast majority of commentators use an idealist method, they often do not use it very well. Indeed, many commentators seem unfamiliar with the history, and in particular, the premodern history, of political philosophy. For example, when we first approach the massive amount of material on the relation between Marx and ‘distributive justice’ we immediately find ourselves in a somewhat embarrassing situation. Most of these commentators do not focus on distributive justice at all. Instead, their discussions have usually been dedicated to what is traditionally described as ‘commutative’ justice. This is not a terminological triviality. It is worth demonstrating this in some detail here because, as we will see, we cannot understand the role of justice in capitalist modernity without first making the proper distinction between distributive justice and commutative justice. This is important in general because even those commentators with an avowedly historical method often produce theories of justice that are pervaded by ahistorical assumptions that uncritically absorb notions of justice specific to capitalist society. It is important in particular because, as we will see in later chapters, if Marx’s critique of commodity production is correct, then the principle of labour-contribution, an important version of the principle ‘to each their due,’ is impossible within a social system where commutative justice is the primary form of proprietary justice.

¹³⁶ Aristotle, *Aristotle’s Politics*, op. cit., 1258b5-8.

Few of the Marxist commentators even mention commutative justice, but when they do they are almost always mistaken about it. In an attempt to solve the question as to whether or not Marx regards exploitation as unjust, Arie translates Marx back into Aristotelian concepts:

To use Aristotelian terminology, distributive justice, or the exchange in accordance with an endowed labour-quantity, does not realise itself under commutative justice, or the appearance of the exchange of equivalents, that is, labour and wages. I think that putting Marx's idea of justice in the Aristotelian tradition is the only path to a consistent and plausible interpretation.¹³⁷

Arie argues that, on this basis, Marx deems capitalism unjust according to distributive justice. Nevertheless, he wrongly conflates distributive and commutative justice. Arie is correct to treat market exchange as an instance of commutative justice. He is wrong, however, to describe labour-contribution as a kind of merit warranting geometric or proportionate equality, as is typical of distributive justice. Under capitalism, labour-power is commodified on a general scale. This makes this labour-power subject to market-exchange. As soon as labour becomes a commodity it is made commensurable with every other commodity. It is therefore subject to the standard of equivalence, to arithmetical equality, to the commutative justice of the market. It is no longer directly a matter of distributive justice.

Hancock argues that, for Marx, the wage-relation between labour and capital is not intrinsically unjust to the worker according to commutative justice.¹³⁸ This is because they exchange equivalents. This only becomes unjust according to commutative justice if fraud and coercion are involved. Nevertheless, Hancock asserts that Marx deems capitalism unjust according to distributive justice, by which Hancock means the appropriation of surplus-value by the capitalist.¹³⁹ While Hancock is to be commended for even mentioning commutative justice, there are two problems with his analysis. First, he neglects how, as we will soon see, Marx uses immanent critique to expose the internal contradictions of commutative justice. Second, and more relevant for our purposes here, Hancock misuses the concept of distributive justice. Not

¹³⁷ Daisuke Arie, 'Marx and Distributive Justice,' in *Marx for the 21st Century*, ed., Hiroshi Uchida (New York: Routledge, 2006), 70.

¹³⁸ Roger Hancock, 'Marx's Theory of Justice,' *Social Theory and Practice*, 1.3 (Spring 1971): 65-71.

¹³⁹ *Ibid.*, 65.

only is commodified labour a matter of commutative justice, not distributive justice, but Hancock also confuses commutative with distributive justice when he describes progressive income taxes as an example of the former rather than the latter.¹⁴⁰ These taxes, appropriated by the state, become a public good outside of the realm of market exchange. Therefore, they are beyond the realm of commutative justice.

Daly also mentions commutative justice.¹⁴¹ Nevertheless, he too conflates it with distributive justice. Daly describes the ‘total injustice’ of capitalism as the vicious circle between, on the one hand, commutative injustice, the systematic theft of surplus-value in market exchange, and on the other hand, distributive injustice, the inequality in the primary distribution of the means of production.¹⁴² One of the things that makes capitalism unique from non-capitalist societies, however, is that the means of production are a part of market exchange. Commodities and money exist in many non-capitalist class societies, but they only become capital when the means of production enter general circulation as commodities that can be bought and sold.¹⁴³ In other words, even if the ‘distribution’ of the means of production is more fundamental than the ‘distribution’ of the means of consumption, under capitalism, both are primarily a matter of commutative justice. Similarly, Colletti criticizes Eduard Bernstein for locating the appropriation of surplus-value in the realm of exchange rather than in production, “as though surplus value originated, in other words, in a violation of *commutative* justice.”¹⁴⁴ Colletti’s critique of Bernstein’s neglect of production is correct. Nevertheless, if the conditions of production are capital, are capable of being bought and sold, they too are within the realm of commutative justice.

These confusions are not unique to Marxism. Among the non-Marxist commentators, the conflation of commutative and distributive justice is true even of Walzer despite the fact that the main goal of his theory of justice is maintaining the integrity of the distinct spheres of ‘social goods.’¹⁴⁵ He describes as distributive justice all allocations of goods, whether they are acquired

¹⁴⁰ Ibid., 69.

¹⁴¹ James Daly, ‘Marx and Justice,’ *International Journal of Philosophical Studies*, 8.3 (2000): 351-370.

¹⁴² Ibid., 366.

¹⁴³ Karl Marx, *Grundrisse: Foundations of the Critique of Political Economy (Rough Draft)*, trans. Martin Nicolaus (London: Penguin Books, 1993), 505.

¹⁴⁴ Lucio Colletti, *From Rousseau to Lenin: Studies in Ideology and Society*, trans. John Merrington and Judith White (London: NLB, 1972), 92-93.

¹⁴⁵ Walzer asserts: “Distributive justice is a large idea. It draws the entire world of goods within the reach of philosophical reflection. Nothing can be omitted; no feature of our common life can escape scrutiny. Human society is a distributive community” (Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York:

through market exchange, the state, or elsewhere. This neglects important differences between commutative and distributive justice.

Although the conflation of commutative and distributive justice indicates a lack of awareness of the long history of political philosophy, and in particular, premodern notions of justice, this mistake is not entirely theoretical. It also reflects changing social conditions. The method used by most of the recent accounts of the development of justice has been a ‘history of ideas’ or ‘intellectual histories’ approach. These studies often neglect how the dramatic transformations undergone by the theory and practice of justice, in all of its aspects, corresponds to material developments in the transitions to capitalism. We can understand neither the prevailing assumptions about justice, nor Marx’s ambiguous relation to them, unless we see both as the product of social development. In the remainder of this chapter, I will examine intellectual histories as well as more sociological and materialist explanations of changing theories and practices of justice in the modern period. One of the reasons why I draw from a variety of different explanations is so that I cannot be accused of ‘backward-reasoning.’ In other words, I do not start from what Marx says about justice and then identify specific transformations of justice under capitalist modernity in a way that prejudices whether or not Marx absorbs these historical changes uncritically.

Throughout this chapter, I will offer tentative explanations as to how recent transformations of justice correspond to the historically unique characteristics of capitalist society. In other words, changing conceptions of justice are related to changing *practices* of justice. What I offer here are provisional hypotheses. It would take immense socio-historical and comparative-political research to fully confirm them. Nevertheless, that the historical materialist critique of capitalism can provide plausible explanations of the transformations of justice under capitalism is enough for our purposes here. It shows the inadequacy of all of those Marxist commentaries on the relation between Marx and justice that have not been posed in these terms. In other words, for our purposes here, it is sufficient that this is only the *beginning* of a historical materialist critique of justice.

Basic Books, Inc., 1983), 3). He also asserts: “Goods in the world have shared meanings because conception and creation are social processes. For the same reason, goods have different meanings in different societies” (7). Walzer is less aware that it is not only the goods themselves, but also how we separate those goods into distinct categories, that changes through history. For example, to describe all of these goods as goods of ‘distributive justice’ cannot be taken for granted. This itself is historically-specific.

The first major change is that, under capitalism, commutative justice replaces distributive justice as the primary form of proprietary justice. There is a reason why Aristotle discusses distributive justice ahead of commutative justice. In Aristotle's society, like all non-capitalist class societies, production was primarily for the direct use of the immediate community.¹⁴⁶ Ruling classes appropriated surplus, usually in the form of compulsory services and tribute, directly from producers.¹⁴⁷ Markets, even when they were prevalent, were always subordinate to production for use. Consequently, people acquired goods primarily through direct distribution, not exchange. It therefore makes sense for Aristotle to begin his account of the particular aspects of justice with distributive justice. Under capitalism, however, the dominant form of economic activity is production for exchange. The primary way to acquire goods is through the market. In the transitions from production for use to production for exchange, the priority of distributive justice over commutative justice is reversed.

This has a significant impact on what constitutes the primary standard of proprietary justice, namely, 'to each their due.' The predominance of commutative justice over distributive justice entails that arithmetical equality, the standard of equivalence, overtakes justice as geometric equality, or proportionality according to merit. In non-capitalist class societies, since production is primarily for direct use, it is constrained by pre-determined patterns of distribution.¹⁴⁸ The kind and the extent of each estate's contributions and compensations are contested and coordinated before production begins. In other words, production is normatively regulated by, on the one hand, ruling classes using directly political and if need be military means, and on the other hand, the communal deliberation of producers who have at least partial ownership and control of their conditions of production.¹⁴⁹ Conversely, under capitalism, since production is for exchange, it is not consciously directed according to a predetermined distribution of use-values.¹⁵⁰ The basis of production is not political direction or communal deliberation. Rather, the socially-determined worth of products, their exchange-values, as well as

¹⁴⁶ Marx compares and contrasts production for use and production for exchange in their various forms in Marx, *Grundrisse*, op. cit., 156-65; 490-514; Marx, *Capital: Volume One*, op. cit., 169-73.

¹⁴⁷ For an excellent analysis of this, see Eric R. Wolf, *Europe and the People Without History* (Berkeley: University of California Press, 1997), 79-80; et passim.

¹⁴⁸ Marx, *Grundrisse*, op. cit., 496.

¹⁴⁹ George Comninel, 'English feudalism and the origins of capitalism,' *Journal of Peasant Studies*, 27.4 (2000): 1-53; 8.

¹⁵⁰ Marx, *Grundrisse*, op. cit., 156.

their allocations to different individuals, are determined after the production process through the interplay of commodities in market competition, which no one directly controls.

If, as we noted, economic activity was traditionally considered to be in the orbit of personal morality, it is now deemed a much more impersonal process. As we will see, this is one of the reasons why the sphere of ‘morality’ begins to shrink and the domain of what is called the ‘non-moral,’ the ‘amoral,’ or the morally-indifferent, begins to expand. As always, the basis of proprietary justice is ‘to each their due’ or ‘to each what they are owed.’ The difference is that what is ‘due’ is the precise equivalent according to value rather than a notion of proportional due according to some standard of politically determined merit. Under capitalism, there is a vast array of legally-enforced regulations of exchange, but they only set the parameters within which the exchange of equivalents occur: they do not challenge the standard of equivalence itself. Indeed, as we will see, due-as-equivalence is often regarded as the principle of justice *sine qua non* for private property.

It is for this reason that Hobbes argues that justice derives merely from the stipulations agreed to in the contract, not the respective merits of the parties involved. After explaining what he regards as the old-fashioned distinction between arithmetic (equivalent) and geometric (proportionate) equality, Hobbes asserts:

But what is all this to justice? For neither if I sell my goods for as much as I can get for them, do I injure the buyer, who sought and desired them of me; neither if I divide more of what is mine to him who deserves less, so long as I give the other what I have agreed for, do I wrong to either. Which truth our Saviour himself, being God, testifies in the Gospel. This therefore is no distinction of justice, but of equality. Yet perhaps it cannot be denied but that justice is a certain equality, as consisting in this only; that since we are all equal by nature, one should not arrogate more right to himself than he grants to another, unless he have fairly gotten it by compact.¹⁵¹

¹⁵¹ Thomas Hobbes, *Man and Citizen*, trans. Charles T. Wood, T. S. K. Scott-Craig, and Bernard Gert (Indianapolis: Hackett Publishing Company, 1991), 140. This passage was pointed out to me by Samuel Fleischacker, *A Short History of Distributive Justice* (Cambridge, Massachusetts: Harvard University Press, 2004), 158, n. 28.

As Macpherson notes, Hobbes has little time for the distinction between commutative and distributive justice, between equal value and relative merit, because value is whatever the market awards irrespective of the merits of the individuals involved.¹⁵² Therefore, the conflation of commutative and distributive justice begins in the early modern period. Indeed, as Hont and Ignatieff note, Grotius argues that the term ‘property’ should only apply to the modern notion of exclusive dominion, not to common property.¹⁵³ Similarly, Rommen contends that Locke inverts the typical order and prioritizes commutative justice and self-interest over distributive justice and the common good.¹⁵⁴

The increasing prominence of commutative justice as the primary form of proprietary justice thereby provokes a dramatic change in distributive justice. Indeed, distributive justice becomes about *redistribution* intended to ameliorate the conflicts arising from commutative justice. As the regime of absolute private property spread, questions arose about the extent to which all allocations and distributions of goods could be accounted for in terms of commutative justice. Grotius argues that the realm of commutative justice, what he calls ‘expletive’ justice, is the domain of ‘perfect rights’ grounded by the natural law of ‘to each their own.’ Conversely, the realm of distributive justice, what he calls ‘attributive’ justice, within which the right of necessity is housed, is the domain of ‘imperfect rights’ commanded by humanity, but not by law.¹⁵⁵

This question was all the more pressing because, whereas pre-modern thinkers like Cicero condemned profiting from distress, early modern commentators increasingly argue that commutative justice is best served when one person’s hardship is another person’s gain.¹⁵⁶ Consequently, a crucial aspect of early modern jurisprudence was a debate about the precise boundaries between the right of private property and the right of necessity. In other words, how dire must the need be before seizing the property of another is no longer simple theft? As Hont and Ignatieff note, “Like Pufendorf, Locke admitted that merchants who exploited scarcity offended against the law of humanity, but he argued that they would only offend against strict justice if they actually caused someone to starve.”¹⁵⁷ Although Smith argues that we must relax

¹⁵² C. B. Macpherson, *The Rise and Fall of Economic Justice and Other Papers* (Oxford: Oxford University Press, 1985), 9.

¹⁵³ Hont and Ignatieff, op. cit., 29.

¹⁵⁴ Heinrich A. Rommen, *The Natural Law: A Study in Legal and Social History and Philosophy*, trans. Thomas R. Hanley (St. Louis: B. Herder Book Co., 1964), 89.

¹⁵⁵ Hont and Ignatieff, op. cit., 29.

¹⁵⁶ *Ibid.*, 39.

¹⁵⁷ *Ibid.*

the otherwise unlimited right of private property in cases of extreme necessity, by ‘extreme’ he means starvation.¹⁵⁸ Anything less urgent than this means that the affront of private property is theft.

As we saw, distributive justice has had a number of contested standards of what constitutes merit, including birth, wealth, citizen equality, and virtue. As numerous commentators have noted, in the modern era, for the first time in history, distributive justice includes a new standard: need. Formerly, need or ‘the right of necessity’ was deemed to be a matter of benevolence, charity, or liberality.¹⁵⁹ Conversely, under capitalism, needs become a matter of distributive justice. Miller argues that notions of distributive justice based in the standard of need emerged during the transitions to the more corporatist, welfarist forms of capitalism, what Miller calls ‘organized capitalism.’¹⁶⁰ If it is corporatism that explains the rise of justice as need, however, why is the ‘right of necessity’ given prominent expression by radicals in the transitions to capitalism as well as during periods of laissez-faire capitalism? For example, the first known modern expression of the famous principle, ‘to each according to their needs,’ is given by Morelly in 1755.¹⁶¹ As we will see, it was adopted during the French Revolution and by the socialist movements in Western Europe in the 1830s-1840s. Surely these periods cannot be described as ‘organized capitalism.’ Few commentators have noted that, throughout the history of capitalism, need has become the standard of distributive justice primarily because dispossessed producers are increasingly dependent on the market, which abstracts from needs in a number of historically-unique ways.

¹⁵⁸ Ibid., 21.

¹⁵⁹ Aquinas, op. cit., 161-62; D. D. Raphael, *Concepts of Justice* (Oxford: Clarendon Press, 2001), 236.

¹⁶⁰ David Miller, *Social Justice* (Oxford: Clarendon Press, 1989), 308. Miller does not engage primarily in an intellectual history of the development of concepts of justice. Rather, he attempts to root these concepts in the kinds of societies from which they emerge. Nevertheless, Miller asserts that we can only combine prescriptive political theory with the recognition of cultural diversity if we have a theory of historical progress, a project he rejects: “Only if we could find a universally accepted criterion (such as a criterion of logic) for judging between concepts or principles could we escape from relativism in this way, and it seems impossible that such a criterion could be found” (342-43). Consequently, our political theory is necessarily bound to our own time and place and can only be evaluated within our own cultural frameworks. All we can do is determine whether or not any of the principles found in our culture have decisive arguments according to the criteria that are currently available (343). Although Miller deploys a sociological method similar to the one used here, his rejection of any attempt to understand human history as a whole means that, in his analysis of past cultures, he uncritically imposes his own standards of the criteria of justice.

¹⁶¹ Etienne-Gabriel Morelly, ‘Code of Nature (1755),’ in *Socialist Thought: A Documentary History*, eds. Albert Fried and Ronald Sanders (Garden City, New York: Anchor Books, 1964), 20.

The basis of this market-dependence, and of capitalism in general, is the ‘primitive accumulation’ that violently separated producers from their conditions of production.¹⁶² In non-capitalist class societies most producers possessed enough productive property to produce for their own subsistence. Furthermore, in times of dearth the ruling classes often provided subsistence. Although this was cast as their ‘mandatory obligations,’ it also preserved the long-term relations of exploitation between producers and landed wealth.¹⁶³ Under capitalism, dispossessed wage-labourers do not have the productive property necessary to produce for their own subsistence. They are dependent on the market for their daily and generational reproduction. Indeed, this is the only way in which wage-labour can become generalized. Producers must be forced to sell on the market the only piece of productive property remaining in their possession: their ability to labour.

As will be explained in more detail in a subsequent chapter, under capitalism, while labour is the source of value, the worker is paid a wage for their commodified labour, their ‘labour-power.’¹⁶⁴ Labour produces more value than it costs the capitalist as labour-power. This is its use-value for the capitalist and the source of his profits. Although there is an exchange of equivalent values, of equal wages for equal labour-power, there is also the appropriation of uncompensated surplus-labour.¹⁶⁵ One of the questions I will try to answer is whether or not Marx deems this exploitation commutatively unjust. In the meantime, for our purposes here, it is enough to note that dispossessed wage-labourers who are dependent on the market for their subsistence must enter into this disadvantageous exchange with the capitalist—that is, if workers are able to find a job. When the ability to labour becomes commodified labour-power, as with any other commodity, capitalists will only purchase it as an input for production if it can be deployed profitably. Since the market does not always require this commodified labour, unemployment is a structural feature of capitalism. Both systemic exploitation and structural unemployment reduce the capacity of producers to translate their needs into wages, into the exchange-values necessary for their consumption.

¹⁶² Marx, *Capital*, op. cit., 873-76.

¹⁶³ For an excellent discussion of these kinds of relations, as well as their transformation amid the transitions to capitalism, see E. P. Thompson, ‘The Moral Economy of the English Crowd in the Eighteenth Century,’ in *Customs in Common: Studies in Traditional Popular Culture* (New York: The New Press, 1993).

¹⁶⁴ Marx, *Capital*, op. cit., 274.

¹⁶⁵ *Ibid.*, 301.

Market exchange only recognizes ‘effective’ needs, namely, needs that can be expressed through purchasing power. From the perspective of the market, if someone cannot express her felt need through purchasing power, it is as if her need does not exist. Consequently, we must distinguish between, on the one hand, those needs that are converted into actual consumption through exchange, and, on the other hand, those felt needs that are intentionally fixed on specific objects and which persist irrespective of whether or not they are successfully converted.¹⁶⁶ It is the latter that is increasingly the terrain of distributive justice under capitalism.

The standard of need arises because, when dispossessed producers can no longer produce for their own subsistence, the circumstances causing the right of necessity are no longer exceptional. Therefore, this necessity cannot be adequately addressed by individual acts of charity. If the right of necessity becomes a structural problem, then in the absence of active intervention, dire need becomes the rule. Although Miller rejects the idea that any social class is particularly predisposed to alternative communities and radical equality, it has primarily been precarious producers and their spokespersons who have elevated the standard of need from a principle of charity to a demand of justice.¹⁶⁷

Another significant transformation of distributive justice is that it becomes centralized in the state. This is the result primarily of the expansion, both quantitatively and qualitatively, of private property under capitalism. In non-capitalist class societies most families owned productive property. Therefore, there was substantial distribution within and between families. Furthermore, producers often had shared possession and control of communal property directly regulated by custom and obligation. This too was a significant site of communal distribution between subordinate classes. As a result, distributive justice was not only the concern of state institutions, but also of the family and community too. The transitions to capitalism, however, violently separated producers from the means of production. With the decline of the *ancien régime*, individuals continued to be deemed the bearers of interests, but these interests lost their familial and corporative character.¹⁶⁸ Gradually, most families and community organizations could only acquire the means of consumption, not the means to produce them.¹⁶⁹ Consequently,

¹⁶⁶ Kate Soper, *On Human Needs: Open and Closed Theories in a Marxist Perspective* (Sussex: The Harvesters Press Ltd., 1981), 60.

¹⁶⁷ Miller, *op. cit.*, 328.

¹⁶⁸ Heide Gerstenberger, *Impersonal Power: History and Theory of the Bourgeois State*, trans. David Fernbach (Chicago: Haymarket Books, 2009), 665.

¹⁶⁹ Eli Zaretsky, *Capitalism, the Family, and Personal Life* (New York: Harper & Row, Publishers, 1986), 11-15.

where public property exists, it is now centralized in the one entity whose social power vies with that of capital: the state.

This is related to the ways in which capitalist production abstracts from concrete needs. Things will only be produced if they are conducive to the expanded reproduction of surplus-value.¹⁷⁰ Every single form of production in human history has been constrained in what and how it produced by what it could afford in terms of material objects, labouring effort, and monetary resources. Nevertheless, there is a distinction between what can be afforded and what is profitable. In the former case, if production is social, conducted through the state or state-regulated estates, certain things can be produced at a loss because they are deemed crucial for the community as a whole. Conversely, individualized production under capitalism will rarely, if ever, operate at a loss. It is dictated entirely by what is profitable. Thus, even if there is a felt need for something in the community, if it cannot be produced profitably, it will not be produced unless some other institution, typically government, does so.

This is one reason why the right of necessity shifts from a question of charity to justice. For example, before the Reformation, not only was the relief of need considered mercy, but it was conferred to people insofar as they were Christians, not citizens. As Fleischacker notes:

By the middle of the sixteenth century, however, states were at least nominally wresting control over poor relief from the church. Charles V tried to regularize relief throughout the Netherlands in 1531, decreeing that it should be centralized and laying down certain general conditions for the poor to receive support; his decree met, however, ‘with the determined and effective resistance of the Church and was fully implemented nowhere in the Northern Netherlands.’¹⁷¹

Programmes for poor relief were established in Hamburg in 1529, in Sweden in 1571, in the German Empire in 1577, and in England in 1601. Although this process was gradual, state redistribution decreasingly occurred through the church.¹⁷² As Gerstenberger notes, the centralization of redistribution was a crucial part of the formation of the modern nation-state:

¹⁷⁰ Marx, *Capital*, op. cit., 342.

¹⁷¹ Fleischacker, op. cit., 50.

¹⁷² *Ibid.*, 50-51.

In place of solidarity in the social neighbourhood, which could scarcely function any longer in the period of industrialisation, the state organised solidarity among strangers. This new model of inclusion, justice and control was especially pronounced in states where the right to existential security could be effected in the form of compulsory membership in social insurance funds. But, even in social states that were organised and financed differently from this, the state correction of the distributive results of the market was and still is bound up with methods of control designed to ensure that the supply of labour on the market is maintained at a sufficient level. Initially, the material benefits were very limited. But, from the very beginning, this social right meant a new form of constitution of political unity.¹⁷³

Thus, in the modern view, distributive justice is primarily the concern of the state in its relations to its citizens.

When distributive justice becomes concentrated in the state, it seems less a virtuous disposition inherent to all ethical individuals and more a legal or juridical concern of particular individuals with specific institutional responsibilities. Finnis notes how in the traditional view exemplified by Aquinas virtually every citizen is responsible for certain public goods, for items of the common stock, and therefore has duties of distributive justice.¹⁷⁴ After the sixteenth-century, however, distributive justice is deemed to be a matter of the state as the personification of the community as a whole. Distributive justice is viewed less as the involuntary obligations that bind everyone in the community and more as the voluntary obligations conferred to particular individuals by their governmental responsibilities. This is connected to Hobbes's rejection of the idea that justice has a predetermined standard of merit. Rather, justice is whatever is agreed to and follows from the covenant or contract. This is due also to the ways in which commutative justice deeply influences the character of distributive justice under capitalism. Although the standard of commutative justice is arithmetic equality, the exchange of equivalents, and the standard of distributive justice is geometric equality, or, proportional need, both are impersonal standards. As with allocations according to what is owed, redistribution

¹⁷³ Gerstenberger, op. cit., 677.

¹⁷⁴ John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), 185-86.

often aspires to neutrality toward the ultimate ends or purpose of those with the needs that must be satisfied, as long as they remain within the law.

One of the more important reasons why we must distinguish between the commutative justice of the market and the distributive justice of the state is the conflict that arises between the standards of ‘due’ and of ‘need.’¹⁷⁵ Under capitalism, the essential basis of the conflict between them is the tension between the private and public sectors. The commutative justice of the market gives rise to the principle ‘to each their due,’ where what is owed is the precise equivalence based on exchange-values. As we have seen, to the extent that the market is the basis upon which goods are allocated, it will provoke a widespread and dire necessity. Consequently, there will be struggles to expand the public institutions for which need is the primary standard of redistribution. Polanyi describes this as the ‘countermovement’: “For a century the dynamics of modern society was governed by a double movement: the market expanded continuously but this movement was met by a countermovement checking the expansion in definite directions.”¹⁷⁶ In other words, it is a struggle over the extent to which commutative justice dominates proprietary justice in general. We saw earlier the attempts by early modern jurists to reduce all property ‘proper’ to private property, and therefore, all proprietary justice to commutative justice. That the conflation of both aspects of proprietary justice is now often described as ‘distributive justice,’ that ‘commutative justice’ has fallen out of our vocabulary, indicates perhaps how much we take for granted the prominence of market exchange. In a later chapter, I will determine whether or not Marx thinks there is a standard of distributive justice within capitalism.

Under capitalism, although distributive justice has necessarily expanded to include needs, it has also contracted in certain ways. Miller defines the subject-matter of justice as the distribution of benefits and burdens.¹⁷⁷ He excludes power from these benefits, “since we use other concepts to discuss and evaluate the distribution of power in society—concepts such as democracy and authority.”¹⁷⁸ In non-capitalist class societies, however, distributive justice not only included material goods, but also offices and honours. In other words, political positions and public responsibilities were included in the things that could be distributed justly. Under capitalism, however, offices and honours are no longer considered a part of distributive justice.

¹⁷⁵ Miller, op. cit., 28.

¹⁷⁶ Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Times* (Boston: Beacon Press, 2001), 136.

¹⁷⁷ Miller, op. cit., 19.

¹⁷⁸ *Ibid.*, 22.

They are more often deemed a matter of freedom, or freedom in a specifically political sense. It is not that distributive justice has been reduced to strictly proprietary goods. It is that offices are no longer regarded as property. This is a result of the peculiar character of production and accumulation under capitalism.

In non-capitalist class societies, since producers had possession over their conditions of production, they could produce for their own subsistence. This gave them a measure of autonomy. Therefore, the appropriation of surplus required directly political coercion by the ruling authorities. Conversely, under capitalism, dispossessed producers must enter the labour-market in order to acquire subsistence. Rarely do they need to be directly coerced into the market. The threat of starvation suffices.¹⁷⁹ Thus, contrary to other forms of class society, political coercion need not be expressed at the point of production in order to appropriate surplus. Furthermore, a division of rule forms within the ruling class between economic appropriation and political domination. Capitalists whose economic power is increasingly dependent on discretion over their privately-owned productive property demand autonomy from direct political and communal control over what is produced, how, and for whom. Indeed, political control of production is increasingly deemed an intervention from the outside. Ellen Meiksins Wood describes this as the differentiation of the economic from the political under capitalism:

the powers of the appropriator no longer carry with them the obligation to perform social, public functions. In capitalism, there is a complete separation of private appropriation from public duties; and this means the development of a new sphere of power devoted completely to private rather than social purposes. In this respect, capitalism differs from pre-capitalist forms in which the fusion of economic and political powers meant not only that surplus extraction was an ‘extra-economic’ transaction separate from the production process itself, but also that the power to appropriate surplus labour – whether it belonged to the state or to a private lord – was bound up with the performance of military, juridical and administrative functions.¹⁸⁰

¹⁷⁹ Marx, *Capital: Volume One*, op. cit., 719.

¹⁸⁰ Ellen Meiksins Wood, *Democracy Against Capitalism* (New York: Cambridge University Press, 1995), 31.

As we will see, this narrowing of public functions is one of the reasons why the very idea of complete justice is often rejected by modern thinkers. For our immediate purposes here, however, this helps to explain why political offices are no longer deemed a form of property within the realm of distributive justice.

When appropriation is separated from state rule, the achievement of certain measures of political power by subordinate classes does not necessarily threaten capitalist accumulation.¹⁸¹ The differentiation of the economic from the political sets the conditions for the expansion of citizenship to the lower orders. Indeed, with this differentiation, the meaning of citizenship becomes more universal, but also more hollow. In capitalist societies, achieving citizen-status does not protect one from exploitation as it did for the *demos* in ancient Greece, which still featured the fusion of economic and political power.¹⁸² Under capitalism, the expansion of citizenship as well as democratic reform gradually undermines the property qualification for political rule, if not always de facto, then at least de jure. Therefore, political office is no longer deemed an aspect of distributive justice. Lacher notes that, in the era after the Absolutist states, ruling classes who derived substantial wealth and privilege from state offices were increasingly seen as corrupt.¹⁸³ Therefore, what was formerly a significant aspect of justice is now separated from it and is regarded as more the concern of freedom. Furthermore, as citizenship increases in breadth and decreases in depth, justice is deemed increasingly formal. In other words, citizen-status does not protect individuals from exploitation and it brings together into one category immensely unequal classes and individuals. Justice begins to cede some of what was traditionally considered its domain to freedom. This is one reason why, amid the transitions to capitalism, freedom begins to replace justice as the apex of the modern table of values.

Corrective justice has also undergone significant transformations in the transitions to capitalism. Crime and punishment have become more impersonal in two ways. First, the expansion of citizenship and the instantiation of equality before the law has made the evaluation of crimes and punishments more universal and formal. In most non-capitalist class societies, the designation of crimes and the implementation of punishments were applied in different ways to

¹⁸¹ Marx, *Early Writings*, op. cit., 219.

¹⁸² Ellen Meiksins Wood, op. cit., 201; G. E. M. de Ste. Croix, *The Class Struggle in the Ancient Greek World* (London: Gerald Duckworth & Company Ltd., 1983), 317.

¹⁸³ Hannes Lacher, *Beyond Globalization: Capitalism, Territoriality and the International Relations of Modernity* (London: Routledge, 2006), 97.

the unequal estates. For example, in feudal Europe, the punishment for convicted members of the upper classes was typically paying a fine, whereas lower class criminals often faced brutal corporal punishment.¹⁸⁴ Under capitalism, however, as with commutative justice, corrective justice is increasingly based on the standard of arithmetic equality. As Rusche and Kirchheimer note, the evaluation of guilt and the calculation of punishment is, in principle, if not always in practice, meant to apply to all citizens, irrespective of their status or merits, however these may be defined.¹⁸⁵ Furthermore, there is an attempt to create an exact relation of equivalence between the crime and the punishment. Indeed, Pashukanis notes that individuals often know the precise amount of punishment they will receive if they are caught doing the crime they are about to commit.¹⁸⁶ The two most dominant theories of corrective justice, the theories of deterrence and of retribution, each put forward their own version of the standard of equivalence. The utilitarian tradition uses a pain calculus to determine the amount of punishment necessary to deter further crimes. The deontological tradition attempts to determine the kind and extent of punishment necessary to make equal restitution for the crime. In other words, crime is a debt for which punishment is repayment.

Second, corrective justice is also increasingly impersonal because corporal punishment is gradually replaced with less directly violent forms of punishment. As we have seen, this corresponds to the decline of direct coercion and political control typical of capitalist social relations. It arises, in part, from the growing needs of the labour market. Cruel corporal punishments can either irreparably damage or kill a person whose labour can no longer be exploited.¹⁸⁷ Indeed, the rise of mass-imprisonment emerges from the transitions to capitalism. Modelled on the workhouses developed in Holland and Britain, prisons were constructed to discipline and harness the labour power of ‘unproductive’ and ‘destructive’ members of society.¹⁸⁸ Imprisonment as a form of punishment is depicted as losing a certain quantity of

¹⁸⁴ Michael J. Lynch and W. Byron Groves, *A Primer in Radical Criminology*, 2nd ed. (New York: Harrow and Heston, 1989), 111.

¹⁸⁵ Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York: Russell and Russell, 1968), 73-74.

¹⁸⁶ Much of this is drawn from Evgeny B. Pashukanis, *Law and Marxism: A General Theory*, ed. Chris Arthur; trans. Barbara Einhorn (London: Ink Links Ltd., 1978), 173-88. See also: Lynch and Groves, op. cit., 112-13.

¹⁸⁷ Lynch and Groves, op. cit., 115.

¹⁸⁸ Ibid.

freedom: “The deprivation of liberty is considered a natural result of the invasion of property, that is to say, property and personal liberty are assigned equal value.”¹⁸⁹

Since corrective justice has become more impersonal in both of these ways, it, like distributive justice, has become concentrated in the centralized state. In the agrarian economies of the feudal era, the organization of punishment fell primarily to local elites.¹⁹⁰ This corresponds to a set of social conditions in which customary law, the normative force of custom based in the collective obligations of the different agricultural communities, was as important as the common law that regulated individualistic, exclusive property rights.¹⁹¹ With the rise of absolute private property, the common law becomes dominant, which requires a centralized state to monopolize the organization of enforcement. Therefore, corrective justice is increasingly the exclusive responsibility of the national governmental institutions.

Indeed, a crucial aspect of disciplining people toward the new social conditions was cultivating a respect for the sanctity of private property. Consequently, the prohibition of theft gained much wider application and greater import. McNally has noted how the rise of absolute private property in the transitions to capitalism led to the criminalization of customary activities through measures like the Black Act of 1723.¹⁹² For example, ‘perquisites,’ the by-products of the production process, were traditionally considered the rightful property of labourers. Nevertheless, this, along with activities like gleaning fruit and appropriating timber, were gradually redefined as the theft of property which rightfully belonged to employers.¹⁹³ Indeed, in the transitions to capitalism, the rights of private property increased, its obligations decreased, and affronts to property were punished with increasing severity.¹⁹⁴ As we have already seen, with the displacement of distributive justice by commutative justice, the standard of equivalence becomes predominant. If the most significant principle of justice in conditions of private property is ‘To each what they are owed,’ then the prohibition that is the *sine qua non* of private property is ‘Do not steal.’

I noted that the notion of commutative justice as ‘to each their due’ confronts an alternative standard, distribution according to need. This conflict manifests in corrective justice

¹⁸⁹ Rusche and Kirchheimer, *op. cit.*, 76.

¹⁹⁰ *Ibid.*, 111.

¹⁹¹ Comminel, *op. cit.*, 32.

¹⁹² David McNally, *Against the Market: Political Economy, Market Socialism, and the Marxist Critique* (London: Verso, 1993), 39.

¹⁹³ *Ibid.*, 35.

¹⁹⁴ For an explanation of the most significant developments in these respects, see: *ibid.*, 34-42.

as well. Against the dominant theories of corrective justice as deterrence or retribution, there arise theories of ‘restorative justice’ that abandon the standard of equivalence or due.¹⁹⁵ Rather, the standard is need, which includes not only the needs of the victim but also of the criminal. The goal is to hear those involved and, if possible, to restore the quality of their social relations. As we saw, modern theories of distributive justice incorporate the standard of need because stark inequalities and dire necessity are structural features of capitalist social relations. Similarly, theories of restorative justice incorporate the standard of need within corrective justice in order to account for the social determinants of crime. Indeed, the tension of conflicting standards between commutative and distributive justice also exists between commutative and corrective justice. As we will see in a later chapter, Marx, an avowed critic of the theories of deterrence and retribution, offers arguments that seem to favour rehabilitation that considers the needs of the criminal. Whether or not Marx deems this a theory of corrective justice is an open question.

The rise of restorative justice is also a response to another crucial change in conceptions of justice: the peculiarly rigid or inflexible character of its application. Indeed, the impersonal character of capitalist social relations and the predominance of the standard of due-as-equivalence foster scepticism about exceptions to the rules. This is exacerbated by the widespread assumption that individuals are inherently self-interested. Consequently, if any opportunity to claim an exception exists, it is assumed that individuals will do so irrespective of its legitimacy. This is the culture of the ‘loop-hole.’ Hume notes the rigidity of justice:

To make this more evident, consider, that tho’ the rules of justice are establiſh’d merely by interest, their connexion with interest is somewhat singular and is different from what may be observ’d on other occasions. A single act of justice is frequently contrary to *public interest*; and were it to stand alone, without being follow’d by other acts, may, in itself, be very prejudicial to society. When a man of merit, of a beneficent disposition, restores a great fortune to a miser, or a seditious bigot, he has acted justly and laudably, but the public is a real sufferer. Nor is every single act of justice, consider’d apart, more conducive to private interest, than to public; and ‘tis easily conceiv’d how a man may impoverish

¹⁹⁵ One of the most influential texts is Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Waterloo, Ontario: Herald Press, 1990). I will discuss it in a later chapter.

himself by a signal instance of integrity, and have reason to wish, that with regard to that single act, the laws of justice were for a moment suspended in the universe.¹⁹⁶

Indeed, as John Millar once said, justice, the sole allegiance between people whose ruling principle is avarice, is not the “delicate” virtue of a “refined humanity,” but rather, a “coarse though useful virtue, the guardian of contracts and promises, whose guide is the square and the compass, and whose protector is the gallows.”¹⁹⁷ As we will see later, Marx criticizes the inflexible, abstract character of the standard of ‘due.’ The question remains, is the principle of need he favours a principle of justice?

The rigidity of justice exists despite the fact that, as many of these commentators concede, justice is increasingly deemed to be a human construction. This is true not only for those who assert that justice is only established through some form of the social contract, but also for those like Hume who, though he is a critic of contractualism,¹⁹⁸ nonetheless gives justice an empirical foundation. In other words, Hume deems justice an artificial construction the utility of which is established only after the fact:

Upon the whole, then, we are to consider this distinction betwixt justice and injustice, as having two different foundations, *viz.* that of *interest*, when men observe, that ‘tis impossible to live in society without retraining themselves by certain rules; and that of *morality*, when this interest is once observ’d; and men receive a pleasure from the view of such actions as tend to the peace of society, and an uneasiness from such as are contrary to it. ‘Tis the voluntary convention and artifice of men, which makes the first interest take place.¹⁹⁹

This, when combined with the reduction of justice to juridical and legal relations, leads to the widespread belief that justice is more a matter of positive law than of natural law. As MacIntyre

¹⁹⁶ David Hume, *A Treatise on Human Nature and Dialogues Concerning Natural Religion: Volume Two* (London: Longmans, Green, And Co., 1882), 269.

¹⁹⁷ Hont and Ignatief, *op. cit.*, 43.

¹⁹⁸ For Hume’s critique, see: David Hume, ‘On the Original Contract,’ in *Social Contract: Essays By Locke, Hume, and Rousseau*, ed. Ernest Barker (New York: Oxford University Press, 1960), 147-168.

¹⁹⁹ Hume, *Treatise on Human Nature*, *op. cit.*, 299-300.

notes, for Aristotle, the virtues are independent of, and can therefore come into conflict with, the prevailing rules and laws.²⁰⁰ The positive law can be found wanting according to the natural law. After Hume, however, the virtues are “just those dispositions necessary to produce obedience to the rules of morality.”²⁰¹ In other words, justice is often deemed to be a particular construction specific to concrete socio-historical circumstances rather than a natural right based in human nature, much less the broader structure of the cosmos. As Weinreb notes, when modern thinkers attempt to base ethics not in nature but in civil society, it shifts from ontology to deontology.²⁰²

Indeed, even the profound disagreements within modern political thought show the extent to which one side is fundamentally shaped by that to which it is opposed. For example, Rousseau does not base his principles of right or justice in a notion of permanent natural justice, but rather, in the idea of freedom as obeying the law that we give ourselves. Despite Burke’s staunch opposition to Rousseau, his alternative is not based in a notion of trans-historical justice, but rather, a historical justice that is legitimate because it has gestated over a longer period and congealed into relatively fixed traditions.²⁰³ The assumptions common to both perspectives lend themselves to the idea that the purpose of justice is the stable reproduction of the given social order whatever its specific form rather than the basis by which different social orders can be judged. As we will see, this more functionalist notion of justice arises in Marx’s work.

Finally, the capstone of justice, complete justice, also undergoes dramatic changes. Indeed, its transformation may be the most dramatic of all. Many commentators have noted how, in general, ‘justice’ traditionally meant the subordination of the individual to the common ends of the social whole. Now, however, justice usually means the opposite. As Raphael asserts, “A concept that began as a shield of the social order has come to be the shield of the individual against encroachment by social authority.”²⁰⁴ In order to understand why this occurs, we must weave together all of the threads I have developed so far.

²⁰⁰ MacIntyre, *After Virtue*, op. cit., 232.

²⁰¹ Ibid.

²⁰² Lloyd L. Weinreb, *Natural Law and Justice* (Cambridge, Massachusetts: Harvard University Press, 1987), 100-101; 264.

²⁰³ Strauss, op. cit., 313-15.

²⁰⁴ Raphael, op. cit., 250; Daisuke Arie, op. cit., 68; Miller, op. cit., 289-91.

As we saw, in non-capitalist class societies the division of labour is differentiated into tangibly unequal castes or estates.²⁰⁵ Furthermore, production is primarily for the direct use of immediate communities. In other words, it is the production of use-values for definite needs, not the abstract wealth of exchange-values. Therefore, the different societal needs, and thus, the various contributions by, and distributions to, the variety of castes or estates, are struggled over and coordinated before production begins.²⁰⁶ Production and consumption are directly connected. In other words, the needs of consumption determines production. From the outset, each caste or estate knows, at least roughly, the nature and extent of their contributions as well as what is owed to them in return. Supply and demand are linked from the beginning and the consequences are integral to the intentions. Since most producers have at least partial possession of their conditions of production, production and consumption are normatively regulated according to the customs of their collective associations, ranging from the family to the guild to the village proprietors of common land. Producers who can produce their own subsistence have a degree of self-sufficiency. Therefore, surplus appropriation by ruling classes is overtly political. Exploitation is directly bound to state power.²⁰⁷ Producers are more tied to particular forms of property than the abstract wealth embodied by money. They are therefore bound to more fixed social relations.²⁰⁸ Nevertheless, because they have a degree of self-sufficiency, they can demand certain obligations from ruling classes, including aid during times of dearth, which rulers typically provide because it preserves the long-term relation of exploitation. Therefore, producer and ruler are bound by mutual but unequal obligations.²⁰⁹

Since production is a means to consumption, to definite and predetermined needs, and because production is directly, normatively regulated by political authorities and communal associations, the typical *ethos* is that each estate should receive no more or less than what is necessary for that particular social function.²¹⁰ It is already taken into consideration during the act of production that the accumulation of each estate is subordinate to the stable maintenance of the whole. These kinds of social conditions are more conducive to the idea that individuals can

²⁰⁵ The next four paragraphs are substantially drawn from: Paul Christopher Gray, 'The Divine Right of Things: On the 'Impersonal Dependence' of Capitalism,' in *A New Social Question: Capitalism, Socialism and Utopia*, ed. Casey Harison (Newcastle-upon-Tyne: Cambridge Scholars Publishing, 2015).

²⁰⁶ Marx, *Grundrisse*, op. cit., 158; Marx, *Capital: Volume One*, op. cit., 166.

²⁰⁷ Wood, *Democracy Against Capitalism*, op. cit., 31.

²⁰⁸ Marx, *Grundrisse*, op. cit., 157; 221.

²⁰⁹ Tawney, op. cit., 37.

²¹⁰ *Ibid.*, 36.

only become what they essentially are in and through their relations with others. This tends to foster an ethics in which each individual is subordinate to the common ends rooted in objective human nature. Since production is primarily of incommensurable use-values, and because these particular forms of property have more limited and fixed uses and relations, not only are people more inclined to make qualitative distinctions between different kinds of activities, but products are deemed to have ‘natural,’ as distinct from ‘unnatural,’ uses. Indeed, these social conditions are more congenial to the idea that things are desired because they are good in themselves, irrespective of whether or not a particular individual recognizes them as such. The hierarchy of contributions are ordered under the supreme good of the social whole, which corresponds to the stratified castes or estates, at the apex of which stands a ruling political authority adopting final responsibility for the common ends of the social organism. Indeed, the societal order is often ascribed to the structure of the cosmos.²¹¹ Tangible political inequality is deemed to be based in the natural hierarchy of humankind.

Conversely, under capitalism, production is primarily for exchange. In other words, it is not production for the tangible needs of the immediate community, but rather, of exchange-values to be sold. Production and consumption are thereby separated by market exchange. Consequently, production is not only free from direct political control, but due to competitive imperatives, it is production for the sake of production, or production as an end in itself. What is produced and how is not socially coordinated. It is the result of individualized, narrowly economic decisions. The societal worth, the exchange-value, of labour and its products is determined after the production process through market exchange. These individual exchanges are largely indifferent to the totality of exchanges, which is only an aggregate of all of these more or less private pursuits. The rationality of these decisions can only be evaluated after the production process according to the degree of profitable market exchange. After a given production period, the allocation of goods is the unintended result of these private activities. Consequently, individualized choices become the measure of social worth.²¹² Capitalist production reduces activities and goods to commensurable units of abstract-labour and exchange-value. Whereas possession of particular use-values entails specific activities that satisfy definite needs as well as a limited set of possible social relations, exchange-value or

²¹¹ Wolf, *op. cit.*, 83.

²¹² E. K. Hunt, *History of Economic Thought: A Critical Perspective* (Belmont, California: Wadsworth Publishing Company, Inc., 1979), 361; McNally, *op. cit.*, 198.

money is wealth in a general form. There are inequalities in different holdings of exchangeable property, but anyone who owns it is formally equal with all other owners of exchange-values. Furthermore, they are also formally free to choose with whom to exchange.²¹³ Therefore, possessors of exchange-value, of wealth in the abstract, are less dependent on particular individuals. Their relations are less fixed. When the dominant economic activities, goods, and social relations are made quantitatively comparable, there is also less impetus to maintain the existence of a hierarchy of goods, much less a supreme good that confers meaning on all of the others. Instead, there can be only a plurality of subjective goods. The common perception is that things are not desired because they are good, but rather, are good because they are desired.

These developments are more congenial to the idea that individuals are who they essentially are independent of their social relations. Consequently, justice shifts from a positive to a more negative connotation.²¹⁴ The positive connotation of justice is more typical of non-capitalist class societies. Justice is not merely a protection from others, but how the fulfilment of our natures necessarily occurs in and through our common efforts with others. The good of each is subordinate to the common ends of the organic social whole. Consequently, the worth of a human being is based in their merit as determined by the extent to which, and by the ways in which, they contribute to these common ends. The modern, more negative connotation is quite different. This is best illustrated in Adam Smith's depiction of justice:

There is, no doubt, a propriety in the practice of justice, and it merits, upon that account, all the approbation which is due to propriety. But as it does no real positive good, it is entitled to very little gratitude. Mere justice is, upon more occasions, but a negative virtue, and only hinders us from hurting our neighbour. The man who barely abstains from violating either the person, or the estate, or the reputation of his neighbours, has surely very little positive merit. He fulfils, however, all the rules of what is peculiarly called justice, and does every thing which his equals can with propriety force him to do, or which they can punish

²¹³ Marx, *Grundrisse*, op. cit., 246.

²¹⁴ Raphael, op. cit., 246.

him for not doing. We may often fulfil all the rules of justice by sitting still and doing nothing.²¹⁵

With the increasingly negative and individualized character of justice, complete justice is more an aggregate of the individuals and their subjective ends. As Schneewind, Buckle, and Fleischacker note, from Grotius on, each individual is deemed to have intrinsic worth regardless of their contributions to the community.²¹⁶

In premodern systems of justice there is a close connection between distributive and complete justice.²¹⁷ This is because the notion of merit by which public goods are justly distributed is provided by the kind of regime, and thus, the dominant notion of the common end to be achieved. With the inversion of the priority between distributive and commutative justice, however, complete justice is now related primarily to commutative justice because the most common way to acquire goods is market exchange. Its standard, geometric equality irrespective of the concrete attributes of the participants, is not conducive to the idea of merit beyond the minimum rules stipulated by the contractual relation. This is a reflection of the differentiation of the economic from the political. In their productive activities, the capitalist class, separated from the state and organized into competitive units, seeks the reproduction of these individual units, not society as a whole. This is why complete justice becomes more individualized, more a protection from the state and from society itself. This is also why ‘neutrality’ becomes the norm for politics. For the increasingly capitalist state, legislating morality is deemed authoritarian. Consequently, the notion of a ‘complete’ justice oriented toward a substantive common end of the social whole is superseded by the principle of liberty: you may do whatever you want with what is yours insofar as it does not hinder the ability of others to do whatever they want with what is theirs.

Some theorists altogether deny the existence of complete justice. For example, Miller reduces the meaning of ‘legal justice’—one of the ways in which Aristotle’s notion of complete justice is translated—to corrective justice: “We are perhaps fortunate that we have lost one of the senses which the term had for the Greeks, the sense in which justice was equivalent to virtue in

²¹⁵ Adam Smith, *The Theory of Moral Sentiments*, eds. D. D. Raphael and A. L. Macfie (Indianapolis: Liberty Fund, Inc., 1982), 82.

²¹⁶ J. B. Schneewind, ‘Modern Moral Philosophy,’ in *A Companion to Ethics*, ed. Peter Singer (Oxford: Basil Blackwell Ltd, 1993), 148; Stephen Buckle, ‘Natural Law,’ in Singer, op. cit., 168; Fleischacker, op. cit., 5.

²¹⁷ Del Vecchio, op. cit., 55.

general.”²¹⁸ Indeed, the conventionalism traditionally espoused by groups like the sophists and Epicureans has become the dominant conception of justice. Nevertheless, as Taylor notes, the contract theorists of the seventeenth century are different from their predecessors because, whereas the latter were concerned with establishing the authority of government by contract, the former thought that there was a more pressing need to establish, by contract, society itself.²¹⁹ Modern thought has become increasingly skeptical that justice is an ontological part of our human natures in the way that, say, freedom is. Even when someone like Rawls offers a robust theory of a ‘sense of justice,’ it is based in the “background institutions” of society, not an objective good of human nature.²²⁰ Taken to its logical extent, this affirms a separation between values and facts. Justice, a subjective value, plays no role in what is regarded as our essentially biological natures. Justice is therefore made to seem reducible to prevailing legal and juridical relations enforced by the state. In other words, justice adopts a much more functionalist character.

As we saw, Marx has substantial differences with theorists of ‘classical’ natural right, whether they are ancients like Plato and Aristotle or moderns like Strauss. Their fundamental disagreement is about whether or not the achievement of our objective human goods, the actualization of the human essence, is rooted in nature or in history. Nevertheless, the theorists of *modern* natural right, whether they are empiricists like Locke or idealists like Kant, share a common disagreement with both Marx and the proponents of classical natural right. Unlike them, the theorists of modern natural right affirm the objectivity of rights, of principles of justice, but also the subjectivity of the good, of human happiness. In other words, they attempt to articulate principles of right that remain “neutral among competing conceptions of the good life.”²²¹ Only each individual can determine for themselves what they deem to be good. This corresponds to the unique form of rule under capitalism. As Gerstenberger notes, the “class character” of the capitalist state does not consist primarily in “overt class justice” and “direct

²¹⁸ Miller, op. cit., 17.

²¹⁹ Charles Taylor, *Sources of the Self* (Cambridge: Harvard University Press, 1989), 193. As Strauss notes, ancient conventionalists agreed with their classical opponents that nature has greater dignity than convention, but they argued that justice and right have their basis in convention. Conversely, proponents of modern conventionalism argue that *all* human thought is essentially historical (Strauss, op. cit., 11-12).

²²⁰ John Rawls, *A Theory of Justice* (Cambridge, Massachusetts: Harvard University Press, 1971), 496; 92-93.

²²¹ Michael J. Sandel, *Justice: What's The Right Thing To Do?* (New York: Farrar, Straus and Giroux, 2010), 215.

forms of oppression,” but rather, in the “neutrality of state power vis-à-vis any kind of private property.”²²²

In these conditions, practical reason, whereby the individual orders her qualitatively distinct needs toward the communal whole, often bifurcates into, on the one hand, the instrumental reason typical of consequentialism, and most famously, of utilitarianism, and on the other hand, the formalistic reason typical of deontology.²²³ Both of these frameworks assume that material or corporeal needs are self-interested pursuits for subjective goods or ‘preferences.’ The consequentialist tendency reduces the ‘Natural Law’ to instinctive pursuits, to the ‘natural’ or ‘factual.’ This transforms ethics into a physical science that analyzes ‘enlightened self-interest’ in a self-regulating market whose impersonal laws of supply and demand rationally determine the common good, the aggregate of purely individual goods. Alternatively, the deontological tendency distinguishes between, on the one hand, the ‘moral,’ the ‘natural laws’ of reason, such as duty for its own sake, and on the other hand, that from which it is autonomous, the ‘non-moral,’ the realm of physical or causal laws. The latter include necessarily self-interested pursuits, such as ‘happiness.’ In other words, the Right, which comprises all of our duties, is absolute, because the Good is deemed to be necessarily subjective and relative.

The bifurcation of these two forms of thought explains the prevalence of the fact-value distinction in modern thought. One form of thought rejects all values that cannot be reduced to fact or consigns them to the realm beyond scientific understanding; the other rigidly separates them. This is another cause of the inflexible character of the rules of justice. The application of general rules to particular circumstances, including a sensitivity to plausible exceptions, has traditionally been the domain of practical reason predicated on the assumption that individuals are naturally oriented toward their common ends. The very existence of an objective human good, the basis of our substantive common ends, is denied by both consequentialism and deontology. Indeed, for these systems of ethics, although we must adhere to principles of justice, we are in large part relieved from the burdens of practical reason. Formerly, we had to situate ourselves in society as whole in order to constantly connect our own individual good to the common good. It is now commonly supposed that this function, at least as far as our happiness is

²²² Gerstenberger, op. cit., 669.

²²³ Steven Seidman, *Liberalism and the Origins of European Social Theory* (Los Angeles: University of California Press, 1983), 31-33; Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Indiana: University of Notre Dame Press, 1988), 339-40.

concerned, is in large part taken care of by the self-regulating market. Consequentialism and deontology, as well as the fact-value distinction that maps onto them, offer only instrumental reason or formal reason, not practical reason. As we saw, these dichotomies arise in the impasse struck by each of the three waves of debate about Marxism and ethics.

Taking account of all of these changes, justice as a whole is reduced in status in the modern era. Formerly, in the best plausible human communities (in other words, excluding utopias and the afterlife), justice is the highest and most complete virtue. Amid the transitions to capitalism, however, justice has been utterly routed by freedom in the hierarchy of virtues. Where it has not been totally replaced by freedom, it is subordinate to it, its value determined by the extent to which it creates the conditions for freedom. Even when justice is exalted, it is rarely described as anything but the junior partner to liberty. This is true especially of the notion of complete justice, typically the capstone of the comprehensive notions of justice. Even for someone like Hegel, who affirms an objective human good, by far the most important principle in his worldview is freedom.²²⁴ We should be wary of attempts to collapse justice into freedom because the modern tendency to begin from principles of freedom is often based in the assumption that society as a whole must abstract from, or be indifferent to, conflicting ideas of our substantive human ends.

Before we go on, let us briefly summarize our results so far.

- Since capitalism is based on production for exchange, commutative justice displaces distributive justice as the primary form of proprietary justice. Consequently, arithmetic equality, or the equivalence of values, becomes the predominant standard of proprietary justice, to which any standard of proportionate equality, of merit, is subordinate.
- Formerly, the competing standards of distributive justice included wealth, virtue, and citizen-equality, whereas need was addressed by benevolence or charity. Under capitalism, however, distributive justice increasingly includes need as its basic standard. This is often to ameliorate the material inequalities arising from commutative justice.
- Traditionally the realm of distributive justice included familial and public associations as well as small-scale private property and communal property. Since genuinely communal

²²⁴ G. W. F. Hegel, *Elements of the Philosophy of Right*, ed. Allen W. Wood; trans. H. B. Nisbet (Cambridge: Cambridge University Press, 2006), §1.

property is significantly reduced amid the absolute private property of capitalism, distributive justice becomes increasingly centralized in the state. As such, distributive justice is deemed less an ontological aspect of our human natures and more a voluntary obligation arising from participation in specific institutions. In other words, justice is deemed reducible to legal and juridical relations.

- Distributive justice traditionally includes not only material goods but also political offices. Under capitalism its scope is narrowed to the former. The question of political power is increasingly viewed as the terrain of freedom, of democracy and authority. Freedom therefore absorbs what were once deemed to be crucial aspects of justice.
- The prominence of commutative justice has important effects on corrective justice, which, like distributive justice, becomes concentrated in the state. Furthermore, it becomes less corporal, more impersonal, and it attempts to make punishment more equivalent to crimes. Finally, theft becomes a paradigmatic case of injustice in a society based on absolute private property.
- As they become more impersonal, the laws of justice are deemed increasingly rigid. We are more sceptical about potential exceptions to the rule. These formal laws abstract from the immense complexity of concrete circumstances.
- At the same time, justice is deemed to be a product of historical circumstances, a human construction based in prevailing conventions, rather than a natural law arising from our human nature or the order of the universe. Consequently, the purpose or function of justice is deemed to be the stable reproduction of the prevailing social relations, whatever their specific form.
- Whereas complete justice traditionally means the common ends to which individuals are subordinate, under capitalism, justice in its general sense is regarded as the protection of the individual against society. Justice becomes much more individualized.
- Complete justice, which was often deemed a positive virtue that is achieved when we are actively contributing to something, becomes a negative virtue that is fulfilled merely by abstaining from interference with something.
- Traditionally, complete justice meant the ethical orientation of the individual toward the common ends of the social whole. Justice was deemed an ontological part of our inherently social nature. Under capitalism, however, justice is deemed less a part of

human nature and more a human construct. In other words, justice is much less an integral part of our natural fulfilment and more the creation of a set of conditions that provides the basis for a self-realization that is associated more with freedom than justice.

- In general, then, justice, once deemed the paramount virtue, is displaced by the supreme ideal of the modern age: freedom.

Marx, in one of his more sustained discussions of historical materialism as a method, asserts that “Human anatomy contains a key to the anatomy of the ape. The intimations of higher development among the subordinate animal species, however, can be understood only after the higher development is already known.”²²⁵ In other words, the current era may reveal truths that are hidden to all preceding periods. This may be true, but it still raises the question, how do we determine the difference between, on the one hand, what is true of all history but is only apparent to us now, and on the other hand, what is merely particular to the current conditions but which we falsely impose on all of the other eras? These are open questions. A full and complete historical materialist critique of ethics—in other words, a universal history of ethics—may reveal that everything that Marx assumed about justice is actually true. Nevertheless, this would have to be demonstrated in ways that, to my knowledge, have not been done.

Before we can interpret Marx’s theory of justice, we must first turn to Hegel. Although I have stressed here the importance of a historical *materialist* critique of justice, we cannot neglect the significance of Marx’s intellectual influences, especially Hegel. Without a close scrutiny of Hegel it is impossible to comprehend Marx’s assertions about ethics and justice. Indeed, we will find that in each of the sections on the four major aspects of justice, we will need a preliminary chapter on Hegel before we can turn to Marx and Marxism. Curiously, although many of the commentators engage in the ‘history of ideas’ approach, they often miss crucial aspects of the dialogue between Marx and Hegel as well as other important thinkers. This is in part a result of the extent to which the much-maligned dialectical method has been deemed incoherent and irrelevant.

The first aspect of justice I will address is commutative justice. As we have seen, capitalism is historically unique in that production for exchange becomes predominant over production for use. This is the basis for the prominence of market exchange in contemporary

²²⁵ Marx, *Grundrisse*, op. cit., 104.

society. Therefore, in this historically grounded study, it is appropriate to begin with commutative justice. Nevertheless, we must always keep in mind the historical contingency of this. If we neglect the dramatic transformations of justice amid the transitions to capitalism, it is impossible to understand Marx's evasiveness about justice. The participants in the debates about Marx and justice, despite their pretensions to materialism, have often approached the debate as a question of intellectual history. This is one of the reasons why the successive waves of this debate have ended in more or less the same impasse. These Marxists have not applied the method to the master. They have not engaged in a historical materialist critique of Marx.

This is also why the debates about Marxism and justice have tended to focus on exploitation. Unmasking the character of surplus appropriation is, of course, important, but the full implications of the decline of justice under capitalist modernity only become clearly apparent when we consider justice in all of its aspects. It is only with a comprehensive notion of the justice, and in particular, of complete justice, that it becomes not merely a principle of judgement, but also a guide to activity. A more robust theory and practice of practical reason could be crucial for overcoming the impasse struck in the three waves of debate and achieving a genuinely democratic socialism.

Part 2: Commutative Justice

Chapter 4: Hegel on Commutative Justice

We begin with commutative justice, the aspect of justice concerned with the equal exchange of privately-held property. In certain respects, Hegel's theory of commutative justice is similar to liberal accounts. Insofar as individuals are owners of private property, they engage in contractual relations with each other. These relations are motivated by mutual or corresponding self-interests and are guided by negative rights, namely, one is free to do what she wants with what is hers insofar as she allows others to do the same. Furthermore, each must adhere to the obligations of the contract into which they voluntarily enter. This relation is commutatively just if they respect each other as property owners and engage in fair and equal exchanges. Nevertheless, unlike most liberal accounts, Hegel thinks that this is only a small part of human freedom. There are other aspects of justice that Hegel deems to be more important than our rights as owners of private property and that can trump the claims of commutative justice.

We cannot fully appreciate Hegel's contributions to theories of commutative justice without first comprehending his dialectical method as well as the way in which he situates his historical account of private property and exchange in his critique of modern moral philosophy. I cannot provide here a systematic commentary on Hegel's dialectical method. Instead, I provide only a sketch in this chapter in order to ground what he and Marx say about ethics and justice.

Hegel is critical of philosophical systems that begin with first principles that are not subsequently proven in the logical course of the philosophical inquiry. This makes them reliant on 'transcendental' ideas that are beyond the possible experience of most individuals. Conversely, Hegel begins with what he deems to be a non-dogmatic starting point, an element of everyday experience, the existence of which is recognized by everyone. Consequently, if Hegel can close his system into a self-contained whole, he never has recourse to transcendental truths. For Hegel, we are eminently historical beings. We always already exist within a certain historical period with its particular forms of thought. We cannot gain objectivity by attempting to abstract from our own historical period. Rather, objectivity is achieved when we can account both for

historical development as a whole and for ourselves as products of, and contributors to, that history.

The immersion in prevailing historical circumstances can only avoid dogmatism under two conditions. First, we must deploy the principle of contradiction and weigh every system of knowledge against itself, against the opposed systems to which it may give rise, in order to discover the system of knowledge capable of accounting for the true grounds of history in its entirety without recourse to transcendental principles. Second, the contemporary period must be the end of history in its essential development, or at least reveal the end of history. Otherwise, our fundamentally historical knowledge cannot determine whether or not it has discovered its foundations such that no procession of time could alter what we have taken to be the true grounds of thought in the present. Hegel refers to this as Absolute Knowing.²²⁶

A crucial aspect of Hegel's conception of Absolute Knowing is his distinction between, on the one hand, the 'spurious' or 'bad' infinite, and on the other hand, the 'genuine' or 'good' infinite. If what is meant by the infinite is something that is limitless or without end, this, for Hegel, is merely the mirror opposite of the finite. It is a bad infinite that has not escaped finitude because, as an infinite regress, it is incapable of determining the true grounds of thought. Each ground can give way to still other grounds, and so on, *ad infinitum*. For Hegel, the good infinite means that in which everything is contained within possible human experience. Unlike the bad infinite, which, because it is limitless, is transcendental, the good infinite is immanent. This, the Absolute, is the goal of Hegel's theoretical system and that upon which his framework stands or falls. The dialectic must begin and end immanently without ever resorting to an unknowable beyond. Therefore, the way in which Hegel tests thought against itself by means of what he deems to be an immanent critique is not merely rhetorically persuasive. It is the essential method of a system that claims to culminate in the Absolute. With regard to questions of justice, a crucial aspect of Absolute Knowing is what Hegel calls 'Ethical Life.'

Hegel distinguishes 'Ethical Life' from 'Morality.'²²⁷ He is deeply critical of modern morality because it tends to cast humans as isolated, atomized individuals. Modern philosophers tend to regard morality as a relation between an individual and her duties, between an individual and a thing. When ethics is reduced to morality in these ways, it becomes a question merely of

²²⁶ Hegel's most significant discussion of this method is the preface to G. W. F. Hegel, *Phenomenology of Spirit*, trans. A.V. Miller (New York: Oxford University Press, 1977), §1-72.

²²⁷ Hegel, *Philosophy of Right*, op. cit., §142-52.

what we ought to do, of how we ought to act. Conversely, for Hegel, ethics is better understood as ‘Ethical Life,’ as a question of who we are and should be given the nature of our circumstances. Ethics is a social relation, not a thing or a relation to things. Acting in accordance with our obligations does not fulfill the duty, but rather, the social relationship which grounds that duty. In other words, the duty is the means, the mediating factor, not the end or purpose of the social relation.²²⁸

For Hegel, one of the most profound tensions in modern morality is that between desire and duty, between “sensuous inclination” and the “cold command”:

These are antitheses which have not been invented, either by the subtlety of reflection or by the pedantry of philosophy, but which have from all time and in manifold forms preoccupied and disquieted the human consciousness, although it was modern culture that elaborated them most distinctly, and forced them up to the point of most unbending contradiction. Intellectual culture and the modern play of understanding create in man this contrast, which makes him an amphibious animal, inasmuch as it sets him to live in two contradictory worlds at once.²²⁹

For Hegel, it is the task of philosophy to undo such contradictions.²³⁰ While we should not pursue our desires without consideration for others, neither should our happiness be purely incidental to the pursuit of our duties. Both modes of activity assume that the happiness of each individual is totally subjective. Conversely, through the reconciliation of our duties and desires, Hegel aspires to an objective happiness pursued in concert with others. Ultimately, for Hegel, the abstract particular of the self-interested will and the abstract universal of the moral will can only become the concrete universal of mutual recognition in a certain kind of community. This universal is ‘concrete’ because it embodies difference in unity. In other words, this concrete universal, this recognition, is *Freigabe*, a mutual ‘releasing’: “*Freigabe* makes it clear that the

²²⁸ This interpretation of Hegel’s ethics has been influenced by J. M. Bernstein, ‘Love and Law: Hegel’s Critique of Morality,’ *Social Research*, 70.2 (Summer 2003): 393-432. For two excellent commentaries on Hegel’s ethics, see: Robert R. Williams, *Hegel’s Ethics of Recognition* (Berkeley: University of California Press, 1997); Allen W. Wood, *Hegel’s Ethical Thought* (New York: Cambridge University Press, 1990).

²²⁹ G. W. F. Hegel, *Introductory Lectures on Aesthetics*, trans. Bernard Bosanquet (London: Penguin Books, 2004), 59.

²³⁰ *Ibid.*, 60.

‘We’ Hegel is after is a community of freedom that does not absorb or reduce individuals to some abstract homogeneity but rather presupposes, requires, and accepts individuals in their differences.”²³¹ It is a “nonreductive union” that aspires to unity, not uniformity.²³² This, the concrete universal, is the basis of Hegel’s ethics.

A fundamental aspect of ‘Ethical Life’ is that it is grounded in certain social conditions that are subject to historical development. In other words, for Hegel, the morality of the ‘ought,’ which proposes universal duties applicable at all times and places, does not account sufficiently for specifically socio-historical conditions in their development: “Hegel’s criticism of morality is that an ethics of conscience or conviction is incapable of deducing determinate duties from an indeterminate universality.”²³³ The individual’s free will must be directed toward a certain community within which everyone’s freedom, in its moral, legal, and ethical senses, is bound.²³⁴ Hegel notes that many different forms of ethics, both religious and secular, praise transcendental ideals embodied in rigid self-discipline, the all-consuming and selfless pursuit of a single definitive virtue, or other-worldly notions of human perfection. But, if we take seriously the idea that ‘ought implies can,’ Hegel responds, then these unattainable ideals are not grand or noble, but defective and false.²³⁵

Hegel often expresses this broad critique through a particular critique of Kant, whom he deems paradigmatic of modern moral philosophy. Hegel contends that Kant, as is typical of Enlightenment thought, thinks in terms of the ‘understanding,’ which tends to keep things in their polar opposition. For example, Kant will pose his morality of the categorical imperative as the exact opposite of the merely prudential rationality of the hypothetical imperatives typical of utilitarianism. Conversely, Hegel seeks to go beyond the ‘understanding’ with ‘reason,’ with a method capable of overcoming stark oppositions by reconciling the best parts of both polarities. Therefore, when Hegel poses an ethics based in ‘Ethical Life,’ it is not in stark opposition to Kantian ‘Morality.’ It is not an embodiment of what later commentators will describe as the ‘non-moral.’ Rather, Ethical Life is meant to reconcile the formal obligations of Morality with their circumstances, with socio-historical content. With his theory of Ethical Life, Hegel intends

²³¹ Williams, op. cit., 21-22.

²³² Ibid., 129.

²³³ Ludwig Siep, ‘The ‘Aufhebung’ of Morality in Ethical Life,’ in *Hegel’s Philosophy of Action*, eds. Lawrence S. Stepelevich and David Lamb (Atlantic Highlands, New Jersey: Humanities Press, 1983), 152.

²³⁴ Ibid., 146.

²³⁵ G. W. F. Hegel, *The Science of Logic*, trans. A.V. Miller (Amherst, New York: Humanity Books, 1969), 149.

to overcome both an isolated consequentialism in which the ends justify the means as well as an isolated deontology in which duty is done purely for duty's sake. Both forms of 'Morality' represent the one-sidedness of the 'understanding.'

In his criticisms of Kant's categorical imperative, Hegel likes especially to focus on Kant's discussion of the prohibition of theft. As we will see, Hegel's general critique of Kantian morality, as well as this specific critique of one of Kant's categorical imperatives, deeply influences Marx's theory in *Capital*. In Kant's discussion of the prohibition of theft, he borrows from Hume the example of a deposit that has been entrusted to our safety. Hume, in his explanation of the origins of justice, asserts: "Now to apply all this to the present case; I suppose a person to have lent me a sum of money, on condition that it be restor'd in a few days; and also suppose, that after the expiration of the term agreed on, he demands the sum: I ask, *What reason or motive have I to restore the money?*"²³⁶ Hume argues that the principles of justice, including that principle which prescribes the return of deposits, are conventions the continuation of which is based on utility, on the stability they offer to society. Unlike Hume, however, Kant does not deem this prohibition an artificial creation that has arisen in specific historical circumstances. Nor does Kant justify the prohibition according to its utility. Rather, Kant tests the prohibition according to a categorical imperative that, arising from our reason, is true in all possible times and circumstances:

What form in a maxim is fitting for universal legislation, and what form is not, can be distinguished without instruction by the commonest understanding. I have, for example, made it my maxim to increase my assets by every safe means. Now I have a *deposit* in my hands, the owner of which is deceased and has left no record of it. Naturally, this is a case for my maxim. Now I want only to know whether that maxim can also hold as a universal practical law. I therefore apply the maxim to the present case and ask whether it could indeed take the form of a law and I could thus indeed, at the same time, give through my maxim such a law as this: that everyone may deny a deposit which no one can prove to him to have been made. I immediately become aware that such a principle, as a law, would annihilate itself, because it would bring it about that there would be no deposit[s]

²³⁶ Hume, *Treatise on Human Nature*, op. cit., 254.

at all. A practical law that I cognize as such must qualify for universal legislation; this is an identical proposition and therefore self-evident.²³⁷

For Kant, any attempt to universalize the theft of deposits would eliminate the possibility of deposits altogether. Therefore, it is self-contradictory.

Hegel criticizes Kant's example of the categorical imperative in a crucial section of the *Phenomenology of Spirit* which we will study in a number of different chapters. It occurs at the very end of "Part C (AA): Reason," in the last sub-section, "Individuality which takes itself to be real in and for itself."²³⁸ Hegel criticizes Kant for his abject formalism and his methodological individualism. For Hegel, these two things are deeply intertwined. Hegel asserts that there is nothing contradictory about the absence of deposits. It is only contradictory if we take as given the institution of deposit-making. In other words, Kant presents as substantive content what is merely formal. The content of this form, of deposits, is private property. Wherever private property exists, it will necessarily give rise to a certain notion of right that includes laws against theft. Nevertheless, neither the existence nor the non-existence of private property, and thus of deposits, is in itself contradictory. The categorical imperative prohibits theft only because it assumes the existence and legitimacy of private property. It does not justify this content itself. Thus, despite its claims to universality, the categorical imperative endorses historically-specific practices.

It is not that Hegel rejects private property. Rather, he criticizes Kant because he cannot account for private property historically. The principle of non-contradiction is not a sufficient guide to concrete ethical action. Kant's moral theory is an example of an 'abstract universal.' It is a moral formalism that fails to address the circumstances and motivations that give rise to it. Hegel's criticism of Kant is situated within his broader critique of the moral formalism endemic to the perspective of isolated, atomized individuals. The individual may believe that she knows immediately what is right and what is good.²³⁹ For example, it is a common-sense rule that one should tell the truth. Nevertheless, this imperative assumes that we know the truth. As soon as this commandment is made dependent on this knowledge, however, it is revealed to be abstract:

²³⁷ Immanuel Kant, *Critique of Practical Reason*, trans. Werner S. Pluhar (Indianapolis: Hackett Publishing Company, Inc., 2002), 40-41.

²³⁸ Hegel, *Phenomenology of Spirit*, op. cit., §394-437. See §437 for where Hegel discusses the example of the deposit.

²³⁹ *Ibid.*, §422.

“For speaking the truth is made contingent on whether I can know it, and can convince myself of it; and the proposition says nothing more than that a confused muddle of truth and falsehood ought to be spoken just as anyone happens to know, mean, and understand it.”²⁴⁰ Thus, this commandment loses its unconditional, imperative-form.

These commandments must give up all claims to have an absolute content.²⁴¹ They are only formal or abstract universals. The most they can claim is that they are not self-contradictory. They must take their content as given despite the contingency and particularity inherent to their reality.²⁴² In fact, this content is as acceptable as its opposite.²⁴³ Property does not contradict itself, but neither does the absence of property. These formal laws cannot tell us anything significant about the content. They cannot tell us whether property should belong to the first person to lay her hands on it or to no one at all. They cannot tell us whether or not a regime of private property is better than communal property. As we will see, Hegel’s critique of this formalistic morality is quite similar to Marx’s critique of utopianism.

Hegel criticizes modern morality, of which Kant is paradigmatic, because it does not provide sufficiently robust notions of practical reason. The attempt to create a pure morality based entirely in universal duties for their own sake is unable to account for the contingencies of specific circumstances, both immediate and broadly historical. Imagine a slight modification of Kant’s discussion of the deposit. What if the holder of the deposit knew that the would-be inheritors of the recently deceased depositor are malicious people who would use the inherited money in socially destructive ways? How then should the deposit-holder frame her maxim? Should she say, ‘Everyone may deny a deposit which no one can prove to have been made’? Or, should she add the stipulation, ‘when it serves her self-interests’? Or, should it be the qualification, ‘when returning the deposit would help fund malicious acts’? Each of these formulations is consistent with the intention of the deposit-holder, but not all of them would pass the test of universalizability. How can the deposit-holder frame the maxim in a way that ensures it does not reflect her own self-interests and moral biases?²⁴⁴ This is why Hegel regards as

²⁴⁰ Ibid.

²⁴¹ Ibid., §426.

²⁴² Ibid., §429.

²⁴³ Ibid., §430.

²⁴⁴ Allen Wood offers an excellent commentary on Hegel’s critique of Kant’s formalism (Wood, *Hegel’s Ethical Thought*, op. cit., 154-73). In particular, my questions about the example of the deposit are deeply influenced by pgs. 160-61. Wood offers perceptive and largely correct criticisms of Hegel, who does not always read Kant, among others, very closely. At the very least, Hegel has a habit of amalgamating a number of Kant’s statements into a

abstract and formal modern morality in general and Kantian morality in particular. In certain respects, Hegel is attempting to construct a practical reason that is as robust as that offered by Plato. Take, for example, Plato's assertion that a typically just act, returning to someone the weapons they have given to you for safe-keeping, becomes an unjust act when the owner of the weapons has gone insane and might use them to hurt themselves or others.²⁴⁵ Nevertheless, for Plato, a sufficiently robust practical reason is based in the contemplation of immutable nature and natural right whereas Hegel bases it in the comprehension of the development of human history as a whole.

Perhaps Hegel's critique of Kant's discussion of the deposit can be accused of missing the point. For Kant, maintaining the institution of honesty may be more important than the institution of deposit-making. Perhaps the latter is only an example of what, for Kant, is the priority, namely, telling the truth. Hegel is primarily addressing Kant's statement of the example in *The Critique of Practical Reason*, where property is the focus, but Hegel also seems to be synthesizing this with Kant's other discussion of the deposit in *The Foundations of the Metaphysics of Morals*, where honesty is indeed the priority.²⁴⁶ As we saw, Hegel does discuss truth-telling. Furthermore, Kant may show similar shortcomings in this respect.

Take, for example, Kant's famous confrontation with King Friedrich Wilhelm II. The King and his censors considered Kant's theories to be disparaging to religion and demanded that he sign a pledge that he would no longer write on the subject. Kant complied by offering this precisely worded response: "As your Majesty's faithful subject, I shall in the future completely desist from all public lectures or papers concerning religion."²⁴⁷ Kant worded the statement this way because he knew that the elderly King would probably die soon, which would absolve him of the pledge. After Wilhelm II did in fact die a few years later, Kant openly explained that he had misled the King without lying to him. Kant argued that one must tell the truth, but not necessarily the whole truth. At the outset we must say that Kant acts immorally according to his own standards. In deceiving Wilhelm II, he does not treat him as a rational being, as an end-in-

single statement, which causes confusion for commentators. Nevertheless, when Wood attempts to salvage Hegel's critique of Kant by reformulating it, I believe Wood understates aspects of Hegel's critique that are already there and do not need Wood's reformulation, as is evident below in the explanation of paragraphs 434 and 435 of *The Phenomenology*.

²⁴⁵ Plato, *Republic*, op. cit., 331c.

²⁴⁶ Immanuel Kant, *Foundations of the Metaphysics of Morals and What is Enlightenment?* trans. Lewis White Beck (Indianapolis: The Liberal Arts Press, Inc., 1959), 40.

²⁴⁷ Kant is quoted and discussed in Sandel, op. cit., 134.

himself, and thereby contradicts one of the foundational aspects of the categorical imperative. Putting this aside, however, the attempt to formulate this action as a maxim is beset with the same problem as is the example of the deposit above. Should Kant's maxim be, 'Everyone must tell the truth'? Or, should he add the qualification, 'but can occasionally do so in a misleading way'? Or, should he include the stipulation, 'when it serves to preserve his own freedom'? Or, 'when it is a response to an unjust curtailing of my freedom'? Or, 'when it is for the sake of a higher truth'? Again, all of these are consistent with Kant's intention, but not all of them may pass the test of universalizability. Kant has no way of separating the purity of his duties from the impurity of his circumstances, self-interests, and moral biases.

Kant's brush with political power exposes tensions in the relation between his moral philosophy and his political philosophy. Kant's formulations of the categorical imperative culminate in his imagining a 'Kingdom of Ends' for which each individual must act as if everyone else acts from duty and treats each other as ends.²⁴⁸ Nevertheless, Kant rejects any attempt to use revolution to bring about this Kingdom of Ends because, no matter how well intentioned, it necessarily contradicts the basis of sovereign law. Instead, Kant argues that history is tending toward the universal realization of rationality by means of natural laws: "*The means which nature employs to bring about the development of innate capacities is that of antagonism within society, in so far as this antagonism becomes in the long run the cause of a law-governed social order.*"²⁴⁹ This is Kant's famous notion of the 'unsocial sociability' of humankind.²⁵⁰ Now that we have reached the age of Enlightenment, however, it would be better to let this natural process unfold, to allow the wisdom of public intellectuals to finally reach and convince the rulers.²⁵¹

The parallels between Kant and Bernstein's morality are obvious, but few have noted that both are undergirded by historical determinism. This is the only way that Kant's political philosophy could be reconciled with the ultimate vision of his moral philosophy. In the end, Kantian morality is formal because those who espouse it can only keep their hands clean by holding them above their heads in an act of surrender as the tide of blood creeps up past their waists. Kant famously says, "Two things fill the mind with ever new and increasing admiration

²⁴⁸ Kant, *Foundations of the Metaphysics of Morals*, op. cit., 57-58.

²⁴⁹ Immanuel Kant, *Kant: Political Writings*, ed. Hans Reiss (Cambridge: Cambridge University Press, 1991), 44.

²⁵⁰ Ibid.

²⁵¹ See the discussion in Hans Reiss's 'Introduction,' *ibid.*, 35-38.

and reverence, the more frequently and persistently one's meditation deals with them: *the starry sky above me and the moral law within me.*"²⁵² In light of Hegel's critique, perhaps Kant should have said that my reverence is for the moral law...*above me.*

For Hegel, when someone tests a given law according to a formal standard, its content is contingent and their judgement is arbitrary.²⁵³ They can claim a personal knowledge that argues them into freedom from the law. Indeed, they can do this with all laws. In this form of immediacy, our knowledge and will is that of a particular, isolated individual.²⁵⁴ It is not yet the 'spiritual substance,' the historical development of human society through a series of phases we can rationally comprehend. In other words, 'Morality' is based in methodological individualism, not the social ontology appropriate for a social and historical being.

We can draw out some of the key aspects of Hegel's critique of Kant by relating it to another of Hegel's texts, his early essay on natural law.²⁵⁵ There he offers the same critique in a much more lucid and explicit way. There is also overwhelming evidence that Marx was familiar with this text.²⁵⁶ Hegel does not critique the premodern, 'classical' forms of natural law typical of theorists like Aristotle, Cicero, or Aquinas. Rather, he criticizes those liberal forms of natural law that have become dominant in the modern period.²⁵⁷ Hegel associates this with the

²⁵² Kant, *Critique of Practical Reason*, op. cit., 203.

²⁵³ Hegel, *Phenomenology*, op. cit., §434.

²⁵⁴ *Ibid.*, §435.

²⁵⁵ G. W. F. Hegel, *Hegel: Political Writings*, eds. Laurence Dickey and H. B. Nisbet (Cambridge: Cambridge University Press, 1999), 102-80.

²⁵⁶ Gopal Balakrishnan claims that Marx did not read any of Hegel's work published before the *Phenomenology* (Gopal Balakrishnan, 'The Abolitionist—I,' *New Left Review*, 90 (November/December 2014): 101-138; 109, n. 9). There are at least three pieces of evidence that Marx read Hegel's essay on natural law. First, Hegel depicts society as an organism, not a crystal (Hegel, *Hegel: Political Writings*, op. cit., 156), which Marx paraphrases in the preface to the first edition of *Capital* (Marx, *Capital: Volume One*, op. cit., 93). Second, Hegel quotes a passage from Plato's *Statesman* (Hegel, *Hegel: Political Writings*, op. cit., 143-44), which is paraphrased by Marx (Marx and Engels, *The Holy Family*, op. cit., 238-39). Third, Hegel makes a distinction between the polyp and the lion: "Just as the totality of life is no less present in the nature of the polyp than in the nature of the nightingale or the lion, so has the world spirit enjoyed its weaker or more developed – but none the less absolute – [modes of] self-awareness in each of its shapes; and it has enjoyed itself and its own being in every people and in every ethical and legal whole" (Hegel, *Hegel: Political Writings*, op. cit., 173-74). Marx uses the distinction between the polyp and the lion several times in his early newspaper articles (Marx and Engels, *Collected Works: Volume One*, op. cit., 173; 231). See also Marx's later expression, in which the polyp and the lion become the ape and the human: "Bourgeois society is the most developed and the most complex historic organization of production. The categories which express its relations, the comprehension of its structure, thereby also allows insights into the structure and the relations of production of all the vanished social formations out of whose ruins and elements it built itself up, whose partly still unconquered remnants are carried along within it, whose mere nuances have developed explicit significance within it, etc. Human anatomy contains a key to the anatomy of the ape. The intimations of higher development among the subordinate animal species, however, can be understood only after the higher development is already known" (Marx, *Grundrisse*, op. cit., 104).

²⁵⁷ Hegel, *Hegel: Political Writings*, op. cit., 130.

displacement of the feudal nobility by the ascending bourgeoisie.²⁵⁸ Although Hegel distinguishes between the ‘empirical’ natural law of Hobbes and Locke and the ‘idealist’ natural law of Kant and Fichte, he asserts that, despite their claims to the contrary, neither are scientific. By failing to understand the historical structure of social laws, they both impose abstract ideals on social relations in ways that only reproduce the problems they attempt to solve. Both forms of natural law adopt uncritically the perspective of market relations. Therefore, they impose the atomized market-actor on the whole of society. Ultimately, Hegel rejects modern natural law and the variety of social contract theories because a genuine common interest can never be formed from competing individuals.²⁵⁹ Even in this early essay, Hegel distinguishes between Morality, the standpoint of civil society, and Ethics, the standpoint of the state, which he regards as the perspective of society as a whole.

The empirical natural law typical of Hobbes and Locke argues that, because all human institutions are historically contingent, we must abstract from this contingency in order to get at the truth of human nature. In doing this, however, empirical natural law takes a specific set of circumstances, the relations between individuals in modern market relations, and casts them as the primordial situation of humankind. Everyone is assumed to be atomized or non-social individuals from the very start. Therefore, conflict can never be overcome.²⁶⁰ Any system of law or political society can only bring these individuals together as an aggregate. It cannot genuinely unify them. Thus, empiricism represents “chaos” both as an imaginary state of nature and as the destiny of humankind, which is a “blatant contradiction.”²⁶¹

Like empirical natural law, the idealist natural law of Kant and Fichte assumes that the individual is the primary being.²⁶² Nevertheless, they separate the empirical realm of necessity from the moral realm of freedom.²⁶³ Natural law becomes the science of the rights and duties of the rational part of our being as distinct from our empirical aspects. Due to this separation, however, freedom is merely negative. It is freedom from necessity.²⁶⁴ This is a formal practical reason in which the moral ideal cannot attain reality because the ideal and real are defined in

²⁵⁸ Ibid., 150-51.

²⁵⁹ Herbert Marcuse, *Reason and Revolution: Hegel and the Rise of Social Theory* (Boston: Beacon Press, 1968), 60.

²⁶⁰ Hegel, *Hegel: Political Writings*, op. cit., 56.

²⁶¹ Ibid., 110.

²⁶² Ibid., 57.

²⁶³ Ibid.

²⁶⁴ Ibid., 58.

irreconcilable ways.²⁶⁵ Since idealist formalism pronounces universal laws the content of which is assumed, some material thing must always be smuggled into the relation.²⁶⁶ Hegel's example here is again the prohibition against theft.²⁶⁷

These two moral standpoints, the empirical and idealist versions of modern natural law, overlap with the so-called fact-value distinction. The empirical natural law, or, ethical positivism, reduces value to fact. It casts humans as a piece of nature that is subject to the same natural laws, namely, the pleasure calculus. Conversely, idealist natural law, or, ethical formalism, creates a strict dichotomy between natural and human laws. Human nature, or, human rationality, is something qualitatively distinct and separate from the external nature of everything else, including the empirical aspects of human nature.

Hegel's critique of modern natural law is situated within an account of broader historical trends, an early version of his universal history. With the decline of ancient Greece, and especially with the development of the Roman Empire, there is a long historical process wherein the individual becomes more prominent and citizenship becomes increasingly de-politicized.²⁶⁸ Hegel seems to be suggesting that each time market relations emerge with any prominence, it throws the organic unity of broader society into crisis. For Hegel, the unparalleled rise of civil society, of the market, in modern life gives rise to a class distinct from the nobility:

The status of this class is accordingly determined by the fact that its province is possession in general and the justice which is possible in this context, that it at the same time constitutes a coherent system, and that, as a direct consequence of the elevation of the relation of possession to formal unity, each individual who is inherently capable of possession is related to all the others as a universal entity, or as a citizen in the sense of a *bourgeois*.²⁶⁹

Hegel contrasts the formal logic of the 'system of reality,' of civil society, with the "genuine and complete justice" of Ethical Life.²⁷⁰ He asserts that in liberal, specifically contractarian thought,

²⁶⁵ Ibid., 119-20.

²⁶⁶ Ibid., 124.

²⁶⁷ Ibid., 124-25.

²⁶⁸ Ibid., 149.

²⁶⁹ Ibid., 150-51.

²⁷⁰ Ibid., 143.

market relations, what he calls the “system of universal mutual dependence,” dominate the whole.²⁷¹ The ‘external justice’ of civil society intrudes on the ethical totality in the same way that the principles of mechanics have become dominant for the whole of natural science.²⁷²

Resisting these developments, Hegel asserts that civil society must be subordinate to the state, to the social whole. Otherwise, this system of market relations will develop into “ever greater difference and inequality in keeping with its natural tendency.”²⁷³ To support his claims about adopting the perspective of the good of the whole, Hegel quotes Plato’s critique of the formalism of most laws:

It is clear that lawmaking belongs to the science of kingship; but the best thing is not that the laws be in power, but that the man who is wise and of kingly nature be ruler [...] Because law could never, by determining exactly what is noblest and most just for one and all, enjoin upon them that which is best; for the differences of men and of actions and the fact that nothing, I may say, in human life is ever at rest, forbid any science whatsoever to promulgate any simple rule for everything and for all time [...] But we see that law aims at pretty nearly this very thing, like a stubborn and ignorant man who allows no one to do anything contrary to his command, or even to ask a question, not even if something new occurs to some one, which is better than the rule he has himself ordained [...] So that which is persistently simple is inapplicable to things which are never simple.²⁷⁴

Again, like Plato, Hegel aspires to a practical reason capable of accounting for the complexity of circumstances.

When we turn back to the previously discussed passages in Hegel’s *Phenomenology*, we see he has retained this theory of historical development. Indeed, that sub-section, “Individuality which takes itself to be real in and for itself,” occurs right before he transitions to “Part (BB): Spirit.” In other words, Hegel makes the transition from the formal standpoint of the isolated,

²⁷¹ Ibid., 141.

²⁷² Ibid., 170.

²⁷³ Ibid., 142.

²⁷⁴ Ibid., 143-44. The ellipses are Hegel’s.

atomized individual to the standpoint of society, or of individuals who are situated within specific social relations. Ultimately, we will find that, for Hegel, these societies are subject to historical developments that can be rationally comprehended. In this initial immediate or uncritical form, however, the social standpoint is that of the customary order. As with the early essay on natural law, Hegel begins his discussion of our social ontology with ancient Greece.

For Hegel, at this stage, the spiritual substance is comprised of the laws as described by Antigone: “They are not of yesterday or today, but everlasting / Though where they came from, none of us can tell.”²⁷⁵ The attempt to give or test these laws according to my isolated insight is already to deny their unshakeable substance:

It is not, therefore, because I find something is not self-contradictory that it is right; on the contrary, it is right because it is what is right. That something *is* the property of another, this is fundamental; I have not to argue about it, or hunt around for or entertain thoughts, connections, aspects, of various kinds; I have to think neither of making laws nor of testing them. All such thinking on my part would upset that relation, since, if I liked, I could in fact just as well make the opposite conform to my indeterminate tautological knowledge and make *that* the law. But whether this or the opposite determination is the right, that is determined *in and for itself*. I could make whichever of them I liked the law, and just as well neither of them, and as soon as I start to test them I have already begun to tread an unethical path. By acknowledging the *absoluteness* of right, I am within the ethical substance; and this substance is thus the *essence* of self-consciousness. But this self-consciousness is the *actuality* and *existence* of the substance, its *self* and its *will*.²⁷⁶

It is not that Hegel is endorsing an uncritical attitude to the prevailing customary order. This is proven, as we will see later, when Antigone, the personification of the old laws, finds herself in an irreconcilable death-struggle with Creon, the personification of the new laws, which foretells a fundamental destabilization of the customary order and dramatic historical change. Rather,

²⁷⁵ Hegel, *Phenomenology*, op. cit., §437.

²⁷⁶ *Ibid.*

what Hegel is arguing is that any such critique of the customary order, of certain social relations, must first understand that order on its own terms. Otherwise, the attempt to impose formal laws will meet with recalcitrant social conditions. Indeed, our social conditions are the true ground of all action. That is why they are the spiritual substance.²⁷⁷

By pointing to the inherently social and historical character of our thinking and acting, Hegel is beginning to show the grounds of his method: immanent critique. We cannot impose *a priori* standards in our evaluation of society because there is no way for the thinking subject to separate herself from these objective conditions. The subject is already an object in the world. She is already necessarily a part of those objective conditions. Therefore, genuine objectivity in thought cannot be achieved by attempting to become a pure subject free from these objective conditions. Rather, it comes from our accounting for the ways in which we as thinking and acting subjects are already situated within objective, socio-historical conditions. Otherwise, in our attempts to completely transcend historical bias, we will uncritically absorb it. This is precisely what happens to Kant when, in attempting to develop *a priori* moral rules, his categorical imperatives unwittingly sanctify what is the product of specific historical circumstances.

If we are inescapably social and historical beings, genuine objectivity in our thinking and acting can only come from an appreciation of how we are the product of specific socio-historical developments. In other words, this requires the comprehension of history as a rational process. This is Hegel's idea of universal history. If, as thinking and acting subjects, we are always already situated within this universal history, we cannot impose external or transcendental standards. Indeed, a penchant for these formal rules of thought and action may itself be something we have uncritically absorbed from historically-specific social relations. Rather, our method must be immanent, must be internal to the various phases of human history in their development. This includes any comprehension of our own society.

Hegel's universal history attempts to rationally comprehend the development of humankind through the dominant modes of thought and action in its successive phases. This universal history is immanent because nothing is attributed to it that is outside of possible human experience. Hegel's method does not judge these phases according to a transcendental standard or according to our own standards which we uncritically impose from without. Rather, it comprehends these phases on their own terms. The only way that this method can avoid

²⁷⁷ Ibid., §439-40.

dogmatism is by weighing each mode of thought against itself. We must comprehend these forms of thinking, these concepts, on their own terms, and then discover if and how they necessarily give rise to tensions, to oppositions, to contradictions that are irreconcilable in their given configuration. In other words, we need not judge our circumstances according to an external, transcendental, or *a priori* standard because the negative, the basis of societal transformation and historical development, already exists internal to the present. As we will see in the next chapter, the death-struggle between Antigone and Creon is of supreme historical significance because it embodies a contradiction at the heart of Greek society: the inability to reconcile, on the one hand, the subjective freedom of the individual animated by her conscience, and on the other hand, the objective freedom embodied in a state that necessarily enforces adherence to its laws.

Hegel, in his *Science of Logic*, during a critique of Kant's formalism, describes the method of immanent critique in the following terms: "Further, the refutation must not come from outside, that is, it must not proceed from assumptions lying outside the system in question and inconsistent with it. The system need only refuse to recognize those assumptions; the *defect* is a defect only for him who starts from the requirements and demands based on those assumptions."²⁷⁸ Hegel continues, "The genuine refutation must penetrate the opponent's stronghold and meet him on his own ground; no advantage is gained by attacking him somewhere else and defeating him where he is not."²⁷⁹ These modes of thought are not contradicted by the external criteria of some external observer. They are self-contradictory. The basis of the conflict and its resolution through the development into a new configuration can only be internal to these concepts themselves. This is the basis of Hegel's dialectical method.²⁸⁰ This explanation of Hegel's immanent critique is crucial because many of the commentators in the debates over the relation between Marx and justice have missed the significance of immanent critique in Marx's work.

For Hegel a crucial aspect of immanent critique is his rejection of the method typical of Enlightenment thought which attempts to strip away false appearances to reveal the underlying essence. Hegel insists that this does not explain why this essence has these false appearances. It

²⁷⁸ Hegel, *Science of Logic*, op. cit., 580-81.

²⁷⁹ Ibid.

²⁸⁰ Ibid., 580-81. For an excellent explanation of immanent critique, see: Steven B. Smith, *Hegel's Critique of Liberalism: Rights in Context* (Chicago: The University of Chicago Press, 1989), 169-74.

does not explain why this essence must appear in these particularly mystifying ways. It does not explain why what is essentially true is not immediately intelligible. By failing to do this, it cannot achieve what it claims, namely, comprehending the underlying essence itself. For Hegel, if essential relations give rise to abstract and therefore mystifying appearances, it is not because these appearances are merely incidentally related to this essence. Rather, it is because something about the essence itself is abstract: “Thus essence *appears*. Reflection is the *showing of illusory being within essence itself*.”²⁸¹

To put this in perspective, we can relate it to Hegel’s critique of Kant on the prohibition of theft. For Hegel, a complete critique of Kant cannot simply point to the formalism and atomism of his thought. We cannot simply critique Kant for uncritically accepting false and mystifying appearances. We must also explain why the essential grounds of Kant’s thought, modern social relations, promotes these abstract appearances, and thus, these formal modes of thought. In other words, for Hegel, to get to the bottom of modern society entails the realization that there is something essentially abstracting and atomizing about it. Therefore, the tensions within Kantian morality cannot be resolved through a critique of that morality alone. It requires also the immanent critique of the social relations, the ‘spiritual substance,’ that grounds this morality. As we will see in later chapters, for Hegel, this is because the principle of conscience, first initiated by figures like Antigone, comes back with a vengeance in the modern era.

In the meantime, we can return to Hegel’s discussion of private property and exchange. Hegel’s fullest explanation of this occurs in the *Philosophy of Right*.²⁸² Unlike Kant, Hegel thinks that the justification for private property arises historically through the development of an initial, albeit abstract, form of mutual recognition between individuals. Hegel thinks that modern society is alone capable of securing this abstract recognition. Modernity is distinct from antiquity because we can only have a right over things, not people. For Hegel, individuals have a right to possess things insofar as they are legally-recognized citizens, or as he defines it, ‘persons.’ This right is limited to negative liberty, to prohibitions against violations of ‘personality.’ Therefore, the ‘person’ is an abstract universal whose freedom is arbitrary will. The command of abstract right is to be a ‘person,’ a property-owner, and respect others as such. At this phase of development, it is only as owners of property that two people exist for each other. Their relation

²⁸¹ Hegel, *Science of Logic*, op. cit., 479. I am indebted to David McNally for initially pointing out to me the significance of this aspect of Hegel’s method.

²⁸² Hegel, *Philosophy of Right*, op. cit., §35-45.

is one of contract, of corresponding self-interests, of equal exchange. For Hegel, this is the basis of what we have called here 'commutative justice.' The free individual becomes an object to herself, becomes her own end, through what she possesses. Since things have no internal end or purpose, when the thing becomes mine, it becomes a means to my ends. Therefore, property is the first or most basic form or shape of freedom.

As we will now see, Marx's *Capital* invests much importance in how it will begin, with which form of property he will start his immanent critique of capitalist society. We will find that Marx's 'Critique of Political Economy' cannot be fully understood without an appreciation for Hegel's ethics in general, his discussion of private property and exchange in particular, and specifically, his critique of Kant's abstract formalism in the prohibition of theft.

Chapter 5: Marx on Commutative Justice

Marx's evasiveness about questions of justice has inspired numerous debates. As we have seen, there are three basic sides in these debates. The first group argues that Marx criticizes capitalism, but not according to a notion of justice. The second group argues that Marx criticizes capitalism for being, among other things, unjust. Both of these groups can find evidence for their positions in Marx's seemingly contradictory statements. In a number of places, Marx explicitly rejects the notion that capitalism is unjust. Indeed, he seems to argue that capitalism is just according to the only form of justice possible under capitalist social conditions, bourgeois justice. In several other places, however, Marx seems to undermine bourgeois notions of justice. He describes capitalist exploitation as 'theft,' 'robbery,' and 'plunder.' Therefore, he appears to critique capitalism as unjust according to a more fundamental standard. The apparent confusion between Marx's statements is one of the reasons why a third group in these debates asserts that Marx deems capitalism neither just nor unjust because his theory is beyond justice as such.

Those who argue that Marx does not deem capitalist exploitation as unjust tend to dismiss as 'rhetorical' those passages where Marx speaks of the 'theft' of surplus labour.²⁸³ Those who do think Marx deems exploitation unjust often dismiss those passages where Marx seems to affirm the bourgeois notion of justice. They describe them as 'tongue-in-cheek,'²⁸⁴ 'satire,'²⁸⁵ or as 'ironic.'²⁸⁶ Geras, who tends to side with these latter theorists, is correct when he asserts that interpreting Marx's assertions as rhetorical or sarcastic allows each side of the debate to ignore the evidence for the other.²⁸⁷ Nevertheless, as we will see, Geras also imputes things to Marx that cannot be found in the text. That so much hinges on whether or not Marx's assertions are ironic or rhetorical demonstrates the paucity of the textual material. That we must resort to debates over text-fragments should, from the very outset, frame the debate: Marx's evasiveness is the first question.

²⁸³ For example: Derek P. H. Allen, 'Marx and Engels on the Distributive Justice of Capitalism,' in *Marx and Morality*, eds. Kai Nielsen and Steven C. Patten (Guelph, Ontario: Canadian Association for Publishing in Philosophy, 1981), 248.

²⁸⁴ Nancy Holmstrom, 'Exploitation,' *Canadian Journal of Philosophy*, 7.2 (1977): 353-369; 368.

²⁸⁵ Husami, *op. cit.*, 45.

²⁸⁶ James Daly, *Marx: Justice and Dialectic* (Holywood, Northern Ireland: Greenwich Exchange, 1996), 79.

²⁸⁷ Norman Geras, 'The Controversy About Marx and Justice,' *New Left Review*, I/150 (March-April 1985): 47-85; 69.

To avoid falsely imputing things to Marx in order to justify my interpretation, I will take Marx literally. Furthermore, this engagement with Marx is not selective, but systematic. Ultimately, I argue that all three sides of the debate are partially correct, but each has fundamental shortcomings. In this exploration of Marx's theory of exchange and its implications for theories of commutative justice, I will focus primarily on *Capital: Volume One*. Nevertheless, I will also supplement this exegesis of *Capital* with relevant passages from other of Marx's texts. There are two reasons for this overall strategy. First, Marxists have often accused each other of quote-mongering, of removing quotes from their context in order to support a particular interpretation. As one commentator has put it, "the power to think dwindled to the power to find enough words to connect two quotations."²⁸⁸ This is particularly true of the debates about Marx and ethics because his discussion of ethics is so fragmentary. By studying the theoretical developments as they occur in *Capital*, we preserve as much as possible their proper context without having to reproduce the whole work. We will find that some of the interpretations of certain of Marx's statements can be demonstrably refuted by pointing to their specific locations in the broader theoretical developments of the text.

The second and more important reason for this exegetical strategy is that it gives sufficient attention to Marx's immanent critique. As we will see, the debates about Marxism and ethics have been unsuccessful largely because the participants do not sufficiently appreciate the ways in which Marx is using immanent critique in his assertions about justice and exploitation. The importance of immanent critique is evident in a letter from Marx to Engels. After proofreading Marx's draft of *Capital*, Engels asks Marx to anticipate and answer in advance potential objections. Marx responds: "If I were *to cut short* all such doubts *in advance* I would spoil the whole method of dialectical exposition. On the contrary, this method has the advantage of constantly *setting traps* for those fellows which provoke them to an untimely manifestation of their asininity."²⁸⁹ By showing fidelity to the progression of the argument in *Capital*, an *Immanent Critique of Political Economy*, I will begin to expose some of the shortcomings in these debates. I will not offer a definitive solution to the questions of Marx and justice in this chapter. For reasons that will soon become apparent, I cannot begin offering such conclusions until the chapter on Marx's contributions to theories of distributive justice. Nevertheless, as I

²⁸⁸ Jack Lindsay, 'Discussion: Socialist Humanism,' *The New Reasoner*, No. 3 (Winter 1957): 95-102; 95.

²⁸⁹ Quoted in Kevin Anderson, 'The 'Unknown' Marx's *Capital*, Volume I: The French Edition of 1872-75, 100 Years Later,' *Review of Radical Political Economics*, 15.4 (1983): 71-80; 74.

hope will also be made apparent in this and other chapters, this exegesis of *Capital* is absolutely necessary for a correct interpretation of Marx on the question of justice.

Since this chapter is an exegesis it is necessarily quote-laden. For those who are already familiar with these debates this may be somewhat tedious. Nevertheless, this method is unavoidable. All I can promise here is that amid this frenzy of worked-over material there rests a purloined letter. It is ‘purloined’ because with it rests the true meaning of theft, and ‘letter’ because we must stay to the letter of what Marx says in order to understand the spirit of what he says.

William Blake once wrote, “To see the World in a Grain of Sand...”²⁹⁰ This is precisely why Hegel asserts that genuine beginnings are always difficult.²⁹¹ For the dialectical method, the beginning must find that one thing which contains within it all of the contradictions whose continuous unfolding propels us to the highest resolution: the system in which everything, including that beginning, is explained in their own terms without resort to external or transcendental standards. Hence, one must scour the desert for that one grain of sand which will disclose an entire world. Hegel begins his *Philosophy of Right*, a treatise on freedom, with freedom in its most immediate form, abstract right, or the property relation between individuals. Similarly, Marx starts with the commodity in a world of commodities. Had Marx been able to travel the full distance of this world as he had initially intended, *Das Kapital* would bring us from a single commodity all the way to the global exchange of every commodity. If he did this successfully, he would never have to leave the internal dialectic initiated by the commodity, the ‘cell-form’ of capitalism. In the transitions from the commodity to money through to capital there is summarized the entire epoch of private property. The end of that epoch, forged by nothing but its own internal contradictions, is also foretold. Let us begin with this grain of sand. After all, we have a world to win!

Marx argues that the commodity has two fundamental dimensions. To the extent that the commodity is something useful, it is a use-value.²⁹² This is based on its material properties irrespective of the amount of labour required to produce it. If its use-value is its qualitative aspect, then the second fundamental dimension of the commodity is quantitative, namely, the

²⁹⁰ William Blake, ‘Auguries of Innocence,’ in *The Poetry and Prose of William Blake*, ed. David V. Erdman (Garden City, New York: Doubleday & Company, 1965), 481.

²⁹¹ Hegel, *Science of Logic*, op. cit., 67.

²⁹² Marx, *Capital: Volume One*, op. cit., 126.

amounts in which commodities compare to each other. This, the exchange-value of the commodity, is its specific form under capitalism. If we abstract from the use-values by which commodities are incommensurable qualities, they have only one thing in common: they are products of human labour.²⁹³ The amount of labour embodied in each commodity is the basis by which they, as exchange-values, are comparable. For Marx, this solves Aristotle's question about how two qualitatively different things, one house and five beds, can be made commensurable. This is Marx's much-maligned labour theory of value.

Under capitalism, labour-power is itself a commodity. As a use-value, labour is 'concrete labour,' namely, all of the qualitatively different useful forms of labour.²⁹⁴ As commodified labour-power, as an exchange-value, labour is 'abstract labour,' namely, labour insofar as it is quantitatively comparable to every other form of abstract labour. In other words, this is labour that is made interchangeable with all other commodified labour. Indeed, the exchange-value of a commodity is not the actual labour-time of each act of concrete labour. Rather, it is the socially necessary labour time, the average productivity in the current production of commodities. The comparative productivity of each act of labour, and thus, the relative exchange-values fetched by its commodities, are only determined after the production process through market exchange. It is not the specific duration or intensity of concrete labour that is remunerated, but rather, abstract labour. Insofar as an act of abstract labour does not match average productivity, it will not be fully compensated. In the long run, this will lead to bankruptcy. Consequently, since production itself is subject to market competition, there is a relentless drive to constantly increase productivity under capitalism. Indeed, one of the reasons why Marx describes abstract labour as alienated labour is because its societal worth is determined by an uncontrollable price mechanism.²⁹⁵

Like any commodity, the exchange-value of commodified labour is determined by the amount of labour that goes into it, namely, the labour necessary for its daily as well as generational reproduction. This will be represented by the wage it is awarded for its use as a commodity. Marx argues that the discovery that labour is the basis of commensurability can only

²⁹³ Ibid., 128.

²⁹⁴ Ibid., 128-29.

²⁹⁵ This paragraph is largely drawn from Paul Christopher Gray, 'Planning for the Feast,' *Radical Philosophy*, 189 (January-February 2015): 65-67.

become apparent under capitalism when labour adopts an abstract form. In other words, Marx is grounding his thought in historical developments.

Marx's first explicit assertions about justice in *Capital* occur after 'Chapter 1: The Commodity,' at the beginning of 'Chapter 2: The Process of Exchange.' Commodities cannot bring themselves to market. This requires people. In order for objects to interact as commodities, people must recognize each other as the owners of these commodities. This is a relation of mutual consent. Each individual can only appropriate the commodity of the other by alienating their own. This should remind us of Hegel's theory of the abstract rights of the legal 'person.'

These juridical relations, which take the form of contracts, are determined by the economic relations: "the characters who appear on the economic stage are merely personifications of economic relations; it is as the bearers of these economic relations that they come into contact with each other."²⁹⁶ First, we should note that Marx's depiction of 'characters' on an 'economic stage' will soon become all the more poignant when we discuss Hegel's theory of tragedy. Second, it is passages like these that provide one of the reasons why some commentators believe that Marx has a purely juridical conception of justice. It is also one of the reasons why they believe that Marx does not deem capitalism unjust. Instead, he deems it just according to the only possible notion of justice under capitalist economic relations. This is bourgeois justice typified by contractual exchanges.

Amid these assertions Marx offers a critique of his French nemesis, Proudhon. We cannot underestimate the significance of Marx's critique of Proudhon. As we will see, much of what Marx says in *Capital* is motivated by a critique of him and other proponents of what Marx calls 'utopian socialism.' Acknowledging this is crucial for our interpretation of Marx's apparently disparate assertions about justice. It is in this critique of Proudhon that Marx makes his first explicit mention of justice:

Proudhon creates his ideal of justice, of 'justice éternelle,' from the juridical relations that correspond to the production of commodities: he thereby proves, to the consolation of all good petty bourgeois, that the production of commodities is a form as eternal as justice. Then he turns round and seeks to reform the actual production of commodities, and the corresponding legal system, in accordance

²⁹⁶ Marx *Capital: Volume One*, op. cit., 179.

with this ideal. What would one think of a chemist who, instead of studying the laws governing molecular interactions, and on that basis solving definite problems, claimed to regulate interactions by means of the ‘eternal ideas’ of ‘*naturalité*’ and ‘*affinité*’?²⁹⁷

What is the basis of Marx’s distinction between his own ‘scientific socialism’ and the ‘utopian socialism’ of Proudhon? Marx’s critique of utopianism is quite similar to Hegel’s critique of moral formalism. Marx argues that the utopian tends to focus on formal ideas, such as justice, equality, and freedom, without determining scientifically the character of their content. Therefore, these forms can give rise to a particular content as easily as its opposite. Indeed, the form can be the site of two irreconcilable contents. Consequently, Marx argues that there are several reasons why we must begin from the immanent critique of present social conditions.

First, this is the precondition of determining whether or not socialism is necessary at all. Unless we are able to ascertain that various social maladies are inherent to capitalism itself, socialists will have no rebuttal to those who argue that the solution is not the overthrow of capitalism, but the development of a better form of capitalism that finally, so to speak, gets it right. To take a current example, utopian socialists will be ill-equipped to refute a libertarian who defends his predictions about the free market by arguing that nowhere has the market been sufficiently free to prove these predictions true. Second, unless we begin from the critique of present conditions, we will not have an understanding of what those conditions ultimately make possible, in however latent and stultified a form under capitalism, as well as the obstacles capitalism creates for attempts to fully realize those potentials. In other words, because the utopian socialists begin from the future society, they do not have objective conceptions of the character that society should take or of how to achieve it, of the ultimate end and its necessary means. And third, Marx rejects utopian socialism because its constructions of the future social order resolve in thought the practices that can only be figured out in the experience of struggling against capitalism, overthrowing it, and building a socialist society. Marx believes this will require a great deal of experimentation.²⁹⁸

²⁹⁷ Ibid., 178-79.

²⁹⁸ Karl Marx, ‘The Eighteenth Brumaire of Napoleon Bonaparte,’ in Marx and Engels, *The Karl Marx Library Volume I: On Revolution*, op. cit., 247-48.

Marx argues that all of these shortcomings combine in the utopian socialism of Proudhon. As we will see, Proudhon believes that the prevailing inequality is the result of a particular form of commodity exchange distorted by monopolies, not generalized commodity exchange itself. His solution is therefore the creation of ‘People’s Banks’ and exchangeable labour vouchers based on actual labour-contribution. Furthermore, Proudhon deems the current conditions unjust according to what he regards as an eternal idea of justice, but which is actually a notion of justice drawn directly from the historically-specific conditions of commodity production and exchange. Therefore, his notion of socialism actually contains elements that are integral to capitalist society and which do not address the inequality endemic to capital, to commodity production, itself. Proudhon’s utopian socialism can do nothing but reproduce capitalism in another form, along with all of its essential inequalities. For example, Marx demonstrates that, under capitalism, it is not merely money that is abstract. Labour vouchers will necessarily fail because generalized commodity production entails the reduction of labour to abstract labour. Consequently, on the rare occasions when specific acts of labour are remunerated for their actual duration and intensity, this will be incidental. Furthermore, the drive to increase average productivity will remain a relentless imperative beyond the control of workers. As with Kant and private property, Proudhon unknowingly ‘smuggles’ the content of a particular kind of production—commodity production based on small-holdings of private property—into a form of justice he deems universal.

Conversely, Marx’s scientific socialism attempts to critique specifically capitalist social relations in order to uncover the societal laws of development, the material contradictions through which that society transforms into something beyond itself. For Marx, ethical ideals, no matter how sophisticated, could not provoke a qualitative transformation of social conditions if the material development of the latter was not sufficiently advanced. We must draw from those conditions the ideals that they necessarily put forward and determine whether or not they are adequate to them. If they are not, if they prove systemically incapable of meeting their own principles, this indicates the limits of reform. It also exposes the contradictions through which there can occur the genuine transformation of the social relations and the realization of these principles. In contrast to Proudhon’s transcendental standards, Marx engages in immanent critique. Therefore, Marx remains within the logic of the laws of exchange, within the laws of

private property, to explore whether or not they give rise to relations and ideals that herald a new and better form of property relations.

After he describes the exchange process, Marx, in the third chapter, explains how money is the universal representative of commodities. The process of the exchange in which commodities are sold in order to buy other commodities can be represented by the formula C-M-C.²⁹⁹ In the fourth chapter, Marx explains capital. It is money that buys commodities in order to sell them. This formula is M-C-M. The possessor of money becomes the capitalist and as such he is “capital personified and endowed with consciousness and will.”³⁰⁰ As Marx notes in chapter five, however, the point of this exchange must be to make more money than one has initially spent. The formula is then M-C-M’.³⁰¹ What Aristotle deemed to be an ‘unnatural’ distortion of the prevailing social relations, namely, buying in order to sell at a profit, is the predominant form of economic interaction under capitalism.

Marx asks, how does the capitalist withdraw increased value from the process of exchange? In chapter six, Marx asserts that “the money-owner must be lucky enough to find within the sphere of circulation, on the market, a commodity whose use-value possesses the peculiar property of being a source of value.”³⁰² This commodity is labour-power. For Marx, the peculiar use-value of labour-power is that it produces more value than it costs. The value of labour-power is the same as any other commodity: the amount of labour necessary to produce it. Therefore, the value of labour-power is the cost of its daily and generational subsistence. If the use-value of labour-power is that it produces more value than it costs, we must turn to the consumption of this labour-power by he who has purchased it.

The consumption of the use-value of labour-power occurs, like all consumption, outside the exchange process: “The sphere of circulation or commodity exchange, within whose boundaries the sale and purchase of labour-power goes on, is in fact a very Eden of the innate rights of man. It is the exclusive realm of Freedom, Equality, Property and Bentham.”³⁰³ Marx asserts that the realm of exchange provides the vulgar apologists of capitalism with the basis for their views. Nevertheless, to understand how profit arises, we must turn to the setting of the consumption of labour-power, the realm of production. When we do, Marx asserts:

²⁹⁹ Marx, *Capital: Volume One*, op. cit., 200.

³⁰⁰ Ibid., 254.

³⁰¹ Ibid., 250-51.

³⁰² Ibid., 270.

³⁰³ Ibid., 280.

a certain change takes place, or so it appears, in the physiognomy of our *dramatis personae*. He who was previously the money-owner now strides out in front as a capitalist; the possessor of labour-power follows as his worker. The one smirks self-importantly and is intent on business; the other is timid and holds back, like someone who has brought his own hide to market and now has nothing else to expect but – a tanning.³⁰⁴

As we will see, it is significant that Marx is referring to the capitalist and the worker as *dramatis personae*. This is intimately connected with his depiction of individuals as the ‘bearers’ or ‘personifications’ of economic categories and social processes.

During a portion of the working day the worker produces enough to match the value of their own as well as their dependents’ daily and generational reproduction. Nevertheless, in the contract they sign with capital the working day extends beyond this amount of time. This is the source of surplus-value, and thus, of profit. The worker is paid for the first portion of the working day, but not the second. Following from this, Marx makes an assertion that has received some of the most intense scrutiny in the debates about Marx and justice:

The use-value of labour-power, in other words labour, belongs just as little to its seller as the use-value of oil after it has been sold belongs to the dealer who sold it. The owner of the money has paid the value of a day’s labour-power; he therefore has the use of it for a day, a day’s labour belongs to him. On the one hand the daily sustenance of labour-power costs only half a day’s labour, while on the other hand the very same labour-power can remain effective, can work, during a whole day, and consequently the value which its use during one day creates is double what the capitalist pays for that use; this circumstance is a piece of good luck for the buyer, but by no means an injustice towards the seller.³⁰⁵

³⁰⁴ Ibid.

³⁰⁵ Ibid., 301.

Marx appears to be arguing that, according to the only available standards of justice, this appropriation of surplus-labour is not unjust. Indeed, according to the laws of private property, the capitalist is entirely correct to ensure that the worker is not idle or lazy: “He has bought the use of the labour-power for a definite period, and he insists on his rights. He has no intention of being robbed.”³⁰⁶

These are not isolated statements. Marx makes similar assertions elsewhere. For example, in *Capital: Volume III*, Marx argues that the standards of ‘just transactions,’ what we call here commutative justice, can only arise from a specific mode of production. Marx quotes James Gilbart: “That a man who borrows money with a view of making a profit by it, should give some portion of this profit to the lender, is a self-evident principle of natural justice.”³⁰⁷ In response, Marx describes as “nonsense” Gilbart’s assertions about natural justice:

The justice of transactions between agents of production consists in the fact that these transactions arise from the relations of production as their natural consequence. The legal forms in which these economic transactions appear as voluntary actions of the participants, as the expression of their common will and as contracts that can be enforced on the parties concerned by the power of the state, are mere forms that cannot themselves determine this content. They simply express it. The content is just so long as it corresponds to the mode of production and is adequate to it. It is unjust as soon as it contradicts it. Slavery, on the basis of the capitalist mode of production, is unjust; so is cheating on the quality of commodities.³⁰⁸

For those theorists who argue that Marx does not critique capitalism as unjust, these statements provide some of their strongest evidence.

Marx then describes the specific characteristics of capitalist exploitation. In chapter eight, he explains the distinction between constant capital and variable capital, between the capital that is expended on means of production and the capital spent on labour-power. Marx then turns in chapter nine to the rate of surplus-value. To determine the ‘degree of exploitation’ of labour-

³⁰⁶ Ibid., 303.

³⁰⁷ Marx, *Capital: Volume Three*, op. cit., 460, n. 55.

³⁰⁸ Ibid., 460-61.

power, we must know the ratio between that part of the day in which the worker produces the amount of value equivalent to her own subsistence, and that part in which she works solely for the capitalist. Marx calls this the distinction between ‘necessary’ and ‘surplus’ labour. In his depiction of this, Marx makes a statement that seems to be in some tension with his assertion that the wage-transaction is not an injustice to the seller of labour-power:

What distinguishes the various economic formations of society – the distinction between for example a society based on slave-labour and a society based on wage-labour – is the form in which this surplus labour is in each case extorted from the immediate producer, the worker.³⁰⁹

Marx asserts that surplus labour is “extorted” from all subordinated, non-ruling, producing classes, including the working class. This is not the only time Marx depicts appropriation in this way. Along with multiple invocations of the term extortion,³¹⁰ he also describes it as robbery,³¹¹ theft,³¹² stealing,³¹³ and plunder.³¹⁴ Those commentators who think that Marx criticizes capitalism as unjust often focus on passages like these. And yet, as we will now see, a few pages later Marx’s critique continues to operate within the laws of private property and exchange. Whether or not Marx deems there to be a tension between his assertions about justice and theft remains an open question.

Marx then examines the working day. He repeats the now familiar claim that, as per the laws of private property, the capitalist has purchased labour-power at its daily value: “He has thus acquired the right to make the worker work for him during one day.”³¹⁵ If the worker does not work for the entirety of the contracted time, “he robs the capitalist.”³¹⁶ The capitalist demands the maximum benefit from his commodity and in doing so “takes his stand on the law of commodity-exchange.”³¹⁷ Suddenly, a new change occurs in our *dramatis personae*. A strange commodity distinguishes itself from all of the others. Equipped with a voice and reason, the

³⁰⁹ Marx, *Capital: Volume One*, op. cit., 325.

³¹⁰ Ibid., 357, n. 40; 362; 645; 658; 788; 901.

³¹¹ Ibid., 553; 751; 874; 875; 885; 920.

³¹² Ibid., 553; 591; 886; 895.

³¹³ Ibid., 728; 884; 892.

³¹⁴ Ibid., 915.

³¹⁵ Ibid., 341-42.

³¹⁶ Ibid., 342.

³¹⁷ Ibid.

commodified labour-power rebels against the unlimited extension of the working day. The worker proclaims to the capitalist:

You and I know on the market only one law, that of the exchange of commodities. And the consumption of the commodity belongs not to the seller who parts with it, but to the buyer who acquires it. The use of my daily labour-power therefore belongs to you. But by means of the price you pay for it every day, I must be able to reproduce it every day, thus allowing myself to sell it again. Apart from natural deterioration through age etc., I must be able to work tomorrow with the same normal amount of strength, health and freshness as today. You are constantly preaching to me the gospel of ‘saving’ and ‘abstinence.’ Very well! Like a sensible, thrifty owner of property I will husband my sole wealth, my labour-power, and abstain from wasting it foolishly. Every day I will spend, set in motion, transfer into labour only as much of it as is compatible with its normal duration and healthy development.³¹⁸

Like the capitalist, the worker takes her stand on the laws of private property. She does not frame her protest according to an abstract ideal or transcendent principle: “You pay me for one day’s labour-power, while you use three days of it. That is against our contract and the law of commodity exchange. I therefore demand a working day of normal length, and I demand it without any appeal to your heart, for in money matters sentiment is out of place.”³¹⁹

The worker does not oppose the rights of private property according to a different notion of right. Rather, the worker reveals that this right itself features an internal tension that causes conflict. The right is turned against itself. Marx asserts:

We see then that, leaving aside certain extremely elastic restrictions, the nature of commodity exchange itself imposes no limit to the working day, no limit to surplus labour. The capitalist maintains his rights as a purchaser when he tries to make the working day as long as possible, and, where possible, to make two

³¹⁸ Ibid., 342-43.

³¹⁹ Ibid., 343.

working days out of one. On the other hand, the peculiar nature of the commodity sold implies a limit to its consumption by the purchaser, and the worker maintains his right as a seller when he wishes to reduce the working day to a particular normal length. There is here therefore an antinomy, of right against right, both equally bearing the seal of the law of the exchange. Between equal rights, force decides. Hence, in the history of capitalist production, the establishment of a norm for the working day presents itself as a struggle over the limits of that day, a struggle between collective capital, i.e. the class of capitalists, and collective labour, i.e. the working class.³²⁰

This passage has been discussed innumerable times. Nevertheless, it has two peculiar aspects that, to my knowledge, have not received any attention from commentators. The first is the historical precedent underlying Marx's assertion that, 'Between equal rights, force decides.' The second is Marx's use of the term 'antinomy,' which is full of theoretical significance. We will look at each in turn.

The first thing that must be pointed out is that Marx is not the first to say that, 'Between equal rights, force decides.' As far as I know, that honour goes to...Hegel. Indeed, he says it in a number of different places. The instance where Hegel's assertion of this most resembles that of Marx is, oddly enough, the one that Marx could not have read. It appears in Hegel's unpublished essay, 'The German Constitution': "War or some other means must decide the issue, precisely because both contradictory rights are equally true; hence a third factor – i.e. war – must make them unequal so that they can be reconciled, and this occurs when one gives way to the other."³²¹ From here on in, when I point to instances of Hegel's asserting something more or less along these lines, I will only refer to texts with which Marx was familiar.

When Hegel articulates one or another version of the idea that, 'Between equal rights, force decides,' it is almost always amid a discussion of tragedy as a form of art. For Hegel, the tragedies that most inspire us speak to a fundamental contradiction within society as it is presently constituted. This contradiction only becomes apparent when two tragic figures become

³²⁰ Ibid., 344.

³²¹ Hegel, *Hegel: Political Writings*, op. cit., 70.

the obsessive embodiment of each of the opposed sides in this societal contradiction. Dare we say that these characters, these *dramatis personae*, are the ‘personifications’ of social processes?

For Hegel, the quintessential example of tragedy is Sophocles’ *Antigone*. Creon, the ruler of Thebes, declares that Polyneices, lying dead on the battlefield immediately after a civil war, is not to receive proper burial rights. Antigone, the sister of Polyneices, defies the edict in the dark of night, burying her brother and fulfilling her familial and religious obligations. She is perfectly aware of the repercussions of her actions. Creon condemns Antigone to death. Haemon, Creon’s son, is engaged to Antigone. Upon her death, Haemon kills himself, which causes his mother, Creon’s wife Eurydice, to curse Creon before she too kills herself. Creon’s edict ultimately stands, but in the process, his pathological adherence to the rule of law destroys his own family. Antigone and Creon are tragic figures because they embody ‘pathos.’ They are whole-heartedly committed to what they deem right. Indeed, they are willing to die for it. For Hegel, these characters have ethical significance for us because they embody broader social conflicts. Antigone is the personification of the old gods, of familial obligations and the religious imperatives that seem older than time itself. Creon is the personification of the new gods, of our duties to the emerging and consolidating state whose laws, though recent, bring society to a higher order.

Hegel speaks of Socrates in the same terms. Indeed, for Hegel, both Antigone and Socrates represent the same commitment to the integrity of individual conscience that foretells the doom of the Greek society unable to account for it. Hegel argues that Socrates’s fate is truly tragic because it represents a “rational misfortune.”³²² It is not simply that a great and innocent man is killed. This is merely sad. “Misfortune is only rational,” Hegel asserts, “when it is brought about by the will of the subject, who must be absolutely justified and moral in what he does, like the power against which he wars—which must therefore not be a merely natural power, or the power of a tyrannic will.”³²³ Hegel continues: “Hence, in what is truly tragic there must be valid moral powers on both the sides which come into collision; this was so with Socrates.”³²⁴ In other words, these rights are equal: “Two opposed rights come into collision, and

³²² G. W. F. Hegel, *Lectures on the History of Philosophy: Greek Philosophy to Plato*, trans. E. S. Haldane (Lincoln, University of Nebraska Press, 1995), 446.

³²³ *Ibid.*, 446-47.

³²⁴ *Ibid.*, 447.

the one destroys the other. Thus both suffer loss and yet both are mutually justified.”³²⁵ Hegel contends that both Antigone and Socrates embody the subjective freedom, the individual conscience, coming into opposition with objective freedom, the state as the apex of ethical life. As we will see later, Hegel thinks subjective and objective freedom can only be reconciled with the onset of modernity.

Hegel distinguishes between ancient and modern tragedy. In ancient tragedy, as we have seen, the tragic figures are personifications of social processes, of the fundamental ethical contradictions. Therefore, their conflict speaks to the grandest possible collisions. They foretell the end of civilizations. In modern tragedy, specifically romantic poetry, the tragic figure has a merely individual passion for a wholly personal end that is stifled within exceptional circumstances.³²⁶ It is obvious which form of tragedy Hegel prefers: “Primitive tragedy, then, consists in this, that within a collision of this kind both sides of the contradiction, if taken by themselves, are *justified*.”³²⁷

The significance of ancient tragedy for Hegel is what is revealed in these profound conflicts: “The tragic downfall of figures of the highest ethical worth can interest us, elevate us, and reconcile us to its occurrence only in so far as such figures appear in mutual opposition, with equally justified but distinct ethical powers which have unfortunately come into *collision*.”³²⁸ In contrast to the downfall of the “self-important rogues and criminals” that pervade modern tragedy, the conflicts between ancient tragic figures expose the right and wrong of both parties, from which emerges the true ethical idea purified of one-sidedness: “Accordingly, it is not the *highest* thing in us which perishes, and we are *elevated* not by the *downfall of the best* but, on the contrary, by the triumph of the true. This is the true and purely ethical interest of ancient tragedy.”³²⁹

For Hegel, a conflict that reveals the two essential and mutually antagonistic principles of the social order is the basis of historical development. The tragic figures choose one or the other law. They deem all of the right to be on their side, all of the wrong on the other.³³⁰ In the conflict, however, they realize their deed is one-sided. From the perspective of the other law,

³²⁵ Ibid.

³²⁶ G. W. F. Hegel, *The Philosophy of Fine Art: Volume IV*, trans. F. P. B. Osmaston (New York: Hacker Art Books, 1975), 310.

³²⁷ Ibid., 296-97.

³²⁸ Hegel, *Philosophy of Right*, op. cit., §140.

³²⁹ Ibid.

³³⁰ Ibid., §466.

which has its own adherents, it is a crime.³³¹ It now appears that there is right on both sides. And yet, the tragic figures, animated by *pathos*, cannot diverge from the law they have chosen: “The ethical individuality is directly and intrinsically one with this his universal aspect, exists in it alone, and is incapable of surviving the destruction of this ethical power by its opposite.”³³² The mutual downfall reveals the basic contradiction of this form of society: “In point of fact, however, the ethical substance has developed through this process into actual self-consciousness; in other words, this particular self has become the actuality of what it is in essence; but precisely in this development the ethical order has been destroyed.”³³³ It is also the basis by which society develops into something qualitatively different, something able to reconcile the contradictions represented in the embattled tragic figures. Indeed, this is Hegel’s agonism. It is through this conflict that we gain self-consciousness of our society.

Hegel’s notion of *pathos* extends Aristotle’s idea of the *peripety* that is the basis of tragic poetry: “A Peripety is the change of the kind described from one state of things within the play into its opposite, and that too in the way we are saying, in the probable or necessary sequence of events.”³³⁴ For Hegel, this has obvious parallels with the dialectical inversion through which something confronts its opposite, revealing a contradiction that demands a higher unity. We can also relate *pathos* and the *peripety* to Hegel’s discussion of ‘passion’ in his more historiographical writings. For Hegel, the principle of spirit is only abstract and general; by itself, it is powerless. Therefore, it requires the motive power of will, the activity of humans to be realized: “we may affirm absolutely that *nothing great in the world* has been accomplished without *passion*.”³³⁵ In the passionate pursuit of their interests, humans often produce an “additional result” in history that is beyond their intentions: “They gratify their own interest; but something further is thereby accomplished, latent in the actions in question, though not present to their consciousness, and not included in their design.”³³⁶ The substance of the act recoils on its perpetrator, “reacts upon him with destructive tendency.”³³⁷ For Hegel, this is why that more profound form of conflict which arises from the very substance of society is the basis of all

³³¹ Ibid., §468.

³³² Ibid., §471.

³³³ Ibid., §445.

³³⁴ Aristotle, ‘Poetics,’ in *The Basic Works of Aristotle*, ed. Richard McKeon (New York: The Modern Library, 2001), 1452a22-24.

³³⁵ G. W. F. Hegel, *The Philosophy of History*, trans. J. Sibree (New York: Dover Publications, Inc., 1956), 23.

³³⁶ Ibid., 27.

³³⁷ Ibid., 28.

historical development. When Marx asserts that, ‘Between equal rights, force decides,’ he invokes this tradition of thought. Although he was a fanatic reader of Shakespeare, Marx shows the basis by which tragedy can be made Sophoclean again.

The second peculiar aspect of the aforementioned passage is that Marx does not describe this conflict as a contradiction. Rather, he calls it an ‘antinomy.’ To understand what is meant by antinomy we must return to Kant. His discussion of the antinomies is intended to show the inadequacy both of the dogmatic rationalism he associates with Plato as well as the skeptical empiricism he deems typical of Locke. Both modes of thought appear to offer arguments that are plausible and yet are mutually opposed. In his explanation of the antinomies Kant discusses four conflicts of the ‘transcendental ideas.’ Let us look at the third conflict, the antinomy between freedom and necessity. First, Kant offers us the rationalist conception of freedom and necessity: “Thesis: Causality according to the laws of nature is not the only causality operating to originate the phenomena of the world. A causality of freedom is also necessary to account fully for these phenomena.”³³⁸ Second, Kant gives us the empirical conception: “Antithesis: There is no such thing as freedom, but everything in the world happens solely according to the laws of nature.”³³⁹ Kant then argues that both the rationalist and empiricist assertions appear correct. If they are both correct and yet mutually opposed, however, then something about the assumptions is wrong. Kant argues that this is why we need his critical philosophy.

Quite interestingly, Kant describes these conflicting ideas, these ‘antinomies,’ as...a struggle. The passage is worth quoting at length:

These sophisticated assertions of dialectic open, as it were, a battle-field, where that side obtains the victory which has been permitted to make the attack, and he is compelled to yield who has been unfortunately obliged to stand on the defensive. And hence, champions of ability, whether on the right or on the wrong side, are certain to carry away the crown of victory, if they only take care to have the right to make the last attack, and are not obliged to sustain another onset from their opponent. We can easily believe that this arena has been often trampled by the feet of the combatants, that many victories have been obtained on both sides, but

³³⁸ Immanuel Kant, *Critique of Pure Reason*, trans. J. M. D. Meiklejohn (Mineola, New York: Dover Publications, Inc., 2003), 252.

³³⁹ *Ibid.*

that the last victory, decisive of the affair between the contending parties, was won by him who fought for the right, only if his adversary was forbidden to continue the tourney. As impartial umpires, we must lay aside entirely the consideration whether the combatants are fighting for the right or for the wrong side, for the true or for the false, and allow the combat to be first decided. Perhaps, after they have wearied more than injured each other, they will discover the nothingness of their cause of quarrel, and part good friends.³⁴⁰

For Kant, the thesis treats the thing-in-itself, or ‘noumena,’ like the thing as it appears to us, or ‘phenomena.’ In other words, it treats the thing in itself as if it can be directly experienced.³⁴¹ That is why it is dogmatic rationalism. Conversely, the antithesis treats phenomena like noumena, as if our sense experience of appearances revealed the thing in itself. This is dogmatic empiricism. Conversely, critical philosophy treats phenomena as phenomena and therefore recognizes the limits of this knowledge. Humans are both rational and empirical beings. To the extent that we are rational, we are free from the necessity of the natural laws that determine our empirical selves. Nevertheless, though this thesis is true, we cannot claim to have ‘objective’ knowledge of it. What we know is beyond possible human experience.

Hegel, in his *Science of Logic*, criticizes Kant’s transcendental solution to these antinomies. According to Hegel, Kant’s resolution occurs only in consciousness, not in the real world: “It shows an excessive tenderness for the world to remove contradiction from it and then to transfer the contradiction to spirit, to reason, where it is allowed to remain unresolved. In point of fact it is spirit which is so strong that it can endure contradiction, but it is spirit, too, that knows how to resolve it.”³⁴² In place of Kant’s ‘subjective idealism,’ Hegel posits an ‘objective idealism’ for which contradictions exist not only in consciousness, but in the world. Indeed, for Hegel, this is what human history is. It is not merely contradictions in thought, or even contradictions in the objective world, but the ongoing and successive phases in the attempt to heal the separation, the contradiction, between the subject and object, between humans and our

³⁴⁰ Ibid., 239-40.

³⁴¹ For a lucid explanation of this, see Frederick Coplestone, *A History of Philosophy: Book Two: Volume VI* (New York: Doubleday, 1985), 286-94.

³⁴² Hegel, *Science of Logic*, op. cit., 237-8.

world. This is why, for Hegel, human history is the story of the development of freedom through necessity.

Hegel explains this most fully in a part of the *Science of Logic* which we have already discussed. It is where he explains immanent critique. Recall that Hegel describes this, like Kant, as a battle: “The genuine refutation must penetrate the opponent’s stronghold and meet him on his own ground; no advantage is gained by attacking him somewhere else and defeating him where he is not.”³⁴³ Surely this is an allusion to Kant’s discussion of antinomies, just as Marx’s discussion is an allusion to both Kant and Hegel. In this section of the *Science of the Logic*, Hegel explains the relation between the dialectical method and freedom.

For Hegel, the method of immanence which weighs concepts against themselves need not impose external criteria of judgement. When a thing confronts its opposite, this is only a negation in a purely negative sense. The two sides remain one-sidedly true and necessarily opposed. It takes a negation of the negation, a reconciliation of what is essential to each in a higher unity, to create a positive negation, a determinate negation. By tracing the oppositions to which these concepts necessarily give rise, reason penetrates to the essence of a concept and traces its development into a higher unity through its own internal dialectic. In other words, the reason of the thinking subject corresponds to the rational development of the object. Far from posing a ‘noumena’ that is fixed in its separation from the subject, the subject and object are unified in the reason they share. Hegel takes Kant’s ‘Copernican revolution’ to its logical conclusion. The thinking subject encounters the object and makes the object her own: “According to this exposition, the unity of the notion is that whereby something is not a mere *mode of feeling*, an *intuition*, or even a mere *representation*, but is an *object*, and this objective unity is the unity of the ego with itself. In point of fact, the *comprehension* of an object consists in nothing else than that the ego makes it *its own*.”³⁴⁴

This is Hegel’s notion of freedom. Conditions are ‘external’ to the extent that the subject has not incorporated them into her being. Transforming ‘external’ nature into something for human use subjectifies it, and objectifies ourselves, by rendering what was external into an internal relation. The human subjectification of nature constitutes its transformation, and the transformation of ourselves is an objectification by nature. A humanization of the world is

³⁴³ Ibid., 580-81.

³⁴⁴ Ibid., 584-85.

constituted by rendering external conditions—that which is not understood by us, that which imposes necessity on us—internal. Through our understanding of it via our worldly interactions with it, it becomes of us and we by it. This notion of freedom overcomes the antinomy posited by Kant. Engels later expresses Hegel’s notion in a more popular, accessible form: “Freedom does not consist in the dream of independence of natural laws, but in the knowledge of these laws, and in the possibility this gives of systematically making them work towards definite ends.”³⁴⁵

If an antinomy is something that, at least as it is currently formulated, is an unresolvable conflict, then a contradiction is something that is formulated in such a way that its opposing sides reveal the basis of its resolution in a higher unity. Why, when Marx is describing the struggle between the equal rights of labour and capital, does he use the term ‘antinomy’? Perhaps he is indicating that the conflict between the owner of the exchange-value of labour-power and the owner of the use-value of labour-power *cannot be resolved at this level of analysis*. The conflict internal to the right of private property is established, but it remains in abeyance. In other words, this immanent critique is far from complete. Other conditions must be satisfied in order for there to be a determinate negation. In other words, there are more aspects of necessity, more natural laws that we must recognize and comprehend, before it is possible to determine the content of a genuine freedom.

In the meantime, Marx points to one of the most important results of the struggles that arise amid the antinomy of rights. This is the legislation protecting, at least to a certain extent, the workers’ sole piece of productive property:

For ‘protection’ against the serpent of their agonies, the workers have to put their heads together and, as a class, compel the passing of a law, an all-powerful social barrier by which they can be prevented from selling themselves and their families into slavery and death by voluntary contract with capital. In the place of the pompous catalogue of the ‘inalienable rights of man’ there steps the modest Magna Carta of the legally limited working day, which at last makes clear ‘when the time which the worker sells is ended, and when his own begins.’³⁴⁶

³⁴⁵ Engels, *Anti-Dühring*, op. cit., 125.

³⁴⁶ Marx, *Capital: Volume One*, op. cit., 415-16.

As important as this is, it nonetheless remains within the confines of bourgeois right and the laws of private property.

Much intervenes between Marx's assertions about the antinomy of rights, which is in 'Part Three,' and his next invocation of justice at the beginning of "Part Six: Wages." In "Part Four: The Production of Relative Surplus-Value," in chapters 12-15, Marx distinguishes between absolute surplus-value and relative surplus-value. The former concerns increasing the surplus-value by lengthening the time or by intensifying the effort of the working day. Conversely, relative surplus-value entails increasing the amount of the working day that is comprised of surplus-labour relative to necessary-labour. This is done by technological improvements that increase the productivity of labour-power. In "Part Five: The Production of Absolute and Relative Surplus-Value," chapters 16-18 examine how to establish the correct ratio between absolute and relative surplus-value in the examination of capitalist production processes.

Marx does not mention justice again until the first chapter of "Part Six: Wages." In "Chapter 19: The Transformation of the Value (and Respectively the Price) of Labour-Power into Wages," Marx distinguishes between labour and labour-power. Although labour is the substance or the measure of value, it does not itself have value. Rather, it is labour-power that has value.³⁴⁷ In other words, it is labour that determines the amount of value created by the worker, but it is labour-power that determines the amount that the worker makes in wages. Since the total labour expended over the course of an entire working day extends beyond necessary labour, the labour-power that is paid in wages, the working day includes the surplus labour that produces surplus value, which is the basis of profits. It is in this context that Marx asserts:

All the notions of justice held by both the worker and the capitalist, all the mystifications of the capitalist mode of production, all capitalism's illusions about freedom, all the apologetic tricks of vulgar economics, have as their basis the form of appearance discussed above, which makes the actual relations invisible, and indeed presents to the eye the precise opposite of that relation.³⁴⁸

³⁴⁷ Ibid., 677-78.

³⁴⁸ Ibid., 680.

By describing justice as illusory, Marx appears to overthrow his earlier assertion that the exploitation of labour-power is by no means an injustice to the labourer who sells it. As we will see, many of the commentators who believe that Marx deems capitalism unjust cite this passage. They argue that when Marx depicts the wage-exchange as, if not just, then not unjust, this depended on the assumption that the wage-relation between workers and capitalists was an equal exchange. This is only formally true. Underlying it is the appropriation of uncompensated surplus-labour. Marx therefore exposes the earlier view as false. The wage-relation is not an exchange of equivalents and therefore it is unjust. Nevertheless, other commentators argue the opposite perspective. They contend that the notion that workers should receive back the equivalent of the amount of value they produce, what is called their 'labour-contribution,' is based on the false idea that workers exchange wages for labour, not labour-power. Marx shows here that workers are only entitled to the equivalent of their labour-power. Therefore, we cannot critique the wage-relation as unjust according to a theory of labour-contribution. Consequently, the wage-relation is just according to the only possible standards. When Marx speaks of the illusion of justice, he is not referring to those who deem capitalism just, but to those who critique capitalism according to a misguided theory of justice.

Much of the debate about these passages does not give sufficient attention to the process of Marx's immanent critique. To my knowledge, no one has asked what dialectical movements intervene between this and the preceding mention of justice. Why does Marx decide to address the question of justice again here? After all, Marx explains the distinction between necessary labour and surplus labour as early as page 325, only 24 pages after the last explicit mention of justice. This is 357 pages before this current mention of justice. That discussion of necessary and surplus labour was also the passage where Marx describes the relation between labour and capital as 'extortion.' Could he have described the illusions of justice then? That he did not provides significant indication as to what Marx is doing with the conception of justice here. There are two main reasons for this. The first reason is what occurs between these two assertions about justice, and in particular, what must occur immediately before the later one. The second reason is what must occur immediately after it. Both are inherent to those parts of the dialectical method that Marx adopts from Hegel.

The first reason is explained in the sentences immediately after the above-quoted passage: "World history has taken a long time to get to the bottom of the mystery of wages; but,

despite this, nothing is easier to understand than the necessity, the *raise d'être*, of this form of appearance.³⁴⁹ Recall that in Hegel's critique of the 'understanding' typical of Kant, we cannot merely expose false appearances. Our explanation of the essential relations must also explain why they have these false appearances, why they must appear in this way. Marx adopts this aspect of the dialectical method. What intervenes between these two distant and seemingly disconnected statements about justice is the way in which Marx's explanations have set the conditions for not only exposing the abstractions and formalisms of ideology, but also why the essential relations underlying them are themselves abstract in some significant way. This is significant because if one wants to address the problems arising from these abstractions it is not enough to expose the ideology as false. It also requires going to the root cause: the material conditions. In other words, the solution is not only a question of correct theory, but of transformative practical activity.

With the explanation of relative surplus-value, and in particular, its priority over absolute surplus-value, Marx can now explain the self-valorization of capital. The previous section, "Part Five," ends in the following way:

Capital, therefore, is not only the command of labour, as Adam Smith thought. It is essentially the command over unpaid labour. All surplus-value, whatever particular form (profit, interest or rent) it may subsequently crystallize into, is in substance the materialization of unpaid labour-time. The secret of the self-valorization of capital resolves itself into the fact that it has at its disposal a definite quantity of the unpaid labour of other people.³⁵⁰

In other words, Marx is almost able to show how the capitalist system, *as a system*, reproduces itself on an ever-expanding scale. A phase of capitalist *production* can only renew itself because it culminates in capitalist *appropriation*, which is necessary for the subsequent phase. All that is left is the short section on this 'unpaid labour' where he introduces the distinction between labour and labour-power. This is directly tied to the second reason why Marx now deems it appropriate to speak about the illusions of justice.

³⁴⁹ Ibid.

³⁵⁰ Ibid., 672.

The reason why Marx could only invoke justice here at this point is indicated one page after the above-quoted statement about the illusions of justice: “The forms of appearance are reproduced directly and spontaneously, as current and usual modes of thought; the essential relation must first be discovered by science. Classical political economy stumbles approximately onto the true state of affairs, but without consciously formulating it. It is unable to do this as long as it stays within its bourgeois skin.”³⁵¹ What does Marx mean here by the need to shed the bourgeois skin? As is evident in the next section, it means exactly what Hegel means by it: we must leave the perspective of the isolated person and enter the realm of Spirit. In other words, to explain the shortcomings of methodological individualism we need a genuinely social ontology. Even more profoundly, we must explain how these historically-specific social relations give rise to the prevalence of methodological individualism itself.

The first chapter of “Part Seven: The Process of the Accumulation of Capital” is “Chapter 23: Simple Reproduction.” Its opening sentences are:

Whatever the social form of the production process, it has to be continuous, it must periodically repeat the same phases. A society can no more cease to produce than it can cease to consume. When viewed, therefore, as a connected whole, and in the constant flux of its incessant renewal, every social process of production is at the same time a process of reproduction.³⁵²

Marx is now explicitly providing the social content to the formal laws of capitalist society: “The illusion created by the money-form vanishes immediately if, instead of taking a single capitalist and single worker, we take the whole capitalist class and the whole working class.”³⁵³ Similarly, a few pages later, he asserts that our perspective changes qualitatively when we shift from “an isolated process of production” to “capitalist production in full swing, and on its actual social scale.”³⁵⁴ As we have seen, the dialectical method shows why essential relations have specific forms of appearance. Following from this, the most robust critique of ideology not only exposes

³⁵¹ Ibid., 682.

³⁵² Ibid., 711.

³⁵³ Ibid., 713.

³⁵⁴ Ibid., 717.

its false claims, but also explains why they appear to be true. In other words, it reveals the conditions that give rise to that falsity.

A few pages later, Marx explains why methodological individualism is so prevalent in political economy. This has broader implications for modern thought as a whole. It is the peculiar character of commodity exchange that buyers and sellers meet each other as mutually indifferent individuals. They are related to each other only for the length of the contract. Any subsequent transactions between these individuals need not follow from, and are therefore incidental to, the preceding transactions.³⁵⁵ Consequently, it makes sense (and it makes ‘sense’) that our perspective would apprehend only particular exchanges between specific individuals rather than the long-term processes of exchange between social classes.

Amid these remarks, Marx makes a claim quite similar to his earlier assertion about ‘extortion.’ Now, however, he is not describing a single, isolated exchange between wage-labour and capital, but the ongoing social processes between classes through which capitalist society as a whole is reproduced:

The means of production with which the additional labour-power is incorporated, as well as the necessaries with which the workers are sustained, are nothing but component parts of the surplus product, parts of the tribute annually exacted from the working class by the capitalist class. Even if the latter uses a portion of that tribute to purchase the additional labour-power at its full price, so that equivalent is exchanged for equivalent, the whole thing still remains the age-old activity of the conqueror, who buys commodities from the conquered with the money he has stolen from them.³⁵⁶

More significantly, on the next page, Marx returns to the language of the dialectic: “It is quite evident from this that the laws of appropriation or of private property, laws based on the production and circulation of commodities, become changed into their direct opposite through their own internal and inexorable dialectic.”³⁵⁷ I noted earlier that Marx used the term “antinomy” in his depiction of the conflict of rights between labour and capital. I suggested that

³⁵⁵ Ibid., 732-33.

³⁵⁶ Ibid., 728.

³⁵⁷ Ibid., 729.

Marx may have been indicating that at the preceding level of analysis the internal conflict embodied in private property rights was unresolvable. In his return to the language of the dialectic, Marx may be demonstrating that this antinomy can now become an outright contradiction, thereby setting the stage for its resolution through a determinate negation.

This explains why with many of his earlier assertions, including the ones that have been relevant for us, he had to allow certain assumptions to hold at that point of his exposition. We began with equal exchange, but this was only an “apparent exchange.”³⁵⁸ In the exchange between wage-labour and capital, the form is “alien” to the content and “mystifies” that content.³⁵⁹ Marx asserts:

Originally the rights of property seemed to us to be grounded in a man’s own labour. Some such assumption was at least necessary, since only commodity-owners with equal rights confronted each other, and the sole means of appropriating the commodities of others was the alienation of a man’s own commodities, commodities which, however, could only be produced by 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, on the part 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.³⁶⁰

For many commentators, this solves the problem. Workers and capitalists have *different* rights. Whereas before there was an antinomy between equal rights, we now see that it is a contradiction between unequal rights, though force still decides. Since the earlier notion of equal rights was based on a false assumption, the exchange between labour and capital *is* an injustice to the former. Despite these revelations, however, Marx asserts that, although capitalist appropriation appears to violate the laws of commodity production, it is what inevitably results from their application.³⁶¹ Indeed, on the very next page, Marx makes a familiar claim: “If, therefore, the

³⁵⁸ Ibid.

³⁵⁹ Ibid., 729-30.

³⁶⁰ Ibid., 730.

³⁶¹ Ibid.,

amount of value advanced in wages is not merely found again in the product, but augmented by a surplus-value, this is not because the seller has been defrauded, for he has really received the value of his commodity; it is due solely to the fact that this commodity has been used up by the buyer.”³⁶² This is because the law of exchange requires only the equality of exchange-values, not of use-values:

Thus the original transformation of money into capital takes place in the most exact accordance with the economic laws of commodity production and with the rights of property derived from them. Nevertheless, its result is:

(1) that the product belongs to the capitalist and not to the worker;

(2) that the value of this product includes, apart from the value of the capital advanced, a surplus-value which costs the worker labour but the capitalist nothing, and which none the less becomes the legitimate property of the capitalist;

(3) that the worker has retained his labour-power and can sell it anew if he finds another buyer.³⁶³

The seller *has not been defrauded*. The surplus-value becomes *the legitimate property of the capitalist*. Marx seems to be arguing that the wage-relation is both just and that this justice is illusory. In the wage-contract between labour and capital, with regard to exchange-values the seller is not defrauded, but according to the use-values, the buyer is guilty of theft. The question arises, why, in certain places, does Marx describe capitalist appropriation as theft? We must defer this question for the time being.

The key to this section of the text is revealed in the following passage and its footnote. In these passages, Marx connects in a massive arc this section of the text with his early critique of ‘eternal justice’ in the second chapter:

³⁶² Ibid., 731.

³⁶³ Ibid.; Fowkes notes that the section from pg. 730-734 “was added by Engels to the fourth German edition on the basis of a similar passage included by Marx in the French translation of 1872” (ibid., 730, n.). Engels’s text, as well as Fowkes’s translation, are accurate reproductions of Marx’s text from the French edition. See in particular the terms ‘lésion’ in the first passage and ‘légitime’ in the second: “Si donc la somme de valeurs avancée en salaires se retrouve dans le produit avec un surplus, cela ne provient point d’une lésion du vendeur, car il reçoit l’équivalent de sa marchandise, mais de la consommation de celle-ci par l’acheteur” (Karl Marx, *Le Capital* (Paris: Maurice Lachatre et C(ie), 1875), 256); “2. Que la valeur de ce produit renferme et la valeur du capital avancé et une plus-value qui coûte du travail à l’ouvrier, mais rien au capitalistes, dont elle deviant la propriété légitime” (ibid., 256).

Only where wage-labour is its basis does commodity production impose itself upon society as a whole; but it is also true that only there does it unfold all its hidden potentialities. To say that the intervention of wage-labour adulterates commodity production is to say that commodity production must not develop if it is to remain unadulterated. To the extent that commodity production, in accordance with its own immanent laws, undergoes a further development into capitalist production, the property laws of commodity production must undergo a dialectical inversion so that they become laws of capitalist appropriation.³⁶⁴

The footnote to this passage reads: “We may well, therefore, feel astonished at the cleverness of Proudhon, who would abolish capitalist property – by enforcing the eternal laws of property which are themselves based on commodity production!”³⁶⁵ Marx indicates that much of what he discusses here is directed not only at apologetic bourgeois political economy, but also the petty-bourgeois socialism unable to fully emancipate itself from it.

Elsewhere, Marx castigates the French socialists who think that exchange and exchange-value are originally a system of universal freedom and equality that have become perverted by money and monopoly capital. They therefore regard socialist society as the genuine realization of these bourgeois ideals. Conversely, Marx demonstrates that, historically, communal production necessarily leads to capitalist commodity production and that this necessarily leads to capitalist appropriation. What Proudhon and his ilk condemn as distortions are actually inherent to exchange-value. In other words, commodity production and exchange entail “the realization of *equality and freedom*, which prove to be inequality and unfreedom.”³⁶⁶ When Marx rejects the idea that socialism should achieve bourgeois ideals, this is not because he lacks alternative conceptions of freedom or equality. Rather, it is because these alternative notions cannot be based on commodity production and exchange value. Nevertheless, whether or not Marx has an alternative to Proudhon’s notion of justice remains to be seen. What I can say at this point is that Marx’s critique of commodity production is one of the reasons why I have insisted on the distinction between commutative justice and distributive justice. If Marx is correct, then, as we

³⁶⁴ Marx, *Capital: Volume One*, op. cit., 733-34.

³⁶⁵ *Ibid.*, 734, n. 10.

³⁶⁶ Marx, *Grundrisse*, op. cit., 248-49.

will see, contrary to Proudhon, the principle of labour-contribution cannot be achieved within a social system in which commutative justice is the primary form of proprietary justice. We should keep this in mind when we consider why Marx describes the relation of exchange between wage-labour and capital as, on the one hand, ‘not unjust,’ but on the other hand, ‘theft.’

Although we cannot say definitively what Marx is referring to when he speaks of the ‘illusions of justice,’ some interpretations are stronger than others. We must take into consideration that it comes immediately after his explanation of the distinction between labour and labour-power. It also comes right before a discussion of the laws of private property that is explicitly directed, at least in part, at the Proudhonists. It is more likely that Marx is not criticizing capitalism as unjust, but rather, is criticizing those who condemn capitalism as unjust according to standards uncritically adopted from capitalism itself. In other words, Marx is referring to the illusion that one could critique capitalism according to a notion of justice based upon ideas of labour-contribution. Nevertheless, this can only be a tentative speculation for the time being.

One of the most important achievements of that school of thought, the self-described ‘Hegelian-Marxism’ of which Raya Dunayevskaya is the paramount example, is to show the prominence of Marx’s critique of Proudhonism throughout his writings. For example, Dunayevskaya notes that Marx, in later editions of *Capital*, greatly expanded the sections on commodity fetishism.³⁶⁷ She contends that Marx did this because of the defeat of the Paris Commune. Marx attributed this defeat, in part, to the unhealthy respect that the Communards showed for the privately-owned banks. Marx regarded this as the insidious influence of Proudhonism and its fetishizing of the money-form. McNally notes that the extent of Marx’s career-long battle against Proudhonism has been neglected. For example, it is significant that the 124-page “Chapter on Money” in the *Grundrisse* not only begins with a citation of Darimon, a disciple of Proudhon, but is in its entirety a response to it.³⁶⁸ Hudis notes how Marx had written many drafts of a treatise on political economy, of which the *Grundrisse* is an example, before writing and publishing *Capital*. Hudis asserts that in all of the previous drafts, the distinction between abstract and concrete labour eluded Marx. It was only when he discovered it that he

³⁶⁷ Raya Dunayevskaya, *Marxism and Freedom: from 1776 until Today* (New York: Columbia University Press Morningside Edition, 1988), 100.

³⁶⁸ McNally, op. cit., 155.

produced *Capital*.³⁶⁹ Hudis points to a passage where Marx asserts, “I was the first to point out and examine critically this twofold nature of the labour contained in commodities.” Hudis contends that “this is the only time Marx uses the first person in *Capital*, aside from the prefaces and postfaces.”³⁷⁰ This is significant because, as Hudis points out, Marx’s major critique of Proudhon is that it is not merely money that is abstract, but labour itself. Therefore, exploitation resides not merely in the distorting influence of money, but in the character of labour endemic to capitalist society.

Marx, in letter to J. B. Schweizer in 1865, discusses his critique of Proudhon.³⁷¹ What Marx says there confirms my interpretation here. Marx asserts that Proudhon’s first major work, *What is Property?*, is marred by the fact that Kant was the only German philosopher who Proudhon had read at the time. Consequently, Proudhon imitates Kant’s treatment of the antinomies, “and he leaves one with a strong impression that to him, as to Kant, the resolution of the antinomies is something ‘*beyond*’ the human understanding, i.e., something about which his own understanding is in the dark.”³⁷² For this reason, Marx criticizes Proudhon on terms that are remarkably similar to Hegel’s critique of Kant on the prohibition of theft.

The most that can be got out of this is that the bourgeois juristic conceptions of ‘*theft*’ apply equally well to the ‘*honest*’ gains of the bourgeois himself. On the other hand, since theft as a forcible violation of property *presupposes the existence of property*, Proudhon entangled himself in all sorts of fantasies, obscure even to himself, about *true bourgeois property*.³⁷³

Marx then takes some of the blame for Proudhon’s later attempts to apply the dialectical method to bourgeois property. During Proudhon’s visit to Paris in 1844, Marx introduced him to the work of Hegel, which Proudhon attempted to deploy in a subsequent work, *The Philosophy of Poverty*. Marx asserts, “In place of Kant’s insoluble ‘*antinomies*,’ the Hegelian

³⁶⁹ Peter Hudis, *Marx’s Concept of the Alternative to Capitalism* (Leiden: Brill, 2012), 150.

³⁷⁰ *Ibid.*, 150, n. 14.

³⁷¹ The letter is published as an appendix to Karl Marx, *The Poverty of Philosophy* (Moscow: Progress Publishers, 1973), 168-75.

³⁷² *Ibid.*, 169.

³⁷³ *Ibid.*, 170.

‘*contradiction*’ was to be introduced as the means of development.”³⁷⁴ Needless to say, Marx does not think that Proudhon understood the dialectical method and the principle of contradiction. Marx’s response, *The Poverty of Philosophy*, ended his friendship with Proudhon for good.

The radical differences between Marx and Proudhon are somewhat obscured by the fact that both associated a certain form of property with ‘theft.’ This, however, is where the similarities end. For Proudhon, exchange based on commodity production entails a relation of equality: “What is it, then, to practise justice? It is to give equal wealth to each, on condition of equal labour.”³⁷⁵ Proudhon argues that exploitation is not the result of private property as such, but of monopoly. It is in this sense that property is theft. Therefore, his conception of socialism entails the end of monopoly and the establishment of genuinely free exchange. Proudhon envisions a synthesis of original communism and private property. This is a society of independent, small-scale production. The way to accomplish this is a mutualism that will envelop capitalism.³⁷⁶ Therefore, Proudhon condemns strikes, which disrupt free exchange by raising prices, as well as political struggles for state power: “It is not for the proletaire to reconcile the contradictions of the codes, still less to suffer for the errors of the government. On the contrary, it is the duty of the civil and administrative power to reconstruct itself on the basis of political equality.”³⁷⁷ Proudhon’s anti-politics is the direct opposite of the agonism that Marx inherits from Hegel. As McNally notes:

By accepting the premises of political economy, Proudhon can merely engage in the tedious exercise of showing how political economy contradicts itself. He does not grasp that these theoretical contradictions are necessary results of the real contradictions of capitalist production. As a result, he hopes to resolve these contradictions through the purely intellectual exercise of separating the ‘good’ aspects of capitalism (individual production, competition, exchange of equivalents) from the ‘bad’ (private property, monopoly, exploitation). Rather than show the inevitable self-contradictions of modern society which need to be

³⁷⁴ Ibid., 171.

³⁷⁵ Pierre-Joseph Proudhon, *What is Property? An Inquiry into the Principle of Right and of Government*, trans. Benjamin R. Tucker (London: William Reeves, 1876), 228.

³⁷⁶ McNally, op. cit., 140-43.

³⁷⁷ Proudhon, op. cit., 239-40.

exploded, he regresses to the standpoint of an abstract moralizing – praising the ‘good,’ bemoaning the ‘bad.’ As Marx notes, with Proudhon ‘there is no longer any dialectics but only, at most, absolute pure morality.’³⁷⁸

In other words, Proudhon expresses an ‘excessive fondness of the world.’ These contradictions exist in commodity production, not merely in our moral consciousness of it. As early as 1844 Marx asserts that, when Proudhon attempts to construct socialism on the basis of labour contribution, he fails to transcend the level of political economy.³⁷⁹ Marx points out that private property is not the cause of, but results from, alienated labour. They are two sides of the same coin. Therefore, a genuine socialism must address not only the ownership of property, but also the alienation of labour. This is one of the reasons why Marx invokes the illusions of justice amid his explanation of the distinction between labour and labour-power. It is not merely money or monopoly that causes the abstractions that result in exploitation. Rather, it is that labour under capitalism is itself abstract. This is the basis of exploitation. This is what gives rise to all of the other abstractions. This is the significance of Marx’s assertion that what at first appeared to be property based in labour in fact suffers a dialectical inversion and becomes the separation, the alienation, of labour from its proprietary basis.

The elimination of small-scale private property, which Proudhon condemns and seeks to reinstate, is, for Marx, the only historical justification for capitalism. Soon after the passages we have been exploring, Marx points to how the capitalist is as subject to the laws of private property, the imperatives of the generalized market, as are workers. Thus, the capitalist “fanatically,” perhaps *pathologically*, forces the whole of society into production for the sake of production: “In this way he spurs on the development of society’s production which alone can form the real basis of a higher form of society, a society in which the full and free development of every individual forms the ruling principle.”³⁸⁰ This is directly relevant to a number of marginal notes criticizing Adolph Wagner written by Marx near the end of his life. They are worth quoting in full because they have been scrutinized time and again in the debates on Marx and justice. Marx asserts:

³⁷⁸ McNally, *op. cit.*, 153.

³⁷⁹ Dunayevskaya, *Marxism and Freedom*, *op. cit.*, 61-62; McNally, *op. cit.*, 147.

³⁸⁰ Marx, *Capital: Volume One*, *op. cit.*, 739.

In fact, in my presentation, capital profit is *not* ‘merely a *deduction* or ‘robbery’ on the labourer.’ On the contrary, I present the capitalist as the necessary functionary of capitalist production and show very extensively that he does not only ‘deduct’ or ‘rob,’ but forces the *production of surplus value*, therefore the deducting only helps to produce; furthermore, I show in detail that even if in the exchange of commodities *only equivalents* were exchanged, the capitalist – as soon as he pays the labourer the real value of his labour-power – would secure with full rights, i.e. the rights corresponding to that mode of production, *surplus value*. But all this does not make ‘capital profit’ into a ‘*constitutive*’ element of value, but only proves that in the value not ‘*constituted*’ by the labour of the capitalist, there is a portion which he can appropriate ‘legally,’ i.e. without infringing the rights corresponding to commodity-exchange.³⁸¹

Marx goes on to say:

The obscurantist falsely attributes to me [the view] that ‘the *surplus value* produced by the labourers alone was left to the capitalist employers in an *improper way*.’ Well, I say the direct opposite; namely, that commodity-production is necessarily, at a certain point, turned into ‘capitalist’ commodity-production, and that according to the *law of value* governing it, ‘surplus value’ is properly due to the capitalist, and not to the labourer.³⁸²

Marx demonstrates that, according to the laws of private property, commodity exchange necessarily becomes commodity production, which necessarily becomes general commodity production, which becomes capitalist appropriation on an ever-increasing scale.

This is the inadequacy of the utopian socialist’s notion of exchange. Proudhon asserts: “Two men encounter each other, their interests opposed. The debate is joined; then they come to terms: the first conquest of *droit*, the first establishment of Justice.”³⁸³ This is the exact opposite

³⁸¹ Karl Marx, ‘Notes on Adolph Wagner,’ in *Later Political Writings*, trans. Terrell Carver (Cambridge: Cambridge University Press, 1996), 232.

³⁸² *Ibid.*, 255.

³⁸³ Proudhon, quoted by McNally, *op. cit.*, 141.

of Marx's assertion about the antinomy of rights. Although Marx rejects the idea that the worker and capitalist have different rights, he asserts that their equal rights create profound inequalities and power disparities. By transitioning to simple reproduction, by examining these relations on their social scale (at least in its first approximation), Marx prepares the way for the transition from the antinomy between wage-labour and capital to its outright contradiction. This contradiction is the very substance of capitalist society. For Marx, it foretells the collision that will bring its doom.

Indeed, if we return to *Capital*, Marx now explains how capitalist appropriation necessarily becomes 'the general law of capitalist accumulation.' Marx asserts that, "within the capitalist system all methods for raising the social productivity of labour are put into effect at the cost of the individual worker; that all means for the development of production undergo a dialectical inversion so that they become means of domination and exploitation of the producers."³⁸⁴ The common condition of all class-societies, whether capitalist or non-capitalist, is that the limited character of the productive forces requires that the development of the general wealth of the species, both economic and cultural, comes at the expense of the individual.³⁸⁵ What is unique in the long-range tendencies of capitalist accumulation is the ability to overcome these productive limits. Nevertheless, this leads to the most profound contradiction of capitalist society, which is also the culmination of the long epoch of private property. On the one hand, production is increasingly socialized, giving rise to both quantitative and qualitative expansions that foster the potential for previously unthinkable abundance. On the other hand, it features the concentration and centralization of the ownership and control of this increasingly socialized production in fewer and fewer hands: "Accumulation of wealth at one pole is, therefore, at the same time accumulation of misery, the torment of labour, slavery, ignorance, brutalization and moral degradation at the opposite pole, i.e. on the side of the class that produces its own product as capital."³⁸⁶ In other words, with the destruction of small-scale private property and communal property, absolute private property is inexorably tending toward its highest pitch.

³⁸⁴ Marx, *Capital: Volume One*, op. cit., 798-99.

³⁸⁵ Marx, *Grundrisse*, op. cit., 705. See also: Agnes Heller, *The Theory of Need in Marx* (New York: St. Martin's Press, 1976), 94. It should be noted that when Marx refers to the 'limited' development of the productive forces, this is not a 'productivist' affirmation of infinite growth. Rather, the productive forces are limited relative to a set of social conditions in which societal development need no longer be monopolized by ruling classes.

³⁸⁶ Marx, *Capital: Volume One*, op. cit., 798-99.

It is only after Marx has laid out all of the systemic, and dare we say logical, steps necessary to explain the general law of capitalist accumulation that he then turns to the history preceding the development of capitalism. This, the concluding section of *Capital*, is Marx's famous discussion of 'primitive accumulation.' Marx is often at his most vitriolic in these pages. He describes with a great deal of moral condemnation the mass expropriation of producers of their conditions of production, of their common and private property: "this history, the history of their expropriation, is written in the annals of mankind in letters of blood and fire."³⁸⁷ Many of the commentators who argue that Marx deems capitalism unjust dwell on these pages. They argue that, though Marx does not explicitly use the term 'justice,' one of his main tasks in this section is to expose the injustices of the origins of capitalism, and thus, of capitalism itself.

Certainly, Marx is combatting the moralizing explanations of the origins of capitalism offered by liberal historians and political economists. For example, Marx derides the "stoical peace of mind with which the political economist regards the most shameless violation of the 'sacred rights of property' and the grossest acts of violence against persons, as soon as they are necessary in order to lay the foundations of the capitalist mode of production."³⁸⁸ Nevertheless, although Marx obviously undermines moral tales about the origins of capitalist private property, it does not necessarily follow that Marx has a coherent, alternative theory of morality with which to replace it. It is as likely that Marx is only showing the hypocrisy of these views, not offering an alternative standard by which these processes, and capitalism as a whole, can be criticized as unjust. One goal of the section on primitive accumulation may be to show that the standard of justice arises from the changes in the property-relations.

This was certainly the opinion of Engels, always much more willing than Marx to discuss questions of ethics. Engels uses the historical character of the prohibition against theft to deny the existence of natural right: "From the moment when private property in movable objects developed, in all societies in which this private property existed there must be this moral law in common: Thou shalt not steal. Does this law thereby become an eternal moral law? By no means."³⁸⁹ If for Proudhon 'property is theft,' for Marx, theft is property.³⁹⁰ Indeed, in a revealing passage, Marx first quotes Thomas Hodgskin: "The power of the capitalist over all the

³⁸⁷ Ibid., 875.

³⁸⁸ Ibid., 889.

³⁸⁹ Engels, *Anti-Dühring*, op. cit., 104.

³⁹⁰ In his notebooks from 1844 Marx asserts: "*The right of the landowners can be traced back to robbery*" (Marx, *Early Writings*, op. cit., 309).

wealth of the country is a complete change in the right of property, and by what law, or series of laws, was it effected?”³⁹¹ Marx then responds, “The author should have reminded himself that revolutions are not made with laws.”³⁹² On the next page Marx famously states: “Force is the midwife of every old society which is pregnant with a new one.”³⁹³

In this, Marx is also criticizing Proudhon’s focus on the so-called injustice of appropriation through unequal exchange. Marx shows that the appropriation of the workers’ labour-power is much less profound than that which makes this possible, the expropriation of the workers’ conditions of production. This expropriation is the basis of commodity production, of capital. This is why Marx asserts that the utopian socialists, who deem unequal commodity exchange the problem, want capitalism without capital. For Marx, this is akin to wanting Catholicism without the Pope.³⁹⁴ The problem is not a particular form of capitalism, but capital itself.

The importance of the labour theory of value is not only its bearing for the question of whether or not workers are exploited, but also, what is necessary in order to bring that exploitation to an end. The utopian socialists locate exploitation in the wrong place, and therefore, their socialism only reproduces it in another form. Marx contends that only a scientific approach to capitalism can comprehend its inequalities. His discovery of abstract labour reveals that these inequalities cannot be brought to an end merely by abolishing money, the commodity market, or private property. This is the mistake of the utopians who advocate for mutualism and workers’ cooperatives; the revisionists and social democrats who affirm the mixed economy or market socialism; and of the vanguardists who establish state-controlled command economies. In all of these cases, since the law of value, the imperative of average productivity, mediates between production and consumption, labour is necessarily reduced to abstract labour and production goals are beyond the control of workers. The inequalities inherent in capitalism can only end when workers have collective control over the conditions of production, and, before production begins, democratically deliberate about the diverse societal needs and the requisite distributions of labour-time and intensity across the different branches of production. Only then

³⁹¹ Marx, *Capital: Volume One*, op. cit., 915.

³⁹² Ibid.

³⁹³ Ibid., 916.

³⁹⁴ Ibid., 181, n. 4; Marx, *Grundrisse*, op. cit., 127.

is production reconciled with consumption such that workers can be compensated according to their actual labour-time.³⁹⁵

In the concluding chapter of this final section of *Capital*, Marx distinguishes between three phases of property in the course of human history. The first phase comprises all non-capitalist class societies. In it, producers own and possess their conditions of production. Although this phase includes forms of personal dependence such as slavery and serfdom, its ‘classical form’ occurs only where workers are free proprietors of their conditions of production. For Marx, this is the classical form because, when peasants own their land or artisans own their tools, they are able to pursue their ‘free individuality.’ Nevertheless, even in its classical expression, since private property and production is small-scale, it is fragmented and dispersed: “As it excludes the concentration of these means of production, so it also excludes co-operation, division of labour within each separate process of production, the social control and regulation of the forces of nature, and the free development of the productive forces of society.”³⁹⁶ Marx asserts that at a certain stage it initiates forces that bring about its destruction: “From that moment, new forces and new passions spring up in the bosom of society, forces and passions which feel themselves to be fettered by that society. It has to be annihilated; it is annihilated.”³⁹⁷ Recall that Hegel also speaks of grand historical developments in terms of ‘passions,’ of *pathos*.

For Marx, the transitions to the second phase of private property, the capitalist mode of production, occur through primitive accumulation, through the expropriations of the mass of producers. The competitive imperatives initiated by capitalist production break through and dissolve private property on a small-scale. The inexorable tendency of capitalism is to concentrate and centralize production on a grand social scale. As a first approximation, this is one of the reasons why Proudhon’s conception of socialism as small-scale ownership is inadequate. Indeed, for Marx, the annihilation of the “universal mediocrity” of small-scale production is precisely the historical justification for capitalism.³⁹⁸ It is for this reason that Marx casts the transition to the third phase, socialism, as the expropriation of the expropriators. In other words, Marx describes it in terms of the dialectic:

³⁹⁵ This paragraph draws heavily from Gray, ‘Planning for the Feast, op. cit.

³⁹⁶ Marx, *Capital: Volume One*, op. cit., 927.

³⁹⁷ Ibid., 928.

³⁹⁸ Ibid.

The capitalist mode of appropriation, which springs from the capitalist mode of production, produces capitalist private property. This is the first negation of individual private property, as founded on the labour of its proprietor. But capitalist production begets, with the inexorability of a natural process, its own negation. This is the negation of the negation. It does not re-establish private property, but it does indeed establish individual property on the basis of the achievements of the capitalist era: namely co-operation and the possession in common of the land and the means of production produced by labour itself.³⁹⁹

The essential foundation of Marx's historical materialism, of his universal history, is freedom. In the classical forms of non-capitalist class societies, workers own their conditions of production, which allows for small pockets of genuine freedom and community that are nonetheless enclosed in relations of direct unfreedom. The capitalist mode of production allows for formal freedom, which is 'universal' but 'abstract,' and thus, contains actual unfreedom. The socialist mode of production combines both moments. It is a qualitatively distinct form of society because it abolishes alienated labour and establishes genuinely cooperative production on a universal scale. The development of the general wealth of the species need no longer come at the expense of the individual. This is why Marx declares that, in socialism, "the free development of each is the condition for the free development of all."⁴⁰⁰

Why does Marx describe capitalist social relations as being both 'not unjust' and 'theft'? Marx seems to show that there is a contradiction between the bourgeois notions of justice, stated positively, to each their due, and stated negatively, do not steal. In other words, Marx appears to assert that capitalist property contravenes its own paramount values. Therefore, Marx does not reject Proudhon's utopian socialism because Proudhon bases his critique in the self-contradictions of capitalism, but because Proudhon sees these self-contradictions in a distorted form of capitalism rather than in capitalism itself. In other words, if Marx rejects Proudhon's coquetting with dialectics and with immanent critique, this does not mean Marx is not engaging in what he deems to be a genuine immanent critique.

³⁹⁹ Ibid., 929.

⁴⁰⁰ Karl Marx and Friedrich Engels, 'Manifesto of the Communist Party,' in *The Marx-Engels Reader*. 2nd ed.; ed. Robert C. Tucker (New York: W. W. Norton and Company, 1978), 490-91.

There are three reasons why Marx's immanent critique is more substantive than Proudhon's. First, when Marx describes the appropriation of surplus-value as the age-old trick of the conqueror, he is undermining Proudhon's belief that capitalism represents something qualitatively different in this respect. Exploitation is not merely the result of exceptional distortions of capitalist exchange, but rather is inherent to it. The laws of private property exist across the history of class societies. The tendencies of all of the previous forms of private property are revealed in their culmination: capital. Thus, when Marx engages in an immanent critique of capital, it is also a critique of that which is the crystallization of private property in its sweeping iron arc. Second, when Marx asserts that inequality is not a perversion of, but the realization of, exchange-value, he is asserting that to actually confront capitalism with its own contradictions is to demand that we go beyond capitalism as such. Indeed, Marx's invocations of 'dialectical inversions' are, in part, to demonstrate the correct use of the dialectical method against its mishandling by Proudhon. Third, contrary to Proudhon's strictures against political agitation, for Marx, immanent critique and the contradictions upon which it is based require an agonism in which history is propelled forward through educative conflict. As we saw, this is why Marx argues that the working class must become revolutionary, not only because the ruling class must be overthrown, but also because it is through struggle alone that workers become 'fit to rule,' to "found society anew."⁴⁰¹

Although Marx contends that Proudhon tries to overthrow capitalism using the standards drawn from capitalism itself, is this not what Marx is doing with immanent critique? Marx weighs these standards against themselves and determines whether or not they can survive the confrontation with their opposites. He argues that the standards put forward by capitalism cannot be realized within capitalism. They are necessarily contradictory. Is this not what Kant does with his principle of non-contradiction? It is not. The difference between, on the one hand, Kant and Proudhon, and on the other hand, Hegel and Marx, is that the former believe that non-contradictory moral action is possible in the prevailing conditions whereas the latter believe in the 'principle of contradiction' because, until the end of history, there are genuinely *tragic* situations where two actors or groups of actors can both be equally justified and yet necessarily opposed. In other words, for both of them to act morally requires either their mutual destruction or the permanent victory of one over the other. Hegel and Marx argue that morality is often

⁴⁰¹ Marx and Engels, *The German Ideology*, op. cit., 60.

formal because it could just as easily affirm a content opposite to that which it currently endorses. Indeed, abstract forms can give rise to two equally legitimate but necessarily opposed contents between which force alone decides. This is the basis of tragic situations in which conflict is necessary to render the form less formal, to make it more concrete. When a victor emerges and the conflict is resolved, the content better corresponds to its form. For Marx, the bourgeoisie is only ever a temporary victor over the proletariat because if it annihilated them, it would annihilate itself. Conversely, workers are the harbinger of a new age because, with their victory, with the abolition of capital, they not only survive, but flourish as free, de-alienated labour.

What does all of this entail for Marx's own conception of justice, if indeed he has one? I must end this chapter without answering this crucial question. We do not yet have enough information to resolve it definitively. We must first explore Marx's assertions about production and distribution in socialist society. Therefore, I cannot begin to offer definitive conclusions until the chapters on distributive justice. In later chapters, we will find that this exegesis of *Capital* was absolutely necessary for providing the context within which this question can be resolved. We will find that the discussions of the relations between property, justice, and theft, in the work of Hume, Kant, and especially Hegel, provide crucial philosophical context for Marx's method in *Capital* and in other works. Commentators, despite their predominantly idealist method, have missed this philosophical context. We will also find that other commentators have not resolved this question because they have neglected significant aspects of the dialectical movement expressed in Marx's *Capital*. In particular, we will see that a great deal of the confusion about Marx and justice has come from a failure to distinguish between, on the one hand, Marx's rejection of Proudhon's false immanent critique, and on the other hand, Marx's own immanent critique. Nevertheless, we will also have to ask the question of whether or not Marx casts his critique of utopianism too wide and defers to the future crucial questions about socialist practice which must actually be answered in the present.

In the meantime, we must turn to an exploration of the third wave of debates about the relation between Marx and ethics. Of the three waves of debate, it focuses most intensely on the question of justice, and in particular, on the question of the exploitative wage-relation between workers and capitalists. In other words, it centers on the question of commutative justice under capitalism, although, as we will see, they often wrongly describe it as a distributive justice. As I

have already briefly mentioned, three basic interpretations emerged from this third wave of debates. Extending what has come to be described as the ‘Tucker-Wood thesis,’ I refer to the two other sides as the ‘Cohen-Geras thesis’ and the ‘Buchanan-Lukes thesis,’ naming each after the most sophisticated or influential proponents of their respective interpretations. It is to the famous Tucker-Wood thesis that we now turn.

Chapter 6: The Tucker-Wood Thesis: Marx Deems Capitalism Commutatively Just

In this chapter and the two that follow, I offer close readings of a number of thinkers.⁴⁰² This may seem tedious at times, but since I make quite strong claims about all of the participants in these debates, and in particular, the third wave, I feel it is necessary to engage with all of them in some detail. When I assert that, as far as I know, no one has asked the questions or has used the method I pursue here, ‘as far as I know’ should count for something.

In this exploration of the most recent wave of debates about the question of Marx and justice, I will look first at those who argue that Marx does not condemn capitalist exploitation as unjust. Irrespective of whether or not they ultimately approve or disapprove, this side of the debate must not only demonstrate that Marx did not deem capitalism unjust, but on what grounds he does critique capitalism. The first sub-group we will study distinguishes between ‘moral’ and ‘non-moral’ goods. They argue that Marx deems capitalism just because he criticizes it according to ‘non-moral’ standards. This is argued by Tucker, Wood, Smart, Graham, McCarney, and Allen. This side of the debate also features another sub-group of theorists who, as we will see, argue that although Marx deems capitalism just, he criticizes it according to other moral principles that are separate from justice. This group includes Nasser and Brenkert. Finally, there is another sub-group, comprised of Reiman and Levine, who agree with Wood’s interpretation of Marx, but argue that Marx was wrong to deem capitalism commutatively just. I will look at each sub-group in turn.

We will find that the strongest evidence in favour of the Tucker-Wood thesis is that, first, Marx does not explicitly describe capitalism as unjust, and second, he explicitly states that, because standards of justice are historically-specific, one standard of justice cannot be used to condemn as unjust the social conditions in another historical context. Nevertheless, the greatest weakness of the Tucker-Wood thesis is that it neglects Marx’s use of immanent critique. Marx may deem bourgeois justice the only possible standard in capitalist conditions, but by describing exploitation as ‘theft,’ ‘robbery,’ and ‘plunder,’ he seems to undermine bourgeois justice on its own terms. Therefore, although Marx does not describe capitalism as unjust, this does not

⁴⁰² I presented an early draft of a paper that synthesized this and the next two chapters at the 73rd Annual Conference of the Midwest Political Science Association, Chicago, Illinois, April 17, 2015. I thank Simon Stacey and Tim John Beaumont for their helpful comments.

necessarily mean that he regards it as just either. In other words, Marx may not deem capitalism as positively just in any non-self-contradictory sense of the term.

In this chapter I will also single out for critique the frequently made distinction between ‘moral’ and ‘non-moral’ goods. This is one of many different examples of what I call ‘saving distinctions.’ I call them this because the commentators impute to Marx a distinction between two opposed things—a distinction that Marx does not explicitly state—in a way that *saves* the particular interpretation of Marx by that group of commentators. The proponents of the Tucker-Wood thesis are by no means alone in this. In the next two chapters, I will critique similar practices by the two other sides in this debate. In and of itself, there is nothing wrong with fleshing out latent distinctions or oppositions in Marx’s work, or extending Marx’s work by introducing new theoretical distinctions in illuminating ways. I critique something as a saving distinction when the commentators have misinterpreted Marx because they have prioritized the needs of their interpretation, as well as the worldview that follows from it, rather than first understanding Marx on his own terms according to his intended meaning.

Finally, I must note that in the next several chapters, I focus more on the accuracy of the interpretations of Marx rather than on the moral and political implications of these interpretations. I will save the latter for the final two chapters because the full ramifications of these interpretations can only be truly comprehended after we have explored each of the major aspects of justice, and in particular, complete justice. For the same reason, I reserve comments on some of Marx’s most problematic assertions, such as his aforementioned statements about the justice of slavery under a slave-based mode of production, until the final chapter. The study and unmasking of exploitation is important, but if this is all we focus on, as has been the tendency in the debates about Marxism and justice, the stakes are too low. This does not consider the full implications of a theory of justice. Even if we deem exploitation unjust according to a robust principle of commutative justice, this only gives us one or a few means by which to condemn capitalism as unjust. It does not give us much indication as to how these social circumstances can be changed. In the absence of a more comprehensive notion of justice, we have only the economic and political, but not the ethical preconditions of fundamentally transforming societal relations.

6. 1: Marx Criticizes Capitalism on Non-Moral Grounds

Robert Tucker, in *Philosophy and Myth in Karl Marx*, argues that the discovery of Marx's early texts changed the interpretation of Marx.⁴⁰³ Whereas previously it was thought that he is a social scientist who offers little or no ethical content, now Marx is seen more as a moralist. Tucker asserts: "Now a distinguishing mark of inquiry, whether in moral philosophy or other branches of philosophy or in science, is that thought proceeds from a methodological doubt, a suspension of commitment."⁴⁰⁴ It is according to this criterion that Tucker argues that Marx is a moralist, but is emphatically not a moral philosopher:

His system, comprised within the comprehensive framework of the Materialist Conception of History, is not constructed in the manner of a system of ethics. It is not an example of ethical inquiry. It does not start by raising the question of the supreme good for man or the criterion of right conduct; these questions are not raised by Marx *as questions*. What is more, he is adamantly opposed to raising them.⁴⁰⁵

Tucker's assertions about Marx are structured, in part, as a response to Karl Popper's interpretation of Marx as a moral philosopher.⁴⁰⁶ Popper, a former Marxist, came to reject it as pseudo-scientific. He asserts: "Marx, I believe, avoided an explicit moral theory, because he hated preaching. Deeply distrustful of the moralist, who usually preaches water and drinks wine, Marx was reluctant to formulate his ethical convictions explicitly."⁴⁰⁷ Nevertheless, Popper believes that Marx's *Capital* is a treatise of social ethics. It expresses a historically-relative ethics, a 'moral futurism' that embraces the morality of that social force whose victory is destined.

Popper argues that, if these questions were put to Marx, he would have answered as follows. Since moral ideas are weapons in the class struggle, I, as a social scientist, can examine

⁴⁰³ Tucker, *Philosophy and Myth in Karl Marx*, op. cit., 12.

⁴⁰⁴ Ibid., 15.

⁴⁰⁵ Ibid., 16.

⁴⁰⁶ Ibid., 21.

⁴⁰⁷ Karl R. Popper, *The Open Society and Its Enemies, Volume II: The High Tide of Prophecy: Hegel, Marx, and the Aftermath* (New Jersey: Princeton University Press, 1966), 199.

them without adopting them. Nevertheless, I must inevitably choose a moral system because even aloofness means taking certain sides.

Now since a decision is ‘moral’ only in relation to some previously accepted moral code, my fundamental decision can be no ‘moral’ decision at all. But it can be a scientific decision. For as a social scientist, I am able to see what is going to happen. I am able to see that the bourgeoisie, and with it its system of morals, is bound to disappear, and that the proletariat, and with it a new system of morals, is bound to win.⁴⁰⁸

Popper rejects Marx’s moral futurism because he finds untenable the assertion that one can come to certain moral commitments on the basis of ‘scientific’ predictions.⁴⁰⁹ Indeed, choosing a moral system is itself a moral decision. Although Popper declares scientific socialism dead, he nonetheless believes that Marx’s “moral radicalism,” the true basis of Marx’s influence, is worth preserving.⁴¹⁰

Against Popper’s interpretation of Marx as a ‘moral futurist,’ Tucker argues, as did the ‘Austrian Marxists,’ that the inevitability of something says nothing about its desirability.⁴¹¹ If anything, Tucker argues, Marx can be better understood as a religious rather than an ethical thinker: “The religious essence of Marxism is superficially obscured by Marx’s rejection of the traditional religions.”⁴¹² Marxism shares a number of a features with traditional religions. They both provide an “integrated, all-inclusive view of reality”; both tell history in terms of a beginning, middle, and end; both offer a theme of a salvation; and both affirm the unity of theory and practice.⁴¹³

In Tucker’s subsequent book, *The Marxian Revolutionary Idea*, he focuses specifically on justice. Tucker argues that Marx and Engels are not really concerned with justice at all: “Their condemnation of capitalism was not predicated upon a protest against injustice, and they did not envisage the future communist society as a kingdom of justice. In general, they were

⁴⁰⁸ Ibid., 203-4.

⁴⁰⁹ Ibid., 205.

⁴¹⁰ Ibid., 211.

⁴¹¹ Tucker, *Philosophy and Myth in Karl Marx*, op. cit., 21.

⁴¹² Ibid., 22.

⁴¹³ Ibid., 22-24.

opposed to the notion that socialism or communism turns principally on the matter of distribution.”⁴¹⁴ This assumes that justice is reducible to matters of ‘distribution.’ Tucker affirms the functionalist interpretation of justice. The exploitation of wage labour is just according to the only “applicable” notion of justice in the existing mode of production.⁴¹⁵ Marx rejects Proudhon’s assertion that profit derived from wage-labour is theft.⁴¹⁶ Nevertheless, Tucker has to contend not only with Marx’s critique of Proudhon, but all of those occasions when Marx describes appropriation as theft, robbery, and plunder. Tucker does not do so.

According to Tucker, Marx’s basic criterion is not justice, but freedom. Marx criticizes capitalism because its intensified division of work turns it into a torment and dehumanizes workers: “Thus, capitalism for Marx and Engels is evil but not inequitable.”⁴¹⁷ Therefore, Marx affirms communism not because it is a more just society, but because it would permit the full-realization of the “producing animal” who pursues creative activity as an end in itself.⁴¹⁸

The assertion that Marx rejects principles of justice but affirms principles of freedom is often repeated by subsequent commentators. As we have seen, the displacement of justice by freedom is a widespread tendency under capitalism. I have tried to explain this in terms of the historically-specific relations of capitalism. For all of those theorists who argue that, for Marx, the critique of capitalism and the praise of socialism are based in a principle of freedom, not justice, the question arises: is this an uncritical absorption of capitalist social relations? Is this ideological? As we will see, these commentators have never even asked this question, let alone answered it. This, after all, is when ideology is at its strongest. They need not provide the answers for questions they do not think to ask.

Bertell Ollman disagrees with Tucker’s assertion that Marx is a religious thinker, but he largely agrees with Tucker’s analysis of the relation between Marx and ethics.⁴¹⁹ Following Tucker, Ollman asserts that ethical inquiry requires that we suspend our commitments and consciously choose to approve or disapprove of a certain state of affairs. Ollman argues that Marx does neither. We cannot say that with regard to the matters that Marx studied, he could

⁴¹⁴ Tucker, *The Marxian Revolutionary Idea*, op. cit., 36-7.

⁴¹⁵ Ibid., 44.

⁴¹⁶ Ibid., 46.

⁴¹⁷ Ibid.

⁴¹⁸ Ibid., 50.

⁴¹⁹ Bertell Ollman, *Alienation: Marx’s Conception of Man in Capitalist Society* (New York: Cambridge University Press, 1977), 44.

have judged otherwise.⁴²⁰ This would appear to attribute dogmatism to Marx. Nevertheless, Ollman has a very specific notion of what ethics entails. Ollman asserts that ethical judgement exists outside of what it evaluates, makes its judgement according to a conscious choice. This, however, is not an unproblematic notion of ethics. To take but one example of a different perspective, Yves Simon relates modern notions of the purely mechanistic universe with the idea, quite prevalent in economic theory, that the value of a thing has nothing to do with its relation to the good human life. Rather, this is determined entirely by what individuals are willing to pay for it: “At any rate, when we hear today of moral values, etc., we should know where these come from. They come from the mind, they come from outside the things, they are not embodied in entities, in nature.”⁴²¹ Indeed, that Ollman separates the judgement from what is judged is all the more peculiar because it may very well be an example of the fact-value distinction he rejects.⁴²²

Ollman also gives a functionalist explanation of ethics. He argues that the attempt to establish universal values is necessarily abstract because it cannot account for unequal conditions and incompatible interests. Therefore, every attempt to do so is motivated by the defusing of class conflict.⁴²³ This assumes, however, that these universal values must be based in consensus, a distinctly liberal idea. Ollman does not consider that these universal values could be based in an objective standard by which some individual, groups, or classes, can be found wanting. As we will see, the assumption that justice entails consensus is frequent in these debates. It is a particular aspect of a broader problem. Marxist commentators deny that Marx and Marxism has or should have an ethics because, in a functionalist manner, they assume that ethics is reducible to the liberal variant of ethics. The real question, however, is whether or not this historical relativism and functionalism is as much a product of contemporary social relations as are the moral theories they reject.

Ollman ultimately argues that Marx and Marxism do not have or need an ethics:

to accept that Marxism either is or contains an ethic, to admit that Marx operated from fixed principles (whatever content one gives them), is to put Marx on the

⁴²⁰ Ibid.

⁴²¹ Yves R. Simon, *The Tradition of Natural Law: A Philosopher's Reflections* (New York: Fordham University Press, 1965), 50-51.

⁴²² Ollman, op. cit., 45.

⁴²³ Ibid., 46-47.

same logical plane as his opponents. It is to suggest that Marx, for all his effort at historical explanation and despite his explicit denial, criticized them because he favored different principles. In which case, the capitalist ideologist easily removes the noose Marx has placed around his neck by the simple device of rejecting what passes for the latter's principles.⁴²⁴

First, we must ask, what is wrong with being on the same logical plane with one's opponents? When Marx developed his conception of the labour theory of value, did he not enter the realm of Petty, Smith, and Ricardo? Ollman can only assert these things because, despite his earlier rejection of the separation between description and prescription, he believes that a discussion of the labour theory of value is not inherently normative in its choice of subject, method of analysis, or conclusions. Only by being mired in this inconsistency can Ollman assert that Marx's purely descriptive analysis places him on a different logical plane. Furthermore, it would not be too difficult for opponents to reject Marx's historical explanations either. In fact, that is what inspired Popper's critique of Marx's claim to scientific status. Finally, perhaps it was the excess of historical explanations devoid of fixed principles by which world socialism slipped the noose around its own neck.

Allen Wood is the most influential proponent of the idea that Marx does not deem capitalism unjust.⁴²⁵ Wood, like Tucker, more or less assumes that justice is reducible to historically-specific juridical relations. In other words, the purpose of justice is functionalist: it preserves the prevailing social order. Therefore, in Wood's interpretation of Marx, capitalism is just according to the only possible standard under capitalist social relations: the bourgeois notion of justice as equal exchange. That justice is a merely legal or juridical concept means that it is not a particularly important concept in the critique of society. Since juridical institutions play only a supporting role in social life, they cannot be the fundamental standpoint from which to judge social reality.⁴²⁶ More importantly, justice cannot be an abstract standard by which human reason evaluates the institutions in different modes of production. Rather, justice is how each mode of production evaluates itself.⁴²⁷ Otherwise, justice becomes an "empty and useless"

⁴²⁴ Ibid., 50.

⁴²⁵ Wood, 'The Marxian Critique of Justice,' op. cit.

⁴²⁶ Ibid., 14.

⁴²⁷ Ibid., 15-16.

philosophical principle abstracted from its concrete contexts: “the justice of the act or institutions is its concrete fittingness to *this* situation, in *this* mode of production.”⁴²⁸

Wood is highly critical of imposing historically-specific ideas about justice on different historical contexts. Since the institution of slavery is not functional for the capitalist mode of production, we who are in capitalist society tend to deem slavery unjust. Nevertheless, it would be ahistorical for us to impose our notion of justice on the era of slave-based modes of production. For the same reason, it would be incorrect to evaluate capitalism according to any principle of justice other than that which corresponds to it. Although Wood argues that Marx has a functionalist theory of justice, he denies that Marx is a relativist. This is because Wood has a very specific concept of relativism. For Wood, relativism means that certain actions are only just or unjust as judged by a specific individual, culture, or epoch. Therefore, relativism means that justice is purely subjective and that there is no rational means by which to resolve disagreements about it. Conversely, Marx is able to discuss justice rationally. If historical analysis reveals that slavery was functional to that mode of production, it was a just institution. This evaluation of that institution is true not only for them, but for anyone, including us.⁴²⁹ Slavery only becomes unjust in a different mode of production. Consequently, anyone who asserts that the institution of slavery was unjust in a slave-based economy is simply wrong. Nevertheless, though Marxism may not be a form of relativism in Wood’s sense of the term, it may be relativist in other relevant senses. I will address this in later chapters.

Wood takes to its logical extent the argument that the wage-relation, though exploitative, is just according to the only possible standards:

Under a capitalist mode of production the appropriation of surplus value is not only just, but any attempt to deprive capital of it would be a positive injustice. Marx rejected slogans like ‘a just wage’ and ‘a fair day’s wages for a fair day’s work’ because in his view the worker was already receiving what these slogans were asking for. A ‘just wage,’ simply because it is a wage, involves the purchase of labor power by capital. The worker is exploited every bit as much when he is paid just wages as when he is paid unjust ones.⁴³⁰

⁴²⁸ Ibid., 16.

⁴²⁹ Ibid., 18.

⁴³⁰ Ibid., 24-25.

In support of this view, Wood cites those passages where Marx describes the sphere of commodity exchange as “a very Eden of the innate rights of man. It is the exclusive realm of Freedom, Equality, Property and Bentham.”⁴³¹ Wood’s assertions here have received much scorn from Marxists. It should be noted that when Wood speaks of a ‘positive injustice,’ he is not referring to adjustments in wages that affect the degree of exploitation. Rather, he is critical of attempts to condemn exploitation as unjust while we remain within the capitalist mode of production. Therefore, Wood’s assertions are not implausible. Many of those who critique Wood invest much importance in Marx’s assertions about robbery and theft. We must recall, however, that Marx speaks not only of the capitalist robbing the worker. He also speaks of the worker robbing the capitalist: “The time during which the worker works is the time during which the capitalist consumed the labour-power he has bought from him. If the worker consumes his disposable time for himself, he robs the capitalist.”⁴³² This is enough to show that, at the very least, Wood’s assertions cannot be immediately dismissed.

There are reasons, however, to find fault with Wood’s assertion that depriving capitalists of surplus-value would constitute a ‘positive injustice.’ Take, for example, Marx’s speech to the General Council of the First International around the time he was completing *Capital*. This speech was later published in the pamphlet *Value, Price, and Profit*. In this speech, Marx offers a justification for workers using class struggle to improve their wages. In doing so he appeals to what is due to the labourer. Nevertheless, this is a political tract. It does not adhere as closely to the method of immanent critique as do Marx’s works in scientific political economy. He is therefore less concerned with remaining within the laws of private property. Marx argues that when productivity declines, and thus, the value of labour increases, workers, in their demands for higher wages, can appeal to standards internal to the market: the higher value of their commodified labour-power. Marx then argues, however, that even when productivity increases, as is the general tendency under capitalism, wage increases can be justified as recompense for the contribution that appropriated surplus labour makes to the technological developments that lead to greater efficiency.⁴³³ Therefore, Marx argues in favour of increasing wages irrespective

⁴³¹ Ibid., 21.

⁴³² Marx, *Capital: Volume One*, op. cit., 342.

⁴³³ Karl Marx, *Value, Price and Profit*, ed. Eleanor Marx Aveling (New York: International Publishers Co., Inc., 1935), 50-51.

of the economic conditions.⁴³⁴ It seems that, for Marx, the ultimate criterion here is whatever is in the interests of the working class. We will return to this point in later chapters. What this indicates for our purposes here, however, is that, although Marx may not regard capitalism as unjust, perhaps he does not deem it positively just either. Therefore, he may not regard the seizure of surplus-value by workers as positively unjust in any meaningful sense. We will also return to this claim in later chapters.

If Marx does not critique capitalism as unjust, what is the basis of his critique? Wood distinguishes between ‘moral’ goods and ‘non-moral’ goods. Moral goods are things we value because of conscience or obligation. They include things like virtue, right, duty, and justice. Non-moral goods are things we value because they satisfy our needs and wants. These include health, freedom, and self-actualization.⁴³⁵ For Wood, Marx bases his critique of capitalism and his affirmation of socialism on non-moral goods.⁴³⁶ Wood concedes that Marx describes socialist society as bringing an end to alienation and inaugurating the free and full development of each and all. Indeed, Wood depicts these statements as “the liturgy which self-styled ‘Marxist humanism’ never tires of chanting.”⁴³⁷ Nevertheless, Wood argues that Marx rejects any notion of a “disinterested human good,”⁴³⁸ including justice. Instead, he roots social practice in class-interest and the expansion of non-moral goods.

Although, as Wood notes, Marx does not explicitly draw the distinction between moral and non-moral goods, “it is not implausible to think that Marx might be tacitly aware of it and even make significant use of it without consciously attending to it.”⁴³⁹ In order to sustain his position, therefore, Wood must impute things to Marx. He must go beyond the letter of what Marx says and speculate about the spirit of what he says. Nevertheless, the distinction between moral and non-moral goods may be a manifestation of the separation between values and facts. Perhaps Wood goes beyond the spirit of Marx too.

⁴³⁴ Wood, in another text which we will study later, argues that Marx cannot be considered an egalitarian (Allen W. Wood, ‘Marx and Equality,’ in *Issues in Marxist Philosophy, Volume IV: Social and Political Philosophy*, eds. John Mepham and David-Hillel Ruben (New Jersey: Harvester Press, 1981), 131). It is worth noting that Marx adds another justification for wage increases: they maintain the workers’ social position relative to capital. Marx makes an appeal to equality to the extent that it is possible under capitalism.

⁴³⁵ Allen W. Wood, *Karl Marx* (Boston: Routledge & Kegan Paul, 1981), 126-7.

⁴³⁶ *Ibid.*, 127.

⁴³⁷ Allen W. Wood, ‘Justice and Class Interests,’ *Philosophica*, 33.1 (1984): 9-32; 21.

⁴³⁸ *Ibid.*, 22.

⁴³⁹ Wood, *Karl Marx*, op. cit., 127.

Wood's distinction between moral and non-moral goods corresponds to his assertions about the use of the concept of justice in historical analysis. Wood asserts,

Marx's conception of nonmoral goods is different from his conception of moral goods. Marx believes that judgments about the nonmoral good of men and women can be based on actual, objective (though historically conditioned and variable) potentialities, needs and interests of human beings. But he sees moral norms as having no better foundation than their serviceability to transient forms of human social intercourse, and most fundamentally, to the social requirements of a given mode of production.⁴⁴⁰

If the non-moral goods are historically-conditioned, however, it is not clear how they are more 'objective' than historically-conditioned moral goods. It appears that Wood is making an assumption, common among proponents of his interpretation, that freedom and self-realization are material, objective, ontological aspects of human beings. Even if a non-moral good like freedom has various forms of expression across human history, it has an objectivity by which these different modes of production can be compared. Conversely, 'moral' goods such as justice are not ontological aspects of human nature. Rather, they are functional to the reproduction of the prevailing social order.

The idea that anything but a functionalist account of justice is necessarily ahistorical and abstract is one of the most common assumptions in these debates. It is often stated but rarely argued. Wood follows Engels's assertions that what people describe as 'natural right' and 'eternal justice' are merely what all of the distinct legal systems have in common.⁴⁴¹ Therefore, the only alternative to a functionalist idea of justice is the idea of eternal justice, which, for Wood, is an abstract expression by which everyone means something different. First, as Peffer notes, that a concept is wracked by differences of opinion does not constitute an immediate reason for refuting it.⁴⁴² The assertion that profound disagreement precludes the idea of justice assumes that it, and ethics in general, is supposed to be immediately intelligible and self-evident.

⁴⁴⁰ Ibid., 128.

⁴⁴¹ Wood, 'The Marxian Critique of Justice,' op. cit., 17, n. 25.

⁴⁴² R. G. Peffer, *Marxism, Morality, and Social Justice* (Princeton, New Jersey: Princeton University Press, 1990), 322.

This is not necessarily the case. This, like the distinction between moral and non-moral goods, is a common assumption under capitalist modernity. It is worth asking whether or not Wood uncritically absorbs these assumptions.

As Norton notes, when compared to the broader history of ethics, modern moral philosophy is a kind of ‘moral minimalism’ in two different ways.⁴⁴³ First, rather than regarding ethics as something by which the various social spheres are integrated, it minimizes the moral realm to a small part of human experience which is enclosed within vast ‘non-moral spheres.’ Indeed, many things currently deemed ‘non-moral’ are ‘moral’ according to classical ethics. Norton offers as an example the choice of vocation. Second, Norton argues that modern moral philosophy is minimalist because it makes minimal demands on the individual in terms of the life-long development of their character. Modern moral philosophies often rely on a relatively simple and universally applicable moral principle which anyone should be able to comprehend more or less immediately. In other words, modern moral philosophy often puts forward an overarching moral rule, criteria for distinguishing moral from non-moral situations, and a subset of rules for applying that principle to any possible moral situation. Moral conduct is therefore the dutiful application of this rule.⁴⁴⁴ These two forms of moral minimalism often converge. For example, J. S. Mill drastically reduces the scope of the moral realm. He regards ninety-nine percent of all human actions as morally-indifferent because demanding that we promote the greatest happiness with every single action would entail unbearable burdens.⁴⁴⁵

Norton offers a few reasons to be critical of modern moral minimalism. First, it exempts certain actions from normative scrutiny if they fall into self-described non-moral spheres. His examples are science and economics. Second, it is unable to account for the contingency of circumstances. And third, it does not take sufficient account of the lifelong development of our personal character amid specific social relations.⁴⁴⁶ Indeed, Norton’s critique of modern moral minimalism is quite similar to Hegel’s critique of the morality of the ‘ought,’ of the formalism he attributes to moral philosophers like Kant. Norton’s arguments are complimented by Beiner’s commentary on the differences between Habermas’s neo-Kantianism and Gadamer’s neo-

⁴⁴³ David L. Norton, ‘Moral Minimalism and the Development of Moral Character,’ *Midwest Studies in Philosophy*, 13.1 (1988): 180-195.

⁴⁴⁴ *Ibid.*, 181-83.

⁴⁴⁵ *Ibid.*, 183.

⁴⁴⁶ *Ibid.*, 184; 187; 192.

Aristotelianism.⁴⁴⁷ Beiner argues that what is absent from modern morality is the way in which prudence or practical reason relates abstract theory to concrete practice: “Part of the explanation for the primacy of *ethos* is that in order for moral convictions to have force within the life of concrete societies, ethical intuitions must possess a great deal more self-certainty than they could possibly gather from merely theoretical demonstrations.”⁴⁴⁸ Even the most robust theory must still address how it is to applied to particular situations. Beiner ultimately contends that, “Good theory is no substitute for good socialization, and even the best theory is utterly helpless in the face of bad socialization.”⁴⁴⁹ When Wood separates the moral from the non-moral, he may be stripping practical reason of its ethical considerations and thereby turning it into a form of instrumental rationality. This risks the consequences typical of Kautsky and his followers.

I raise here the arguments of Norton and Beiner because, even though Wood may reject bourgeois morality, in the process, he may have unwittingly adopted some of its basic assumptions. We have seen, for example, that in the modern view, justice is often deemed to be the attempt to create consensus, or at least, to limit conflict, between self-interested individuals. In other words, justice should foster peace and stability by constructing the minimal amount of rules necessary to regulate the otherwise purely subjective goods pursued by individuals. It is therefore possible that Wood projects this historically-specific conception of justice on all modes of production as such. By evaluating institutions of slavery and wage-labour in terms of whether or not they are functional to the slave mode of production and to the capitalist mode of production, he may be imposing a historically-specific idea of justice on every form of society across history. Wood may have uncritically absorbed the idea that justice is not based in some notion of the objective goods, but rather that it entails a specific set of juridical relations functional for its particular economic base. Indeed, Wood may be engaging in the ahistoricism he so often condemns.

Paul Smart agrees with Wood’s interpretation, and in particular, his distinction between moral and non-moral goods. Smart is more vitriolic about the moral goods, describing them as “things which we pursue because we believe (or perhaps more pertinently, others believe) we

⁴⁴⁷ Ronald Beiner, ‘Do We Need a Philosophical Ethics? Theory, Prudence, and the Primacy of *Ethos*,’ in *Action and Contemplation: Studies in the Moral and Political Thought of Aristotle*, eds. Robert C. Bartlett and Susan D. Collins (New York: State University of New York Press, 1999).

⁴⁴⁸ *Ibid.*, 43.

⁴⁴⁹ *Ibid.*, 44.

ought to, and which conform to pre-existing virtues, rights, duties and codes of justice.”⁴⁵⁰ Smart contends that Marx’s positions on justice are in part a response to the old-fashioned notions of the labour theory of value, typical of Locke, which assert that workers have a right to the fruits of their labour.⁴⁵¹ According to Smart, this idea applied to a time when individuals confronted each other as not only the owners of products, but also the means of production. With the development of capitalism, however, there has been a widespread dispossession of workers of the means of production. Consequently, this traditional labour theory of property, as well as the expectation that workers should possess the full fruits of their labour, have become outmoded. Hence, Smart argues, Marx does not deem the appropriation of surplus-labour as unjust.

As evidence for this perspective, Smart quotes a statement by Marx which we addressed in an earlier chapter:

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 to be the impossibility, on the part of the labourer, of appropriating his own product. The separation of property from labour has become the necessary consequence of a law that apparently originated in their identity.⁴⁵²

As is often the case in these debates, Smart misses how Marx’s assertion here is not a historical explanation describing the transition from one form of proprietary relations to another. Rather, as we have seen, this is an immanent critique of political economy and the moral principles it espouses. This is why the most overtly historical chapters in *Capital*, the section on primitive accumulation, come after this passage. This is not to deny every aspect of Smart’s assertion. In the chapter on Marx’s *Capital* I offered reasons to suggest that Marx is sceptical of criticizing capitalism according to principles of justice that are rooted in labour-contribution. Nevertheless, when Smart neglects Marx’s immanent critique, he also ignores the extent to which Marx undermines liberal political economy according to its own notions of justice.

⁴⁵⁰ Paul Smart, *Mill and Marx: Individual Liberty and the Roads to Freedom* (New York: Manchester University Press, 1991), 143.

⁴⁵¹ *Ibid.*, 137.

⁴⁵² Quoting Marx, *ibid.*

Smart takes the functionalist account of justice to its logical conclusion. He argues that, for Marx, the communist ethic cannot be applied to practices within capitalism.⁴⁵³ Even in the period when socialists thought that capitalism could be overthrown in a single insurrection, the idea that the intervening period between modes of production is totally devoid of ethics would be hard to sustain. Every serious socialist must now concede that this intervening period would be much longer than initially anticipated. Any revolutionary rupture would require a great deal of prefiguration within and against capitalism. This makes it even more difficult to displace the question of the new ethics to the communist future. Indeed, neglect of the former may have been a major factor in the failure of the latter.

Keith Graham argues that Marx does not appeal to principles of justice in his critique of capitalism. Marx's primary aim is not a fairer distribution of goods. Rather, it is putting an end to the "literal loss of life consequent on the need to sell one's labour-power."⁴⁵⁴ Like Smart, Graham rejects the idea that Marx bases a principle of justice in the notion of labour-contribution. With regard to the passage in *Capital* when Marx speaks of the 'illusions of justice held by both worker and capitalist,' Graham asserts: "The conception of justice itself arises from misperception of the nature of the exchange between worker and capitalist, and the mistaken notion that it is labour rather than labour-power which is sold."⁴⁵⁵ The wage-relation only appears unjust to those who, like Proudhon, think the worker exchanges labour instead of labour-power. Only if it were the former would the worker be entitled to all of the value they produce, the full fruits of their labour. Nevertheless, like all of the commentators who hold these positions, Graham must contend with those passages where Marx describes exploitation as theft.

Graham offers a number of arguments as to why Marx describes exploitation as 'robbery' but does not deem it unjust. Graham asserts:

Robbing is defined in the *Shorter Oxford Dictionary* as depriving someone of something by unlawful force *or* superior power. This mirrors well the distinction between *de jure* and *de facto* ownership, and indicates a similar distinction in the case of robbery. It can be specified in a way entirely free of reference to legal or

⁴⁵³ Ibid., 161.

⁴⁵⁴ Keith Graham, *Karl Marx: Our Contemporary: Social Theory for a Post-Leninist World* (Toronto: University of Toronto Press, 1992), 114.

⁴⁵⁵ Ibid., 113.

moral notions. Marx's characterization of capitalist exploitation as involving robbery does not, therefore, commit him to the claim that it is unjust.⁴⁵⁶

Graham's distinction between the *de facto* and the *de jure* is based on a misinterpretation of the following statement by Marx: "Landed property presupposes that certain persons *enjoy the monopoly of disposing of* particular portions of the globe...Nothing is settled with the *legal power* of these persons to use and misuse certain portions of the globe. The *use* of this power depends entirely on economic conditions..."⁴⁵⁷ Graham argues that this supports the distinction between *de facto* and *de jure* ownership of property, which corresponds to the distinction between base and superstructure. Graham misunderstands Marx here. It is certainly true that Marx deems economic conditions more fundamental than legal relations and that revolutionary changes in the economic conditions precede their normalization by new legal relations. Nevertheless, these 'de facto' economic conditions are not so separate from the 'de jure' character of their legal relations that the ruling class could constantly and visibly affront them. A power resting purely on coercion tends to be unstable. This makes it more likely that when Marx speaks of exploitation as a form of theft, he is speaking not only in this 'de facto' sense, but also with the intention to show how, if we look below the surface, it consistently affronts its 'de jure' laws and rules. In other words, Graham's distinction between *de facto* and *de jure* neglects Marx's immanent critique.

Graham, like Wood, assumes that justice is reducible to juridical relations: "When [Marx] speaks scathingly of notions of morality and justice, this is on the grounds not of their dubious cognitive status but of their dubious social function in reinforcing existing attitudes and relations."⁴⁵⁸ It is not clear how we can distinguish between the cognitive status of a thing and its social function when what we are talking about is Marx's social theory, a theory that purports to explain society. At the very least, there is no evidence that Marx would support some such distinction. Graham continues: "In normal circumstances it would be entirely inappropriate to confront one's robber with the proposition that they are acting unjustly. Their conduct already shows that they allow that fact no influence on their conduct."⁴⁵⁹ The mugger and the capitalist

⁴⁵⁶ Ibid., 112-13

⁴⁵⁷ Ibid., 51. The ellipses are Graham's.

⁴⁵⁸ Ibid., 113.

⁴⁵⁹ Ibid., 113.

are not analogous. This is precisely the need for immanent critique. The mugger knows that they are engaged in robbery, in a crime. There is no dominant ideology that tells them otherwise. Conversely, the capitalist does not necessarily know where surplus-value comes from, and thus, that they are engaged in theft. In fact, the whole point of the ideological mystification of the exchange relation is to hide the fact that it is robbery at all.

Joseph McCarney contributes to this debate in two separate works. The first is more dismissive of the debate than the second. In his first contribution, *Social Theory and the Crisis of Marxism*, McCarney rejects those who would ascribe a theory of justice to Marx. McCarney argues that this turn to ethics is inspired in large part by the decline of world socialism and the labour movement:

Deprived of the possibility of being the mouthpiece of a world-transforming movement, they may seek to retain a link with practice by becoming providers of practical reasons; that is, reasons for acting to bring about change. These reasons have to be grounded in a negative evaluation of the object to be changed. Thus, socialist theory becomes in essence normative theory.⁴⁶⁰

This may be an accurate description of many of these Marxists. Nevertheless, it does not refute them. Indeed, it does not consider whether or not the study of ethics was as necessary—*more necessary*—when world socialism was at the height of its power. It is clear why McCarney does not consider this. He asserts that, with the decline of world-historical movements, “Ethics has in the end to replace ontology.”⁴⁶¹ This assumes uncritically that ethics is not ontological. In other words, it assumes a fact-value distinction.

McCarney revisits this debate in a subsequent article, ‘Marx and Justice Again.’⁴⁶² He notes how some argue that, although Marx depicts capitalist exchange as just, he believes that the more fundamental production relations are unjust. McCarney responds that, while Marx does not describe these production relations as just, it is equally significant that he does not describe them as unjust: “It is perhaps well to be cautious about assuming that Marx, or any serious thinker, is doing ‘in effect’ what he or she is perfectly capable of doing ‘in so many words’ and

⁴⁶⁰ Joseph McCarney, *Social Theory and the Crisis of Marxism* (London: Verso, 1990), 174.

⁴⁶¹ *Ibid.*, 174.

⁴⁶² Joseph McCarney, ‘Marx and Justice Again,’ *New Left Review*, 195 (September–October 1992): 29–36.

yet omits to do in those words at every conceivable opportunity.”⁴⁶³ This is entirely correct. Nevertheless, his subsequent arguments are less compelling.

McCarney argues that Marx has an extremely narrow concept of justice that, in a positivist manner, reduces it to the conventional juridical norms internal to the capitalist social order.⁴⁶⁴ For this concept of justice, the exploitation in the wage-relation is necessarily invisible. Even the best of the classical political economists could not penetrate to these depths:

He explicitly connects the ability to do so with his own distinctive achievements in political economy, the discovery of the true nature of surplus-value and of the distinction between abstract and concrete labour. These are plainly matters that fall outside the scope of the prevailing or conventional norms. Hence, Marx makes no attempt to deal with them in terms of a concept governed by those norms.⁴⁶⁵

And yet, Marx’s critique of the labour theory of value results in his own version of that theory. Why is justice different? If Marx rejects a narrow conception of capitalist exchange and insists we interrogate the ‘hidden abode’ of production, why is he content with the narrow conception of justice? Is there a ‘hidden abode’ of justice? Even if capitalist production determines juridical norms, does this warrant a positivist conception of the latter? Must our critique of the ‘superstructure’ be *superficial*?

McCarney notes how Marx speaks of exploitation in terms of ‘theft’:

What Marx’s practice may reasonably be taken to imply is that the negatively evaluative terms noted above have, unlike ‘just’ and ‘unjust,’ some element of absolute or trans-historical meaning, or at any rate of meaning which is not wholly relativized to a particular social order. It is hard to see why such an implication should not be allowed. We are, after all, under no compulsion to treat justice and robbery or theft as logically interdependent notions at the same theoretical level. Indeed, various writers on Marx have sought to exploit the

⁴⁶³ Ibid., 33.

⁴⁶⁴ Ibid.

⁴⁶⁵ Ibid.

fluidity of the situation precisely by holding them categorically apart for their own interpretative purposes. Their efforts meet with no resistance from everyday thinking. We find no strain in agreeing both that Robin Hood did indeed rob the rich to give to the poor and that what he did was just or not unjust. Marx may analogously be allowed to hold that what the capitalist does with labour-power is robbery without being committed to holding that it must be a breach of justice.⁴⁶⁶

There are a number of problems here. First, Marx does not deem the prohibition against theft to be trans-historical. Like Hegel, he deems it the consummate principle of private property. In other words, it is a historical phenomenon. Second, McCarney contradicts himself. He is vindicating what he deems to be Marx's extremely narrow concept of justice. Therefore, according to McCarney, Marx would say that, according to the only principle of justice now available, Robin Hood acts unjustly. McCarney must then ask why we 'find no strain' in thinking otherwise. Finally, why is 'everyday thinking' an appropriate standard? Marx, in the preface to the first edition of *Capital*, explicitly rejects it: "I welcome every opinion based on scientific criticism. As to the prejudices of so-called public opinion, to which I have never made concessions, now, as ever, my maxim is that of the great Florentine: '*Segui il tuo corso, e lascia dir le genti.*'"⁴⁶⁷ In other words, 'Go on your way, and let the people talk.' Making philosophy practical and subordinating it to 'everyday thinking' are not the same thing.

McCarney concludes that, since neither Marx nor any other commentators have a "copyright" on their notions of justice, each is as entitled to their views as are any of the others.⁴⁶⁸ McCarney can only argue this because, as we saw, he believes that ethics, or at least justice, is not ontological: "We do find it easy to think of justice as a context-bound, and specifically juridical, notion in a way that, say, freedom or self-realization are not."⁴⁶⁹ Perhaps the belief that justice is context-bound is itself context-bound. Furthermore, even if the discussions about justice had no real referent, one would still be obliged to achieve some objectivity by studying the history of the theories of that concept. Even this is all too rare in these debates.

⁴⁶⁶ Ibid., 34.

⁴⁶⁷ Marx, *Capital: Volume One*, op. cit., 93.

⁴⁶⁸ Joseph McCarney, 'Marx and Justice Again,' op. cit., 36.

⁴⁶⁹ Ibid., 35.

Derek Allen argues that the fundamental issue in this debate is if Marx assesses capitalism with the standards that correspond to it or with alternative standards.⁴⁷⁰ Allen agrees with Wood that, for Marx, different notions of justice are functional for or correspond to different modes of production. Nevertheless, Allen also argues that notions of justice are not necessarily specific to each mode of production.⁴⁷¹ He cites the following assertion from Marx's depiction of distribution under the first phase of socialism: "*equal right* here is still in principle—*bourgeois right*, although principle and practice are no longer in conflict."⁴⁷² We will examine this passage more closely in the chapters on distributive justice. In particular, we will focus on what Marx regards as a conflict between principle and practice. As we will see, Marx asserts that capitalism and the first phase of socialism share the same principle in the allocation or distribution of goods, although socialism adheres to it more adequately.⁴⁷³ This is why Allen thinks that these standards are functional for the modes of production but not necessarily specific to them. If Marx thought that these standards were specific to each mode of production, his comparison between capitalism and the first phase of socialism would not make sense.

Allen speaks of "transactional justice," a term he gets from Marx's aforementioned commentary on Gilbart in *Capital: Volume Three*. Allen asserts: "Among the transactions which correspond to the capitalist mode of production are wage transactions, interest transactions, and rent transactions."⁴⁷⁴ According to Allen, neither Marx nor Engels define justice, but their assertions about it are compatible with the classical view of economic and social theory, namely, "the essence of distributive justice lies in treating persons according to their deserts."⁴⁷⁵ Allen seems to be distinguishing between, on the one hand, the 'transactional' justice specific to capitalism, and on the other hand, 'distributive' justice, not because they are materially different, but because the latter *as a conception* has a long philosophical pedigree that includes the former within it. Allen asserts that the standard of 'desert,' or what we could call 'due,' is relative to the existing mode of production.⁴⁷⁶ Nevertheless, transactional justice is the 'distributive' principle for both capitalism and socialism, although in the latter, this does not entail the exchange of

⁴⁷⁰ Allen, op. cit.

⁴⁷¹ Ibid., 229.

⁴⁷² Marx, *Critique of the Gotha Programme*, op. cit., 9.

⁴⁷³ Allen, op. cit., 229.

⁴⁷⁴ Ibid., 223.

⁴⁷⁵ Ibid., 227.

⁴⁷⁶ Ibid., 229.

commodities.⁴⁷⁷ We will determine whether or not Allen is correct about these matters in the chapter on Marx and distributive justice. It is enough to note here that, with regard to capitalism, what he describes as distributive justice is actually commutative justice.

For Allen, as for Wood, Marx believes that insofar as the exchange is genuine, it is just according to the only possible standard: bourgeois justice. Nevertheless, Marx then makes a series of statements which Allen deems to be potentially contradictory. First, Marx asserts that, if we look at the relation between entire classes, the relation between wage-labour and capital is not a genuine exchange. Marx then seems to repudiate this view, however, when he argues that, according to the laws of commodity exchange, we can only consider the relation between wage-labour and capital as a relation between individuals.⁴⁷⁸ Allen is referring to Marx's assertion that,

To be sure, the matter looks quite different if we consider capitalist production in the uninterrupted flow of its renewal, and if, in place of the individual capitalist and the individual worker, we view them in this totality, as the capitalist class and working class confronting each other. But in so doing we should be applying standards entirely foreign to commodity production.⁴⁷⁹

Allen's interpretation of this passage is quite distinct from those commentators who argue that Marx deems exploitation unjust. They argue that, for isolated individuals, the wage-relation appears to be a genuine exchange. Therefore, it seems just. Conversely, Marx denies that this is a genuine exchange. This seems to entail that the wage-relation is unjust. Allen responds:

But this is not so. Marx intends rather to contrast two ways of regarding a wage transaction in which the wage is realized surplus value: one sees it as a relation between individuals, the other as a relation between classes. To regard it in the latter way is to apply standards foreign to commodity production. So, we seem warranted to infer, the correct way to regard it is as a relation between individuals.⁴⁸⁰

⁴⁷⁷ Ibid., 230.

⁴⁷⁸ Ibid., 235.

⁴⁷⁹ Marx, *Capital: Volume One*, op. cit., 732-33.

⁴⁸⁰ Allen, op. cit., 235-36.

Allen asserts that, although this would seem to render Marx inconsistent, it is only the result of the differences between the French and German editions which are combined in the English edition: “It might be argued, then, that when Marx made his revisions for the French edition of the text, he did not notice that his new remarks on wage transactions with realized surplus value conflicted with his earlier ones.”⁴⁸¹ Allen argues that Marx’s preferred way of viewing the wage-relation is as a relation between individuals, not classes: “The central point of the 1872 passage is that surplus value is ‘the legitimate property of the capitalist,’ assuming that commodities exchange at their values.”⁴⁸² In other words, when assessing the “mode-relative *justice*” of these transactions, we must adopt the perspective of individuals.⁴⁸³ Therefore, these are genuine exchanges. Consequently, they are just.

By imposing his analytical philosophical method on Marx here, Allen fundamentally misinterprets him. Marx is not espousing methodological individualism when he speaks of the standards of commodity exchange. He is *explaining* it. As we have seen, it is inherent to the dialectical method, both in Hegel and in Marx, to critique the ‘understanding’ typical of Enlightenment thought. Marx rejects the notion that we need only peel away appearances in order to reveal the underlying essences. We must also explain why those essences must give rise to their forms of appearance. This reveals that it is not merely the appearances, but also the essential relations that are abstract and formal. This is a crucial dimension of Marx’s critique of ideology. Admittedly, Marx could have been clearer in his presentation of this method, but he is not inconsistent. This immanent critique shows why things appear the way they do. He is not affirming these appearances as the proper way to look at these relations.

Despite all of this, Allen disagrees with Wood’s assertion that Marx’s critique of capitalism is not based in the contention that it contravenes its own principles.⁴⁸⁴ As we will see, Marx argues that in the first phase of socialism the principle of distribution is the same as the principle of allocation in capitalism, namely, to each their due. Socialism is superior in this respect because in it principle and practice do not contradict each other. Since there is no longer commodified labour, and therefore, no distinction between labour and labour-power, workers do

⁴⁸¹ Ibid., 236.

⁴⁸² Ibid.

⁴⁸³ Ibid.

⁴⁸⁴ Ibid., 239.

not produce more than they receive back in another form. According to Allen, this statement would not make sense if Marx did not critique bourgeois justice as self-contradictory. It would therefore seem that Allen does not deem capitalism just according to a consistent standard. Allen soon makes it clear, however, that Marx is not exposing the internal contradictions of bourgeois justice as such. Rather, he is only undermining the vulgar, apologetic notions of it, whether they are held by bourgeois theorists or utopian socialists. Allen asserts:

Suppose that the wage transaction really were the sale of living labour and that living labour has a Ricardian value: what would the worker be paid if the transaction were an exchange of equal values? In Ricardian theory, things of equal value contain the same quantity of labour. So if living labour has a Ricardian value, it is equal to the value which the worker creates in the form of a product, because this latter value is simply a materialization of the same quantity of labour. Thus the wage transaction (considered as the sale of living labour with Ricardian value) is an equal exchange only if the worker receives a wage equivalent to the value he creates.⁴⁸⁵

Allen argues that this confuses labour and labour-power. The worker does not have a legitimate claim to her labour, to the amount of value she creates. She has a claim to her labour-power, the value of which is only that portion of the working day comprised of necessary labour. Though the worker is paid less than all of the value she creates, she does not suffer an injustice according to the standards relative to capitalism.

Allen contends that the juridical standards of capitalism falsely deem the transaction of labour, not labour-power, as the basis of the wage-relation. Thus, this genuine exchange seems to contravene its principle:

The disclosure of the real nature of the transaction is enough to refute apologist and socialist alike. And the revelation of the fact that it is impossible for the worker to be paid an equivalent of the value he creates is enough to show that from its own juridical point of view (which sees the wage transaction as the sale

⁴⁸⁵ Ibid., 240.

of labour) and it seems by its own ‘theoretical principles’ (by which it seems that labour has a value) bourgeois society will have to consider the wage transaction necessarily unequal and therefore necessarily unjust.⁴⁸⁶

It is according to these vulgar, apologetic conceptions of the wage-relation that the principle of justice is contradicted by its practice. Allen, like Graham, is reversing the argument of those who hold that the wage-relation between labour and capital appears to be an equal and just exchange, but in essence is unequal and unjust. Allen is saying that, in appearance, the worker is paid for her labour for which she should receive all the value she produces. In essence, however, she is paid for her labour-power. Therefore, she should be paid for the value of her commodified labour-power, not for the value it produces. Thus, according to the surface appearance, capitalism seems unjust, but in essence, it is not. Although Allen does not explain this very clearly, he seems to argue that there are successive levels of appearance. The first level is the exchange of equivalents, the second is the unequal exchange of labour and value, and the third is the equal exchange of labour-power and value. For Allen, according to the non-vulgar standards of capitalism, the wage-relation is a genuine and just exchange. If indeed this exchange is genuine, however, it raises the question as to why Marx also describes the appropriation of uncompensated surplus labour as theft.

Unlike anyone else who affirms Wood’s view, Allen deems Marx’s assertions about capitalist ‘theft’ to be inconsistent. Allen disagrees with Wood’s assertion that, although Marx thinks that the capitalist robs the worker, this robbery is not unjust given Marx’s notion of justice: “This argument is unsatisfactory. If the capitalist’s appropriation of surplus is *just* relative to capitalism then the surplus value is his legitimate property and his appropriation of it cannot be *robbery*, relative to capitalism.”⁴⁸⁷ With regard to Marx’s ‘Notes on Wagner,’ Allen responds:

There is no reason to think that Marx is speaking rhetorically here when he uses the word ‘rob.’ But then he is speaking falsely, for he is misrepresenting his account of the earnings on capital: he does not ‘show at length’ that the capitalist

⁴⁸⁶ Ibid., 241.

⁴⁸⁷ Ibid., 246.

really does take what rightfully belongs to the worker, that is, that he robs him. On the contrary, he shows that the worker has no title to surplus value relative to capitalism, and he considers the matter from no other point of view.⁴⁸⁸

To maintain his interpretation Allen must accuse Marx of inconsistency. Otherwise, Marx would be pointing to the self-contradictions inherent not only to apologetic depictions of the wage-relation, but to the wage-relation itself. This conclusion is impossible, however, according to the methodological individualism that Allen imposes on Marx in those very passages where he was speaking about the inadequacy of anything but a social ontology. If we acknowledge Marx's social ontology, it raises the question of whether or not Marx invokes capitalist 'theft' in order to undermine bourgeois notions of justice. Perhaps Marx does not deem capitalism unjust. This does not entail, however, that Marx deems it positively just either. Perhaps Marx's assertion about the correspondence between principle and practice, which Allen cursorily notes, holds the key. Again, I cannot demonstrate this until we explore Marx's assertions about distribution under socialism.

As I conclude this section on this particular group of commentators, I must note that the most significant tension within this particular interpretation of Marx is their distinction between moral and non-moral goods. Like Kautsky, they must attempt to explain the tenuous relation between Marx's objective social scientific standpoint and his occasional outbursts of moral condemnation. For example, Wood asserts that there is no contradiction between, on the one hand, Marx's moral invectives against particular capitalists, and on the other hand, his refusal to critique capitalism on moral grounds.⁴⁸⁹ Individual capitalists are not to blame: "they as individuals do not create exploitative social relations but only live out the role in which these relations cast them."⁴⁹⁰ Wood asserts that Marx's outrage is not aimed at the fact that certain individuals cause suffering. Indeed, these individuals are more of an effect than the cause. Rather, Marx's indignation is inspired by indifference or callousness in the face of suffering.⁴⁹¹ Wood's assertions here are deeply unsatisfactory. By implication, Marx's indignation would end if every capitalist continued to exploit workers but felt genuinely upset about it.

⁴⁸⁸ Ibid., 247.

⁴⁸⁹ Wood, *Karl Marx*, op. cit., 150-1.

⁴⁹⁰ Ibid., 152.

⁴⁹¹ Ibid., 153.

Smart argues that Marx's personal outrage was not inspired by the injustice of capitalism.⁴⁹² Rather, it results from the constant affronts to non-moral goods, such as freedom, creative activity, and health. Smart argues that Marx's scientific analysis, which refutes all notions of morality and justice, "should be contrasted with those isolated, acerbic instances of a personal 'moral outrage' which are clearly the product of individual emotion rather than the expression of an exhaustive, universal ethic."⁴⁹³ McCarney argues for something similar. Although Marx "does indeed regard capitalism as immoral in various ways, he does not suppose that making or elaborating such judgements is a necessary part of his role as a revolutionary theorist."⁴⁹⁴ McCarney continues: "It would then be possible to hold together in a unitary framework Marx's occasional outbursts of savage indignation and his resolutely non-normative conception of the status of his work."⁴⁹⁵

To get some clarity on this matter, let us leave for a moment the domain of social science and enter that of natural science. Our aspiring scientist, knowing full well the strict separation between facts and values, takes a job testing cosmetic products on animals. These experiments often cause great discomfort for these test-subjects. Indeed, they often irritate the skin, fur, and eyes, which occasionally makes the animals cry. No matter: morality ends on the other side of the laboratory door. Therefore, the scientist, who never tests these products on himself, has no rational explanation as to why, during these experiments, a tear occasionally comes to his own eye. For science, at least as it is conceived by Kautsky and his progeny, such phenomena are inexplicable. They are isolated instances of 'moral outrage' and 'savage indignation.' Perhaps this is a shortcoming of natural science, and even more so, of social science. After all, it is peculiar that Marx, who is said to critique capitalism on entirely 'non-moral' grounds, does not always treat its excesses with a 'non-moral' demeanor.

6. 2: Marx Criticizes Capitalism on Moral Grounds Other Than Justice

There is another group of theorists who argue that Marx does not critique capitalism as unjust, but unlike Wood, they argue that Marx does not critique capitalism on non-moral grounds.

⁴⁹² Smart, op. cit., 143.

⁴⁹³ Ibid., 144.

⁴⁹⁴ McCarney, *Social Theory and the Crisis of Marxism*, op. cit., 173.

⁴⁹⁵ Ibid.

Rather, he criticizes it according to a different moral principle or ethical standard. It would seem that this group thereby avoids the thorny issues arising from the distinction between the non-moral and moral, namely, the fact-value distinction. Nevertheless, this group is embroiled in other tensions. If Marx's critique of capitalism is based, at least in part, in ethics, they must explain why justice is not an integral part of that ethics.

Alan Nasser argues that Marx roots ethics in human nature. This puts him in the naturalist tradition of ethics.⁴⁹⁶ Marx criticizes capitalism according to what Nasser calls the 'ergon argument,' which is given classical expression in Aristotle's *Nicomachean Ethics*. This argument contends that human nature has an *ergon*, a special function, a kind of activity unique to humans, which constitutes our moral good.⁴⁹⁷ According to Nasser, Marx conceives of human nature as *homo faber*. Translated literally, this means 'tool-making animal.' Consequently, Marx criticizes capitalism because wage-labour stifles the creative activities that make us truly human.⁴⁹⁸ This is not, however, a trans-historical critique. Nasser argues that, although every pre-communist society stifles the human *ergon*, this only becomes ethically wrong when historical developments create the potential conditions for the universal expression of the essential capacities of our species. Thus, it is capitalism alone that Marx deems worthy of this ethical critique.

Nasser asserts that this ethical critique is not a critique of injustice. He agrees with Wood in this respect. For Nasser, the basic point of Marx's commentary on Hegel's *Philosophy of Right* is that the political state and its legal concepts are not the foundation of society. Rather, they reflect the mode of production: "Hence, one must not speak of 'justice' per se, but of, for example, 'feudal justice' or 'bourgeois right,' each accommodated to its respective productive mode."⁴⁹⁹ Therefore, Marx's ethical critique of capitalism is not a juridical, but rather, an anthropological critique.

There are two basic problems with Nasser's account, the second much more significant than the first. The first problem is Nasser's assertion that Marx conceives of humankind as *homo faber*. Other theorists, such as Habermas and Markus, have also argued this.⁵⁰⁰ The depiction of humans as *homo faber* arose in the early modern period. It was a reaction against the aristocratic

⁴⁹⁶ Alan G. Nasser, 'Marx's Ethical Anthropology,' *Philosophy and Phenomenological Research*, 35.4 (June 1975): 484-500; 485.

⁴⁹⁷ *Ibid.*, 486.

⁴⁹⁸ *Ibid.*, 488.

⁴⁹⁹ *Ibid.*, 498-9.

⁵⁰⁰ Jürgen Habermas, *Knowledge and Human Interests*, trans. Jeremy J. Shapiro (Boston: Beacon Press, 1971); Gyorgy Markus, 'Praxis and Poiesis: Beyond the Dichotomy,' *Thesis Eleven*, 15.1 (1986): 30-47.

conception of humankind. Whereas, for Aristotle, the life of production and the family are only a precondition of the good life, of leisure, with the Reformation, there arises the affirmation of the intrinsic value of labour and of 'everyday life.'⁵⁰¹ Taylor deems Marx the inheritor of this modern tradition.⁵⁰² Interestingly, other commentators seem to attribute to Marx the near-opposite conception, Aristotle's *zoon politikon*.⁵⁰³ For Aristotle, this is the 'political animal' freed from the slavish confinement of the *oikos*: "nature herself, as has been often said, requires that we should be able, not only to work well, but to use leisure well; for, as I must repeat once again, the first principle of all action is leisure."⁵⁰⁴ It is said that Marx envisions the working class political party as a modern *polis* whose task is complete liberation from the realm of necessity.⁵⁰⁵ Nasser's commentary on the *ergon* argument seems to combine elements of both of these interpretations.

Those who attribute to Marx the notions of *homo faber* or the *zoon politikon* have neglected that passage where he explicitly rejects both. Marx asserts: "man, if not as Aristotle thought a political animal, is at all events a social animal."⁵⁰⁶ In the footnote he says: "This is quite as characteristic of classical antiquity as Franklin's definition of man as a tool-making animal is characteristic of Yankeedom."⁵⁰⁷ In other words, these conceptions of our so-called eternal human nature actually arise from and reflect historically specific social conditions. If Marx rejects both the 'political' and 'tool-making' animals, what is his conception of human nature?

Marx asserts that human activity, human labour, changes external nature as well as our own internal nature.⁵⁰⁸ As an inherently historical being, what makes humans unique is the capacity to consciously transform ourselves. Human nature is the totality of all preceding social conditions because it is the actualization of the potentialities within these social conditions. Thus, humans are not content to remain what we have become, but rather are "in the absolute

⁵⁰¹ Taylor, *Sources of the Self*, op. cit., 12-13; 23.

⁵⁰² *Ibid.*, 14.

⁵⁰³ Alan Gilbert 'Historical Theory and the Structure of Moral Argument in Marx,' *Political Theory*, 9.2 (May 1981): 173-205; 185; Claudio Katz, 'The Socialist Polis: Antiquity and Socialism in Marx's Thought,' *The Review of Politics*, 56 (1994): 237-260.

⁵⁰⁴ Aristotle, *Aristotle's Politics*, op. cit., 1337b30-3.

⁵⁰⁵ Katz, op. cit.

⁵⁰⁶ Marx, *Capital: Volume One*, op. cit., 444.

⁵⁰⁷ *Ibid.*, 444, n. 8

⁵⁰⁸ *Ibid.*, 283.

movement of becoming?”⁵⁰⁹ If Fromm introduced the distinction between what it means *to have* and *to be*,⁵¹⁰ perhaps we also need to distinguish between what it is *to be* and *to become*. For this reason, humans are neither *homo faber* nor the *zoon politikon*, but their reconciliation in *Homo seipsum faciens*, or ‘Humans who make themselves.’

Although I think this is an accurate explanation of Marx’s concept of human nature, it still leaves open an important question: what aspects of human nature can change, can be made and re-made, and what aspects are permanent and unchangeable? After all, our creations would seem to presuppose a creative capacity that is not itself subject to creative changing (although it could lay dormant as unfulfilled potential). Failing to acknowledge this question can lead to the conundrum that besets Howard Selsam. He basically follows Marx in arguing that ethics is a human creation based in the material practices typical of the specific historical social conditions.⁵¹¹ With regard to the question of freedom, Selsam asserts: “The content of this conception must be supplied by each generation for itself. This is so for the simple reason that human nature is subject to infinite change and development.”⁵¹² If human nature is ‘subject to infinite change,’ however, there would be nothing about capitalism or any other society that could contravene this nature. There would be no social conditions or practices to which the permanent aspects of human nature would offer resistance. The concept of ‘de-humanization,’ and, in fact, the concept of ‘unfreedom,’ would be unthinkable.

This leads to the second and more significant shortcoming of Nasser’s contribution. For Aristotle, an integral part of human nature, of the human function, is natural justice. In other words, justice is not merely juridical, but as Nasser would say, anthropological. Let us assume for a moment that Nasser and Wood are correct in their interpretation of Marx. As we have seen, the impersonal, contractual character of capitalist economic relations, as well as the centralization of distributive justice in the capitalist state, have made common the idea that justice is not an involuntary, ontological obligation, but rather a voluntary, institutional responsibility. If Marx, Wood, and Nasser all regard justice as merely juridical, is this an uncritical reflection of these social conditions? They do not engage with this question. Perhaps

⁵⁰⁹ Marx, *Grundrisse*, op. cit., 487-88.

⁵¹⁰ Erich Fromm, *To Have Or To Be?* (New York: Bloomsbury, 2009).

⁵¹¹ Howard Selsam, *Socialism and Ethics* (New York: International Publishers, 1943), 69.

⁵¹² *Ibid.*, 201.

they, like most moderns, deem the idea of an ontological justice absurd. Nevertheless, commonly-held opinion is not a safe ground for philosophical or scientific theory.

George G. Brenkert, like Wood, asserts that Marx's basic standard is freedom, not justice.⁵¹³ Unlike Wood, however, Brenkert describes freedom as a moral principle. For Brenkert, the most significant difference between justice and freedom is their respective relation to the fundamental economic conditions.⁵¹⁴ Whereas justice is a superstructural reflection of the mode of production, freedom is inextricably integral to it:

a society is not more just because it possesses a more highly developed mode of production. There is, then, given Marx's views on ideology, no basis for transcultural appraisals of justice. Freedom, however, is different. There is a basis for appraising freedom, as opposed to appraising justice, in the ontological dimension that freedom possesses. Freedom, like justice, is not an autonomous principle, not an ideal which Marx imposes on society. Unlike justice, freedom should be appraised, not simply as an outgrowth of, but as an integral part of the development of the forces and relations of production upon which all societies are based. The basic criterion of freedom is the self-development of man and society through the development of the productive forces of society.⁵¹⁵

Unlike freedom, other moral principles, such as responsibility, beneficence, or justice, are not related to the mode of production in such a way that its development toward a higher mode gives rise to 'higher' forms of these moral principles.⁵¹⁶ According to Brenkert, Marx ultimately opposes private property because of its negative effects on individual personality and the freedom of self-development.

Brenkert is right to assert that the basic criterion of Marx's theory of universal history, of the rationality of the historical process, is freedom. In this respect, Marx is like Hegel before him and Croce afterward. Nevertheless, there are a number of problems with Brenkert's account.

⁵¹³ George G. Brenkert, 'Freedom and Private Property in Marx,' in Marshall Cohen, et al., op. cit., 81.

⁵¹⁴ Ibid., 94.

⁵¹⁵ Ibid., 96-7.

⁵¹⁶ Ibid., 101.

First, it is by no means clear that the development of freedom follows that of the productive forces so closely, even on Marx's own terms. Indeed, Brenkert cites a passage in which Marx seems to argue the opposite. While Marx argues that capitalism is the highest development of productive forces so far, he also asserts that it is the height of unfreedom: "in imagination, individuals seem freer under the dominance of the bourgeoisie than before, because their conditions of life seem accidental; in reality, of course, they are less free, because they are more subjected to the violence of things."⁵¹⁷ For Marx, capitalism does not entail unmitigated progress beyond the non-capitalist class societies that precede it. Temporally, it is closer to socialism and is therefore progressive. As far as its human impact is concerned, however, there are certain respects in which capitalism is freer, and in other respects, less free than what precedes it.

Second, putting aside the aforementioned problems with the unargued assumption that freedom is ontological and justice is not, it is not self-evident that a more developed mode of production cannot result in 'higher' principles of justice. Take, for example, Hume's influential conception of the conditions of justice. As we will see, Marx's conception of the development of the forces and relations of production is often compared to this conception. Hume asserts:

Thus, the rules of equity or justice depend entirely on the particular state and condition in which men are placed, and owe their origin and existence to that utility, which results to the public from their strict and regular observance. Reverse, in any considerable circumstance, the condition of men: Produce extreme abundance or extreme necessity: Implant in the human breast perfect moderation and humanity, or perfect rapaciousness and malice: By rendering justice totally *useless*, you thereby totally destroy its essence, and suspend its obligation upon mankind.⁵¹⁸

Hume's notion of justice is primarily negative. It protects individuals from each other. If scarcity were eliminated, justice would become unnecessary. Nevertheless, if scarcity were only reduced, but not eliminated, justice would still be necessary. We could say that the circumstances of

⁵¹⁷ Ibid., 100.

⁵¹⁸ David Hume, *Enquiries Concerning the Human Understanding and Concerning the Principles of Morals* (Oxford: Clarendon Press, 1975), 188.

justice would have improved. At the very least, this proves that it is not inconceivable to think of an integral and developing relation between fundamental social conditions and justice, even within the common-sense premises of capitalist modernity. Indeed, one wonders what it would look like to construct a universal history in which the ruling principle was not the development of freedom, but of justice. More interesting still would be a theory in which one principle is not subordinate to the other.

The most significant shortcoming of the interpretation offered by Nasser and Brenkert is that, even if Marx condemns capitalism on moral grounds, we would still need to explain why justice does not have the same ontological status as freedom. Like Tucker and Wood, Nasser and Brenkert do not explain why the principle of freedom, whether it is conceived as a moral or non-moral principle, is not purely functionalist in the way justice is purported to be.

In general, these two sub-groups adopt uncritically the liberal notion of justice. Initially, this statement may appear absurd. After all, they castigate the formalism of a liberal justice that sustains the stifling of our moral and non-moral goods. The problem is that, in doing so, they believe that they are criticizing not merely a particular notion of justice, but what in the prevailing circumstances is justice as such. They assume that what justice means is the even-handed balancing of separate and antagonistic interests.⁵¹⁹ Of course, this notion of justice is irreconcilable with Marx's theory of revolutionary class struggle. It is also distinctly liberal. It presumes that there is no objective good forming a standard independent of the different parties.⁵²⁰ It reduces this good to the manifold subjective interests. Therefore, it must rely on neutral arbitration between them. These authors do not seriously consider the possibility of conferring to justice the objectivity they attribute to, say, freedom or self-realization. If they did, justice need not be an even-handed arbiter between conflicting interests. Indeed, some of those interests may reflect that objective good better than others.

Even if a theorist rejects a particular notion of justice, they uncritically accept it if they deem it to be justice as such, or the only possible notion of justice. This is significant because, despite their rejection of this notion of justice, their alternative may nonetheless be determined by it. Developing the exact opposite of a rejected position must share much with that to which it is opposed. This is one of the key insights of the dialectical method. Proponents of the Tucker-

⁵¹⁹ See for example: Tucker, *The Marxian Revolutionary Idea*, op. cit., 51.

⁵²⁰ Peffer, op. cit., 344.

Wood thesis can reject what they deem to be a historically specific conception of justice and counter-pose to it another historically specific conception of justice. Nevertheless, by uncritically accepting the framework imposed by the rejected notion of justice, their alternative does not consider whether or not a genuine negation, not a mere opposition, might entail a notion of justice that is not, or at least not merely, historically relative. Therefore, they do not even consider whether or not justice can have the kind of ‘objectivity,’ the ontological status, which they attribute to freedom or to other so-called ‘non-moral’ goods. In this, the proponents of the Tucker-Wood thesis are like Kautsky, who rejected ‘morality’ because, for him, all morality is essentially Kantian morality.

This is confirmed by those who agree with the Tucker-Wood interpretation of Marx, but who disapprove of what they take to be Marx’s stance on justice. As we will see, this undialectical tension between opposites is reflected in Jeffrey H. Reiman and Andrew Levine, who, in their rejection of Marx’s stance, shift to what they regard as the only plausible alternative, the neo-Kantian morality of Rawls. If Tucker and Wood are like Kautsky, then Reiman and Levine are like Bernstein.

6. 3: Marx Deems Capitalism Commutatively Just, But Was Wrong To Do So

So far, all of the theorists we have examined in this third wave of debates have argued that, first, Marx deems capitalism just according to the only available standards, and second, he was right to do so. There are a few theorists, however, who agree with this first point while disagreeing with the second. Both Jeffrey H. Reiman and Andrew Levine agree with Wood’s interpretation of Marx. Nevertheless, they argue that Marx and Marxism needs a theory of justice that is able to compare modes of production according to a broader standard. Indeed, both attempt to reconcile Marxism with modified versions of Rawls’s theory of justice. In this, Reiman and Levine serve as a good segue between, on the one hand, the proponents of the Tucker-Wood thesis, and on the other hand, those theorists who argue that Marx did critique capitalism as unjust. Like Reiman and Levine, many of these theorists attempt to reconcile Marx with contemporary liberal political philosophy.

Reiman argues that Wood is correct about what Marx thought about justice.⁵²¹ What Marx ought to have thought is a different matter. Taking *Capital* as a whole it is clear that, whatever Marx thought he was doing, he demonstrates how to condemn capitalism on its own terms. Workers sell their labour at its value and therefore the appropriation of surplus-value by capital is not theft. Nevertheless, workers only need to sell themselves after they have been separated from their means of production. For Reiman, these processes of primitive accumulation do constitute theft and therefore capitalism is unjust.⁵²²

Reiman argues that Rawls's method, but not the principles he derives from it, allows us to determine whether or not a social structure is exploitative.⁵²³ He argues that there can be "cooperation" between this theory of justice and Marxist theory.⁵²⁴ The social contract need not take it for granted that only some will own the means of production. Therefore, it can show how such a society is exploitative and unjust.⁵²⁵ Although some might argue that Rawls's 'original position' is ideological because it is inherently individualist, Reiman retorts that this mutual indifference does not determine what kinds of individuals the participants are.⁵²⁶ Furthermore, the absence of this mutual indifference opens the potential for the suppression of individuals by supra-individual groupings like the state or the *Volk*.⁵²⁷

Reiman argues that this modified version of Rawls's difference principle expresses the real tendency toward justice. This is embodied in the transitions from the succession of dominant theories, namely, utilitarianism, liberalism, Rawls's two principles of justice, and Marx's concepts of the first and second phases of socialism. The development of the forces of production increases the standard of living of the least advantaged. This is reflected in the relations of production by a reduction of the range of permissible inequalities.⁵²⁸

Levine, like Reiman, argues that Wood's interpretation of Marx is " cogently argued" and "likely correct."⁵²⁹ Nevertheless, certain aspects of the classical account of historical materialism

⁵²¹ Jeffrey H. Reiman, 'The Possibility of a Marxian Theory of Justice,' in Kai Nielsen, et al, op. cit., 310.

⁵²² Ibid., 310-11.

⁵²³ Ibid., 307-8.

⁵²⁴ Ibid., 308.

⁵²⁵ Ibid., 312.

⁵²⁶ Ibid., 314.

⁵²⁷ Ibid., 315.

⁵²⁸ Ibid., 320-22.

⁵²⁹ Andrew Levine, 'Toward a Marxian Theory of Justice,' *Politics & Society*, 11 (September 1982): 343-62; 353.

are no longer tenable.⁵³⁰ Levine argues that historical materialism proposes four basic principles: (i) the development of productive forces account for epochal transformations; (ii) the economic base accounts for legal and juridical superstructures; (iii) the general course of historical development is progressive; and (iv) the only feasible future alternative to capitalism is socialism.⁵³¹ Since the third and fourth of these principles have become increasingly questionable, Levine argues that it is worth seeing whether or not a historical materialist concept of justice is possible: “Capitalism’s claims of formal equality, and even of equality of opportunity, help to bring about a profoundly egalitarian concept of justice and to establish its pre-eminence among social values.”⁵³² This is significant because capitalism puts forward ideals of formal equality and justice that its material inequalities violate. To realize these ideals, capitalism must be superseded. It should be noted that capitalism may put forward the value of formal equality, but not necessarily of justice as it is broadly conceived. Levine’s assertions reflect a myopic view of the recent debates about specifically ‘distributive’ justice. This masks the extent to which the ‘social value’ of justice as a whole, in each of its aspects, has declined.

Levine attempts to reconcile Marx’s social theory with a ‘materialist’ reading of Rawls. The problem with Rawls’s theory is not its contractarian character but its level of abstraction.⁵³³ The original position does not include fundamental property relations in its considerations.⁵³⁴ A materialist version of the original position includes not only equal opportunity for political office and the just distribution of the means of consumption, but also the just distribution of the means of production. This provides a basis for comparing different modes of production: “A Marxian theory of justice would be a theory that advocates maximin distributions of those goods that, for one reason or another, are best not distributed equally, while putting fundamental social structures and property relations in question.”⁵³⁵ We can thereby critique capitalism according to this standard of justice.

As is typical in these debates, moral formalism is undergirded by an unacknowledged determinism. It is true that Marx claims that coherent theories of freedom (and perhaps, of justice), must be rooted in the means necessary to accomplish them. Nevertheless, this is not

⁵³⁰ It should be noted that by orthodox historical materialism Levine has in mind Cohen’s formulation of it (ibid., 353, n. 18).

⁵³¹ Ibid., 347-49.

⁵³² Ibid., 345-46.

⁵³³ Ibid., 357.

⁵³⁴ Ibid., 358-59.

⁵³⁵ Ibid., 359.

simply a question of whether or not the productive forces are sufficiently advanced to make socialism possible. It is also about the recognition and development of how fundamental class interests relate to the potential higher interests of society. This cannot be derived from an original position in which our interests are hidden behind a veil of ignorance. Indeed, for Marx, it depends entirely on the clear and conscious awareness of our interests, whether shared or antagonistic.

This is true especially given that, contrary to Reiman's assertions, the methodological individualism inherent to this hypothetical situation already privileges a particular conception of our interests. Rawls's theory of justice precludes from the outset a socialist society because the original position is pervaded by liberal assumptions. First, Rawls's notion of what is 'rational' is based in neoclassical conceptions of self-interest. Therefore, what it means to be 'better off' is defined in terms of quantity, the share of the total product. This neglects the qualitative dimension, how it is decided what will be produced and how. Ignoring this latter dimension, questions of alienation cannot arise. Therefore, the only plausible motivation for activity is 'incentive.' Second, the impersonal indifference between individuals is assumed. Consequently, the only reason why one would critique this arrangement is 'envy.' This neglects 'recognition,' which includes the conviction that inequality also dehumanizes the rulers. Although Reiman denies the inherently individualist character of the original position, Rawls explicitly confirms that this is its intention:

The essential ideal is that we want to account for the social values, for the intrinsic good of institutional, community, and associative activities, by a conception of justice that in its theoretical basis is individualistic. For reasons of clarity among others, we do not want to rely on an undefined concept of community, or to suppose that society is an organic whole with a life of its own distinct from and superior to that of all its members in their relations with one another.⁵³⁶

Of course, this neglects how capitalist social relations, despite their impersonal character, impose stratified functions on individuals as surely as does any more 'organic' society. Indeed, this is the

⁵³⁶ Rawls, *op. cit.*, 264.

bias of atomism. The capitalist can act as an isolated individual and still appropriate surplus-labour. Conversely, workers can only defend themselves against the worst effects of the uncoordinated activities of isolated individuals, much less fundamentally challenge the social system upon which this is based, by engaging in collective activity.

Ultimately, Reiman and Levine reject Wood's neo-orthodox Marxism from the perspective of a neo-revisionism. As we will see, this is generally true of Wood's critics. Posing the exact opposite position without a genuine synthesis, a determinate negation, also occurs among the proponents of what I call here the 'Cohen-Geras thesis.'

6. 4: Critical Assessment of These Commentators

As we have seen, the first significant problem with the Tucker-Wood thesis is that it does not take seriously Marx's immanent critique of capitalism. It dismisses Marx's assertions that capitalist appropriation constitutes theft, robbery, and plunder. Or, in the case of Allen, this is deemed an inconsistency in Marx's thought which need only be acknowledged before it can be whisked away. It may be true that Marx deems bourgeois justice the only possible standard of justice under capitalism. Nevertheless, his immanent critique seems to undermine it by confronting it with its opposite. The principle of 'to each their due' is contradicted by the principle of 'do not steal.' Therefore, if Marx does not deem capitalism unjust, this does not necessarily mean that he deems it positively just. In other words, it does not mean that Marx regards capitalism to be just in a non-self-contradictory way. Indeed, we must hold out for the possibility that Marx deems his perspective beyond justice as such.

The second major problem with the proponents of the Tucker-Wood thesis is that they do not use immanent critique in their explanations of Marx. In other words, their use of historical materialism is selective. This is not only true of the two clusters of commentators around Tucker and Nasser, who tend to agree with Marx as they interpret him, but also of Reiman and Levine despite their disagreements with Marx. Therefore, they do not consider whether or not the functionalist, narrowly juridical, definition of justice that they attribute to Marx is an uncritical absorption of certain aspects of capitalism, such as the widespread dissolution of communal property and the concentration of distributive justice in the state. They also do not consider if the precedence of freedom over justice in Marx's work, an assumption held in common with liberal

thought, is uncritically adopted from, among other material developments, the establishing of absolute, individually-held private property. In other words, they fail to ask whether or not Marx's statements about justice, as well as their own interpretations of them, are ideological.

Finally, I must offer the reminder that although the moral and political implications of these interpretations are profound, as is also true of the other interpretations which we will soon explore, I prioritize assessing the accuracy of these interpretations and save an assessment of their broader implications to the final two chapters. We must first understand Marx and these Marxists on their own terms before any substantive judgement can proceed.

Chapter 7: The Cohen-Geras Thesis: Marx Deems Capitalism Commutatively Unjust

We turn now to those who argue that Marx deems capitalism unjust. I refer to this interpretation of Marx as the ‘Cohen-Geras thesis,’ named after its two most influential proponents. The strongest argument made by these commentators, the argument that proponents of the Tucker-Wood thesis have difficulty accounting for, is that Marx clearly seems to undermine bourgeois justice as self-contradictory. Nevertheless, proponents of the Cohen-Geras thesis have a hard time accounting for the strongest arguments in favour of the Tucker-Wood thesis, namely, that Marx explicitly asserts, first, that capitalism is not unjust, and second, that any mode of production cannot be condemned as unjust according to the standards of another mode of production.

As we saw, the proponents of the Tucker-Wood thesis often support their theories with a ‘saving distinction’ between moral and non-moral goods. Similarly, those who argue that Marx criticizes capitalism as unjust also have their own ‘saving distinctions.’ Despite Marx’s occasional assertions that capitalism is not unjust, these theorists point to more fundamental phenomena or criteria that they believe prove that he does in fact deem capitalism unjust. For example, if Marx says that capitalist exchange is not unjust, that is because he regards as unjust the much more fundamental production relations. Common to all of these saving distinctions is that it is the latter term in the binary that saves the argument. In other words, whereas Marx often explicitly describes the first term in the binary as maintaining bourgeois justice, the second term is supposed to demonstrate that, on a deeper level, he deems capitalism unjust. These saving distinctions include, exchange vs. production;⁵³⁷ sociology of morals (‘explanation’) vs. Marx’s morality proper (‘evaluation’);⁵³⁸ similarly, the internal (emic) perspective vs. the external (etic) perspective;⁵³⁹ the capitalist standpoint vs. the post-capitalist standpoint, or, the perspective of capital vs. the perspective of labour;⁵⁴⁰ formal freedom vs. substantive freedom;⁵⁴¹ formal justice vs. real justice;⁵⁴² equivalent exchange values vs. non-equivalent use-values;⁵⁴³ buying labour-

⁵³⁷ Young, op. cit., 260; Blackledge, *Marxism and Ethics*, op. cit., 63.

⁵³⁸ Arneson, op. cit., 219-20; Husami, op. cit., 76; Nielsen, op. cit., 109.

⁵³⁹ Peffer, op. cit., 336.

⁵⁴⁰ Husami, op. cit., 77.

⁵⁴¹ Young, op. cit., 267; Daly, ‘Marx and Justice,’ op. cit., 368.

⁵⁴² Hancock, op. cit., 67.

⁵⁴³ Husami, op. cit., 69.

power vs. using labour-power;⁵⁴⁴ methodological individualism vs. social ontology;⁵⁴⁵ and de jure justice vs. de facto justice.⁵⁴⁶ If we take Marx literally, we can call into question the former term in each of these binaries. In other words, we need not go beyond the letter of what Marx says to show that he undermines liberal conceptions of justice in its various aspects. Nevertheless, each of these theorists must contend with the fact that Marx never describes any of the latter terms in these binaries using the language of justice. It is not enough to simply impute to Marx the distinction between formal justice and substantive justice by pointing to these saving distinctions. These theorists must find further grounds to support these distinctions. As we will see, they are largely unsuccessful in this endeavour.

The purpose of my criticism of saving distinctions is not to turn Marx's work into a catechism. As I have said, in and of itself, there is nothing wrong with drawing out distinctions latent in Marx's work or using Marx's work to make further theoretical distinctions of which he is unaware. My criticism of saving distinctions is that too often in these debates commentators prioritize explanation over interpretation. Frequently, these commentators come to these debates with pre-formed ideas about the position Marx had to have held, and therefore, they are tempted to impute certain distinctions to Marx in order to *save* what they already expected to find. Conversely, I take Marx literally. I adhere to the letter of what Marx says precisely because this is the best strategy to understand the spirit of what he says. I prioritize interpretation without thereby neglecting explanation.

One of the more important divisions among those who argue that Marx deems capitalism unjust is whether or not he does so consistently and consciously. Some theorists argue that Marx obviously and consistently criticizes capitalism as unjust. Other theorists take more seriously the Tucker-Wood thesis. They argue that, although it is not obvious and he is not entirely consistent, Marx ultimately criticizes capitalism as unjust, even if he is not aware of it. In general, the first sub-group tend to rely more on unquestioned assumptions than the second sub-group. Nevertheless, we will find that, although the second sub-group offers a more sophisticated interpretation of Marx than the first sub-group, making sense of Marx does not require the claim

⁵⁴⁴ Alan Ryan, 'Justice, Exploitation and the End of Morality,' in *Moral Philosophy and Contemporary Problems*, ed. J. D. G. Evans (New York: Cambridge University Press, 1987), 128-29.

⁵⁴⁵ Young, *op. cit.*, 263; Holmstrom, *op. cit.*, 367; Blackledge, *Marxism and Ethics*, *op. cit.*, 63; 87.

⁵⁴⁶ Daly, *Marx: Justice and Dialectic*, *op. cit.*, 69.

that he is inconsistent. Reconciling Marx's statements about justice and theft require a dialectical method that most of these 'analytical' Marxists reject.

Like their antagonists in these debates, the proponents of the Cohen-Geras thesis tend to neglect Marx's immanent critique, although they do so from the other side of the opposition between justice and theft. Although Marx describes exploitation as theft, this does not necessarily mean that he regards this theft as unjust according to any available standard, whether it be a socialist standard or a trans-historical standard of natural right. We turn now to the first sub-group.

7. 1: Marx Consistently Criticizes Capitalism As Unjust

Donald van de Veer argues that it is more plausible that Marx rejects the *rhetoric* of 'justice,' so often abused by moralists, rather than justice as such.⁵⁴⁷ We noted earlier how theorists like Wood, Smart, and McCarney distinguish between Marx's scientific method and his occasional personal outbursts of moral rage. Interestingly, van de Veer makes the exact opposite distinction. He distinguishes between, on the one hand, what he regards as Marx's severe personal shortcomings, and on the other hand, the humanity of Marx's theory.⁵⁴⁸ Van de Veer will focus on the latter. First, he establishes what he means by 'justice':

In regard to the question of Marx's attitude toward justice, what is at issue is obviously a dispute about 'justice' in *one* of its several senses. We are not concerned with justice as regarded as a personal trait or disposition exhibited by the just man. Rather 'justice' here is a term which is significantly applicable to an actual or possible mode of distributing benefits or burdens. Our concern, then, is with one of Aristotle's two kinds of 'particular' justice, namely, the kind '...exercised in the distribution of honour, wealth, and the other divisible assets of the community, which may be allotted among its members in equal or unequal shares.'⁵⁴⁹

⁵⁴⁷ Donald van de Veer, 'Marx's View of Justice,' *Philosophy and Phenomenological Research*, 33.3 (March 1973): 366-386; 369.

⁵⁴⁸ *Ibid.*, 375.

⁵⁴⁹ *Ibid.*, 376, n. 31.

Van de Veer is one of the few commentators to not only speak of proprietary justice, but also of the virtue of justice. Unfortunately, it is confined to a footnote. He does not pursue any further the question as to why it is only a particular aspect of justice that is of concern for Marx and Marxism. Furthermore, he fails to make the proper distinction between commutative and distributive justice.

Van de Veer asserts that, although Marx appears to espouse historical relativism, there is an ‘ethical absolutism’ underlying his critique of capitalism. For van de Veer, ethical absolutism entails moral principles that are rationally justifiable across cultures and epochs. He argues that when Marx appears to denounce ethical absolutism, he may be doing it with regard to “low level” judgements, such as “having thirty or more children is morally permissible,” but not “generic moral principles,” such as “one ought to maximize the net balance of happiness over pain.”⁵⁵⁰ Marx may also be denouncing a dogmatic adherence to the prevailing candidates for ‘ethical absolutism,’ but not ‘ethical absolutism’ as such.⁵⁵¹ Neither distinction is found in Marx. As is often the case, apparent tensions between Marx’s explicit statements are explained in terms of distinctions that, however plausible or sophisticated, must be imputed to Marx rather than derived from him. As we have seen, Marx states explicitly that principles of right cannot be ‘higher,’ cannot be more developed, than the prevailing economic conditions.

Van de Veer also argues that the affirmation of ethical absolutism is not incompatible with the assertion that moral concepts have their specific genesis in particular cultures or epochs. Their origins do not tell us whether or not they are valid: “Aristotelian and Einsteinian physics are both historical products but not, therefore, equally plausible.”⁵⁵² This is true, but it is not clear that Marx would deem Aristotelian and Einsteinian physics analogous to, say, Aristotelian and existentialist ethics. Marx explicitly asserts that an ethics that vindicates slavery, as Aristotle’s apparently does, is valid for a slave mode of production,⁵⁵³ whereas Marx would surely deny that the Aristotelian physics was true of nature in Aristotle’s time.

Van de Veer ultimately concludes:

⁵⁵⁰ Ibid., 381.

⁵⁵¹ Ibid.

⁵⁵² Ibid., 380-81.

⁵⁵³ Marx, *Capital: Volume Three*, op. cit., 460-61.

If it is correct and if it were true that Marx was a relativist, then I think we should have to conclude, quite simply, that Marx was inconsistent. Such a move is far more plausible than the alternative of maintaining that Marx was not committed to normative moral principles. More specifically, if one had to choose, it is more plausible to maintain that Marx was theoretically inconsistent than that Marx was averse to the idea of justice.⁵⁵⁴

As we will soon see, several theorists will indeed argue that Marx is inconsistent in precisely these ways.

Ziyad I. Husami's 1978 response to Tucker and Wood, 'Marx on Distributive Justice,' launched the third wave of debates.⁵⁵⁵ He argues that, contrary to Tucker and Wood, it is obvious that Marx clearly and consistently criticizes capitalism as unjust. Like Bernstein before him, Husami asserts that "there is no meaningful sense in which the capitalist can simultaneously rob the worker and treat him justly."⁵⁵⁶ He asserts that, with regard to Marx's assertion that the wage-relation is by no means an injustice to the seller, "Marx is plainly satirizing capitalism."⁵⁵⁷ Husami argues similarly with regard to Marx's depiction of the sphere of commodity exchange as "a very Eden of the innate rights of man. It is the exclusive realm of Freedom, Equality, Property and Bentham."⁵⁵⁸ Husami rejects Wood's attempt to marshal this passage as evidence: "The terms 'justice' and 'just exchange' nowhere appear in the passage to which Wood refers. But even if we grant Wood his paraphrase of the passage in question, its ironic tone should have alerted him to the 'formal' character of this justice. Like formal equality and freedom, this justice would produce and perpetuate its own opposite."⁵⁵⁹ Although I too am tempted to describe Marx's assertion here as 'ironic,' I must refrain because Husami's interpretation is immediately faced with a significant problem.

Although Marx explicitly distinguishes between formal and substantive freedom, as well as formal and substantive equality, he never distinguishes between formal and substantive justice. Marx explicitly describes a 'materialist' freedom, a "positive power" to assert our "true

⁵⁵⁴ van de Veer, op. cit., 386.

⁵⁵⁵ Husami, op. cit.

⁵⁵⁶ Ibid., 45.

⁵⁵⁷ Ibid.

⁵⁵⁸ Marx, *Capital: Volume One*, op. cit., 280.

⁵⁵⁹ Husami, op. cit., 67-8.

individuality,” as distinct from a mere “negative” freedom to “avoid this or that.”⁵⁶⁰ Marx also describes a formal equality that results in substantive inequality.⁵⁶¹ Furthermore, he distinguishes between, on the one hand, socio-historical inequality, and on the other hand, the unequal talents and needs of individuals.⁵⁶² Nevertheless, in Marx’s critique of capitalism, he does not explicitly distinguish between formal justice and substantive justice. Marx never explicitly describes a materialist justice. Indeed, it remains an open question whether or not Marx thinks materialism precludes a theory of substantive justice.

Husami neglects the nature of Marx’s immanent critique: “To be sure, Marx could not have passed such a judgment by evaluating capitalism from its own juridical standpoint since, on his own simplifying supposition, capitalist practice does not violate capitalist economic laws or juridical norms.”⁵⁶³ This misunderstands Marx’s immanent critique. As we saw, we must distinguish between Marx’s critique of Proudhon, who attempts to show that a particular form of capitalism contradicts itself, and Marx’s demonstration that capitalism itself, in every possible form, is deeply self-contradictory. Husami fails to make this distinction. It is on this basis that he argues that Marx must be criticizing capitalism from the perspective of a socialist principle of justice. Husami can only account for this by imputing to Marx something that he never explicitly acknowledges. Husami distinguishes between explanation and evaluation, between the sociology of morals and morality proper: “It bears repeating that the explanation of the functioning of capitalism is made on the basis of capitalist institutions, as it must be, but the evaluation is made on the basis of Marx’s ethics.”⁵⁶⁴ Husami does not address why Marx is not explicit about the basis upon which he makes his evaluations and in what ways this basis is distinct from his explanations.

Despite these shortcomings, Husami does make two important points. First, he argues that the societal origin of an idea does not invalidate it.⁵⁶⁵ The adequacy of a theory must be determined through rational argument. That justice, or at least a particular conception of it, has ‘bourgeois’ origins is not enough to discredit it. Otherwise, Marx would not have adopted the labour theory of value from bourgeois political economy. This is cogent and answers some of the

⁵⁶⁰ Marx and Engels, *The Holy Family*, op. cit., 175-76.

⁵⁶¹ Marx, *Grundrisse*, op. cit., 248-49.

⁵⁶² Marx, *Critique of the Gotha Programme*, op. cit., 15-16.

⁵⁶³ Husami, op. cit., 77.

⁵⁶⁴ Ibid.

⁵⁶⁵ Ibid., 55.

objections raised by Ollman without becoming the ‘ethical absolutism’ that van de Veer affirms and which Marx would surely reject.

Second, and more importantly, Husami argues that Tucker and Wood ignore how elements of the superstructure, including justice, have two levels of determination. They have not only a social determination but also a class determination.⁵⁶⁶ In other words, Tucker and Wood argue that moral conceptions are determined only by the mode of production, abstractly conceived. They neglect that moral ideas, like all ideas, also derive from the opposition of social classes. They therefore imply that Marx’s sociology of morals is a form of positivism.⁵⁶⁷ Conversely, Husami argues that Marx adopts the proletarian standpoint. This is the basis of his critique of capitalism. Husami makes an important point. To a certain extent it is vindicated by Marx’s assertions about the struggles to enact labour laws:

This struggle about the legal restriction of the hours of labour raged the more fiercely since, apart from frightened avarice, it told indeed upon the great contest between the blind rule of the supply and demand laws which forms the political economy of the middle class, and social production controlled by social foresight, which forms the political economy of the working class. Hence the Ten Hours Bill was not only a great practical success; it was the victory of a principle; it was the first time that in broad daylight the political economy of the middle class succumbed to the political economy of the working class.⁵⁶⁸

We can also point to historical precedent. The feudal mode of production did not rigidly determine the superstructure to such an extent that there was only a single possible notion of morality. During the feudal crisis, distinctly bourgeois notions of morality were indispensable for the hegemonic class-formation of the bourgeoisie and for their eventual triumph. As Tawney notes, “Virtues are often conquered by vices, but their rout is most complete when it is inflicted by other virtues.”⁵⁶⁹

⁵⁶⁶ Ibid., 50.

⁵⁶⁷ Ibid., 51.

⁵⁶⁸ Marx, *The First International and After*, op. cit., 79.

⁵⁶⁹ Tawney, op. cit., 225.

Although Husami is correct about the class-determination of the superstructure, for Marx, this may not necessarily transfer over to morality or justice under capitalism. Marx concedes the importance of these alternative notions of right in past revolutions. Nevertheless, he also asserts that these ascending classes had to deceive themselves about the extent to which their particular class interests were reconcilable with the general interest.⁵⁷⁰ Contrary to Husami's suggestions, Marx may deem justice inherently ideological. When he argues that the working class needs no such illusions when it wages its revolution, these illusions may include justice. At the very least, the applicability of Husami's important assertions about the class-determination of knowledge to questions of justice requires more argument than he offers.

This is revealed in Husami's interpretation of Marx's account of primitive accumulation. Typically, bourgeois political economy gives three justifications for capitalist profit: it is a reward for superintendence, for abstinence, and for risk.⁵⁷¹ Husami argues that Marx obliterates these moralizing assertions with his historiography of these 'original accumulations.' Husami asserts that Marx does this in order to show that both the origins and the reproduction of capitalism are unjust. Husami is correct in one respect. Marx certainly destroys the myths of bourgeois morality in its 'heroic' age. Nevertheless, Husami neglects that Marx does not replace this shattered moral edifice with an alternative theory of the just acquisition of property. Instead, he casts it as the expropriation of the expropriators. With this, Marx sounds quite like Rousseau: "The uprising that ends in the strangulation or the dethronement of a sultan is as lawful an act as those by which he disposed of the lives and goods of his subjects the day before. Force alone maintained him; force alone brings him down."⁵⁷² While it is true that Marx speaks of the proletarian standpoint in terms of the 'political economy of the working class,' when does he ever make comparable assertions about the *ethics* of the working class? Of course, he occasionally praises the distinctly ethical actions of the working class. For example, Marx exalts the Paris Commune: "The moderation of the Commune during two months of undisputed sway is equalled only by the heroism of its defence."⁵⁷³ Nevertheless, nowhere in Marx's work are these scattered comments about ethics raised to the level of a science in the way that Marx describes

⁵⁷⁰ Marx and Engels, *The Karl Marx Library, Volume I*, op. cit., 246-47.

⁵⁷¹ Husami, op. cit., 63.

⁵⁷² Jean-Jacques Rousseau, 'The Origins of Inequality,' in *The Basic Political Writings*, ed. and trans., Donald A. Cress (Indianapolis: Hackett, 1987), 79-80.

⁵⁷³ Marx, *Civil War in France*, op. cit., 76.

the ‘political economy of the working class.’ He does not assert whether or not such a thing is possible. Perhaps Marx deems ethics inherently unscientific.

Gary Young, who also contends that Marx deems capitalism unjust, bolsters his argument with three ‘saving distinctions,’ each of which map onto the others.⁵⁷⁴ He distinguishes between the realms of exchange and production, between market and non-market rights, and between methodological individualism and a social ontology. Young asserts that Wood and Allen neglect how, for Marx, the ‘distributions’ of values in the market may be just, but the way these values enter the market, the unequal ‘distribution’ of the means of production between different classes, is unjust.⁵⁷⁵ Wood and Allen therefore miss that exploitation is unjust theft. This is not because this theft contravenes market-based rights. Rather, this theft is unjust because it offends against the more foundational set of background rights.⁵⁷⁶ Young contends that Allen’s methodological individualism renders him unable to see how the wage-exchange is mere appearance. When we account for long-term processes between entire classes, this market exchange and its ‘justice’ are non-real.⁵⁷⁷

Young’s critique of methodological individualism is warranted, but this does not entirely disprove Allen’s assertions. Although Marx’s social ontology penetrates to the more foundational production relations between entire classes, this does not necessarily entail that he has a positive conception of justice. Young asserts:

The capitalist’s right to profit arises from the laws of commodity exchange, which are market rights, rights one has only in one’s role as owner and buyer or seller. As a living component of capital, the worker has no market rights. But it is as a living component of capital that the worker is exploited. When Marx says that capitalist exploitation is theft – and therefore unjust – he presupposes a background of rights that do not arise from one’s status in the market.⁵⁷⁸

And yet, right before this statement, Young quotes from Marx’s ‘Notes on Wagner,’ which includes the line: “I further indicate in detail that even if in commodity exchange only

⁵⁷⁴ Gary Young, ‘Doing Marx Justice,’ in Kai Nielsen, et al, op. cit.

⁵⁷⁵ Ibid., 255.

⁵⁷⁶ Ibid., 260.

⁵⁷⁷ Ibid., 263.

⁵⁷⁸ Ibid., 260.

equivalents are exchanged, the capitalist – as soon as he has paid the labourer the real value of his labor power – quite legally, i.e. by the law [*Recht*] corresponding to this mode of production, obtains surplus value.”⁵⁷⁹ Marx does not say that the capitalist is legally entitled to the surplus value according to the law corresponding to commodity exchange. Rather, it is the law corresponding to the *mode of production*. Marx does not recognize the distinction Young imposes on him. Therefore, Young has not demonstrated that “and therefore unjust” follows from the theft of surplus value. This undermines Young’s distinction between market rights and the more real background rights arising from the realm of production.

Young notes how, for Marx, there are both juridical and substantive versions of freedom and self-realization. Marx deems all “value concepts” or “value expressions” to have both critical and uncritical applications.⁵⁸⁰ Young asserts that Wood and Allen ascribe to Marx a concept of justice that makes it impossible to deploy it as a critical concept: “If Marx understood not only justice, but all value concepts, in this way, he would be precluded from criticizing capitalist production.”⁵⁸¹ This is true, but we cannot assume that justice is a value concept like any other. This is not to endorse the fact-value distinction. It is to point to historical processes in the transitions to capitalism that transform the accepted meaning of justice. It is possible that Marx isolates justice as an inherently ideological moral category that has no critical form of application.

Richard T. Arneson also deems it fairly obvious that Marx condemns capitalism as unjust.⁵⁸² Like Husami, he argues that we must distinguish between sociology and morality. In other words, we must distinguish between, on the one hand, Marx’s explanation of how people come to adopt ideological conceptions of certain things, and on the other hand, Marx speaking ‘in his own voice’ about the correct perspectives.⁵⁸³ Otherwise, Arneson contends, Marx would be inconsistent:

It is true that Marx occasionally seems to characterize as ‘just’ aspects of capitalism that strike us and him as fairly horrible. But when Marx uses terms of moral evaluation he is often employing them in what has been called the inverted-

⁵⁷⁹ Ibid., 259.

⁵⁸⁰ Ibid., 267.

⁵⁸¹ Ibid., 266.

⁵⁸² Richard T. Arneson, ‘What’s Wrong With Exploitation?’ *Ethics*, 91.2 (January 1981): 202-227; 219.

⁵⁸³ Ibid., 220.

comma use, and this is almost invariably so when characterizations of justice are being mooted: that is, Marx's 'this is just' can almost always appropriately be rendered 'this is what is called 'just.'⁵⁸⁴

Of course, Arneson's claims would be stronger if Marx ever used the inverted commas in this way. This provokes the question: why didn't he? The use of inverted commas is not entirely foreign to Marx. For example, in *Capital* he not only uses them, but does so for a word that has received a great deal of scrutiny in these debates: "The act of 1844 certainly 'robbed' the silk manufacturers of the 'liberty' of employing children under 11 for longer than 6 ½ hours each day."⁵⁸⁵ This makes it all the more significant that when Marx describes the wage-relation as not unjust, or when he describes it as robbery, he puts neither term in inverted commas. That Marx says it is not unjust and is robbery rather than 'not unjust' and 'robbery' is one of the reasons why I insist on taking him literally.

Arneson, like Young, argues that Marx's notion of justice must be similar to other moral values: "However, one would ransack Marx's texts in vain for any reason to think that 'this is unjust' is always ideological sham whereas 'this is unfree' or 'this is uncommunal' may be reasonable evaluations. No such reason exists, so it cannot be found."⁵⁸⁶ Arneson continues: "The situation is not that Marx talks a great deal about freedom and other nonmoral values and is strangely silent about justice in a way that demands some special explanation. Marx is generally taciturn about norms."⁵⁸⁷ And yet, Marx speaks about freedom in a number places:

- "Only within the community has each individual the means of cultivating his gifts in all directions; hence personal freedom becomes possible only within the community."⁵⁸⁸
- "If man is unfree in the materialist sense, i.e., is free not through the negative power to avoid this or that, but through the positive power to assert his true individuality, crime must not be punished in the individual, but the anti-social source of crime must be

⁵⁸⁴ Ibid., 217-18.

⁵⁸⁵ Marx, *Capital: Volume One*, 406.

⁵⁸⁶ Arneson, op. cit., 220.

⁵⁸⁷ Ibid., 221-222.

⁵⁸⁸ Marx and Engels, *The German Ideology*, op. cit., 86.

destroyed, and each man must be given social scope for the vital manifestation of his being.”⁵⁸⁹

- “In place of the old bourgeois society, with its classes and class antagonisms, we shall have an association, in which the free development of each is the condition for the free development of all.”⁵⁹⁰
- “In this way he spurs on the development of society’s production which alone can form the real basis of a higher form of society, a society in the full and free development of every individual forms the ruling principle.”⁵⁹¹
- “The working class did not expect miracles from the Commune. They have no ready-made utopias to introduce *par decret du people*. They know that in order to work out their own emancipation, and along with it that higher form to which present society is irresistibly tending by its own economical agencies, they will have to pass through long struggles, through a series of historic processes, transforming circumstances and men.”⁵⁹²

Where does Marx ever speak about justice in such exalted terms?

Kai Nielsen notes how, in the interpretation of Tucker and Wood, Marx deems capitalism as exploitative, dehumanizing, and enslaving, but not unjust.⁵⁹³ Nielsen responds,

If Tucker and Wood accept the previous social descriptions as genuine Marx, then they must conclude that as the term ‘justice’ is plainly and unequivocally used in everyday life, Marx and Engels were condemning capitalism as unjust. All that Tucker and Wood could show is that if their own readings are correct, in a specialized, quasi-technical use of the term ‘justice,’ or more accurately, ‘*Gerechtigkeit*,’ that Marx and Engels did not, in that *special sense*, claim that capitalism is unjust.⁵⁹⁴

⁵⁸⁹ Marx and Engels, *The Holy Family*, op. cit., 175-76.

⁵⁹⁰ Marx and Engels, ‘The Communist Manifesto,’ op. cit., 490-91.

⁵⁹¹ Marx, *Capital: Volume One*, op. cit., 739.

⁵⁹² Marx, *Civil Wars in France*, op. cit., 61-62.

⁵⁹³ Nielsen, *Marxism and the Moral Point of View*, op. cit., 170.

⁵⁹⁴ *Ibid.*

First, we must note that the way that terms are ‘plainly and unequivocally used in everyday life’ is not a legitimate standard for argument in any plausible philosophical method. This is true especially of Marxism for which the prevailing common-sense is rife with ideology. Indeed, Marx refers to fetishism as the “religion of everyday life.”⁵⁹⁵ The basis of Nielsen’s ‘ordinary language’ approach is his belief that ethics is basically composed of truisms: “A Marxist critique of society proceeds not by way of presenting new moral tablets but by way of showing people with ordinary human feelings and moral beliefs how societies really function and what the world could become with the development of the productive forces.”⁵⁹⁶ One need not propose a transvaluation of all values to assert that this common-sense approach provides insufficient grounds for the critique of ideology.

Second, we must say something about the stakes of these debates. Wood asserts that these debates are not based in mere verbal quibbling—they represent substantive disagreements:

When Marx limits the concept of justice in the way he does, he is not by any means making a terminological stipulation. He is basing his claim on the actual role played in social life by the concept of justice, and the institutional context in which this term has its proper function. His disagreement with those who hold that capitalism is unjust is a substantive one, founded on his conception of society and having important practical consequences.⁵⁹⁷

Nielsen, on a number of occasions, dismisses Wood’s assertions as ‘quasi-technical’ quibbling:

But, oddly and indeed quixotically, Wood did not regard talk of exploitation, dehumanization, and enslavement as talk of distinctively moral notions. Here again we seem at least to have a purely verbal issue, with Wood pointlessly making what are in effect verbal stipulations about the range of ‘the moral.’⁵⁹⁸

⁵⁹⁵ Marx, *Capital: Volume Three*, op. cit., 969.

⁵⁹⁶ Nielsen, *Marxism and the Moral Point of View*, op. cit., 33.

⁵⁹⁷ Wood, ‘The Marxian Critique of Justice,’ op. cit., 26.

⁵⁹⁸ Nielsen, *Marxism and the Moral Point of View*, op. cit., 172.

Nevertheless, we may disagree with Wood's distinction between the moral and non-moral without describing it as pure idiosyncrasy. It is only one contribution to a vast literature on the fact-value distinction. Is all of this trivial too? Wood's distinction cannot be so easily dismissed. Indeed, given the pervasiveness of these distinctions in the modern era, we would do well to explore the extent to which they are determined by specifically capitalist social relations. Rather than dismiss Wood's assertions about the range of the moral as terminological, we should explore whether or not it is rooted in broader historical circumstances. Perhaps this is the key to making what seems to be a verbal quibble into something more substantive. This is the least we could expect from Marxists, no?

Nielsen nonetheless seems determined to narrow the significance of these debates. He asserts that if we were to accept Wood's premises, all it would mean is that in our depictions of socialism as a higher or better society, we would have to drop terms like "fairer" or "juster."⁵⁹⁹ Nielsen asks whether or not this really matters that much. Instead, many of these commentators need to ask, what are the stakes of this debate? What would happen if either side conceded to the other? It seems the stakes are very low. It appears that this would be only a nominal victory, 'nominal' meant in the literal sense. Either we would or we would not attach the word 'justice' to our criticisms of capitalism, every other aspect of this critique remaining untouched. Rarely, if ever, is the debate conducted in a way that would render the stakes high. All that is fought for is the imputation of a name. It is not a struggle over a genuine concept and practice, a qualitatively different worldview and ethical activity, the stakes of which may not only entail a thoroughgoing critique of Marx, but of modernity itself. Instead, the warring factions have dug hundred-foot trenches on either side of an anthill. In the bluster of their battle, they miss the mountain in the near-distance.

Another crucial problem of Nielsen's more linguistic approach, a problem that is also critical for the stakes of these debates, is his overemphasis of moral justifications and his neglect of moral activity. It seems that, for Nielsen, the primary significance of these debates is argumentative. In other words, we need a Marxist theory of justice in order to describe capitalism as unjust and socialism as just. Nevertheless, this neglects the significance of justice as a guide to activity, including revolutionary struggle. This results in significant tensions. Nielsen asserts:

⁵⁹⁹ Ibid., 70.

However, the socialist who wishes to condemn capitalism as an unjust system because it systematically treats some human beings, in their conditions of servitude, as means only, could still recognize that sometimes such evils and such injustices are necessary. Not infrequently in morality, we have to choose the lesser evil. Such socialists could grant, as John Rawls would not, that sometimes, in grim circumstances, utility outweighs justice and that we then must accept injustice as morally necessary.⁶⁰⁰

It is not at all clear how someone who argues for the importance of a coherent notion of justice could then justify acting unjustly. What are the stakes of these debates if what is won need not be followed consistently?

Nielsen asserts: “I am, however, much more concerned with the soundness of such a Marxist account of justice on its own, quite apart from anything Marx or Engels may or may not have said about the justice and moral preferability of socialism.”⁶⁰¹ Nevertheless, his Marxist conception of morality will attempt to correspond with the “canonical core of Marxism.”⁶⁰² Ultimately, he is not concerned with an exegesis of Marx but with what Marxists can consistently say about morality.⁶⁰³ Nielsen’s method does not address the fundamental question. This question is not whether or not Marx condemns capitalism as unjust. The first question should be why is Marx so evasive about ethics and justice? This question should have come before Nielsen’s attempt to establish a Marxist morality independent of Marx. This is not because we demand a slavish adherence to what Marx says. Far from it. Rather, it is because the very fact of Nielsen’s project implies the absence of a coherent theory of ethics in Marx’s system, an absence which may call into question a theory that claims to be systematic. We pursue the more fundamental question because, rather than leading to a potential historical materialist ethics, it may result in significant criticisms of historical materialism as a whole. These debates would then become substantive. Instead of an exegesis of Marx, Nielsen engages

⁶⁰⁰ Ibid., 165.

⁶⁰¹ Ibid., 119-120.

⁶⁰² Ibid., 120.

⁶⁰³ Ibid., 282.

in an exegesis of subsequent Marxists. In doing so he has traded *the* Marxist for Marxists of inferior quality. Surely this is the unjust exchange they are always quibbling over!

Finally, there are certain theorists who make their claims that Marx deems capitalism unjust primarily dependent on two ideas. First, they argue that the third wave of debate has faltered because of its dependence on analytical philosophy. Second, they contend that it is only with a sufficient understanding of the dialectical method that we can appreciate the ways in which historical development embodies progress in the principles of justice. In other words, these theorists contend that, if Marx condemns capitalism as unjust, it is according to a higher principle of socialist justice.

Sean Sayers argues that the conflict between Wood and, as we will see in the next section, Cohen and Geras, results from the way in which their analytical philosophical approaches demand an either/or choice between moral relativism and absolutism.⁶⁰⁴ For Sayers, Wood rightly argues that justice is an ideological notion for which we must provide a socio-historical account, but wrongly argues that these standards are purely internal to the social conditions and therefore cannot provide a basis by which to critique them. Nevertheless, Sayers continues, Cohen is right to assert that Marx deems capitalism unjust but is wrong to assert that Marx makes this judgement according to trans-historical principles of justice.⁶⁰⁵ For Sayers, these are insufficiently dialectical approaches. The pure relativism of Wood and the pure absolutism of Cohen neglect that, from the perspective of justice, as with any other standard, history is not an arbitrary succession of incommensurable social forms. Rather, it is a progressive development through these forms.⁶⁰⁶ Sayers asserts that,

by the standards of bourgeois society, the feudal order, with its ranks and privileges, seems unjust, and capitalism seems a higher form. However, these standards, and the society which produces them, themselves come to seem limited and unjust, as the conditions for a new and still higher form of society—socialism—emerge, and as the morality associated with it becomes clearer.⁶⁰⁷

⁶⁰⁴ Sean Sayers, *Marxism and Human Nature* (London: Routledge, 1998), 113.

⁶⁰⁵ *Ibid.*, 113-15.

⁶⁰⁶ *Ibid.*, 117-18.

⁶⁰⁷ *Ibid.*, 123.

Ultimately, for Sayers, human nature hitherto has only existed as latent potential. It will only be actualized in socialism and communism.

Similarly, Philip J. Kain argues that neither Wood nor Husami adequately account for Marx's dialectical method, especially as it develops from the *Grundrisse* on.⁶⁰⁸ Kain argues that, with regard to the 'Notes on Wagner,' because Marx believes that the capitalist both acts in accordance with right but also robs the worker, he acts both justly and unjustly. Although Kain agrees with Husami more than Wood, he believes that Husami's arguments about a specifically proletarian moral standpoint are more indebted to Engels than to Marx. Rather, for Kain, Marx deems capitalism just according to the everyday experience of its surface appearances, but unjust according to a scientific method that grasps capitalism in its essential relations.⁶⁰⁹ It is for this reason that Kain also disagrees with Wood's assertion that slavery was just in a slave-based mode of production. Rather, like capitalism, Marx would deem slavery just according to surface appearances, but essentially unjust.⁶¹⁰ Kain concludes that, when Marx says in the 'Critique of the Gotha Programme' that the present distribution is the only fair distribution in the present social conditions, "he is not claiming that no higher standard of justice can be envisioned or appealed to, but that no other form of distribution can be *realized* on the basis of capitalist production."⁶¹¹

Sayers and Kain's interpretation of Marx features significant shortcomings. Although Marx explicitly asserts that from the perspective of one mode of production every other mode of production is unjust, he never asserts that one mode of production can be judged as more or less just than another. Furthermore, Kain's assertion that, for Marx, a higher standard of justice can be appealed to even if it cannot be realized in present conditions, defies Marx's rejection of utopianism and his use of immanent critique with respect to the standards of justice. Both Sayers and Kain assume that, for Marx, as with any other standard, principles of justice are subject to continuous and progressive historical development. This neglects all of the evidence that Marx deems justice a standard different from all of the others. Finally, as Eagleton has argued, Sayers is more of a romantic than a Marxist because his affirmation of socialism does not tell us which of the vast panoply of human capacities are beneficent:

⁶⁰⁸ Philip J. Kain, *Marx and Ethics* (Oxford: Oxford University Press, 2005), 138.

⁶⁰⁹ *Ibid.*, 159-60.

⁶¹⁰ *Ibid.*, 169-70.

⁶¹¹ *Ibid.*, 170.

To reply that we should actualize only those capacities which make for socialism is simply to beg the question, since, if socialism is valuable because it is a positive form of self-realization, what is to count as such positive self-realization still needs to be determined.⁶¹²

In general, this sub-group does not take seriously enough the Tucker-Wood thesis. They are dismissive of the strongest arguments in favour of that position. Consequently, they are overly reliant on imputing things to Marx without sufficient fidelity to his intended meaning. We turn now to those commentators who do take seriously the Tucker-Wood thesis despite their opposition to it.

7. 2: Marx Criticizes Capitalism As Unjust...Without Knowing It

This sub-group accounts for the Tucker-Wood thesis by making certain concessions to it. They argue that, although Marx sometimes says something to the contrary, for the most part, he deems capitalism unjust. Therefore, Marx is somewhat inconsistent. Nevertheless, this sub-group believes that most of the evidence is in their favour. In later chapters, I will argue that Marx *is* inconsistent, but not in the ways these commentators think he is. An unstrained reading of Marx proves that everything he says about justice is internally consistent if we have a sufficient appreciation for his dialectical method and his use of immanent critique. Where Marx might be inconsistent is the way in which he separates justice from other aspects of ethics like freedom. This can only be shown if we apply immanent critique to Marx himself.

We begin with G.A. Cohen.⁶¹³ Earlier, I cited Cohen's essay, 'Freedom, Justice and Capitalism,' as an example of the curious habit among Marxists who fail to apply the methods of

⁶¹² Terry Eagleton, 'Self-Realization, Ethics, and Socialism,' *New Left Review*, 1/237 (September-October 1999): 150-161; 156-57.

⁶¹³ There were some precursors to this perspective before the debate really got under way. For example, Leon McBride argues that Marx criticizes capitalism from a perspective that is external to capitalism (William Leon McBride, 'The Concept of Justice in Marx, Engels, and Others,' *Ethics*, 85.3 (April 1975): 204-218, 211). McBride asserts that although there is little evidence that Marx deemed capitalism unjust, he does seem to distinguish justice from concepts like rationality, freedom, and equality: "Justice, in the thought of Marx, is different from all these in some significant respects, because it is totally epiphenomenal and dependent on the existing order, whereas none of the others is quite as completely so. And yet, and yet...I do not see how Marx and Engels could, if pressed on the

Marxism in their study of Marx. As we saw, Cohen asserts that Marxists hold theories of natural right without knowing it. In particular, Marxists believe that private ownership of the means of production contravenes a natural law of justice. Ultimately, Cohen attributes a similar lack of awareness to Marx.

Cohen, in a review of Wood's *Karl Marx*, argues that when Marx describes the appropriation of surplus-labour as 'theft,' he cannot mean that it is theft according to the rules of capitalism since the wage-exchange obeys those rules: "Wood treats the assertion of equivalence as though Marx intended it to show that moral condemnation of capitalism is out of place, when its purpose, for Marx, is to emphasize that the transaction he goes on to condemn does not violate the rules of market exchange."⁶¹⁴ We saw earlier that Wood neglects Marx's immanent critique. He thinks that Marx deems capitalism unproblematically just because Wood misses Marx's efforts to undermine the bourgeois notion of justice as equal exchange. Although Cohen comes to the opposite conclusion, he also ignores Marx's immanent critique:

Now since, as Wood will agree, Marx did not think that by capitalist criteria the capitalist steals, and since he did think he steals, he must have meant that he steals in some appropriately non-relativist sense. And since to steal is, in general, wrongly to take what rightly belongs to another, to steal is to commit an injustice, and a system which is 'based on theft' is based on injustice.⁶¹⁵

Whereas Wood argues that Marx is theoretically consistent in his assertions that capitalism is just, Cohen argues that Marx ultimately believes capitalism is unjust but held this belief inconsistently:

And perhaps Marx did not always realize that he thought capitalism was unjust. For there exist texts, ably exploited by Wood, which suggests that, at least when writing them, Marx thought all non-relativist notions of justice and injustice were moonshine. *If* the texts really show that he thought so, then I would conclude that,

matter, logically avoid recognizing that justice, too, can meaningfully be referred to from a standpoint at least partially external to any particular past or present socioeconomic system" (ibid., 213). McBride's inclination was subsequently raised into formal theories of Marx's inconsistency in the work of Cohen, Geras, Elster, and Peffer.

⁶¹⁴ G. A. Cohen, 'Review of Allen Wood's *Karl Marx*,' *Mind*, 92.367 (July 1983): 440-445; 443.

⁶¹⁵ Ibid.

at least sometimes, *Marx mistakenly thought that Marx did not believe that capitalism was unjust*, because he was confused about justice.⁶¹⁶

As we will soon see, one finds frequently in this debate assertions about what Marx would have said had he known his own mind.

The application of the methods of analytical philosophy in Cohen's *Karl Marx's Theory of History*, in which Cohen provides a self-described functionalist reading of Marx's historical materialism, inspired a sea-change among many Marxists who later identified as 'Analytical Marxists' or 'No-Bullshit Marxists.' Gradually, however, Cohen came to reject Marx's theory of history. Cohen argued that the impelling force of Marx's socialism, the working class, was disappearing. Cohen attributes the decline of the working class to "technological change."⁶¹⁷ In this, Cohen's rejection of Marxism is as technologically determinist as his earlier affirmation of it. As we have seen, this has a long pedigree in these waves of debate.

Cohen argues that, according to the traditional communist conceptions, the working class:

1. constituted the majority of society;
2. produced the wealth of society;
3. were the exploited people in society; and
4. were the needy people in society [...]
5. would have nothing to lose from revolution, whatever its upshot might be [...]
6. could and would transform society.⁶¹⁸

Cohen concludes that because there is now no group in advanced industrial capitalism that combines the first four aspects, the last two are false. There are a number of problems with this.

The three waves of debate about Marx and ethics, and indeed, the history of Marxism in general, are pervaded by overly myopic, short-term perspectives. Bernstein declared that Marx's theory of the immiseration of the working class had been refuted not too long before the Great

⁶¹⁶ Ibid., 444.

⁶¹⁷ G. A. Cohen, *On the Currency of Egalitarian Justice, and Other Essays in Political Philosophy*, ed. Michael Otsuka (Princeton: Princeton University Press, 2011), 214-15.

⁶¹⁸ G. A. Cohen, *If You're an Egalitarian, How Come You're So Rich?* (Cambridge, Massachusetts: Harvard University Press, 2000), 107.

Depression threw masses of workers into dire conditions. Goldmann did the same soon before the recession of the 1970s overturned the post-war ‘golden age’ of capitalism. Cohen made similar claims in the period before the current Great Recession obliterated the anemic recovery of the 1990s. Indeed, many are now speaking of the ‘precariat’ and ‘precarious work.’ If theorists like Cohen had been more careful when conveying Marx’s ideas, more people would understand that this is precisely what Marx means by the proletariat and proletarianization.⁶¹⁹ Instead, Cohen asserts:

It is necessary to emphasize that the point I am laboring has nothing to do with the scholastic question about what is the correct way to use the phrases ‘working class’ or ‘proletariat.’ Under some orthodox definitions of these terms, where, for example, the essential condition for inclusion in their denotation is that one must sell one’s labor power to get one’s living, the overwhelming mass of the population is, some would argue, now proletarian. But that, if indeed a fact, is an entirely boring fact, in face of the nonverbal, and politically fateful, truth that the four features I listed have come apart. That truth has nothing to do with the proper meaning of the expression ‘proletariat’ (or ‘working class’), and is therefore not refutable on the basis of whatever anyone thinks its proper meaning is.⁶²⁰

We agree that the defeats of the working class have been ‘politically fateful.’ Nevertheless, treating the theorization of the working class as a ‘scholastic’ discussion precludes from the outset any serious explanation of its fate.

Cohen’s technological determinism shows not only in his commentaries on developments in the working class, but also in his conception of socialism. He argues that, according to the traditional Marxist account, two “irrepressible historical trends” would lead to “ultimate economic equality.”⁶²¹ The first is the rise of the organized working class. The second is the growth of the productive forces: “That growth would issue in a material abundance so great that

⁶¹⁹ Bryan Palmer, ‘Reconsiderations of Class: Precariousness as Proletarianization,’ in *Socialist Register 2014: Registering Class*, eds. Leo Panitch, Greg Albo, and Vivek Chibber (London: Merlin Press, 2013).

⁶²⁰ Cohen, *If You’re an Egalitarian, How Come You’re So Rich?* op. cit., 108.

⁶²¹ G.A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995), 6.

anything that anyone needed for a richly fulfilling life could be taken from the common store at no cost to anyone.”⁶²² Cohen dramatically exaggerates the importance of abundance relative to transformed social relations in Marx’s and Marxism’s account of socialism. The three waves of debate reveal time and again how the critique not of historical materialism, but of determinist readings of it, usually provoke some form of deontological ethics. After all, even Kantian winds can blow over a straw-Marx.

Cohen rejects the distinction between scientific and utopian socialism and calls for an openly utopian moral justification for the project of socialism:

The decisive reason for not abandoning community and equality is that the moral force of those values never depended on the social force supporting them that is now disappearing. No one who believed in the values could have said that she believed in them *because* they expressed the sentiments of a social movement. Anyone who believed in them believed in them because she thought them inherently authoritative, and the withering of the social force that backed them cannot justify ceasing to think them authoritative.⁶²³

Like Bernstein before him, Cohen is inspired to pursue the question of ethics because he calls into question significant aspects of the classical (or at least what he deems to be the classical) theory of historical materialism. If the scientific aspects of historical materialism are refuted, we must recover what is unique to socialism, its ethics. This assumes that the question of ethics was not as pertinent, or *more pertinent*, when historical materialism was more widely respected as a scientific theory, and when world socialism was at the apex of its power. This also fails to ask the question of whether or not the lack of a coherent ethics in historical materialism can be subjected to a historical materialist critique. All of this derives from Cohen’s misinterpretations of Marx and his historical materialism.

In the aforementioned essay on freedom and justice, Cohen, after a critique of Nozick’s libertarianism, attempts to persuade his leftist audience about the plausibility of claims of natural right by asking them to imagine a scenario in which the government has outlawed protest:

⁶²² Ibid.

⁶²³ Cohen, *On the Currency of Egalitarian Justice*, op. cit., 215.

one way of expressing anger at the government's decision would be to say: people have a right to protest against any part of government policy. Since *ex hypothesi* that would not be true at the level of *legal* rights, we would be claiming to possess a right which is not a merely legal one. And that is what is meant, at any rate by Nozick and me, by a natural right.⁶²⁴

This argument is not decisive. Marx and Marxists can argue that people protest not because they object to positive laws on the basis of a natural law, but rather, because the positive law is against their material interests. Cohen argues that one of the reasons why socialists should adopt the notion of natural right is to counter social democrats whose style of argumentation leaves them vulnerable to conservative arguments. He contends that the primary critique that social democrats level at *laissez faire* capitalism is not that it is unjust, but that it harms the weak.⁶²⁵ Consequently, a conservative like Nozick can respond that while this may be true, it would be unjust to force others to provide aid to the weak through welfare state policies. Cohen argues that socialists must be able to meet conservatives on these grounds:

And to this position it is not a principled reply to sketch forth vividly the inhuman effects of absence of coercive transfer payments. The principled reply is that the socializing state is not violating rights, or even overriding them in the interest of something more important, but righting wrongs: it is rectifying violations of rights, violations inherent in the structure of private property.⁶²⁶

This does not answer the strongest arguments of what Cohen would no doubt deem to be an orthodox Marxism. According to them, Marxists do not necessarily need natural right to counter the social democrats. Again, they can appeal to interests. Indeed, for Marx, as we have seen, struggle is not about 'righting a wrong.' Rather, it is about the inevitable antagonism between two equal rights which shows the contradiction through which a new society devoid of such a contradiction must be forged.

⁶²⁴ Cohen, 'Freedom, Justice and Capitalism,' *op. cit.*, 12.

⁶²⁵ *Ibid.*

⁶²⁶ *Ibid.*, 13.

Cohen concludes his *If You're an Egalitarian, How Come You're So Rich?* with an epilogue titled "Envoi." It begins by invoking the task of Marxism: liberating humanity from the oppression of the capitalist market.⁶²⁷ It ends with the following:

Business is, among other things, people treating people according to a market norm—the norm that says they are to be dispensed with if they cannot produce at a rate which satisfied market demand. Of course that promotes 'efficiency,' but it also corrupts humanity. Business turns human producers into commodities. Nor does it spare their employers—'For what shall it profit a man, if he shall gain the whole world, and lose his own soul?' (Mark 8:36).⁶²⁸

Cohen goes from Marxism to *Markism*. This is a path frequently trod by those who begin with a crude, deterministic version of scientific socialism. When they engage in ethical questions, they turn to an equally crude, idealistic, utopian socialism. Cohen's 'Envoi,' this sending off, sends us off course.

Norman Geras raises Cohen's arguments to a higher level of sophistication and provides what in all likelihood is the best contribution to this debate.⁶²⁹ Ultimately, I will disagree with Geras's interpretation. Nevertheless, anyone coming to these debates for the first time would do well to start with his articles. After laying out a fairly exhaustive overview of the main arguments for the two major sides we have discussed so far, Geras offers two reasons to doubt that following the letter of Marx's texts can give a definitive resolution to this debate.⁶³⁰ First, Marx is dismissive of overtly normative theorizing. Second, Marx's true intentions are obscured by his dialectical theorization of the formal equivalence and the substantive non-equivalence embodied by the wage-relation. Those who argue that Marx does not deem capitalism unjust tend to emphasize the wage-relation as an exchange of equivalents, while those who take the opposite position emphasize the illusory character of the wage-relation: "The problem is that [Marx] equivocates as to which of them is the one relevant to the moral question."⁶³¹ Marx seems to say that, as far as justice is concerned, what matters is the exchange of equivalents

⁶²⁷ Cohen, *If You're an Egalitarian, How Come You're So Rich?* op. cit., 180.

⁶²⁸ Ibid., 181.

⁶²⁹ Geras, 'The Controversy About Marx and Justice,' op. cit.

⁶³⁰ Ibid., 62.

⁶³¹ Ibid., 63.

according to the laws of private property. Subsequently, however, he asserts that these laws become their opposite. Geras asserts that this is merely a “logical trick.”⁶³² The dialectic is only the “enjoyment of intellectual paradox”:

A thing cannot be its opposite. If the wage relation is an exchange of equivalents and just, then that, finally, is what it is, and this can be maintained, even to the point of extreme stubbornness, in the face of Marx clearly speaking otherwise. But if it does indeed turn into its direct opposite, then it is not, finally, an exchange of equivalents or just, and therefore Marx cannot really mean what he says when he says that it is.⁶³³

Geras concludes that because mere exegesis will not solve the debate, some textual reconstruction is also required.⁶³⁴

Geras sides with those who argue that Marx deems capitalism unjust. Geras criticizes the view that Marx’s depiction of primitive accumulation only registers violations of pre-existing property rights without condemning primitive accumulation.⁶³⁵ Geras correctly asserts that this interpretation cannot explain the vitriol with which Marx describes these processes. With regard to the Tucker-Wood thesis, Geras asserts: “The argument, in other words, is merely an explanation of convenience. It responds to a need that must be met if that view is to be sustained, and has no independent textual foundation.”⁶³⁶ Nevertheless, when Geras, a few pages later, argues that Marx challenges the moral propriety of the distribution of the conditions of production, he is guilty of precisely the same thing for which he criticizes Tucker and Wood:

The challenge, by its nature, cannot be anything else than a critique of injustice. We have seen this with respect to the matter of robbery: to say that that is what capitalists are engaged in just *is*, so long as one has no well-founded alternative

⁶³² Ibid., 64.

⁶³³ Ibid.

⁶³⁴ Ibid., 65.

⁶³⁵ Ibid., 66.

⁶³⁶ Ibid., 67.

explanation of its meaning, to question their right to what they appropriate and so the justice of the appropriation.⁶³⁷

Not only should we be wary of ‘just is’ arguments in philosophy, but by arguing in this way, Geras seems to be relying on the needs of the interpretation, not the texts. As we have seen, while we have no reason to doubt that Marx morally condemns primitive accumulation, this does not entail that he does so according to a principle of justice.

Anyone who does not take the dialectic seriously will deem immanent critique, at the most, a particular rhetorical strategy, not a vital methodological practice. Accordingly, Geras rejects the argument that Marx is engaged in an immanent critique:

It is true that he seeks to expose an ideology of bourgeois society according to which the worker receives full recompense for all the value his or her labour-power creates. The worker, Marx holds, receives the equivalent only of some of that value, of a part of it equal to the value of labour-power itself. However, this is all that the capitalist is required to pay according to the laws of commodity production and exchange, and it is these which Marx plainly takes as the real standard of bourgeois right in this matter. If, therefore, the ideology is a deception or hypocrisy, the relation between capitalist and worker still satisfies what are for him the sole effective juridical norms of capitalist exchange. So the claim is unconvincing.⁶³⁸

This interpretation cannot explain why Marx asserts that the practice of commodity exchange conflicts with its principle.⁶³⁹ Furthermore, Geras has missed the philosophical context informing Marx’s arguments, especially the integral relation between private property and the prohibition against theft in the writings of Hume, Kant, and Hegel.

In support of his general argument, Geras makes a claim that, he admits, seems quite paradoxical. Geras, like Cohen, asserts: “Marx did think capitalism was unjust but he did not

⁶³⁷ Ibid., 71.

⁶³⁸ Ibid., 67.

⁶³⁹ Marx, *Critique of the Gotha Programme*, op. cit., 9.

think he thought so.”⁶⁴⁰ Although Geras provides a more robust explanation of this than does Cohen, he also diagnoses this as a merely conceptual confusion. Geras does not ask whether or not the fallacy is rooted in the social conditions which give rise to it. Even though he interprets Marx as a ‘moral realist’ who acknowledges the social determinants of moral thought, Geras applies no such ‘realism’ to Marx himself.⁶⁴¹ This may result, in part, from his not taking Marx’s immanent critique seriously. Geras therefore fails to apply it to Marx.

Geras asserts that Marx has a particularly narrow conception of justice that reduces it to juridical norms and the distribution of consumption goods.⁶⁴² Geras argues that Marx also held an implicit, unformulated, and unacknowledged conception of ‘distributive’ justice. This is broader than the typical conception of ‘distributive justice.’ First, it includes not only the means of consumption, but also the means of production. Second, it not only includes the distribution of material goods, but also the capacities necessary for freedom and self-realization.⁶⁴³ Third, Geras argues that this ‘distributive’ justice is not merely juridical, legal, or conventional, but also moral.⁶⁴⁴ Therefore, he ascribes to Marx a theory of natural right. Geras admits that this conclusion is “mildly shocking” given Marx’s condemnations of the natural right tradition.⁶⁴⁵ For Geras, Marx necessarily holds the belief, whether he acknowledges it or not, “that people are not morally entitled to exclusive use of the productive resources of the earth; saying that private ownership of these constitutes a wrong.”⁶⁴⁶ As we saw, Cohen argues for something similar.

In support of these assertions, Geras cites a passage in which Marx describes the private ownership of land:

⁶⁴⁰ Geras, ‘The Controversy About Marx and Justice,’ op. cit., 70.

⁶⁴¹ Peter Railton, in his explanation of his own specific notion of moral realism, addresses many of the features that any moral realist perspective is likely to have, although, of course, there are different nuances and interpretations: “I will argue for a form of moral realism which holds that moral judgments can bear truth values in a fundamentally non-epistemic sense of truth; that moral properties are objective, though relational; that moral properties supervene upon natural properties, and may be reducible to them; that moral inquiry is of a piece with empirical inquiry; that it cannot be known a priori whether bivalence holds for moral judgments or how determinately such judgments can be assessed; that there is reason to think we know a fair amount about morality, but also reason to think that current moralities are wrong in certain ways and could be wrong in quite general ways; that a rational agent may fail to have a reason for obeying moral imperatives, although they may nonetheless be applicable to him; and that, while there are perfectly general criteria of moral assessment, nonetheless, by the nature of these criteria no one kind of life is likely to be appropriate for all individuals and no one set of norms appropriate for all societies and all times” (Peter Railton, ‘Moral Realism,’ *The Philosophical Review*, 95.2 (April 1986): 163-207; 165).

⁶⁴² Geras, ‘The Controversy About Marx and Justice,’ op. cit., 71.

⁶⁴³ Ibid., 72.

⁶⁴⁴ Ibid., 71.

⁶⁴⁵ Ibid., 77.

⁶⁴⁶ Ibid.

From the standpoint of a higher socio-economic formation, the private property of particular individuals in the earth will appear just as absurd as the private property of one man in other men. Even an entire society, a nation, or all simultaneously existing societies taken together, are not the owners of the earth. They are simply its possessors, its beneficiaries, and have to bequeath it in an improved state to succeeding generations, as *boni patres familias*.⁶⁴⁷

On this basis, Geras concludes: “He is saying no more nor less than that people are not morally entitled to exclusive use of the productive resources of the earth; saying that private ownership of these constitutes a wrong.”⁶⁴⁸ Nevertheless, this quotes Marx in a misleading way. Geras excludes an important part the passage, which, because it points to the historically determined character of what constitutes legitimate property, belies his claims about natural right:

For the buyer, therefore, his claim to rent does not appear as something obtained for nothing, without labour, risk or the entrepreneurial spirit of capital, but rather as the return for his equivalent. Rent seems to him, as we have already noted, simply interest on the capital with which he has purchased the land, and with it the claim to rent. In exactly the same way, it appears to the slaveowner who has bought a Negro slave that his property in the Negro is created not by the institution of slavery as such but rather by the purchase and sale of this commodity. But the purchase does not produce the title; it simply transfers it. The title must be there before it can be bought, and neither one sale nor a series of such sales, their constant repetition, can create this title. It was entirely created by the relations of production. Once these have reached the point where they have to be sloughed off, then the material source, the economically and historically justified source of the title that arises from the process of life’s social production, disappears, and with it all transactions based on it. From the standpoint of a higher socio-economic formation, the private property of particular individuals in the earth will appear just as absurd as the private property of one man in other

⁶⁴⁷ Ibid.

⁶⁴⁸ Ibid.

men. Even an entire society, a nation, or all simultaneously existing societies taken together, are not the owners of the earth. They are simply its possessors, its beneficiaries, and have to bequeath it in an improved state to succeeding generations, as *boni patres familias*.⁶⁴⁹

As we will now see, Geras's affirmation of natural right ultimately derives from a somewhat ambiguous rejection of this historical method.

In a subsequent essay on these debates, Geras, like most forms of revisionism, argues in favour of a recuperation of utopian socialism:

To be anything at all socialism, now as before, will have to be, as this once upon a time would have been put, scientific: materially based in genuine social forces and making use of every resource of knowledge available to it. But socialism now, it must clearly also be acknowledged, is *utopian* socialism—in the way Marxists used to mean that. It is a moral idea; a protest; the refusal to take for acceptable, much less for the best, what is today triumphantly commended as being that. And no one presently knows how, or even if, socialism will be achieved.⁶⁵⁰

This is the logical outcome of what Geras argues in the prior essay, namely, that Marxists must stop deceiving themselves and must begin contributing to debates about justice:

It is a discussion in which Marxists, deceiving themselves as to what they were about, have not been prominent. Rather has it been the thinkers of liberalism who developed a rich and impressive philosophical literature on the subject of justice. Socialists of Marxist formation have to recognize finally (those who have not already done so) the spurious nature of the long polemic Marxism waged in this area, against the ethical advocacy and analysis of others. They have to learn about

⁶⁴⁹ Marx, *Capital: Volume Three*, op. cit., 911.

⁶⁵⁰ Norman Geras, 'Bringing Marx to Justice: An Addendum and Rejoinder,' *New Left Review*, I/195 (September-October 1992): 37-69; 69. Perhaps one would have to bring Marx *to* justice because justice could not be brought *from* him.

these things, to put it bluntly, in liberalism's more advanced school. The case for socialism is obliged now to pass through this more advanced school.⁶⁵¹

Nevertheless, despite his advocacy of natural right, of permanent standards of justice, Geras pursues this in a strangely historicist way. After all, it is not only liberals who have advanced schools of justice. Aside from modern conservatism, to which he cedes this terrain, Marxists can learn from the vast stores of pre-modern philosophical discussion. Despite the sophistication of his contribution, Geras's theory is a contradictory hodgepodge of natural right and historicism. We will return to this in later chapters. For now, Geras concludes his seminal essay with the following: "The last and the largest paradox here is that Marx, despite everything, displayed a greater commitment to the creation of a just society than many more overtly interested in analysis of what justice is."⁶⁵²

Jon Elster asserts that "No interpretation of Marx's various remarks on justice and rights can make them all consistent with one another."⁶⁵³ Nevertheless, he thinks his interpretation is the most compatible with the central texts. Elster affirms Cohen's assertions that Marx must have meant that the capitalist steals in some non-relativistic sense.⁶⁵⁴ He also agrees with Cohen and Geras that Marx did not think he thought that capitalism is unjust. Whether he knew it or not, Marx's *Capital: Volume One* criticizes capitalism for its injustice and his 'Critique of the Gotha Programme' praises socialism for its justice: "Like M. Jourdain, he did not know how to describe correctly what he was doing; unlike him, he actually went out of his way to deny that the correct description was appropriate."⁶⁵⁵ Elster's reference is to Molière's play *The Bourgeois Gentleman*:

MONSIEUR JOURDAIN: And when a man talks, what's that?

PHILOSOPHY MASTER: Prose.

MONSIEUR JOURDAIN: What? When I say: 'Nicole, bring me my slippers and give me my nightcap,' that's prose?

PHILOSOPHY MASTER: Yes, sir.

⁶⁵¹ Geras, 'The Controversy About Marx and Justice,' op. cit., 67.

⁶⁵² Ibid., 85.

⁶⁵³ Elster, op. cit., 230.

⁶⁵⁴ Ibid., 224.

⁶⁵⁵ Ibid., 216.

MONSIEUR JOURDAIN: Well, I'll be hanged! For more than forty years I've been talking prose without any idea of it.⁶⁵⁶

According to Elster, Marx argues that capitalist transactions have the appearance of being trans-historically just. When Marx criticizes this appearance, he does not argue that they are actually trans-historically unjust: "When denying their transhistorical justice, he denied the 'tranhistorical' not the 'justice' part. This, in my view, is the only unstrained interpretation of the passages cited."⁶⁵⁷ If Elster thinks that Marx criticizes capitalism as unjust, but not according to a trans-historical standard of justice, it is unclear why he affirms Cohen's ascription to Marx of a non-relative principle of justice. Perhaps this is because Elster roots principles of justice in their historical context, but thinks it appropriate to evaluate one historical period by the standards of another, 'higher' period. This is the only 'unstrained' interpretation of Elster. He continues:

When referring to the 'defects' of the contribution principle, Marx is implicitly invoking a higher principle of justice. In fact, after the quoted passage he had set out a devastating argument against any abstract theory of justice, and did not notice that in doing so he invoked a theory of the kind he wanted to dispense with.⁶⁵⁸

As we will see, Marx criticizes the principle of distribution in the first phase of socialism, the 'contribution principle,' and posits a superior principle in the second phase, the 'principle of need.' Marx does this while criticizing other socialists for their preoccupation with principles of fair distribution. Elster responds: "the contribution principle provides a second-best criterion when the needs principle is not yet historically ripe for application. Capitalist exploitation is doubly unjust, since it obeys neither principle. The 'equal right' of the first stage of communism, is also unjust, but less so, since only the needs principle is violated."⁶⁵⁹ This provokes the question, what if the contribution principle is not historically ripe for application? Does this mean that there is no standard by which to critique capitalism? Must we then choose either of the

⁶⁵⁶ Molière, *Eight Plays By Molière*, trans. Morris Bishop (New York: The Modern Library, 1957), 346.

⁶⁵⁷ Elster, *Making Sense of Marx*, op. cit., 220.

⁶⁵⁸ *Ibid.*, 222.

⁶⁵⁹ *Ibid.*, 230.

stances that Elster rejects, namely, deem capitalism just or critique it as unjust according to trans-historical standards?

Despite these shortcomings, Elster makes an important contribution to these debates. He quotes Marx from the *Grundrisse*:

The recognition by labour of the products as its own, and the judgement that its separation from the conditions of its realization is improper (*ungehörig*) – forcibly imposed – is an enormous awareness (*enormes Bewusstsein*), itself the product of the mode of production resting on capital, and as much the knell to its doom as, with the slave's awareness that he *cannot be the property of another*, with his consciousness of himself as a person, the existence of slavery becomes a merely artificial vegetative existence and ceases to be able to prevail as the basis of production.⁶⁶⁰

Elster than asserts:

Now one may argue that the word 'ungehörig' is ambiguous, and need not be taken in the sense of 'unjust.' Also, the passage would appear to be quite atypical, almost unique in its insistence on the cognitive conditions for revolution. Both of these objections evaporate in the face of the remarkable fact that in the 1861-3 *Critique*, written a few years after the *Grundrisse*, Marx repeats the same passage almost verbatim, with one main exception. This is that the separation from the means of production that in the *Grundrisse* was referred to as 'ungehörig,' in the later manuscript is called 'ein Unrecht.' If Marx had not believed in the injustice of capitalist property he would hardly, when singling out this passage for excerption, have sharpened the 'improperness' of alienation into 'injustice.' And had it not been representative of his thinking, it would hardly have been singled out in the first place.⁶⁶¹

⁶⁶⁰ Ibid., 106.

⁶⁶¹ Ibid. The passage Elster is referring to is the following: "Das Arbeitsvermögen verhält sich zu ihr als fremdes, als *Zwangsarbeit*. Seine eigne Arbeit ist ihm fremd – und sie ist es, wie wir sehn in der capitalistischen Production ihrem Inhalt, ihrer Direction, ihrer gesellschaftlichen Form nach – ebenso gut wie Material und Instrument. Daher

We cannot ignore this one exception. It is significant. It alters somewhat any potential interpretation of Marx on the question of justice. Nevertheless, Elster invests too much significance in this passage. That it is the only such example does not indicate that this is representative of Marx's thought. Rather, it indicates the opposite. That Marx does not use the term in the 1857-58 draft, then uses it in the 1861-63 draft, but then does not use it in *Capital*, published in 1867, or in any of the subsequent translations, or in the drafts of *Capital Volumes II* and *III*, indicates more that Marx uses 'ein Unrecht' as a kind of shorthand than as a foundational concept.

Despite Elster's claims about the rarity of Marx's statements about the 'cognitive conditions for revolution,' we can compare the two aforementioned passages from the *Grundrisse* and the *Manuskript 1861-63* with a similar one from *Capital: Volume One*. This is one of his final and most sweeping statements in that text:

Along with the constant decrease in the number of capitalist magnates, who usurp and monopolize all the advantages of this process of transformation, the mass of misery, oppression, slavery, degradation and exploitation grows; but with this there also grows the revolt of the working class, a class constantly increasing in numbers, and trained, united and organized by the very mechanism of the capitalist process of production. The monopoly of capital becomes a fetter upon the mode of production which has flourished alongside and under it. The centralization of the means of production and the socialization of labour reach a point at which they become incompatible with their capitalist integument. This

ihm denn auch das Product als eine Combination fremden Materials, fremden Instruments und fremder Arbeit – als *fremdes Eigenthum* erscheint, und es nach der Production ärmer ist um die verausgabte Lebenskraft und die drudgery von neuem beginnt als von den *Arbeitsbedingungen* employed Arbeitsvermögen. Die Erkennung des Products als seines eignen, und die Beurtheilung der Trennung von den Bedingungen seiner Verwirklichung als seines Unrechts – *Zwangsverhältnisse* – ist ein enormes Bewußtsein, *selbst das Product* der capitalistischen Produktionsweise und sehr das knell to its doom, wie mit dem Bewußtsein des Sklaven, daß er *nicht* das *Eigenthum eines Dritten sein kann*, die Sklaverei nur noch künstlich fortvegetirt, und aufgehört hat als Basis der Production fort dauern zu können." (Karl Marx, *Zur Kritik der Politischen Ökonomie (Manuskript 1861-1863)*, *Karl Engels-Friedrich Engels Gesamtausgabe (MEGA): Zweite Abteilung, 'Das Kapital' Und Vorarbeiten, Band 3, Teil 6* (Dietz Verlag Berlin, 1982), 2284-87).

integument is burst asunder. The knell of private property sounds. The expropriators are expropriated.⁶⁶²

As with the previous two passages, Marx speaks of the ‘knell’ of capitalism. Furthermore, his use of ‘integument,’ or in the German original, ‘Hülle,’ is significant. He uses this term sparingly in *Capital: Volume One*. It is almost always to describe the ‘integument,’ or, as it is sometimes translated, the ‘material shell,’ that masks the true character of capital, namely, that its value is the product of labour that has been alienated and appropriated from the labourers themselves. Indeed, the term ‘Hülle’ is most often used in the chapter on commodity fetishism, which is Marx’s most sophisticated statement about the cognitive obstacles to proletarian revolution:

Men do not therefore bring the products of their labour into relation with each other as values because they see these objects merely as the material integuments of homogenous human labour. The reverse is true: by equating their different products to each other in exchange as values, they equate their different kinds of labour as human labour. They do this without being aware of it. Value, therefore, does not have its description branded on its forehead; it rather transforms every product of labour into a social hieroglyphic.⁶⁶³

With his sparing use of ‘Hülle,’ Marx intends to link this passage near the beginning of the text with the aforementioned passage at its end. In the concluding sections of *Capital: Volume One*, Marx offers his most eloquent explanation of how the deciphering of the social hieroglyphic is the product of capitalist development. And yet, nowhere in this section does he characterize this as a revelation of the injustice of capital. Surely, if the passage from the *Manuskript 1861-63* had the importance that Elster attributes to it, Marx would have used the terminology of justice again in 1867 in the culmination of his life’s work. He does not.

⁶⁶² Marx, *Capital: Volume One*, op. cit., 929.

⁶⁶³ Ibid., 166-67; see also 167, n. 29 and 185. For the German, see: “Die Menschen beziehen also ihre Arbeitsprodukte nicht aufeinander als Werte, weil diese Sachen ihnen als *bloß sachliche Hüllen* gleichartig menschlicher Arbeit gelten” (Karl Marx, *Das Kapital: Kritik Der Politischen Ökonomie: Buch I* (Berlin: Dietz Verlag, 1960), 79); “Die Zentralisaton der Produktionsmittel und die Vergesellschaftung der Arbeit erreichen einen Punkt, wo sie unverträglich werden mit ihrer kapitalistischen Hülle. Sie wird gesprengt. *Die Stunde des kapitalistischen Privateigentums schlägt. Die Expropriateurs werden expropriert*” (803).

If the proponents of the Cohen-Geras thesis cannot demonstrate independent reasons to think that Marx deems capitalism unjust according to a robust concept of justice, then Elster's piece of evidence is not enough. Even if more passages like it were found, where Marx appends the words 'justice' or 'injustice' to already-formulated ideas without a substantive statement about justice, my argument still stands. While we cannot say definitively whether or not Marx held a secret notion of justice, we can say that he deems it to be of so little importance in his writings, and gives so few hints toward one, that even if he held one it was necessarily impoverished. Our fundamental question remains: why does Marx neglect the concept of justice? Why is he so evasive about ethics?

R. G. Peffer agrees with Cohen, Geras, and Elster that, with regard to questions of ethics and justice, Marx is inconsistent.⁶⁶⁴ Peffer also agrees with Elster that the "normative element constitutes the *sine qua non* of Marxism" whereas the "explanatory element can to some extent be modified and revised without loss of identity."⁶⁶⁵ Part of this modification means bringing analytical philosophy to bear on Marxism: "We should not even be surprised, I think, to find that there is considerable overlap in the ethical views espoused by contemporary left-liberal moral and social philosophers within the analytic-linguistic tradition and Analytical Marxists (or, indeed, Marxists in general)."⁶⁶⁶

Peffer attributes some of Marx's inconsistencies to his criticisms of morality in general. First, Marx seems to think that all morality necessarily espouses the eternal principles for which he criticizes Proudhon. Second, he also seems to think that profound disagreements about ethics preclude objective criteria. Third, Marx thinks that all morality necessarily supports the social status quo and is therefore ideological. Fourth, Marx deems all ethics as unrealistic and ineffective in practice, at least in truly historical moments.⁶⁶⁷ Nevertheless, Peffer contends that Tucker and Wood are wrong to argue that Marx deems capitalism just.⁶⁶⁸ They argue that when Marx describes capitalist exploitation as just, he is making not only a factual, but also a normative claim. Conversely, Peffer separates these claims. As we have seen, this is a familiar 'saving distinction':

⁶⁶⁴ Peffer, op. cit., 339.

⁶⁶⁵ Ibid., 28.

⁶⁶⁶ Ibid.

⁶⁶⁷ Ibid., 321-23.

⁶⁶⁸ Ibid., 329.

It seems to me that rather than taking a normative position here, Marx is really taking an *internal point of view* with respect to capitalism, but an *external point of view* with respect to his own standards, and then *reporting* certain facts about how capitalism is to be judged from its own operational normative standards. He is really simply pointing out that by the rules of the game it has set up, so to speak, capitalism is not unjust.⁶⁶⁹

Peffer likens this to the anthropological distinction between the ‘emic’ and ‘etic’ points of view, which differentiates reporting on a culture according to its own internal perspectives from the external perspective of the ethnographer.⁶⁷⁰

Another piece of evidence presented by Peffer deserves some extended scrutiny. In documents co-written for the International Working Men’s Association (IWMA), Marx seems to affirm principles of justice and morality:

They declare that this International Association and all societies and individuals adhering to it, will acknowledge truth, justice, and morality, as the basis of their conduct towards each other, and towards all men, without regard to colour, creed, or nationality.

They hold it the duty of a man to claim the rights of a man and a citizen, not only for himself, but for every man who does his duty. No rights without duties, no duties without rights.⁶⁷¹

Nevertheless, Marx, in a letter to Engels on November 4, 1864, says the following: “My proposals were all accepted by the subcommittee. Only I was obliged to insert two phrases about ‘duty’ and ‘right’ into the preamble to the statutes, ditto ‘truth, morality, and justice,’ but these are placed in such a way that they can do no harm.”⁶⁷² Peffer asserts:

Now these proclamations may well be rather bizarre exceptions to the overwhelming majority of Marx’s remarks about morality, rights, and justice—

⁶⁶⁹ Ibid., 336.

⁶⁷⁰ Ibid.

⁶⁷¹ Marx, *The First International and After* op. cit., 82-83.

⁶⁷² Karl Marx, letter to Friedrich Engels, November 4, 1864:

https://www.marxists.org/archive/marx/works/1864/letters/64_11_04-abs.htm

which view them as ‘ideological nonsense,’ unhelpful in the revolutionary struggle, or at least headed for obsolescence in coming communist society—but it is most interesting that he chooses the occasions on which he has the most direct and immediate impact on the socialist movement to acquiesce and put them forward. Together with the other passages cited above does this not indicate that Marx actually put more store in such concepts or principles as motivating factors than he was willing to admit? It seems to me that it does.⁶⁷³

Paul Blackledge agrees with Peffer: “Marx on many occasions seemed to betray his acceptance of an implicit conception of justice that moves beyond the morality of self-realization.”⁶⁷⁴ Ultimately, all of this is very wishful thinking. The obvious explanation as to why these are the circumstances in which Marx articulates these moral values is because he was writing by committee, which is, as anyone who has done it knows, a process of relentless compromise. In his own works, which he hoped would be widely read by the workers movement, these moral terms are conspicuously absent.

Although Draper is not responding directly to these debates, he offers a similar interpretation.⁶⁷⁵ In his usual rigorous manner, he offers the strongest arguments for this general position. Draper argues that Marx’s critique of moral principles like justice did not forbid appeals to them. Rather, it was to anchor such appeals to class struggle.⁶⁷⁶ When Marx asserts to Engels that these principles are placed so as to do no harm, Draper does not interpret this to mean that Marx thinks they can be ignored. Instead, they are placed so as to have a concrete content. Truth, justice, and morality are not tied to eternity, but to the IWMA.⁶⁷⁷ This is also the case with how Marx concludes the Inaugural Address, a vindication of ‘the simple laws of morals and justice.’⁶⁷⁸ This is plausible, but it ignores that Marx had plenty of opportunities to give concrete content to principles of justice in his own writings when he was not beholden to a broader committee. He does not do so.

⁶⁷³ Peffer, op. cit., 206.

⁶⁷⁴ Blackledge, *Marxism and Ethics*, op. cit., 60.

⁶⁷⁵ Hal Draper, *Karl Marx’s Theory of Revolution: Volume IV: Critique of Other Socialisms* (New York: Monthly Review Press, 1990).

⁶⁷⁶ *Ibid.*, 27.

⁶⁷⁷ *Ibid.*, 28-29.

⁶⁷⁸ *Ibid.*, 29.

Draper also notes how Marx, in his report to the congress of the IWMA in 1868, describes attempts by the Bonaparte regime to imprison the executive members of the French section:

As against the well-known lying and dirty tricks characteristic of Louis Napoleon's government, Marx chose to contrast—the International's insistence on 'truth, justice, and morality.'

The [French government] tribunal had the naiveté to declare in the preamble of its judgment that the existence of the French Empire was incompatible with a working men's association that dared to proclaim truth, justice, and morality as its leading principles.

It would appear that Marx had clasped the dreadful phrase to his very bosom.⁶⁷⁹

This too is well-argued, but not decisive. It could just as easily be a critique of the hypocrisy of the French government rather than an affirmation of a positive alternative. This is Marx's tendency in the domain of ethics. What he reduces to rubble he does not rebuild into an alternative structure.

Before we turn to a critical assessment of this group of theorists who argue that Marx criticizes capitalism as unjust, it is worth noting an internal disagreement about what is most significant about exploitation. In other words, this is a disagreement about what it is that makes capitalism unjust.

7. 3: What is the Basis of Commutative Injustice?

As we saw, theorists like Husami argue that the main injustice of exploitation is that it contravenes the principle of labour-contribution.⁶⁸⁰ Workers do not receive the fruits of their labour. Consequently, the problem with exploitation is primarily a matter of 'distribution,' or, if

⁶⁷⁹ Ibid., 30.

⁶⁸⁰ Husami, *op. cit.*, 62.

we account for the proper distinction between commutative justice and distributive justice, a matter of *allocation*. There are other theorists, however, who think that exploitation is unjust primarily because it entails servitude. These power disparities are sometimes translated into the language of distribution. Capitalism not only features unequal allocations of property, but also of power and control within the community. In other words, it is unjust in part or in whole because it allocates unequally the conditions and the capacities necessary for freedom and self-realization. This is argued by theorists such as Arneson, Ryan, van der Linden, Geras, and Warren.⁶⁸¹ We will look in particular at two theorists who argue for this, Lawrence Crocker and Carol Gould.

Crocker, writing in 1972 at the time of the second wave of debates, argues that the emphasis on alienation neglects the significance of exploitation.⁶⁸² He argues that this occurs largely because Marx's theory of exploitation has been misunderstood. For Marx, what is truly significant about exploitation is not the equal 'distribution' of goods and services, but rather the undemocratic control of production. Crocker argues that the 'distributive' interpretation of exploitation is harder to maintain amid the increasing standards of living of the working class. If exploitation is about the unequal control of social life, however, it can coexist with high wages and a robust welfare state: "Marx's chief concern was power. Once power is wrested by the majority from the dominant minority, and democracy extends into every aspect of human activity, Marx was optimistic that the problems of welfare, in the broadest sense, could be solved."⁶⁸³ Therefore, Marx is more of a revolutionary democrat than he is a radical welfarist.

Although this interpretation of Marx is adapted too much to the tactical needs of Crocker's immediate circumstances, he raises important points. Nevertheless, not only does he fail to distinguish between commutative justice and distributive justice, he assumes that, for Marx, democratic control is a question of justice, albeit, an expanded notion of justice. As we have seen, however, Marx may deem this more a question of freedom than justice. This occurs frequently among this sub-group of theorists.

⁶⁸¹ Cheyney C. Ryan, 'Socialist Justice and the Right to the Labor Product,' *Political Theory*, 8.4 (November 1980): 503-524, 516-19; Arneson, op. cit., 205; Harry van der Linden, 'Review: Marx and Morality: An Impossible Synthesis?' *Theory and Society*, 13.1 (January 1984): 119-135, 128; Geras, 'The Controversy About Marx and Justice,' op. cit., 71-72; Paul Warren, 'Why Marxists Should Still Be Interested in Exploitation,' in *Justice: Key Concepts in Critical Theory*, ed. Milton Fisk (New Jersey: Humanities Press, 1993), 193.

⁶⁸² Lawrence Crocker, 'Marx's Concept of Exploitation,' *Social Theory and Practice*, 2.2 (Fall 1972): 201-215; 201.

⁶⁸³ *Ibid.*, 209; see also, 204.

Carol Gould argues along similar lines. At the outset we should note her discussion occurs in a chapter titled “The Ontology of Justice: Social Interaction, Alienation and the Ideal of Reciprocity.”⁶⁸⁴ It is rare that justice is regarded as ‘ontological’ in these discussions. Gould believes that it is obvious that Marx criticizes capitalism as unjust. Since he demonstrates that workers do not gain ownership over the products of their labour, “Marx’s critique here amounts to the claim that capitalism is unjust in that it violates the very principle of abstract justice which it enunciates in its principle of property right.”⁶⁸⁵ Nevertheless, Gould asserts that Marx also deems capitalism unjust in a deeper sense. His theory of exploitation and alienation shows that, in these historical social relations, some groups are deprived of freedom by others.⁶⁸⁶ Gould speculates that Marx says so little about justice in either its abstract or deeper senses because he is opposed to substitutions of “abstract moralizing for the criticism of society.”⁶⁸⁷ It is unclear, however, why Marx did not react the same way about freedom, which is as susceptible to such moralizing.

Gould asserts that Marx is not a historical relativist because freedom is based in the nature of human activity: “it characterizes all individuals in all historical periods, though it is realized to varying degrees in different forms of society.”⁶⁸⁸ It is on this basis that Gould deems not only freedom, but also justice as ontological. In one of its senses, justice describes a set of social relations in which no one deprives another of the conditions for their positive freedom.⁶⁸⁹ This is ‘abstract justice.’ Nevertheless, justice requires not only a specific form of instrumental relations with the conditions of production, but non-instrumental relations between individuals. This more positive conception of freedom, and therefore, of justice, requires “mutuality.”⁶⁹⁰ In other words, it is not simply about providing the space and conditions for others to pursue their freedom, but rather, it is actively contributing to the positive freedom of others.⁶⁹¹ Gould’s overall project is to prove that, because we are inherently social beings, the study of human societies demands a social ontology. With regard to what concerns us here, she concludes that since justice is so important for our ontological freedom, justice is also ontological.

⁶⁸⁴ Carol C. Gould, *Marx’s Social Ontology: Individuality and Community in Marx’s Theory of Social Reality* (Cambridge, Massachusetts: The MIT Press, 1978).

⁶⁸⁵ *Ibid.*, 160.

⁶⁸⁶ *Ibid.*, 161.

⁶⁸⁷ *Ibid.*, 167.

⁶⁸⁸ *Ibid.*, 169.

⁶⁸⁹ *Ibid.*, 171.

⁶⁹⁰ *Ibid.*, 175.

⁶⁹¹ *Ibid.*, 176.

Gould argues that for Marx, private ownership of the conditions of production is unjust because it ensures unequal access to the conditions of our positive freedom.⁶⁹² Gould more or less assumes that Marx deems capitalism unjust without adequately demonstrating this. Furthermore, her notion of justice is quite dependent on her notion of freedom, which, for her, is the paramount value. The independent merits of justice are not sufficiently emphasized. Nevertheless, Gould is to be commended for at least considering as a possibility that justice has ontological status.

Ultimately, this sub-group of theorists fails to subject Marx to historical materialist critique. They argue correctly that, for Marx, exploitation is about more than unequal transactions. It is also about power disparities and the stifling of self-realization. It is not clear, however, that Marx's condemnations of systematically unequal transactions and class domination are based in principles of justice. Indeed, as we have seen, it is a common premise in capitalist modernity that, in general, self-determination, and in particular, equal access to political control, are considered to be matters more of freedom than of justice. Marx may have adopted this assumption. In his commentary on the Paris Commune, Marx's most sustained discussion of the expansion of political control and the capacities for self-determination, he speaks in terms of 'emancipation,' not justice.⁶⁹³ It seems that Marx's critique is not based in a more just distribution of freedom, but rather, a more universal and qualitatively better kind of freedom.

7. 4: Critical Assessment of These Commentators

The first important shortcoming of the Cohen-Geras thesis is its neglect of the role of immanent critique in Marx's work. Some theorists in this general cluster of thought, such as Gould⁶⁹⁴ and Blackledge,⁶⁹⁵ explicitly identify the importance of immanent critique. But even they, as we have seen, take it for granted that Marx criticizes capitalism as unjust according to socialist standards. Due to the lack of an explicit critique of capitalist injustice in Marx's work (except for, as I noted, one paltry use of the term in his unpublished notes), this group of commentators can only

⁶⁹² Ibid., 174-75.

⁶⁹³ Karl, *Civil War in France*, op. cit., 60-61.

⁶⁹⁴ Gould, op. cit., 160-61.

⁶⁹⁵ Blackledge, *Marxism and Ethics*, op. cit., 61-63.

maintain their interpretations by imputing to Marx ‘saving’ distinctions that are not found in his text.

In my critical assessment of the Tucker-Wood thesis, I argued that although Marx does not describe capitalism as unjust, he undermines bourgeois notions of justice. Therefore, it does not necessarily follow that Marx describes capitalism as just in any non-self-contradictory sense of that term. Now, in light of the Cohen-Geras thesis, we must note that, although Marx undermines bourgeois notions of justice, this does not necessarily entail that he deems capitalism unjust. Indeed, even if Marx argues for a higher principle of justice in socialism, which, as we will see, he does, this does not mean that Marx deems that socialist principle of justice applicable to the critique of capitalism. Marx seems to regard this as the imposition of an external principle on capitalist social conditions. In other words, he appears to condemn this as utopian socialism.

It is surprising that these theorists are not more amenable to the idea of immanent critique. After all, if they are committed to exposing capitalism as unjust, it is at least plausible that Marx, using immanent critique, might be demonstrating that capitalism is unjust *according to its own standards*. Nevertheless, not even this can save their interpretation. For Marx, capitalism is not the field of an ‘epic’ battle of the just against the unjust, of right against wrong. Rather, it is the ‘tragic’ conflict between equal rights. This does not mean that Marx’s argument that force decides, that ‘might makes right,’ is purely relativist. Rather, he contends that the course of history culminates in the universalization of the breadth and the depth of freedom. That is his principle.

The second major shortcoming of the proponents of the Cohen-Geras thesis is that they do not use immanent critique in their interpretation of Marx. For example, they criticize Marx’s narrow notion of purely juridical justice and assert that, as with his evident distinction between a merely formal freedom and a substantive freedom, Marx needs a notion of substantive justice. They do not ask, at least not in any profound way, why Marx is explicit about a substantive freedom but not a substantive justice. They do not ask whether or not Marx has uncritically absorbed the conquering of justice by freedom under capitalist social relations. Therefore, in their abandonment of scientific socialism for utopian socialism, they regard significant aspects of historical materialism as simply wrong. They do not pursue the much more meaningful project of subjecting historical materialism itself to historical scrutiny, of determining whether or not it, or certain aspects of it, are self-contradictory and ideological in Marx’s sense of those terms.

Although Marx would deem the Cohen-Geras thesis utopian, nevertheless, they assert that, without knowing it, Marx is a utopian socialist in this respect. Throughout the first wave of debates about Marxism and ethics, revisionists espoused an explicitly utopian socialism because, on the basis of their deterministic readings of history, they rejected scientific socialism. As we have seen, this is often true of the latest wave of debates, especially with Cohen. More significant, however, is the question of Marx's inconsistency, whether it is Allen on the one side of these debates, or on the other, the cluster of thinkers around Cohen. The problem with the inconsistency argument is not only that it is deemed to be a purely *theoretical* inconsistency and not also an *ideological* one. The problem is also that they locate Marx's inconsistency in the wrong place. Marx may be inconsistent, but not in the ways they think he is. As I will show, everything Marx says about justice is internally consistent. If he is inconsistent, it is because of how he separates justice from other aspects of ethics such as freedom. The reasons for this can only be discovered through an immanent critique of Marx. Consequently, in addressing the shortcomings of Marx's ethics, my strategy is not to resort to utopian socialism. This risks abandoning the correct insights of Marx's critique of socialists like Proudhon. Rather, my strategy is to show why, for ideological reasons, Marx casts his critique of utopianism too wide.

Chapter 8: The Buchanan-Lukes Thesis: Marx Deems Capitalism Neither Just Nor Unjust

We turn now to those who argue that, ultimately, Marx deems capitalism neither just nor unjust because his critique does not have a concept of justice or is beyond justice in some sense. In general, this interpretation is stronger than either the Tucker-Wood thesis or the Cohen-Geras thesis because it is able to account for the strongest arguments made by both. Ultimately, it is best able to explain how Marx can describe exploitation as theft, and yet, as not unjust, without becoming mired in inconsistencies.

There are three major differences within this interpretation: first, whether they think that Marx is an amoralist or a moralist of some kind; second, whether or not they note the significance of immanent critique in Marx's discussion of justice; and third, whether they approve or disapprove of Marx's attempt to go beyond the notion of justice. Miller and Ryan both interpret Marx as an amoralist. They also tend to downplay the significance of immanent critique, although Ryan hints toward it. Finally, both approve of Marx's rejection of justice, although Ryan is somewhat ambiguous about this. Conversely, Buchanan and Lukes see a moral theory in Marx, but distinguish it from any principle of justice. Furthermore, they notice Marx's use of immanent critique without necessarily describing it as such. Finally, they disapprove of Marx's attempts to go beyond justice. They argue that Marxism needs a concept of justice. Although I will offer criticisms of each of these thinkers, Buchanan and Lukes's interpretation of Marx is the closest to my own in all of these debates. Nevertheless, they too neglect immanent critique in a certain sense. They neglect the role of immanent critique not in Marx's work, but in the evaluation of it. They engage in the idealist method. They account for Marx's theory only in terms of his intellectual influences and diagnose its problems as primarily theoretical shortcomings.

8. 1: Marx is Right to Think Beyond Justice

Richard W. Miller, like Wood, distinguishes between the moral and non-moral.⁶⁹⁶ For Miller, morality proper is comprised of three aspects: (i) ‘equality,’ which means that all people should be shown equal concern and respect; (ii) ‘general norms,’ which are the valid rules that can resolve political disputes in every society; and (iii) ‘universality,’ which means that any rational person would accept these rules. For Miller, this makes morality distinct from the pragmatic orientation to interest, whether it is self-interest, class-interest, national-interest, and so on. According to Miller, Marx is an anti-moralist. In other words, he deems the moral point of view, in all three of its aspects, as inappropriate in the choosing of social arrangements.⁶⁹⁷ This does not mean that Marx rejects all decency. It means that, although Marx’s preferred social arrangements would make people more equal, he prefers them not because they conform to an ultimate standard of equality, but because they would enhance people’s lives.⁶⁹⁸ “When its foundations are brought to light,” Miller asserts, “Marx’s rejection of morality as the basis for social and political choice turns out to be complex, well-argued, and humane, though, in an important sense, anti-humanitarian.”⁶⁹⁹ This decency distinguishes Marx from the anti-moralism of, say, Nietzsche and Weber.

Miller attempts to offer “plausible” reasons for rejecting the moral point of view, “at least as philosophers have conceived it.”⁷⁰⁰ Miller’s method is idealist. He speaks of moral philosophers like Aristotle and Rawls as if, despite certain differences, they both affirmed something called the moral point of view.⁷⁰¹ He does not consider whether or not what he describes as the moral point of view is historically-specific. Indeed, as we have seen, the idea of a distinctly ‘moral’ point of view tends to arise only when vast swathes of human experience are deemed to be ‘non-moral.’ This assumption goes unquestioned.

The potential pitfalls of Miller’s method is manifest in Rawls himself. For example, Rawls associates his notion of justice with certain aspects of Aristotle’s conception of justice:

The more specific sense that Aristotle gives to justice, and from which the most familiar formulations derive, is that of refraining from *pleonexia*, that is, from

⁶⁹⁶ Richard W. Miller, *Analyzing Marx: Morality, Power and History* (Princeton: Princeton University Press, 1984), 16-17.

⁶⁹⁷ *Ibid.*, 17.

⁶⁹⁸ *Ibid.*, 19.

⁶⁹⁹ *Ibid.*, 16.

⁷⁰⁰ *Ibid.*

⁷⁰¹ *Ibid.*, 18.

gaining some advantage for oneself by seizing what belongs to another, his property, his reward, his office, and the like, or by denying a person that which is due to him, the fulfillment of a promise, the repayment of a debt, the showing of proper respect, and so on.⁷⁰²

Rawls assumes that he is participating in a single, long conversation, addressing questions similar to those of someone like Aristotle. Nevertheless, this misunderstands fundamentally Aristotle's notion of *pleonexia* and thereby his theory of justice. Aristotle distinguishes between, on the one hand, the just or unjust person, and on the other hand, the just or unjust action.⁷⁰³ One may incidentally engage in unjust actions, but they are not an unjust person unless injustice is a constant and recurring aspect of their character. One of the crucial dimensions of the unjust person is that they are constantly grasping for more. For Aristotle, this is what *pleonexia* means: it is not human nature, but a habituated corruption of human nature. In light of this, let us consider Rawls's conception of human nature, of the 'rational,' as it is depicted in the original position, in which it is assumed that individuals are naturally self-interested. In other words, Rawls assumes that people, if they had the choice, would desire a greater share of the total product. Far from being an extension of Aristotle's notion of justice, Rawls's conception of human nature is precisely what Aristotle would condemn as *pleonexia*. Neglecting crucial disagreements such as these are a danger of the idealist method adopted by Rawls in his interpretation of Aristotle as much as by Miller in his interpretation of Rawls and Aristotle.

Having defined morality as the 'moral point of view,' Miller believes that there are four reasons why Marx rejects it in its entirety:

1. Various needs of the vast majority are in such conflict with those of minorities that an ultimate standard of equality would have intolerable costs.
2. Strategies for effective change require obstruction and, sometimes, violence that are incompatible with concrete sentiments of equal concern for all involved.
3. In the course of history, normal people have had deep moral differences that were not due to unreason or ignorance. Similarly, in the present day, there are

⁷⁰² Rawls, op. cit., 10.

⁷⁰³ Aristotle, *Aristotle's Nicomachean Ethics*, op. cit., 1135b17-26.

conflicting conceptions of the good that cannot be resolved through rational persuasion.

4. The conflicts between the long run and the short run, culture and minimal well-being for all, productivity and leisure, have sometimes been so acute that no set of basic institutions was the best. Only historical change has removed this incoherence.⁷⁰⁴

If Marx rejects the moral point of view, it follows that he rejects justice too. In this, Miller goes even further than Wood. Miller asserts that, although Wood's case against the injustice of the wage transaction is "conclusive," this does not make it "positively just."⁷⁰⁵ In fact, justice is not a "real property" of institutions, not even in Wood's sense of something that functionally stabilizes the prevailing social relations.

What Miller means by justice, however, is quite specific: "an evenhanded balancing of interests is the basic property of justice as everyone uses the term in deliberations over whether to accept or oppose institutions. And Marx's arguments would show that no coherent notion of evenhandedness is available to be applied to institutions."⁷⁰⁶ Miller's argument reveals the shortcomings of his idealist approach. Like Tucker and Wood, he assumes typically liberal notions of justice to be the only available ones, irrespective of social conditions.

Miller also engages in a number of 'saving distinctions,' but curiously, he reverses their usual intention. First, Miller dismisses Marx's occasional mention of terms like 'justice':

If Marx uses such terms, it is to refer to people's moral beliefs or to single out phenomena which those beliefs would force them to approve. But he is no more acknowledging that institutions really are just than, say, Freud acknowledged that

⁷⁰⁴ Miller, *Analyzing Marx*, op. cit., 96-97. As an aside, although Marx is obviously aware of class-prejudice, this does not necessarily preclude attempts to speak to a universal audience. For example, Marx makes appeals to disinterested scientific rationality. In other words, he attempts to speak to everyone who rejects the 'royal road to science': "The manufacturer knows that if a long period of time is considered, commodities are sold neither over nor under, but at, their average price. If, therefore, he were at all interested in disinterested thinking, he would formulate the problem of the formation of capital as follows: How can we account for the origin of capital on the assumption that prices are regulated by the average price, i.e. ultimately by the values of the commodities?" (Marx, *Capital: Volume One*, op. cit., 269, n. 24).

⁷⁰⁵ Miller, *Analyzing Marx*, op. cit., 91.

⁷⁰⁶ *Ibid.*, 87, n. 53.

demons really had existed when he claimed that demonic possession in the Middle Ages was schizophrenia based on infantile guilt and fear.⁷⁰⁷

Like other commentators, Miller distinguishes between Marx's sociology and Marx's own views. Unlike the other commentators, however, Miller believes that Marx only mentions justice because some people mistakenly think it exists, not because Marx wants to contrast the prevailing morality with one of his own.

Miller also distinguishes between the realms of exchange and production:

Even if Marx did believe that capitalist transactions *were* just, typically and on the average, there would be no need to transfer this judgment to the capitalist mode of production or typical capitalist institutions. His ordinary-language arguments appeal to considerations quite specific to individual acts of exchange. His other arguments similarly rely on a notion of equal value quite specific to the analysis of capitalist exchanges and their consequences for price, profit and related phenomena. No corresponding body of everyday assumptions or scientific measures of value supports a rational standard of justice for whole economic systems.⁷⁰⁸

Miller distinguishes between capitalist exchange and the capitalist mode of production. He does not do this in order to show how the more fundamental injustice of the latter negates the formal justice of the former. Rather, he distinguishes them in order to insulate the mode of production from any criterion of justice at all. In doing so, he adopts the methodological individualism of Allen. He therefore focuses only on the exchange between individuals, not the societal relations between entire classes.

We recall that for Tucker and Wood, capitalism is exploitative and evil, but not unjust. Similarly, for Miller, Marx's politics are "humane, though, in an important sense, anti-humanitarian,"⁷⁰⁹ and "decent without being moral."⁷¹⁰ This is because Marx is committed to the

⁷⁰⁷ Ibid., 79.

⁷⁰⁸ Ibid., 93.

⁷⁰⁹ Ibid., 16.

⁷¹⁰ Ibid., 96-7.

non-moral goods of the vast majority of people. Miller asserts that, if Marx is correct, the motivations that initially attract us to the moral point of view will, upon reflection, cause us to reject it.⁷¹¹ This is an interesting paradox. One of the first things young Marxists often learn is to reject as ‘bourgeois’ humanism all of the values which inspired them to become Marxists in the first place. When we turn to Buchanan and Lukes, we will find that they are critical of Marx and Marxism for this very reason. Denying the cogency of justice and of rights becomes a self-fulfilling prophecy.

Alan Ryan also argues that Marx’s critique of capitalism is essentially beyond a standard of justice.⁷¹² Ryan does disagree with Marx in certain respects, but the nature of his disagreement is worded ambiguously. It seems that Ryan does not critique Marx on the basis of fundamental issues, but rather, because Marx failed to address certain issues and to clarify certain terms. Furthermore, Ryan asserts that he shares some of Marx’s more substantive claims. Therefore, it makes more sense to discuss Ryan in this section rather than the next one, which addresses Buchanan and Lukes’s much more foundational criticisms of Marx.

Initially, Ryan expresses some sympathy for Cohen’s view.

Cohen’s claim that whether he knew it or not Marx attacked capitalism for its *injustice* rests on the plausible point that Marx uses terms such as ‘rob’ and ‘usurp’ in their plain sense, and does not so to speak bracket them or place them in inverted commas; Marx condemned theft, not ‘theft.’ Yet, Marx’s scepticism about ethical appeals is well known.⁷¹³

Nevertheless, when Marx says that capitalist exchange is not unjust, he does not put it in scare quotes. Marx says the wage-relation is not unjust. He does not say it is not ‘unjust.’⁷¹⁴ Despite these assertions, Ryan ultimately concludes that, for Marx, moral judgements are “epistemologically dubious.”⁷¹⁵ Marx believes that morality basically functions to preserve the

⁷¹¹ Ibid., 18.

⁷¹² Ryan, ‘Justice, Exploitation and the End of Morality,’ op. cit.

⁷¹³ Ibid., 118.

⁷¹⁴ Again, as I noted, scare-quotes are not entirely absent from Marx’s work: “The Act of 1844 certainly ‘robbed’ the silk manufacturers of the ‘liberty’ of employing children under 11 for longer than 6 ½ hours each day” (Marx, *Capital: Volume One*, op. cit., 406). This makes it all the more significant that he does not use them when describing the wage-relation as not unjust and as robbery, theft, extortion, etc.

⁷¹⁵ Ryan, ‘Justice, Exploitation and the End of Morality,’ op. cit., 120.

social order. In this, Ryan takes Kantianism to be paradigmatic of morality: “The features which Kant ascribes to morality—its coercive character and its independence of self-interest above all—reflect in a mystified fashion the social function of the institution of ‘morality.’”⁷¹⁶ Therefore, morality, like law, is purely ideological. Ryan shares with Tucker and Wood the belief that justice has only a functional role in society.

Ryan notes how Marx seems to both assert and deny the justice of capitalist exploitation.⁷¹⁷ In *buying* labour-power the capitalist does not violate the rule of equivalent exchange, but in *using* labour-power he does. Ryan argues that the only satisfactory explanation is that capitalism is in contradiction with itself. Ryan is to be commended for noticing how Marx undermines bourgeois justice according to its own internal standards. Nevertheless, he does not provide any explanation of immanent critique and its broader meaning in these debates. Furthermore, he does not provide any explanation of the distinction between labour and labour-power, which, as we will see, is an important aspect of the explanation of Marx’s ideas about justice.

For Ryan, Marx is not demonstrating that capitalism is just according to its own standards and unjust according to socialist standards. Ryan believes that there are no such standards of justice in socialist society:

After that state, we reach the end of the road. Here, on my view, there is no justice, because there are no rights. There is, however, a principle of distributing work and resources, the famous principle of ‘from each according to his capacity, to each according to his need.’ This is not a principle of justice in Marx’s eyes—and mine—because it does not ground claims of *right*. There is no question of its imposition on the members of the communist society; there is no question of anyone being forced to work on these terms. Not only is it not a principle of justice, it is not a moral principle at all. It will be understood by everyone, not as a moral principle but as a practical or rational principle.⁷¹⁸

⁷¹⁶ Ibid.

⁷¹⁷ Ibid., 128-29.

⁷¹⁸ Ibid., 130.

For Ryan, since the goal of this principle is freedom, it is a practical good, not a moral ideal.⁷¹⁹ Ryan makes the common-sense assumption that justice resides in the state. Therefore, without a state, there is no basis for, or a need of, justice.

According to Ryan, Marx espouses a kind of anti-moralism or amoralism because the basis of his theory, freedom, is not a moral entity: “It is not a moral view; freedom is not an ideal, and we are not morally obliged to seek it. Like freedom from ill health, it is a natural good and its pursuit is a practical, not a moral imperative.”⁷²⁰ Ryan contends that this distinguishes his own theory from that of Lukes, which, as we will see, regards freedom or emancipation as a moral imperative in Marx. Nevertheless, Ryan downplays the stakes of their differences, stating that not much hangs on the difference. Lukes, like Nasser, will have to determine why justice is of a different ontological status than freedom, whereas Ryan, like McCarney, must determine how we can deny ethics any ontological status at all without falling into the fact-value distinction that Marx rejects. Neither Lukes nor Ryan answer these questions adequately.

In response to Marx’s ‘bracketing’ of moral ideals, Ryan asserts: “That leaves it an open question whether he was wholly wise to do so; I hope I have suggested that he was not.”⁷²¹ Nevertheless, since Ryan has agreed with much of what Marx says, it is not clear what he is referring to here. My best guess is that Ryan means the following. After explaining how Marx offers a sociology of morality, Ryan asserts: “I readily concede that what Marx omits is a careful account of where the boundaries lie between ‘moral’ and non-‘moral’ evaluation.”⁷²² This indicates that, for Ryan, the problem is not Marx’s assertions themselves, but that he left his analysis incomplete. He did not adequately distinguish between the moral and the practical.

8. 2: Marx is Wrong to Think Beyond Justice

We turn now to those who argue, first, that Marx deems his critique beyond justice, and second, that he was wrong to do so.⁷²³

⁷¹⁹ Ibid., 132-33.

⁷²⁰ Ibid.

⁷²¹ Ibid., 134.

⁷²² Ibid., 132-33.

⁷²³ In his later work, MacIntyre does not participate in the third wave of debate. Nevertheless, it is worth noting that he partially agrees with what he interprets to be Marx’s rejection of justice and rights insofar as it supports MacIntyre’s depiction of modernity as wracked by a plurality of incommensurable moral systems: “It follows that

According to Allen E. Buchanan, for Marx, justice is a primarily negative value. It means the protection of the individual's rights. Therefore, a set of social conditions that requires principles of justice and rights is already defective in some significant way. It entails that violations of individuals are systemic. They are frequent enough to require principles of protection. Therefore, Marx does not critique capitalism as unjust because justice itself already entails defects worthy of critique. For this reason, Marx deems capitalism neither just nor unjust. Rather, his critique is beyond justice.

Buchanan summarizes what he regards as Marx's "multidimensional critique of rights and justice":

- i) One of the most serious indictments of capitalism—and of all class-divided societies—is not that they are unjust or that they violate persons' rights, but that they are based on defective modes of production which make reliance upon conceptions of justice and right necessary.
- ii) The demands of justice cannot be satisfied in the circumstances which make conceptions of justice necessary; thus efforts to achieve justice inevitably fail.
- iii) Conceptions of rights and justice will not play a major motivational role in the revolutionary struggle to replace capitalism with communism.
- iv) Communism will be a society in which juridical concepts—including the juridical concept of respect—have no significant role in structuring social relations.

our society cannot hope to achieve moral consensus. For quite non-Marxist reasons Marx was in the right when he argued against the English trade unionists of the 1860s that appeals to justice were pointless, since there are rival conceptions of justice formed by and informing the life of rival groups. Marx was of course mistaken in supposing that such disagreements over justice are merely secondary phenomena, that they merely reflect the interests of rival economic classes. Conceptions of justice and allegiance to such conceptions are partly constitutive of the lives of social groups, and economic interests are often partially defined in terms of such conceptions and not *vice versa*. Nonetheless Marx was fundamentally right in seeing conflict and not consensus at the heart of modern social structure. It is not just that we live too much by a variety and multiplicity of fragmented concepts; it is that these are used at one and the same time to express rival and incompatible social ideals and policies *and* to furnish us with a pluralist political rhetoric whose function is to conceal the depth of our conflicts" (MacIntyre, *After Virtue*, op. cit., 252-53). As we have seen, MacIntyre asserts that Marxism cannot claim to have a distinct moral standpoint, however, because in practice Marxists always fall back into either Kantian or utilitarian stances (ibid., 261).

- v) The concept of a person as essentially a being with a sense of justice and who is a bearer of rights is a radically defective concept that could only arise in a radically defective form of human society.⁷²⁴

We will focus here on the first two claims. The last three claims will be addressed in later chapters.

Buchanan asserts that, according to Marx's materialism, justice means juridical relations. Consequently, it has very little explanatory value in comparison to the much more fundamental production relations. In class societies, these production relations necessarily give rise to scarcity and conflict. For Marx, this is what makes justice necessary. Without this historically-contingent scarcity and conflict people would not need rights to separate and protect them from each other. In Buchanan's interpretation of Marx, therefore, to say that a society is just is to condemn it as defective because it contains the poverty and antagonism that make principles of justice necessary. Furthermore, these principles cannot fundamentally address and alter the social conditions upon which they depend. Therefore, class-societies inevitably fail to adhere to the principles of justice to which they give rise. Consequently, for Marx, the reason why communism is superior to all class societies is not because it finally achieves justice. Rather, it is because it eliminates scarcity and conflict and thereby renders justice irrelevant.⁷²⁵

Buchanan is highly critical of this, but not because he rejects Marx's explanation of exploitation. Rather, his critique has more to do with Marx's neglect of the significant civil rights afforded under capitalist society and the need for them in the revolutionary transition to, and establishing of, a socialist society. Since Buchanan's critique is more relevant for questions of complete justice, we will explore it in more detail in the final chapters. Nevertheless, I will provide a brief summary of Buchanan's critique of Marx here. First, Buchanan argues that Marx's account of justice under capitalism focuses too exclusively on matters of exchange to the neglect of important civil rights such as the right to free speech. Second, Buchanan contends that justice plays an indispensable role in revolution. Without it, any attempt to overthrow capitalism will fall prey to collective action failures. Finally, Buchanan argues that, even in a communist society, justice and rights will be necessary in order to, among other things, preserve universal

⁷²⁴ Allen E. Buchanan, *Marx and Justice: The Radical Critique of Liberalism* (Totowa, New Jersey: Rowman & Allanheld, 1982), 50-1.

⁷²⁵ *Ibid.*, 59.

democratic participation, limit paternalism, and specify what can and cannot be done to individuals in the name of the general social welfare.⁷²⁶

Steven Lukes asserts that the paradox of Marxism and morality is that, on the one hand, morality is deemed to be an ideological expression of a particular stage in the development of the productive forces, and yet, on the other hand, the writings of Marx and Marxists abound with moral judgments.⁷²⁷ Marxism seems to have a commitment to both the rejection and the adoption of moral criticism.⁷²⁸ For Lukes, the solution to this paradox is to distinguish between a morality of *Recht* and a morality of emancipation.⁷²⁹ Marx rejects the former and accepts the latter.⁷³⁰ Indeed, emancipation means, in part, emancipation from the morality of *Recht* and the conditions that call it into being:

Marxism maintains that the conditions of *Recht* are historically determined, specific to class-societies, and imminently removable. Neither limits to desired goods, nor limited sympathies, nor antagonistic social relations, and corresponding moral ideologies, nor the opaqueness or reified character of social relations are essential to the human predicament. To assume that they are is itself an ideological illusion (propagated by *Recht*) – ideological in serving to perpetuate the existing class-bound social order.⁷³¹

Indeed, by regulating conflicting interests, *Recht* fosters class compromise rather than revolution.⁷³²

Lukes asserts that the rejection of liberal rights is not replaced with a Marxist theory of rights and justice because its anti-utopianism prevents it. There are four reasons for this: (i) Marx and Engels had teleological faith in the coming of communism and believed that it would alleviate all present social disparities; (ii) they believed that the evils of capitalism were so obvious; (iii) they saw that the proletariat was rapidly becoming the majority of citizens and therefore utopian speculation would not be needed; and (iv) they asserted that utopian

⁷²⁶ Ibid., 50-68; 165-77.

⁷²⁷ Lukes, *Marxism and Morality*, op. cit., 3.

⁷²⁸ Ibid., 4.

⁷²⁹ Ibid., 27.

⁷³⁰ Ibid., 29.

⁷³¹ Ibid., 34.

⁷³² Ibid., 35.

speculation would engender pointless debates about the future when the real fight remains in the present.⁷³³ Nevertheless, Lukes argues that, since Plato, utopian thinking has provided two useful functions from which Marxism could benefit: first, it clarifies political and social ends through imaginative counter-factuals; second, it brings non-routine perspectives to bear on intractable issues in the present context.⁷³⁴

Lukes asserts that Marx's conception of justice is "internally complex and hierarchically organized."⁷³⁵ First, Marx provides a functional account of how capitalist exploitation is regarded as just according to bourgeois standards. Second, he provides an 'internal' or 'immanent' critique of those relations, which only appear equitable. Third, he offers an 'external' critique of capitalism from the perspective of the lower stage of communism, regarding it as unjust according to the principle, 'to each according to their contribution.' Fourth, Marx offers a critique from the perspective of the higher phase of communism in which the very form of the criticism of capitalism as just or unjust is indicative of a class society in a prehistorical phase that has not yet transcended the morality of *Recht*.⁷³⁶

Although Lukes argues that Marx thinks in terms of a hierarchy of concepts, he disagrees with Elster that this is a hierarchy of justice: "What Marx offers is multi-perspectival analysis in which capitalism's self-justifications are portrayed, undermined from within, and criticized from without, and then both justification and criticism are in turn criticized from a standpoint that is held to be beyond justice."⁷³⁷ Lukes therefore disagrees with Cohen that Marx has a non-relative notion of justice: "for Marx, there was no such sense: all such judgements are perspective-relative. Objectivity, in the sense of perspective-neutrality, was, for him, an illusion, indeed an ideological illusion."⁷³⁸ This is a persuasive account. We must remain skeptical that, for Marx, contemporary capitalism can be deemed unjust according to a future socialist standard. In every other respect, however, Lukes's schema is able to account for most of the evidence presented by the Tucker-Wood and Cohen-Geras theses.

For Lukes, the content of Marx's morality of emancipation is a specific theory of freedom. Marx's theory of substantive freedom is an Aristotelian, perfectionist, teleological

⁷³³ Ibid., 42-5.

⁷³⁴ Ibid., 46.

⁷³⁵ Ibid., 58.

⁷³⁶ Ibid.

⁷³⁷ Ibid., 59.

⁷³⁸ Ibid.

actualization of our species-being or capacities.⁷³⁹ The key to this notion of freedom is emancipation from external purposes, whether natural necessity or social duty.⁷⁴⁰ The basis of Marx's critique of non-communist societies is that they stifle this substantive freedom.

Although Lukes deems Marx's notion of freedom to be quite sophisticated, he is also highly critical of Marx's attempt to get beyond justice, and for reasons similar to Buchanan. Therefore, I will explore his critique in more detail in the final chapters while offering a brief summary here. First, Lukes also contends that Marx's critique of the egoistic rights, such as the right to private property, is too narrow. Marx neglects political rights that are worth preserving, such as the freedom from unlawful detention. Second, Lukes argues that, without a substantive concept of justice, proletarian revolution will be prone to excessive and arbitrary violence. Since it takes its coordinates from a distant goal, it will be tempted to excuse its atrocities in the present. Therefore, it will become mired in 'dirty hands' problems and will ultimately be self-defeating. Finally, Lukes is skeptical that the end of private property will result in declines of scarcity and egoism sufficient to ensure that principles of justice are no longer necessary to regulate interactions between individuals.⁷⁴¹

8. 3: Critical Assessment of These Commentators

Miller's distinction between moral and non-moral goods and Ryan's distinction between moral and practical goods warrant all of the criticisms I have already made of commentators like Wood, Smart, and McCarney insofar as they rely on similar saving distinctions. Furthermore, depictions of Marx as an amoralist are directly contradicted by the evidence. Take, for example, Marx's embrace of the "moral influence" of revolution:

The right of the democratic popular masses, by their presence, to exert a moral influence on the attitude of constituent assemblies is an old revolutionary right of the people which could not be dispensed with in all stormy periods ever since the

⁷³⁹ Ibid., 87.

⁷⁴⁰ Ibid., 89.

⁷⁴¹ Ibid., 63-65; 94-95; 145-49.

English and French revolutions. History owes to this right almost all the energetic steps taken by such assemblies.⁷⁴²

Conversely, the perspective offered by Buchanan and Lukes is the most sophisticated so far because it can account for and integrate all of the strongest arguments of the others. Despite their praise-worthy efforts, however, there remains at least one major shortcoming. As is so common in these debates, this is due to their idealist approach.

Buchanan, for example, explains Marx's "evaluative perspective" by discussing the influence of Hegel.⁷⁴³ Similarly, Lukes explains Marx's notion of freedom by contrasting it with the tradition of Hobbes, Hume, Bentham, and Mill, and by comparing it to the tradition of Spinoza, Rousseau, Kant, and Hegel.⁷⁴⁴ Delineating intellectual influences is, of course, necessary. Indeed, that is why I emphasize the importance of Hegel, and in particular, his theory of immanent critique. Nevertheless, attributing Marx's perspective to his intellectual influences is not sufficient. This also requires a materialist critique that roots these ideas, however critical, in their historical conditions. This is needed not only in the critique of his influences but of Marx himself.

Take, for example, Buchanan and Lukes's affirmation of the missing link, of justice and rights. I am certainly sympathetic to this. It is the purpose of this inquiry. By failing to engage in a materialist critique, however, they take for granted prevailing conceptions of justice and rights. Both Buchanan and Lukes describe rights as a kind of protection against others, what Dworkin calls 'trumps.'⁷⁴⁵ Nevertheless, this is a historically specific notion of rights. This negative notion of justice is quite different from positive conceptions in which justice is an essential part of our self-realization. In the positive connotation, justice is not merely a protection against others, but how our self-realization necessarily occurs in and through our common efforts with others. Indeed, with his distinction between the moralities of *Recht* and emancipation, Lukes does not adequately explain why justice is not deemed to be an ontological part of human nature in the way that freedom is. Buchanan and Lukes uncritically adopt the modern, more negative notions of right and justice because, without rooting them in changing historical conditions, we assume

⁷⁴² Karl Marx and Friedrich Engels, *Articles from the Neue Rheinische Zeitung 1848-49* (Moscow: Progress Publishers, 1972), 129.

⁷⁴³ Buchanan, *Marx and Justice*, op. cit., 1-13.

⁷⁴⁴ Lukes, *Marx and Morality*, op. cit., 76-77.

⁷⁴⁵ Ronald Dworkin, *Taking Rights Seriously* (Cambridge, Massachusetts: Harvard University Press, 1978), xi.

that this simply is what justice and rights entail as such. This is not to say that the modern notions of primarily negative justice and rights are false. This must be argued on its own terms. Rooting justice and rights in specific historical conditions is not enough to prove that they are narrow, mutable, and deserve to be superseded. But it can begin to stimulate the critique that is otherwise precluded if we accept concepts immediately. I am not yet affirming either the positive or negative notions of justice and rights. I am simply noting the difference as well as how the transition from the predominance of the former to the latter may be rooted in historical social relations.

Marx often criticizes a specific notion of rights that is primarily negative. He offers as an alternative a conception of positive freedom. He does not speak of positive justice. Perhaps Marx thinks that justice is inescapably negative. Therefore, he thinks that justice, or the conditions that require principles of justice, are to be negated. Why would Marx assume this about justice and not freedom? Perhaps it is because freedom is the paramount value under modernity. Conversely, justice, particularly as complete justice, is considered to be old-fashioned. In a certain sense, Marx may unwittingly accept the ‘egoistic’ conception of others as limits to my freedom. If he rejects justice, perhaps this is because he accepts that the ‘egoistic’ conception is its only possible expression. As we have seen, a stark rejection can feature an underlying and more fundamental acceptance. Rejecting something as a whole because it is mistakenly conflated with, and made reducible to, what is only a particular expression of that thing, means we will continue to be haunted by the ghosts of the alternative conceptions that, in this blanket-rejection, have been ignored.

Despite these shortcomings, however, Buchanan and Lukes’s interpretation of Marx’s relation to justice and rights is the most accurate so far.

8. 4: Critical Assessment of the Debate on Marx and Commutative Justice as a Whole

It is now time to offer an assessment of these debates up to the point we have now reached. Here I will offer what I think are some important conclusions, but these will only be tentative and partial. It is impossible to come to any definite conclusions without first studying what Marx asserts about socialist society. Therefore, I must prolong these definite conclusions until the next two chapters. Nevertheless, even if some of the conclusions offered here feature some

unresolved antinomies, we have traversed enough material to begin weighing the comparative merits of the different interpretations as well as to point to a number of shortcomings in all of them.

If we take Marx literally, he says that the wage-relation is not unjust according to bourgeois justice, the only standard of justice possible under capitalist conditions. If we take Marx literally, he says that the wage-relation is based in theft, robbery, extortion, and plunder. It seems that the bourgeois notion of commutative justice is internally contradictory, self-defeating, and therefore, ideological and false. This perspective has superficial similarities with certain aspects of both the Tucker-Wood and the Cohen-Geras theses. Like Tucker and Wood, I argue that Marx believes that bourgeois justice is the only form of justice possible under capitalism. Therefore, it is the only notion of justice by which one could evaluate capitalism. Consequently, capitalism is not unjust. Nevertheless, contrary to Tucker and Wood, I agree with Cohen and Geras that Marx's invocations of 'theft' undermine the validity of bourgeois justice. Therefore, Marx does not seem to regard capitalism as just in any non-self-contradictory sense of that term. Contrary to Cohen and Geras, however, I do not believe that this proves that Marx has some alternative, implicit, positive notion of justice by which capitalism can be condemned as unjust. Ultimately, both sides neglect the ways in which Marx deploys immanent critique.

The proponents of the Tucker-Wood thesis neglect or dismiss as 'rhetorical' the ways in which Marx undermines bourgeois justice when he explicitly asserts that it is predicated on systemic theft, robbery, or extortion. Much of the discussion about the systemic theft embodied in capitalist appropriation misses the philosophical tradition to which Marx contributes. In other words, a crucial aspect of the relation between Marx's immanent critique and what he says about justice and theft are his intellectual predecessors, Hume, Kant, and Hegel, and, of course, the historical conditions that inform their ongoing discussion of justice. Each of these intellectual predecessors deem 'to each their due' and 'do not steal' as the consummate positive and negative expressions of private property. This is precisely the basis by which Marx undermines bourgeois justice as self-contradictory. Nevertheless, Marx also embraces Hegel's immanent critique as well as his assertions that concepts of justice arise from specific, historically-determined forms of property relations. It is for this reason that Marx's destabilizing of bourgeois justice does not necessarily erect in its place an alternative principle of justice capable of being implemented in prevailing historical conditions and by which those conditions can be criticized as unjust. As we

will see in a subsequent chapter, Marx says much the same thing about the first phase of socialism.

The proponents of the Cohen-Geras thesis also neglect immanent critique. Although Marx undermines bourgeois justice, this does not mean he affirms a different conception of justice that can serve as a positive alternative within capitalism. He does not say that capitalist exploitation is unjust. Rather, he says that the only standard of justice possible under capitalism, bourgeois justice, is a form that contains a contradictory content: the necessary antagonism between the proletariat and the bourgeoisie. Marx will offer a principle of justice that poses an alternative to bourgeois justice, but he gives every indication that it is specific to post-capitalist society. In other words, the dialectical resolution occurs beyond capitalist historical conditions. Since that resolution must exist not only in our minds but in our material conditions, it cannot be imposed on capitalist conditions as some external or transcendental standard. Therefore, this principle of justice in socialism is not a basis by which we can (i) critique capitalism as unjust, (ii) justify the post-capitalist society, and (iii) inform the revolutionary activity that takes us from one form of society to the other.

We must also conclude that Marx is not inconsistent in the way that Cohen and Geras think he is. Is Marx's theory of justice the necessary outcome of his use of immanent critique? Perhaps not. After all, Marx asserts that capitalist freedom and equality necessarily result in unfreedom and inequality. He criticizes capitalism on these grounds even though alternative notions of a more substantive freedom and equality cannot be achieved within capitalist society. Why then does Marx fail to assert that capitalist justice necessarily becomes injustice? When Cohen and Geras accuse Marx of inconsistency, they are looking in the wrong place. Everything Marx has said so far about justice is internally consistent. If Marx applies the method of immanent critique to principles of freedom and equality in ways that are fundamentally different from its application to justice, the question becomes, why does Marx separate justice from other ethical principles? Is it not his notion of justice, but his use of immanent critique that is inconsistent? As I will show, it is only a historical materialist critique of Marx that can prove this to be the case.

Even those who argue that Marx's theory casts itself as essentially beyond justice neglect immanent critique, if not the use of immanent critique in Marx's work, than in their own critique of Marx. To a significant extent, I agree with the interpretation and critique of Marx offered by

Buchanan and Lukes. Nevertheless, even they engage in an idealist method. They attribute Marx's errors only to specific intellectual influences and cognitive mistakes. Thus, the question of justice and rights becomes something to append to Marx's theory. In Hegel's terms, this does not meet Marx on his battleground. A truly thoroughgoing critique of Marx would be what is attempted here: an immanent critique that shows how Marx, *on his own terms*, may be guilty of ideology in his sense of the term.

As I noted earlier, each of the three waves of debate about Marxism and ethics has ended in the same basic impasse: the mutually reinforcing antinomy between, on the one hand, determinism or consequentialism, and on the other hand, formalism or deontology. This is one of the reasons why I insist so stringently on the use of the historical *materialist* method in the debates about Marx. It is not only that this is the least we should expect from self-described Marxists. It also because, by failing to root the problems of Marxist ethics in capitalist social relations, too often these commentators turn to what they deem to be the only possible alternative, which is as rooted in these historical conditions as are the shortcomings in Marx. Every position in this debate allows liberal notions of justice to not only frame the discussion, but to dominate it. As we will see, this is true not only for those commentators who embrace certain aspects of liberal justice and rights, whether it is, on the one hand, Cohen and Geras, or on the other hand, Buchanan and Lukes. It is also true of those commentators who reject liberal justice and rights, which they deem to be justice and rights as such, whether it is, on the one hand, Tucker and Wood, or on the other hand, Miller and Ryan. This is why the impasse struck by each of these waves of debate resorts to liberal antinomies, either the consequentialism of that tradition descending from Kautsky to Wood or the deontology of that tradition descending from Bernstein to Cohen.

In the first two debates, there were attempts to construct a genuinely dialectical, non-determinist ethics. These efforts failed. I point to this not because I can offer here a successful dialectical ethics. Rather, I do so in order to put on the agenda the question of whether or not a genuine dialectical method results in serious shortcomings in the domain of ethics. Indeed, these limitations may be severe enough to call into question the dialectical method altogether. In doing so, however, I will have attempted to critique it on its own grounds.

If we take Marx literally, so far, all we can say is that Marx never speaks affirmatively about a principle of justice without demonstrating how it is self-contradictory. In other words,

Marx nowhere speaks of a principle of justice that is not destined to be transcended by another principle of justice. Furthermore, he explicitly states that these principles of justice are specific to their historical circumstances and cannot be used to comparatively judge different modes of production. As we will soon see, Marx, in his discussion of the first phase of socialism, describes the socialist standard of distribution: ‘From each according to their ability, to each according to their contribution.’ We have not addressed this yet because, unlike the issues of commutative justice we have covered so far, this principle of right, when embodied in socialist conditions, is genuinely a standard of *distribution*. Two questions arise. First, does Marx deem that principle an appropriate standard for the evaluation of capitalist society? In other words, is it a basis by which we can critique capitalism, not merely because of its self-contradictory justice, but because it is unjust? Second, does Marx deem this principle of right an adequate standard for human societies?

We will find that, for Marx, this principle of right corresponds more to its practice. In other words, its content is more reconciled with its form. Nevertheless, he also criticizes what he regards as its serious shortcomings. Marx argues that the principle of justice under socialism is, as with every other form of justice, self-contradictory. Nevertheless, it is not transcended by another principle of justice. Indeed, justice itself is transcended. As we will soon find, it is on the basis of this critique that Marx does not deem that principle an appropriate standard for the evaluation of capitalism as unjust. Since Marx looks forward to a time beyond justice, he deems it futile to use it as a concept in the present. Indeed, we will find that Marx never articulates a principle of right or justice without calling it into question shortly thereafter. To fully appreciate why he does this, we must soon turn to the rare occasions where Marx actually speaks of distributive justice rather than the commutative justice with which it is so often conflated. First, however, we must again return to Hegel.

Part 3: Distributive Justice

Chapter 9: Hegel on Distributive Justice

Soon we will turn to Marx's most extensive discussion of distribution under socialism, the 'Critique of the Gotha Programme,' written in 1875. There he articulates the famous principle of need. As Manuel notes: "The banderole inscribed 'From each according to his abilities, to each according to his needs' may be getting a bit frayed with age, but it is still fluttering in the winds of doctrine, belief, and hope."⁷⁴⁶ Nevertheless, a mystery must be solved. Although Marx gives to the needs principle its most famous expression, he did not invent it. The principle of need was well-known among socialists at that time. Marx's discussion of it in the 'Critique,' like his discussions of socialism in all of the writings in which they occur, is brief. If we could discover from whom Marx acquired it—if indeed this can be attributed primarily to a single person—and how they conceptualized it, it could be crucial for our understanding of how Marx theorizes the needs principle, and more generally, socialist society. The curious case of the needs principle is littered with hidden clues and fraught with many dead-ends. Fortunately, the mystery has a more than satisfying resolution.

H. S. Harris contends that Marx was quoting Bakunin.⁷⁴⁷ His source, J. M. Davidson, asserts: "In 1870 Bakunine organised an insurrection at Lyons. It was a fiasco, but it led to something like an authoritative statement of Anarchist aims. Forty-seven of the prisoners signed a declaration, read by one of them at the trial," which includes the following: "We wish, in a word, equality—equality in fact as corollary, or, rather, as primordial condition of liberty. From each one according to his faculties, to each according to his needs; that is what we wish sincerely and energetically."⁷⁴⁸ Nevertheless, Davidson offers no evidence of the connection to Marx inferred by Harris. Similarly, although Cornelius Castoriadis asserts that Marx got the needs

⁷⁴⁶ Frank E. Manuel, *A Requiem for Karl Marx* (Cambridge, Massachusetts: Harvard University Press, 1995), 157.

⁷⁴⁷ H. S. Harris, *Hegel's Ladder, Volume II: The Odyssey of Spirit* (Indianapolis: Hackett Publishing Company, Inc., 1997), 455, n. 46.

⁷⁴⁸ J. Morrison Davidson, *The Old Order and the New* (London: William Reeves, 1902), 131; 132. The text, which is difficult to find, is available for free at <http://catalog.hathitrust.org/Record/000190225>.

principle from Prosper Enfantin, one of the early Saint-Simonians, he also provides no evidence for this.⁷⁴⁹

Tucker, Wood, Reiman, Gilbert, and van der Linden all speculate that Marx got the needs principle from Louis Blanc.⁷⁵⁰ It is often attributed to his *The Organization of Labour*, which was published in French in 1839, in German in 1847, and in English in 1848. It is quite possible that the young Marx, despite his later contempt for Blanc, read and was influenced by the first editions of Blanc's text. There are uncanny resemblances. For example, Blanc asserts:

It is because liberty has been defined by the word *right*, that men have come to be called free, who are in fact the slaves of hunger, the slaves of cold, the slaves of ignorance, and the slaves of chance. Let it be said once, and for all, Liberty consists, not only in the rights accorded, but in the power given to men to exercise and develop their faculties under the empire of justice and the safeguard of the law.⁷⁵¹

Similarly, Marx and Engels assert, “The *right* of proletarians to eat has never been ‘curtailed’, nevertheless it happens ‘of itself’ that they are very often unable to ‘exercise’ it.”⁷⁵² Characteristically, Marx and Engels's rendering of this idea drops any mention of a positive conception of justice. Nevertheless, the needs principle is nowhere expressed in the original edition of Blanc's *The Organization of Labour*. Blanc does not express it for the first time until his *Plus de Girondins*, published in 1851: “*De chacun selon ses facultés, à chacun selon ses*

⁷⁴⁹ Cornelius Castoriadis, ‘From Marx to Aristotle, from Aristotle to Us,’ trans. Andrew Arato, *Social Research*, 45.4 (Winter 1978): 667-738; 721.

⁷⁵⁰ Tucker, *The Marxian Revolutionary Idea*, op. cit., 37-8; Wood, ‘Marx and Equality,’ op. cit., 211; Reiman, op. cit., 321; Alan Gilbert, ‘An Ambiguity in Marx's and Engels's Account of Justice and Equality,’ *The American Political Science Review*, 76.2 (June 1982): 328-346; 341, n. 12; van der Linden, op. cit., 123.

⁷⁵¹ Louis Blanc, *The Organization of Labour* (London: H. G. Clarke, 1848), 20. Recently, proponents of the so-called ‘capabilities’ approach to political philosophy have also noted the potential gulf between ‘freedom’ and ‘power’ or ‘capabilities.’ For example, Sen asserts: “Capability is, thus, a set of vectors of functionings, reflecting the person's freedom to lead one type of life or another. Just as the so-called ‘budget set’ in the commodity space represents a person's freedom to buy commodity bundles, the ‘capability set’ in the functioning space reflects the person's freedom to choose from possible livings” (Amartya Sen, *Inequality Reexamined* (Cambridge: Harvard University Press, 1995), 39-40). Nevertheless, while the capabilities approach can address how, for example, a person with a disability might derive less utility from the same amount of income as an able-bodied person, it cannot address the gulf between freedom and power that arises for wage-labourers who can only own means of consumption in comparison to capitalists who also own means of production. In other words, the capabilities approach cannot address the problem of capitalism.

⁷⁵² Marx and Engels, *The German Ideology*, op. cit., 335.

besoins.⁷⁵³ The dates of Bakunin and Blanc's respective articulations of the needs principle are significant because, as most of the commentators on the relation between Marx and justice have missed, the 'Critique of the Gotha Programme' is not the first time the principle of need appears in Marx's work.

In the manuscripts for *The German Ideology*, written in 1845, we find the following statement: "the false tenet, based upon existing circumstances, 'to each according to his abilities,' must be changed, insofar as it relates to enjoyment in its narrower sense, into the tenet, 'to each according to his need.'⁷⁵⁴ As we will see later, Harris attributes much importance to Hegel's concept of forgiveness. It is therefore peculiar that he occasionally lambasts misreadings of Hegel as 'unforgiveable.' When one reads his assertion that Marx acquired the needs principle from Bakunin, even though it can be found in Marx's work twenty-five years before Bakunin's declaration, we can only say that this misreading, or rather, this non-reading, of Marx is...*unforgiveable*. The attribution to Blanc by other commentators is somewhat more plausible. It only came six years after.

Although Marx and Engels were aware of the needs principle as early as 1845, neither are its author in this text. While writing *The German Ideology*, Marx and Engels recruited Moses Hess to write two chapters, including that in which appears the needs principle.⁷⁵⁵ In all likelihood, this chapter, similar to one of Hess's later articles, was written by him, copied by Joseph Weydemeyer, and edited by Marx and Engels.⁷⁵⁶ Nevertheless, there are reasons to doubt that Marx learned the needs principle from Hess, or had his specific articulation of it in mind while writing the 'Critique of the Gotha Programme.'

In *The German Ideology*, the needs principle is articulated during an analysis of the 'true socialist' Georg Kuhlmann, whose socialism is, according to Hess, "based on the abject doctrine of predestined slavery."⁷⁵⁷ Kuhlmann argues that distinct forms of labour with their different degrees of value confer a right to different amounts of pleasure or enjoyment. Therefore, Kuhlmann, with his self-described important and highly valuable philosophical labour, can make claims to deserving a better life than the common artisan. Hess responds,

⁷⁵³ Louis Blanc, *Plus de Girondins* (Paris: Charles Joubert, Passage Dauphine, 1851), 92.

⁷⁵⁴ Marx and Engel, *The German Ideology*, op cit., 566.

⁷⁵⁵ Editors, *The Collected Works of Karl Marx and Friedrich Engels, 1845-47, Volume V* (Moscow: International Publishers, 1975), 586, n. 7.

⁷⁵⁶ *Ibid.*, 606-7, n. 143.

⁷⁵⁷ Moses Hess, in Marx and Engels, *The German Ideology*, op cit., 565.

But one of the most vital principles of communism, a principle which distinguishes it from all reactionary socialism, is its empirical view, based on a knowledge of man's nature, that differences of *brain* and of intellectual ability do not imply any differences whatsoever in the nature of the *stomach* and of physical *needs*; therefore the false tenet, based upon existing circumstances, 'to each according to his abilities,' must be changed, insofar as it relates to enjoyment in its narrower sense, into the tenet, '*to each according to his need*'; in other words, a *different form* of activity, of labour, does not justify *inequality*, confers no *privileges* in respect of possession and enjoyment.⁷⁵⁸

Hess ultimately accuses Kuhlmann of concealing his "craving for power" and "hypocritical pleasure-seeking" under the veil of his socialist "dogma," and equates him with the dictatorial tendencies of the "reactionary socialists" who would use their own merits to justify their continuing rule.⁷⁵⁹

Norman Geras, one of the only commentators to have noticed Hess's earlier formulation of the needs principle, sees certain similarities with Marx's later formulation. Geras notes the resemblance between Hess's assertion that differences of ability should not confer "privileges," and, as we will soon see, Marx's critique of the principle of labour-contribution for its tacit recognition of "natural privileges."⁷⁶⁰ We could also point to the similarity between Hess's assertion that the supposed superiority of specifically intellectual labour does not justify inequality, and Marx's assertion that communist society will bring an end to the antithesis between mental and manual labour.⁷⁶¹ Nevertheless, Geras also notes that Hess's depiction of needs as basic, physical needs is much narrower than Marx's conceptualization.⁷⁶² This is true whether we are referring to the 'Critique of the Gotha Programme,' which recognizes needs for, say, education, or to other texts, such as the 'Instructions for the Delegates of the Geneva Congress,' where Marx discusses the need for "intellectual development."⁷⁶³ We could also point

⁷⁵⁸ Ibid., 566.

⁷⁵⁹ Ibid.

⁷⁶⁰ Geras, 'The Controversy About Marx and Justice,' op. cit., 80.

⁷⁶¹ Marx, *The Critique of the Gotha Programme*, op cit., 10.

⁷⁶² Geras, 'The Controversy About Marx and Justice,' op cit., 79-80.

⁷⁶³ Marx, *The Critique of the Gotha Programme*, op cit., 7; Marx, *The First International and After*, op cit., 87.

out that, contrary to Hess, Marx argues that distinct forms of labour can and should confer different amounts of value or worth, even if he does not draw from this the same conclusions as does Kuhlmann.⁷⁶⁴ Nevertheless, Geras limits his discussion to an evaluation of whether or not Marx can be considered an egalitarian. Since Hess affirms the needs principle against Kuhlmann's inegalitarian doctrine, this is enough to satisfy Geras that it is evidence of Marx's egalitarianism. For our purposes here, however, the differences between the two expressions of the needs principle inspire us to look elsewhere for Marx's source.

The modern form of the needs principle probably originates from the 'Code of Nature,' written in 1755 by the obscure *philosophe* Etienne-Gabriel Morelly.⁷⁶⁵ Until the nineteenth-century, however, this text was falsely attributed to Diderot, who did not deny it. Morelly asserts that the 'sacred laws' that would 'tear out the roots of societal vice' include, on the one hand, that each will contribute according to their capacity, talent, and age, and on the other hand, that each will own nothing beyond what is of immediate need or use.⁷⁶⁶ These ideas were famously expressed by Gracchus Babeuf in his defence during the trial that led to his execution:

To be more specific, it is necessary *to bind together everyone's lot*; to render the lot of each member of the association independent of chance, and of happy or unfavorable circumstance; *to assure to every man and to his posterity, no matter how numerous it may be, as much as they need, but no more than they need.*⁷⁶⁷

Babeuf was probably the major source of the needs principle for Europeans in the following decades. This includes the utopian Etienne Cabet, who featured the principle on the title page of his *Voyage en Icarie*, published in 1840.⁷⁶⁸ Marx was certainly familiar with Morelly, Babeuf,

⁷⁶⁴ For example, see: Marx, *Capital: Volume One*, op. cit., 305.

⁷⁶⁵ R. N. C. Coe, 'The Fortunes of the 'Code de la Nature' Between 1755 and 1848,' *French Studies*, II (1957): 117-26; 118.

⁷⁶⁶ Morelly, op. cit., 20.

⁷⁶⁷ Gracchus Babeuf, 'Babeuf's Defence (From the trial at Vendôme, February-May 1797), in *Socialist Thought: A Documentary History*, eds. Albert Fried and Ronald Sanders (Garden City, New York: Anchor Books, 1964), 67.

⁷⁶⁸ Etienne Cabet, *Voyage et aventures de Lord Villiam Carisdall en Icarie* (Paris: H. Souverain, 1840). That the needs principle appears on the title page of the 1840 edition is a widely-made claim. Take, for example, Manuel, op. cit., 171. None of the electronic copies of the 1840 edition I have seen feature the needs principle. The earliest edition with the needs principle that I have seen is from 1845: Etienne Cabet, *Voyage en Icarie* (Paris: Bureau du Populaire, 1845). Nevertheless, my search has not been exhaustive. The following is a helpful summary of the history of the search for the origins of the needs principle, which, nonetheless, does not discover Marx's source: Editors, 'Notes from the Editors,' *Monthly Review*, 66.3 (July-August 2014):

and Cabet.⁷⁶⁹ It is possible that Marx's expression of the needs principle engages entirely with these and subsequent socialist theorists. Nevertheless, there is another, much more interesting potential source.

In my opinion, the primary influence on Marx's discussion of the needs principle is...Hegel. For many commentators, this will seem absurd. And yet, in passage 430 of *The Phenomenology of Spirit*, Hegel criticizes the needs principle. We have already studied parts of this section of the text in a previous chapter. Hegel discusses the kinds of laws that arise from different property-regimes in order to illustrate a broader argument about the formalism of an individualistic moral standpoint not grounded in ethical life, in the societal whole in its world-historical development. Hegel asserts that there are two basic forms of proprietary justice. The first, which naturally arises from private property, has as its standard 'to each according to their due.' Its paradigmatic rule is 'Tell the truth.' The second form, arising from communal property, is 'to each according to their need,' paradigmatically expressed as 'Love thy neighbour.'⁷⁷⁰ The conflict between these two notions of justice would have been a pressing issue for Hegel because, as we just saw, the principle of need was given radical expression in the lead up to and during the French Revolution, the most significant event of his life. It is likely that Hegel encountered Babeuf's espousal of the principle of need in the journal *Minerva*.⁷⁷¹ It is obvious that in his critique of private property, Hegel has Kant in mind. It is possible that Hegel's critique of communal property is directed, at least in part, at Fichte. There is evidence that Babeuf influenced Fichte's quasi-socialist assertions in his theory of the 'closed commercial state.'⁷⁷² Perhaps Hegel saw the connection.

<http://monthlyreview.org/2014/07/01/mr-066-03-2014-07/>

⁷⁶⁹ Like most socialists at that time, Marx was quite familiar with Babeuf, primarily from Buonarroti's *Babeuf's Conspiracy for Equality*. Michael Löwy notes that Morelly's name appears in Marx's notes for *The Holy Family* (Michael Löwy, *The Theory of Revolution in the Young Marx* (Leiden: Brill, 2003), 70). He cites 'Marxens Notizbuck,' MEGA BD 5, 1 Abt., (1932), pp. 549-50. I have not been able to access this volume, but the books of Morelly, Babeuf, and Cabet are found in an inventory of Marx's personal library conducted in 1850: Bruno Kaiser and Inge Werchan, *Ex Libris: Karl Marx Und Friedrich Engels: Schicksal und Verzeichnis* (Berlin: Dietz Verlag, 1967), 209-28.

⁷⁷⁰ Hegel, *Phenomenology of Spirit*, op. cit., §424-26. See also, Harris, op cit., 119-20.

⁷⁷¹ Between May 1796 and July 1797, *Minerva* published almost a dozen articles on Babeuf's life, trial, and death (Maynard Solomon, *Beethoven Essays* (Cambridge, Massachusetts: Harvard University Press, 1988), 199). As is indicated in his letters, Hegel was a regular reader of *Minerva* (Susan Buck-Morss, *Hegel, Haiti, and Universal History* (University of Pittsburgh Press, 2009), 45).

⁷⁷² David James, *Fichte's Social and Political Philosophy: Property and Virtue* (New York: Cambridge University Press, 2011), 56-86.

Hegel criticizes the principle of need for two reasons. First, he argues that it is necessarily shortsighted in its concern for immediate needs and cannot support the long-term independence and stability that private property alone guarantees:

But by non-ownership of the thing is not meant absolute non-ownership, but that it shall come into someone's possession according to the individual's needs, and, moreover, not in order to be kept, but to be used immediately. But to provide for the need in such a completely arbitrary way is contradictory to the nature of the conscious individual who alone is under discussion. For such an individual must think of his need in the form of *universality*, must provide for the whole of his existence, and acquire a lasting possession.⁷⁷³

Hegel's second criticism of the principle of need is that it is self-contradictory. It espouses the equality of humankind in order to justify unequal distributions according to the unequal needs of individuals:

In a society based on a common ownership of goods, in which provision would be made in accordance with a universal fixed rule, either each receives as much as he *needs*—in which case there is a contradiction between this inequality and the essential nature of that consciousness whose principle is the equality of individuals—or, in accordance with that principle, goods will be *equally* distributed, and in this case the share is not related to the need, although such a relationship alone constitutes the very notion of 'sharing.'⁷⁷⁴

Hegel is not one-sided in his analysis. He also criticizes the formalism of the kind of justice that arises from private property. Hegel argues that the permanence and the universal recognition upon which its property-rights are based is contradicted by the impermanence and the exclusivity

⁷⁷³ Hegel, *Phenomenology of Spirit*, op. cit., §430. For further evidence of my interpretation of Hegel's first criticism of the needs principle, see how the discussion is prefigured (ibid., §425). See also Hegel's later assertions about how the right of necessity applies only to the most immediate dangers: Hegel, *Philosophy of Right*, op. cit., §127.

⁷⁷⁴ Hegel, *The Phenomenology of Spirit*, op. cit., §430.

of the property consumed by each individual.⁷⁷⁵ For Hegel, there is nothing in either of these principles that, at this level of abstraction, makes one inherently superior to the other. We must move beyond these formal rules to the social content that gives rise to them. Indeed, the relations between form and content pervade this section of the text. From the perspective of the individual abstracted from time and place, Hegel transitions to Spirit, to the social perspective, to the shapes of society in their world-historical development.⁷⁷⁶ In other words, this is a transition from abstract universals to more concrete universals.

Though Hegel is critical of private property, he ultimately deems it a ‘fate’ to which we must be reconciled. In his early essay, ‘The Spirit of Christianity,’ the only aspect of Christ’s teachings that Hegel flatly rejects is Jesus’s advice to his followers that they sell their possessions and give all of their money to the poor because it is easier for a camel to fit through the eye of a needle than for a rich man to enter the kingdom of God. The young Hegel responds: “there is nothing to be said; it is a litany pardonable only in sermons and rhymes, for such a command is without truth for us. The fate of property has become too powerful for us to tolerate reflections on it, to find its abolition thinkable.”⁷⁷⁷ As far as I know, there is no evidence that Marx read these early theological works, although he would have read the mature Hegel’s critique of what he deems to be Christ’s revolutionary communism: “Were this precept directly complied with, a social revolution must take place; the poor would become the rich.”⁷⁷⁸ In one of Hegel’s lectures on religion, he goes so far as to accuse Christ of “sansculotism”!⁷⁷⁹

Although Hegel deems private property a ‘fate,’ he is quite critical of bourgeois property relations. Hegel wants to ameliorate the negative effects of the market on modern society. He rejects the principle of need as the sole basis of justice because it is not and cannot be concerned with lasting possession. Nevertheless, the basis of the needs principle, immediate necessity, often exists in modern society. Hegel therefore deems the needs principle an appropriate supplement to the principle of due. Since life is the basis of all rights, if someone is starving, then stealing a loaf of bread is not common theft. This moral claim has its basis not in equal right, which it contravenes, but in the right of necessity. For the same reason, Hegel embraces the *beneficium*

⁷⁷⁵ Ibid., §431.

⁷⁷⁶ Ibid., §438.

⁷⁷⁷ G. W. F. Hegel, ‘The Spirit of Christianity and its Fate,’ in *Early Theological Writings*, trans. T. M. Knox (Chicago: The University of Chicago Press, 1948), 221.

⁷⁷⁸ Hegel, *The Philosophy of History*, op. cit., 327.

⁷⁷⁹ G. W. F. Hegel, *Lectures on the Philosophy of Religion, Volume III: The Consummate Religion*, ed. Peter C. Hodgson (Oxford: Oxford University Press, 2007), 119.

competentiae, the debtor's right to pay only what they can. 'Ought,' the root of which is 'to owe,' implies 'can.' Nevertheless, promoting welfare cannot justify an action that is wrong: "When St. Crispin stole leather to make shoes for the poor, his action was both moral and wrong, and hence invalid."⁷⁸⁰ Furthermore, the only thing that is absolutely necessary is the preservation of life in the immediate context. The right of necessity cannot be invoked for the sake of our future, longer-term preservation.⁷⁸¹

Hegel's emphasis on immediate need may be one of the reasons why he finds so troubling the increasing incidence of pauperization in the modern market. It is a much more systemic, and therefore, long-term deprivation of necessities. Hegel acknowledges that, in market relations, private acts and individualized choices can pass out of our control and wrong or harm other individuals.⁷⁸² Furthermore, the accumulation of wealth necessarily fosters the specialization of work, which increases the dependence and want of the producing class. This inhibits the feeling of wider freedoms and spiritual advantages of civil society. This impoverishment leaves individuals with all the needs of civil society but none of its benefits.⁷⁸³ The loss of the honour associated with supporting oneself through work can inspire laziness or even viciousness and the rise of the 'rabble': "The important question of how poverty can be remedied is one which agitates and torments modern societies especially."⁷⁸⁴

Hegel asserts that if the burden of maintaining the welfare of the poor fell on the wealthy, this would be contrary to the principle of civil society and would result in overproduction: "This shows that, despite an *excess of wealth*, civil society is *not wealthy enough* – i.e. its own distinct resources are not sufficient – to prevent an excess of poverty and the formation of a rabble."⁷⁸⁵ Hegel contends that the administration of justice in modern society should not only guarantee the security of persons and property, but also the livelihood and welfare of individuals.⁷⁸⁶

Hegel attempts no dialectical resolution to this issue. He asserts that the administration of justice needs to strike a balance between absolute free trade, which results in abject poverty, and

⁷⁸⁰ Hegel, *The Philosophy of Right*, op. cit., §126.

⁷⁸¹ Ibid., §127.

⁷⁸² Ibid., §232.

⁷⁸³ Ibid., §241.

⁷⁸⁴ Ibid., §244.

⁷⁸⁵ Ibid., §245. Marx repeats this exact claim, except he asserts every crisis has its basis in the impoverishment of the working-class, not in overproduction, which is a tautology (Marx, *Capital: Volume Three*, op. cit., 366).

⁷⁸⁶ Hegel, *The Philosophy of Right*, op. cit., §230.

total state control, which hinders wealth accumulation.⁷⁸⁷ Hegel also asserts that this “inner dialectic” drives civil society to look for consumers through colonialism.⁷⁸⁸ This ever-expanding civil society does not address its internal contradictions. Hegel engages here in the ‘spurious’ or ‘bad’ infinite for which he so often faults others.

With regard to the connection between the discussions of the needs principle in Hegel and Marx, there is, as far as I can tell, no definitive proof. It is possible that in writing the ‘Critique of the Gotha Programme,’ Marx’s explanation of the needs principle is influenced entirely by the early communists. Nevertheless, while Marx’s ‘Critique’ is obviously structured in terms of its analysis of the Gotha Programme, it seems also to be structured in order to respond to Hegel’s critique of communism and the needs principle. This can only be demonstrated through a close reading of the text. It is to Marx’s contributions to theories of distributive justice that we now turn.

⁷⁸⁷ Ibid., §236.

⁷⁸⁸ Ibid., §246-48.

Chapter 10: Marx on Distributive Justice

This chapter explores the relation between Marx and distributive justice proper.⁷⁸⁹ As we saw in a previous chapter, contemporary political philosophy, whether Marxist or non-Marxist, often conflates the two forms of proprietary justice, namely, commutative and distributive justice. Whereas commutative justice has to do with individuals exchanging privately-held goods in the market, distributive justice is about the public distribution of commonly-held goods, primarily through state institutions. The standards of commutative justice tend toward a more exacting equivalence between the worth of the products irrespective of the status of their possessors. Conversely, the standards of distributive justice are highly variable, tending toward notions of proportionate equality based in historically specific class relations. In order to maintain the distinctions between exchange and distribution and between commutative and distributive justice, I will describe the two forms of property-holdings as allocations and distributions.

Under capitalism, production for exchange predominates over production for use. Consequently, commutative justice overtakes the traditional primacy of distributive justice in matters of proprietary justice. Distribution therefore becomes a matter of *redistribution* beyond the allocations resulting from market exchange. As we saw in the last chapter, the standard of justice typical of private property, and in particular, of relations of exchange, is ‘to each their due’ or ‘to each what they are owed.’ In contemporary political philosophy, distributive justice is often intended to ameliorate the inequalities and other negative social effects associated with commodity exchange. The justifications and standards for these redistributive measures has been the focal debate within political philosophy over the last fifty years.

When we properly distinguish between commutative and distributive justice we arrive at a paradoxical result. Despite the voluminous commentaries about the relation between Marx and so-called ‘distributive justice,’ the vast majority of what he writes about justice is relevant to the content of commutative justice. In fact, Marx says very little about the content of distributive justice proper. In this chapter we will look at what Marx says about distributive justice in capitalism and socialism. In particular, we will focus on the two principles of distribution attributed to Marx. These are the principle of labour-contribution, ‘From each according to their

⁷⁸⁹ I presented a draft of this chapter at the 2015 Annual Conference of the Canadian Political Science Association, Ottawa, Ontario, June 3, 2015.

ability, to each according to their contribution,’ and the principle of need, ‘From each according to their ability, to each according to their needs.’

10. 1: Distribution Under Capitalism

The most significant of Marx’s examinations of the content of distributive justice occurs in the ‘Critique of the Gotha Programme,’ Marx’s scathing commentary on the draft political platform for what would become the founding congress of the Social Democratic Party of Germany. As we will see, however, commentators often overemphasize this text to the neglect of relevant discussions in his other works.

One of the more famous passages from the ‘Critique’ is Marx’s criticism of those who make too much of a “fuss” about distribution:

The distribution of the means of consumption at any time is only a consequence of the distribution of the conditions of production themselves. The latter distribution, however, is a feature of the mode of production itself. The capitalist mode of production, for example, rests on the fact that the material conditions of production are in the hands of non-workers in the form of property in capital and land, while the masses are only owners of the personal conditions of production, *viz.*, labour power. Once the elements of production are so distributed, then the present-day distribution of the means of consumption results automatically. If the material conditions of production are the co-operative property of the workers themselves, then this likewise results in a different distribution of the means of consumption from the present one. Vulgar socialism (and from it in turn a section of democracy) has taken over from the bourgeois economists the consideration and treatment of distribution as independent of the mode of production and hence the presentation of socialism as turning principally on distribution. After the real position has long been made clear, why go back again?⁷⁹⁰

⁷⁹⁰ Marx, *Critique of the Gotha Programme*, op. cit., 10-11.

When Marx asserts that, in our more precise terminology, the allocations of the means of consumption ‘result automatically’ from the allocation of the means of production, he seems to ignore the great deal of variability between the allocations and distributions of the means of consumption, and therefore, the significance of redistributive measures. Although we will soon critique Marx for neglecting distributive justice, this passage is not a broad indictment of redistribution. Rather, it is a more specific critique of, first, overemphasizing the allocation of the means of consumption relative to the means of production, and second, arbitrarily separating them and therefore effacing the extent to which the latter determines the former.

In fact, throughout the course of his work, Marx affirms redistributive measures. Take, for example, a proposal from his draft programme for the IWMA:

(a) No modification of the form of taxation can produce any important change in the relations of labour and capital.

(b) Nevertheless, having to choose between two systems of taxation, we recommend the *total abolition of indirect taxes*, and the *general substitution of direct taxes*.

Because indirect taxes enhance the prices of commodities, the tradesman adding to those prices not only the amount of the indirect taxes, but the interest and profit upon the capital advanced in their payment;

Because indirect taxes conceal from an individual what he is paying to the state, whereas a direct tax is undisguised, unsophisticated, and not to be misunderstood by the meanest capacity. Direct taxation prompts therefore every individual to control the governing powers while indirect taxation destroys all tendency to self-government.⁷⁹¹

Although he warns us about its limits, Marx nonetheless recommends this redistributive measure. Other redistributive measures either proposed by Marx or co-signed by him in various committees include abolition of the right to inheritance; nationalization of banks and centralization in the state of credit, the means of communication, transport, factories, and the

⁷⁹¹ Marx, *The First International and After*, op. cit., 92-93.

instruments of production; performance of legal proceedings done free of charge; and free education.⁷⁹²

Marx's support for redistributive measures is one of the reasons why commentators like Husami contend that, first, even though the principles of contribution and of need can be fully realized only in socialism, Marx believes that these principles should be adopted by proletarian parties for more or less immediate, albeit partial, implementation within capitalism; and second, that Marx, on the basis of these principles, condemns capitalism for its injustice and affirms socialism as a more just society.⁷⁹³ Supporting Husami's second claim, Nielsen asserts: "We can see from looking at the programme of *The Critique of the Gotha Programme* that, pace Wood, Marx set out socialist principles of justice for evaluating institutions and indeed for evaluating the whole capitalist system."⁷⁹⁴ Marx, however, would surely dismiss this as utopian. As he says time and again, the critique of capitalism cannot be derived from the standards of socialism. Rather, the standards of socialism must be derived from the critique of capitalism. Furthermore, Marx seems to reject the second of Husami's claims:

What is 'equitable distribution'?

Do not the bourgeois assert that the present-day distribution is 'equitable'? And is it not, in fact, the only 'equitable' distribution on the basis of the present-day mode of production? Are economic relations regulated by legal conceptions or do not, on the contrary, legal relations arise from economic ones? Have not also the socialist sectarians the most varied notions about 'equitable' distribution?⁷⁹⁵

As we saw in previous chapters, Marx asserts that, because social relations, practices, and institutions are determined by their historical conditions, bourgeois justice is the only notion of justice possible within capitalism. Nevertheless, as we have just seen, he does not abandon

⁷⁹² Marx and Engels, 'Manifesto of the Communist Party,' op. cit., 490-91; Marx, *Civil War in France*, op. cit., *et passim*; as well as 'Demands of the Communist Party in Germany' and 'Address of the Central Committee to the Communist League,' in Marx and Engels, *The Karl Marx Library Volume I*, op. cit., 108-9; 118-19. This list is not exhaustive.

⁷⁹³ Husami, op. cit., 46; 73-74.

⁷⁹⁴ Nielsen, op. cit., 180.

⁷⁹⁵ Marx, *Critique of the Gotha Programme*, op. cit., 6.

redistributive measures. Rather, he seems to assert that, although these measures are necessary, we should not distort them with moral concepts like the ‘equitable.’

Wood goes too far, however, when he rejects the first of Husami’s claims, namely, that Marx deemed the principles of contribution and of need as appropriate for proletarian parties.⁷⁹⁶ Wood argues that, because of the objective historical constraints imposed by capitalism, Marx intends these principles as descriptions only of the post-capitalist future. In fact, however, Marx demonstrably embeds versions of both principles in the transitional programmes of proletarian parties. The real question is whether or not Marx regards them as alternative principles of justice. We will begin with the needs principle because, as we will soon see, its presence in a proletarian programme is more straightforward than that of the contribution principle.

There are numerous occasions where Marx justifies reforms with an appeal to human needs. For example, when he argues for the legal restriction of the working day, Marx appeals to the needs for physical well-being, intellectual development, and sociable intercourse.⁷⁹⁷ More significantly, point twelve of the ‘Demands of the Communist Party in Germany’ states: “In the salary scale of all government officials there is to be no differential except that those with a family, that is, those who have greater needs, are to receive a higher salary than the others.”⁷⁹⁸ As we will see later, Marx’s discussion of the needs principle in the ‘Critique of the Gotha Programme’ also invokes the needs arising from, among other things, having a family. There, however, the context is socialism, in which the needs principle can achieve its fullest expression. The version of the needs principle expressed in the ‘Demands’ is only partial because, under production for exchange, needs are necessarily subordinate to the standard typical of private property, to each their due. In capitalism ‘due’ is defined as ‘effective’ need, as need attached to purchasing power. These are the only needs that gain recognition in the market. Nevertheless, even with these constraints, it is enough to note this example to refute Wood’s claim that Marx defers this principle to the socialist future.

Marx also affirms versions of the contribution principle in proletarian programmes, but not in the ways that are usually expected. By the principle of labour-contribution is usually meant that each labourer receives the full fruits of her labour. As we saw in previous chapters,

⁷⁹⁶ Allen W. Wood, ‘Marx on Right and Justice: A Reply to Husami,’ in *Marx, Justice, and History: A Philosophy & Public Affairs Reader*, eds. Marshall Cohen, Thomas Nagel, and Thomas Scanlon (Princeton: Princeton University Press, 1980), 130-31.

⁷⁹⁷ Marx, *The First International and After*, op. cit. 87.

⁷⁹⁸ Marx and Engels, *The Karl Marx Library Volume I*, op. cit., 109.

Marx deems the relation between the wage-labourer and the capitalist as inherently exploitative. The capitalist appropriates unpaid surplus labour. This precludes, in the vast majority of cases, the principle of labour-contribution under capitalism, at least as it is conceptualized in terms of the ‘full fruits’ of labour. Nevertheless, Marx is also able to embed a version of the contribution principle in proletarian programmes because he inverts its usual emphasis. Stated in full, the contribution principle is ‘From each according to their ability, to each according to their contribution.’ The first part, ‘From each according to their ability,’ is common to the needs principle as well. Consequently, both principles include what is called the equal liability of all to labour, although Marx recognizes exemptions on the basis of age and disability. In fact, Marx asserts that to work with both head and hands in order to eat is a “general law of nature.”⁷⁹⁹ Therefore, the principle of labour-contribution is also a principle of contributing labour. In a society that does not affront this general law, one must contribute to the total social product from which they gain a share. It is in this sense that Marx can deploy the contribution principle. Rather than demanding that those who are already contributing wage-labour receive the full fruits of that labour, which is impossible under capitalism, Marx demands that those who do not contribute to, but nonetheless take a share from, the total social product, must be forced to contribute.

Take, for example, point four in the ‘Demands of the Communist Party in Germany’:

General arming of the people. In the future, the armies are to be at the same time working armies, so that the troops are no longer, as hitherto, consumers but, rather, producers of more than their maintenance cost.

This is, moreover, a means for the organization of labor.⁸⁰⁰

It would seem that, at least with regard to the contribution principle, Marx’s qualification, “In the future,” lends credence to Wood’s argument that Marx defers his distributive principles to the socialist future. Nevertheless, this has more to do with the specific, less developed conditions of Germany. Marx expresses the same principle in the ‘Manifesto’⁸⁰¹ where he makes clear that its ten proposals are an international transitional programme to be gradually implemented *within*

⁷⁹⁹ Marx, *The First International and After*, op. cit., 88.

⁸⁰⁰ Marx and Engels, *The Karl Marx Library Volume I*, op. cit., 109.

⁸⁰¹ “Equal liability of all to labour. Establishment of industrial armies, especially for agriculture” (Marx and Engels, ‘The Communist Manifesto,’ op cit., 490).

capitalism. The first steps are “to win the battle of democracy” and “to wrest, by degrees, all capital from the bourgeoisie,” because “in the beginning, this cannot be effected except by means of despotic inroads on the rights of property, and on the conditions of bourgeois production.”⁸⁰² In the ‘Demands’ these despotic inroads on the rights of property include feudal property, surely, a measure that is not to be deferred to a socialist future! Marx justifies this, in part, because the landowners, like the standing armies, offend against the equal liability of all to labour:

6. All feudal burdens, dues, socages, tithes, etc., which have hitherto burdened the country people, are abolished without any compensation.

7. Princely and other feudal landed estates, all mines, pits, etc., are transformed into state property. On those landed estates agricultural land will be cultivated on a large scale and with the most modern scientific methods for the benefit of the whole people.

8. Mortgages on peasant farms are declared to be state property. Interest on them is to be paid by the peasants to the state.

9. In the areas where tenant farming is developed, ground rent or tenure schilling is to be paid to the state as a tax.

All measures under Nos. 6, 7, 8, and 9 are conceived with a view toward diminishing the official and other burdens of the peasants and small tenant farmers, without decreasing the necessary means for the defrayal of state costs and without endangering production itself.

The landowner who is neither a peasant nor a tenant has no share in production at all. His consumption is therefore merely a misuse.⁸⁰³

⁸⁰² Ibid.

⁸⁰³ Marx and Engels, *The Karl Marx Library Volume I*, op. cit., 108-09. It is interesting to note that while Marx denies the landowner a share in production, conversely, the tenant farmer, who historically is the basis for the emergence of agrarian capital, is given a share in production. In the following passage, which we have examined previously, note Marx’s assertion about the ‘necessary functionary’: “In fact, in my presentation, capital profit is *not* ‘merely a *deduction* or ‘robbery’ on the labourer.’ On the contrary, I present the capitalist as the necessary functionary of capitalist production and show very extensively that he does not only ‘deduct’ or ‘rob,’ but forces the *production of surplus value*, therefore the deducting only helps to produce; furthermore, I show in detail that even if in the exchange of commodities *only equivalents* were exchanged, the capitalist – as soon as he pays the labourer the real value of his labour-power – would secure with full rights, i.e. the rights corresponding to that mode of production, *surplus value*. But all this does not make ‘capital profit’ into a ‘*constitutive*’ element of value, but only proves that in the value not ‘*constituted*’ by the labour of the capitalist, there is a portion which he can appropriate

Consequently, partial versions of the contribution principle appear in Marx's proletarian programmes. Nevertheless, like the needs principle, they are subordinate to capitalist forms of private property.

In the debates about the relation between Marx and distributive justice the issue should not be whether or not he deems the principles of contribution and of need as appropriate for contemporary political programmes—he evidently does. The question is whether or not Marx bases these redistributive measures under capitalism in principles of distributive justice.⁸⁰⁴ Marx never explicitly describes them as such. Although he occasionally speaks of 'transactional' justice, Marx often conflates commutative and distributive justice as the 'distribution' of the undifferentiated means of consumption. As we have seen, this is frequent in modern thought. Since he deems 'transactional' or commutative justice the predominant form under capitalism, perhaps redistributive measures are more of a rearguard action rather than full-fledged, competing principles of justice. Furthermore, Marx did not bother to develop a systematic theory of these redistributive measures. Marx sometimes appeals to the criterion of need, as was the case, for example, when he argues in favour of a higher salary for government officials with families to reflect their greater needs. At other times, Marx appeals to the criterion of due, as was the case in his pamphlet, *Value, Price, and Profit*, in which he argues for higher wages irrespective of downturns or upturns in the prices of commodities. Nowhere does Marx explain how or even if the principles of due and need can be reconciled in a theory of radical reforms within capitalism. Taylor argues that, for Marx, the question 'what is just?' can have no purview within capitalism, that "no incomes policy can be the right one," because capitalism is "irremediably a domain of force."⁸⁰⁵ Taylor goes too far in this respect. Nevertheless, although

'legally,' i.e. without infringing the rights corresponding to commodity-exchange" (Marx, 'Notes on Adolph Wagner,' op. cit., 232).

⁸⁰⁴ MacIntyre argues that although Marx intended his needs principle for a future society, it can be applied in contemporary society. MacIntyre attempts to link Marx's needs principle to the Thomistic doctrine of misericordia or mercy: "Just generosity requires us to be uncalculating in this sense, that we can rely on no strict proportionality of giving and receiving" (Alasdair MacIntyre, *Dependent Rational Animals: Why Human Beings Need the Virtues* (Chicago: Carus Publishing Company, 1999), 126). Nevertheless, MacIntyre's communitarianism attempts to create autonomous communities within capitalism that can protect themselves from its worst effects and survive until its collapse. This does not sufficiently address how principles of distribution and mercy can be implemented in, through, and against prevailing capitalist institutions. It also does not address the ways in which the struggle for the fulfilment of needs can itself be a crucial factor in bringing about the end of capitalism.

⁸⁰⁵ Charles Taylor, *Philosophy and the Human Sciences: Philosophical Papers 2* (New York: Cambridge University Press, 1985), 307-08.

Marx does not describe praiseworthy redistributive measures as distributive justice, this may not be because he deems any redistribution under capitalism as necessarily unjust, but because he believes that the concept of justice has no real application or meaning at all.

Although we may be inclined to attribute Marx's silence on the questions of distributive justice under capitalism to the relatively underdeveloped condition of public services and the welfare state in Marx's lifetime, perhaps his neglect of distributive justice is the result of deeper and persisting theoretical shortcomings. Therefore, the subsequent development of the public sector may not be the only reason for developing a theory of redistribution under capitalism. We will return to this question at the end of this chapter. First, however, we must turn to Marx's discussion of distribution under socialism.

10. 2: Distribution Under Socialism

In the first phase of socialism, production for use replaces the production for exchange typical of capitalism. For Marx, socialism, as it is described in the 'Critique of the Gotha Programme,' has no exchange of commodities, no exchange proper, only the exchange of activities.⁸⁰⁶ With this, distribution overtakes exchange as the primary way of acquiring goods, and distributive justice, or at least its content, becomes predominant over the content of commutative justice. To put this in perspective, let us compare it to libertarian theory. In debates about commutative and distributive justice, libertarianism and socialism are the two most extreme poles. Libertarians, the most consistent defenders of the market, attempt to collapse distributive justice into commutative justice. For them, commutative justice can account for the vast majority of economic interactions.⁸⁰⁷ Therefore, the scope of distributive justice is limited. It arises only in exceptional cases of 'market failures.' Conversely, socialists, the most consistent critics of the market, attempt to collapse commutative justice into distributive justice. Market exchange and commutative justice, if they are to exist at all, should be confined to the production and exchange of the non-necessities that arise from the wholly unique interests of individuals and groups, not society as a whole.

⁸⁰⁶ Marx, *Critique of the Gotha Programme*, op cit., 8.

⁸⁰⁷ For example, see: F. A. Hayek, *Studies in Philosophy, Politics and Economics* (Chicago: The University of Chicago Press, 1967), 167; Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 163-64.

Although Marx bases the first phase of socialism on the principle of labour-contribution, at the outset, he introduces substantive qualifications to the principle. Marx criticizes that part of the ‘Gotha Programme’ which calls for “the co-operative regulation of the total labour with equitable distribution of the proceeds of labour.”⁸⁰⁸ He criticizes it not only because, as was mentioned before, he is sceptical about the notion of the ‘equitable,’ but also because, under socialism, there will have to be different kinds of deductions from the total social product before workers are directly given their individual shares of the remainder:

Let us take first of all the words ‘proceeds of labour’ in the sense of the product of labour, then the co-operative proceeds of labour are the *total social product*.

From this is then to be deducted:

First, cover for replacement of the means of production used up.

Secondly, additional portion for expansion of production.

Thirdly, reserve or insurance fund to provide against mis-adventures, disturbances through natural events, etc.

These deductions from the ‘undiminished proceeds of labour’ are an economic necessity and their magnitude is to be determined by available means and forces, and partly by calculation of probabilities, but they are in no way calculable by equity.⁸⁰⁹

In other words, one part of the total social product must be deducted for the reproduction and expansion of production itself irrespective of questions about equitable distribution.

After these deductions the remainder of the total social product serves as the means of consumption. This remainder is divided into two parts. The first part is deducted as forms of communal property for collective consumption. The second part is distributed as personal property for the private consumption of individuals. We will look at each in turn.

The part deducted for collective consumption includes the following:

First, the general costs of administration not belonging to production.

⁸⁰⁸ Marx, *Critique of the Gotha Programme*, op cit., 6.

⁸⁰⁹ *Ibid.*, 7.

This part will, from the outset, be very considerably restricted in comparison with present-day society and it diminishes in proportion as the new society develops.⁸¹⁰

It may appear odd to describe administration as a form of consumption. Nevertheless, we cannot consume any product without also consuming all of the labour, including the general administrative labour, that goes into it. We can also compare Marx's discussion of administration to an assertion made in his commentary on the Paris Commune: "The Commune made that catchword of bourgeois revolutions, cheap government, a reality by destroying the two greatest sources of expenditure—the standing army and state functionarism."⁸¹¹ This immanent critique of liberalism shows how socialists can get the better of liberals according to one of their own principles.

Marx continues:

Secondly, that which is destined for the communal satisfaction of needs, such as schools, health services, etc.

From the outset this part is considerably increased in comparison with present-day society and it increases in proportion as the new society develops.⁸¹²

Before articulating the principle typical of the first phase of socialism, the contribution principle, there is already a partial form of that principle which characterizes the second phase, the needs principle. Included in the initial deductions are provisions for communal needs like education and health.⁸¹³ Marx seems to assert that the extent to which each individual engages in collective consumption, say, of medicinal products and services, is determined by their individual needs, in this case, their health. It is not determined by how much they as individuals have contributed to the total social product. The criterion is communal need, the needs of individuals as guaranteed by the community. Marx asserts that this communal property is analogous to present-day public

⁸¹⁰ Ibid.

⁸¹¹ Marx, *Civil War in France*, op cit., 60.

⁸¹² Marx, *Critique of the Gotha Programme*, op cit., 7.

⁸¹³ Nielsen asks, "Why need it in these early phases of communism (what later came to be called the socialist phase) be *entirely* according to labour contribution where there is illness, a large number of children and the like? Why would there not be 'corrections' similar to the corrections we get in welfare-state capitalism? To say that there could and should surely means to be in the spirit of communism" (Nielsen, op cit., 94, n. 9). Somehow, Nielsen has missed this part of Marx's discussion.

institutions, goods, and services. Under capitalism, however, they exist in a much more meagre form because they are subordinate to production for exchange. Does this mean that the standard of communal need underlying these institutions in socialism is, from the perspective of the working class, the same standard for their expansion under capitalism? Marx does not say.

Marx concludes with a final deduction for communal consumption: “*Thirdly, funds for those unable to work, etc.*, in short, what is included under so-called official poor relief today.”⁸¹⁴ This deduction is different from the previous one because the public institutions dedicated to communal consumption, while much more robust than those under capitalism, cannot fulfill all of the needs of individuals. Each individual will also need personal property for their own private consumption. As we will soon see, this is distribution according to the amount of labour each contributes. Consequently, those who cannot contribute labour will need funds to access this personal property.

Marx characterizes the nature of these deductions: “The ‘undiminished proceeds of labour’ have already quietly become converted into the ‘diminished’ proceeds, although what the producer is deprived of in his capacity as a private individual benefits him directly or indirectly in his capacity as a member of society.”⁸¹⁵ Presumably, he says ‘directly or indirectly’ because there is no exact correspondence between the contributions of the individual as an individual and the manifold compensations for an individual as a member of the community. What is the criteria for distinguishing between communal needs and individual needs? What, with regard to the means of consumption, is the basis for the distinction between communal and personal property? What is the balance between, on the one hand, deductions for communal production and consumption, and on the other hand, the remainder for personal consumption? Marx does not say. This will need more theorization.

These unanswered questions do not detract, however, from the significance of Marx’s distinctions between private, communal, and personal property. Although it has become the trend in contemporary capitalism to describe as ‘private property’ every form of property except public goods, this is a relatively new development. In the early phases of capitalism, private property meant specifically productive property. This is property in the means of production that could generate enough of a surplus to live on. Those who owned only their own labour, and thus, could

⁸¹⁴ Marx, *Critique of the Gotha Programme*, op cit., 7.

⁸¹⁵ *Ibid.*, 8. For an earlier formulation of this, see Marx, *Capital: Volume Three*, op. cit., 1016.

only purchase means of consumption, had only personal property, even if it was subject to the same formal laws as private property. Nevertheless, proletarianization meant that individual identities could no longer be formed through the ownership of productive property. Consequently, the proletariat redefined private property as the objects of consumption, like food, clothing, and so on.⁸¹⁶ We could also point to how, from the perspective of ruling classes, there are ideological advantages to the conflation of private and personal property.⁸¹⁷ Class inequalities are easier to deny if everyone holds simple, undifferentiated private property.

Marx cannot be accused of any such conflation in his depictions of property under capitalism and socialism. With regard to the latter, he carefully distinguishes between communal and personal property, though he does not establish their precise relations. For Marx, communal property includes productive property, the means of production jointly owned by the association of producers, and the products for collective consumption. Conversely, personal property consists in the products that pass into the hands of individuals for their own private consumption.

It is at this point that we can return to my earlier contention about the source of the needs principle in Marx. It seems to me that the discussion so far in the ‘Critique of the Gotha Programme’ is intended, in part, to refute the first of Hegel’s criticisms of the needs principle, namely, what he deems to be its necessarily shortsighted concern with immediate needs. Marx’s assertions about the deductions from the total social product for the sake of reproducing and expanding communal production and consumption demonstrate the long-term vantage afforded by this form of socialist society. This is, in part, the significance of his theorization of the socialization of production under capitalism. Hegel does not (and, given his historical period, perhaps could not) distinguish between communal and personal property. Consequently, he does not distinguish between the long-term independence and stability allowed by common ownership of the means of production and certain forms of consumption, and the personal property associated with the more or less immediate needs of individuals. Conversely, Marx shows how the long-run tendencies of capitalism make possible a form of socialism which, rather than levelling everyone down to the same equal but minimal standard, instead raises everyone to a standard of relative abundance.⁸¹⁸ This is also why Marx uses the word ‘antinomy’ in his assertion that, ‘Between equal rights, force decides.’ At that point in *Capital*, Marx had not yet

⁸¹⁶ Zaretsky, *op. cit.*, 44-45.

⁸¹⁷ See Macpherson’s critique of libertarianism: Macpherson, *Democratic Theory*, *op. cit.*, 146.

⁸¹⁸ Marx, *Early Writings*, *op. cit.*, 346.

presented the general tendency of capitalist accumulation, namely, the way in which the immiseration of the proletariat coincides with the concentration and centralization of the conditions of production. In other words, Marx had not yet shown how the antinomy becomes an outright and explosive contradiction.

It must be noted, however, that in Marx's depiction of the first phase of socialism, the principle of need is not yet the primary standard by which personal property is distributed. After the deductions for communal production and consumption, the remainder of the total social product is distributed according to what appears to be the principle of private property *par excellence*, to each their due. Furthermore, although distribution becomes the primary form of giving and receiving activities and goods in the first phase of socialism, it does not occur according to a standard of proportionality, but rather, the standard of equivalence typical of commutative justice. This is not totally unprecedented. For example, in Aristotle's depiction of democracy, although distributive justice remains the primary form of proprietary justice, the standard of equality is equivalence because every citizen is regarded as politically equal irrespective of education, wealth, or virtue. Why does Marx argue for something similar in the first phase of socialism? He asserts:

What we have to deal with here is a communist society, not as it has *developed* on its own foundations, but, on the contrary, as it *emerges* from capitalist society; which is thus in every respect, economically, morally and intellectually, still stamped with the birthmarks of the old society from whose womb it emerges.⁸¹⁹

As if to extend Hegel's assertions about the differences between the laws of private and communal property, Marx theorizes the transition from one to the other. Consequently, the first phase of socialism has as its standard to each their due according to their contribution. This demands an exact equivalence between contribution and compensation:

Accordingly the individual producer receives back from society—after the deductions have been made—exactly what he gives to it. What he has given to it is his individual amount of labour. For example, the social working day consists

⁸¹⁹ Marx, *Critique of the Gotha Programme*, op cit., 8.

of the sum of individual labour hours; the individual labour time of the individual producer is the part of the social labour day contributed by him, his share in it. He receives a certificate from society that he has furnished such and such an amount of labour (after deducting his labour for the common fund), and with this certificate he draws from the social stock of means of consumption as much as the same amount of labour costs. The same amount of labour which he has given to society in one form, he receives back in another.⁸²⁰

The significance of these passages is lost on most commentators because they have conflated Proudhon's mishandling of immanent critique with Marx's genuine use of this method. What Marx reveals in these passages is the culmination of his immanent critique of the exchange relation between wage-labour and capital.

As we saw in previous chapters, the laws of private property are, when stated positively, to each their due, and when stated negatively, do not steal. Recall how Marx, in a series of key passages in *Capital*, asserts that although it appears that the rights of private property are grounded in a person's own labour, in fact, they arise from the separation of property from the labourer:

The relation of exchange between capitalist and worker becomes a mere semblance belonging only to the process of circulation, it becomes a mere form, which is alien to the content of the transaction itself, and merely mystifies it. The constant sale and purchase of labour-power is the form; the content is the constant appropriation by the capitalist, without equivalent, of a portion of the labour of others which has already been objectified, and his repeated exchange of this labour for a greater quantity of the living labour of others.⁸²¹

Compare the way in which, on the one hand, Marx in *Capital: Volume One* criticizes private property in terms of 'content' and 'form,' and on the other hand, how Marx in 'The Critique of the Gotha Programme' describes the first phase of communal property:

⁸²⁰ Ibid.

⁸²¹ Marx, *Capital: Volume One*, op. cit., 729-30.

Here obviously the same principle prevails as that which regulates the exchange of commodities, as far as this is exchange of equal values. Content and form are changed, because under the altered circumstances no one can give anything except his labour, and because, on the other hand, nothing can pass into the ownership of individuals except individual means of consumption. But, as far as the distribution of the latter among the individual producers is concerned, the same principle prevails as in the exchange of commodity-equivalents, so much labour in one form is exchanged for an equal amount of labour in another form.⁸²²

Recall how Hegel's discussion of the different principles of justice is pervaded by distinctions between form and content. Remember also how he criticizes Kant's maxim, honour your debts, as an uncritical acceptance of private property. Marx goes even further. His critique of private property is an *immanent* critique. Marx not only demonstrates how the laws of private property offend their own highest principle. Marx also shows that the principle of to each their due, of the equality between contribution and compensation, can only be actualized within social relations based on communal property, on common production.⁸²³ Hegel, following the standard assumptions, regards 'due' as the principle of private property. Marx responds that the conditions of private property are precisely those in which the principle of due cannot be realized without contradicting itself. In *Capital* the laws of private property are transformed by means of a dialectical inversion into their opposite. They are negated. In the 'Critique of the Gotha Programme,' they are inverted again. This is the negation of the negation.

This marks an advance beyond capitalism not only because it ends exploitation, but also some of the imposed abstractions through which that form of exploitation occurs: "Hence, *equal*

⁸²² Marx, *Critique of the Gotha Programme*, op cit., 8-9. Nozick imagines the communal ownership that would prevail in a socialist society: "Thus, persons either must do without some extra things that they want, or be allowed to do something extra to get some of these things. On what basis could the inequalities that would eventuate be forbidden? Notice also that small factories would spring up in a socialist society, unless forbidden" (Nozick, op. cit., 162). Where the means of production are collectively owned, no individual could work enough hours to acquire enough resources to threaten production that is genuinely communally-owned and directed. In fact, no person could produce enough to receive back more than is made possible by participation in collective labour. Therefore, in a set of social relations where communally-directed production prevails, the attempt by certain individuals to create private property in the means of production would be irrational.

⁸²³ This is one of the reasons why I rejected Nielsen's assertion that Marx imposes the standards of socialism in his critique of capitalism. Marx is attempting to show how socialism must arise from the contradictions internal to capitalism.

right here is still in principle—*bourgeois right*, although principle and practice are no longer in conflict, while the exchange of equivalents in commodity exchange only exists on the *average* and not in the individual case.”⁸²⁴ When Marx contrasts distribution under the first phase of socialism with that under capitalism, when he asserts that principle corresponds to practice, this is not only (as is often claimed) with regard to surplus-value and the cessation of exploitation, but also the cessation of a need to equate individual labouring activity to a social average that necessarily abstracts from it. Marx is saying here that these averages arise from the abstract character of alienated labour. Marx is therefore rejecting Proudhon’s assertion that these averages are the result of prices distorting values. On the contrary, Marx asserts that this arises from the abstract character of value itself, of abstract labour itself. This is why, for Marx, the key to socialism is not the end of private property, which, after all, is possible under authoritarian societies that claim to be socialist. Rather, the key is the end of alienated labour, of genuine communal control of production by workers. We should also note that, under capitalism, compensation according to contribution is stifled not only by systemic appropriation of uncompensated surplus labour. This is also because the reduction of actual labour-time to average socially-necessary labour-time distortedly refracts actual contributions through the levelling averages in the market. This occurs when, for example, ten hours of labour is equated with eight hours of more productive labour. This makes two hours of the less productive labour worthless, irrespective of the kinds or the extents of the talents or efforts of the individual workers.⁸²⁵

This is the importance of the distinction between commutative and distributive justice. Marx shows that commodity production inevitably becomes capitalist appropriation and exploitation. Therefore, contrary to what Proudhon asserts, the principle of labour contribution cannot occur through exchange, through a system where commutative justice is the primary form of proprietary justice. Rather, Marx shows that it is only possible when distributive justice becomes primary again. Indeed, Marx also shows that capitalist society is a necessary phase between two fundamentally different forms of society in which distributive justice is the primary form of proprietary justice. Capitalism conquers those class societies in which exploitation occurs through distribution, and capitalism is in turn conquered by a form of society in which

⁸²⁴ Marx, *Critique of the Gotha Programme*, op cit., 9.

⁸²⁵ McNally, op. cit., 197; Hudis, op. cit., 79.

distribution once again becomes primary, but is such that it not only brings an end to the capitalist exploitation that occurs through commutative justice, but all exploitation as such.

Despite all of this, however, for Marx, this first phase of socialism still has significant shortcomings because certain abstractions remain:

In spite of this advance, this *equal right* is still stigmatised by a bourgeois limitation. The right of the producers is *proportional* to the labour they supply; the equality consists in the fact that measurement is made with an *equal standard*, labour.

But one man is superior to another physically or mentally and so supplies more labour in the same time, or can labour for a longer time; and labour, to serve as a measure, must be defined by its duration or intensity, otherwise it ceases to be a standard of measurement. This *equal right* is an unequal right to unequal labour. It recognises no class differences, because everyone is only a worker like everyone else; but it tacitly recognises unequal individual endowment and thus productive capacity as natural privileges. *It is therefore a right of inequality in its content, like every right.* Right by its very nature can only consist in the application of an equal standard; but unequal individuals (and they would not be different individuals if they were not unequal) are only measurable by an equal standard in so far as they are brought under an equal point of view, are taken from one *definite* side only, e.g., in the present case are regarded *only as workers*, and nothing more seen in them, everything else being ignored. Further, one worker is married, another not; one has more children than another and so on and so forth. Thus with an equal output, and hence an equal share in the social consumption fund, one will in fact receive more than another, one will be richer than another, and so on. To avoid all these defects, right, instead of being equal, would have to be unequal.⁸²⁶

⁸²⁶ Marx, *Critique of the Gotha Programme*, op cit., 9-10. Recall the aforementioned proposal in the ‘Demands’ which stipulates an increase in salary for government officials with families.

There has been much discussion in recent political philosophy about the extent to which the natural endowments of individuals are morally relevant, and thus, a factor in redistributive measures. For example, Rawls argues that natural endowments are, from the perspective of morality, arbitrary, whereas Nozick argues that they are morally relevant and entitle people to unequal property-holdings.⁸²⁷ Marxists like Cohen have also weighed in on these debates. He has made a unique contribution to what is called ‘luck egalitarianism,’ which acknowledges that people get different amounts of utility from the same things because of differences in their natural endowments. Therefore, a sufficiently robust egalitarianism must be able to account for these differences. Cohen asserts that the right reading of egalitarianism is to “eliminate *involuntary disadvantage*, by which I (stipulatively) mean disadvantage for which the sufferer cannot be held responsible, since it does not appropriately reflect choices that he has made or is making or would make.”⁸²⁸ Consequently, whereas something like Dworkin’s form of egalitarianism does not subsidize expensive tastes, Cohen’s theory does not subsidize expensive tastes people did not choose to develop.⁸²⁹ It is in this context that we can understand Peffer’s contention that Marx’s example here, the comparison between someone with a family and someone without, is ill-suited to the case Marx is trying to make: “A better case to illustrate this concern would be one in which the two workers receive equal pay but one has a need or needs that are (1) vital to his well-being, (2) very expensive to meet, and (3) nonvoluntarily acquired.”⁸³⁰ This misses Marx’s point. His position is not only different from either Nozick or Rawls, but also from the luck egalitarianism of Cohen. Marx intentionally criticizes the imposition of an abstract standard of equal right on unequal individuals, not only with regard to their unchosen natural endowments, but also to their chosen *legitimate* obligations, such as the size of their families. Marx disagrees with the abstraction itself.

Marx is also aware that his critique of abstraction cannot itself become an abstraction imposed irrespective of socio-historical context:

But these defects are inevitable in the first phase of communist society as it is when it has emerged after prolonged birth pangs from capitalist society. Right can

⁸²⁷ Rawls, *op. cit.*, 102; Nozick, *op. cit.*, 216.

⁸²⁸ Cohen, *On the Currency of Egalitarian Justice*, *op. cit.*, 13.

⁸²⁹ *Ibid.*, 20.

⁸³⁰ Peffer, *op. cit.*, 334.

never be higher than the economic structure of society and the cultural development thereby determined.

In a higher phase of communist society, after the enslaving subordination of individuals under the division of labour, and therewith also the antithesis between mental and physical labour, has vanished; after labour, from a mere means of life, has itself become the prime necessity of life; after the productive forces have also increased with the all-round development of the individual, and all the springs of co-operative wealth flow more abundantly—only then can the narrow horizon of bourgeois right be fully left behind and society inscribe on its banners: from each according to his ability, to each according to his needs!⁸³¹

It seems to me that this is, in part, Marx's response to Hegel's second critique of the needs principle, namely, that it espouses a principle of equality as justification for distribution according to unequal needs. Although the first phase of socialism fulfils the standard of due better than any regime of private property ever could, it still imposes an abstract universal. It still demands the scrutiny of labour time, the monitoring of contributions, and the calculation of more or less precise compensations. This then is the exchange of equivalents irrespective of the concrete circumstances and needs of individuals. Therefore, equal right is a relation of inequality. The second phase ends the precise correspondence between contribution and compensation. The standards of production, distribution, and consumption are applied universally, but they establish unity rather than imposing uniformity. Marx's vision is a commitment to the concrete universal that Hegel, given his critique of formalism, usually embraces. This is another occasion when Marx *out-Hegels* Hegel.

Marx's critique of equal right and his articulation of the needs principle have inspired two significant disagreements among commentators. The first is about whether or not Marx can be considered an egalitarian. The second disagreement is about whether or not Marx regards one or both of the principles of distribution as principles of justice. We will look at each of the debates in turn. Ultimately, I will argue, first, that Marx is an egalitarian if you follow his explicit statements; second, that Marx deems the principles of distribution in the first phase of a socialism a principle of justice; and third, that Marx does not deem the principle of distribution

⁸³¹ Marx, *Critique of the Gotha Programme*, op cit., 10.

in the second phase of socialism a principle of justice. In other words, the fully socialist society is beyond justice as such.

Marx's innumerable criticisms of imposed abstractions inspire some commentators to deny that Marx is an egalitarian. For example, Wood asserts that, "there are, as far as I know, no explicit and unequivocal endorsements of the notion of equality in Marx's writings."⁸³² Wood continues,

The relation between capitalists and workers *is* one of equality, in a way in which the relations between masters and slaves, lords and serfs, guild masters and journeymen, are not. The irony is that this equality, far from protecting workers from oppression, is precisely the means by which the oppression of wage labour is carried out. The conclusion to be drawn is not that some other sort of equality is to be preferred to bourgeois equality, but that the fight against working class oppression ought not to be carried on in the name of equality.⁸³³

Wood acknowledges that his view may be difficult to reconcile with Marx's avowed sympathy for uprisings of the oppressed across history, such as Spartacus's slave rebellion, even when they had little or no hope of overthrowing the prevailing class relations.⁸³⁴ Nevertheless, Wood contends that Marx sympathizes with them because they have a certain kinship with the working class movement, not because they have the same "historical justification."⁸³⁵

Whereas theorists like Wood take Marx to be recognizing not only the differences, but also the inherent inequalities between individuals, other commentators like Geras, Elster, and Nielsen argue that Marx replaces a false equality with a truer one. As Geras describes it, this is "an equality of self-realization."⁸³⁶ In this particular debate, although we cannot draw all of the same conclusions as Geras, Elster, and Nielsen, they are clearly more correct than Wood. Contrary to Wood's assertion, Marx does explicitly endorse a form of egalitarianism. It is dependent on Marx's distinction between social inequality and individual inequality. Marx does

⁸³² Wood, 'Marx and Equality,' op. cit., 195.

⁸³³ Ibid., 198.

⁸³⁴ Ibid., 218.

⁸³⁵ Ibid., 219.

⁸³⁶ Geras, 'The Controversy About Marx and Justice,' op. cit., 61; see also Elster, op. cit., 232, and Nielsen, op. cit., 222.

not dismiss those inequalities, those ‘natural privileges,’ that exist between individuals irrespective of their social conditions. He does condemn, however, the social inequalities that exist between individuals irrespective of their individual inequalities. To put this in perspective, let us again compare socialism with libertarianism.

Libertarians argue that if there are truly universal and impersonal procedures regulating free-market exchange, material inequalities are justifiable because they result purely from differences between innate talent and degree of effort.⁸³⁷ Conversely, for Marx, the laws of exchange, abstractly conceived, only appear to impose the same standards of behaviour on individuals. These laws conflate the qualitatively different forms of property held by wage-labourers and capitalists. In other words, these formal procedures treat indifferently those who can acquire both the means of production and the means of consumption, and those who can acquire only the means of consumption. This systematically disadvantages the latter. It is in this sense that Wood, following Marx, can argue that equality is the condition of exploitation. Wage-labour and capital confront each other as property-owners with the same abstract rights. This is one of the shortcomings of conflating productive and personal property as private property. For Marx, under capitalism, as with all class societies, the inequality between individuals as individuals is negligible in comparison to the social inequality between individuals, as determined by their class positions.⁸³⁸ As long as class stratification exists, individuals of great potential will often remain confined to and stifled by their place in the subordinate class, whereas those of meagre talent and dubious merit can more easily remain within the ruling classes from which they will have more opportunities. Marx demonstrates that the libertarian assertion about compensation according to talent and effort can only be actualized in the first phase of socialism. Whereas in a class-society the distinction between individuals is vastly overshadowed by their social inequality, in a classless society this social equality ensures that it is primarily the distinctions between individuals that determine outcomes.

This is the significance of Marx’s assertion that, with the first phase of socialism, “Content and form are changed, because under the altered circumstances no one can give anything except his labour, and because, on the other hand, nothing can pass into the ownership

⁸³⁷ For example, Nozick, *op. cit.*, 216.

⁸³⁸ Despite their agreement on the organic character of society, Hegel, unlike Marx, believes that the vibrancy of the organic social whole entails, at least to a certain extent, the inequality of its parts, and that these derive more from individual than social differences: “inequality of nature, talents, and mental energy” creates a more considerable difference than the “inequality of civil circumstances” (Hegel, *Hegel: Political Writings*, *op. cit.*, 17).

of individuals except individual means of consumption.”⁸³⁹ This is why Marx later goes on to say, “Instead of the indefinite concluding phrase of the paragraph—‘the removal of all social and political inequality’—it ought to have been said that with the abolition of class differences all the social and political inequality arising from them would disappear of itself.”⁸⁴⁰ This is a critique of social inequality and thus an endorsement of social equality, on its own terms: “everyone is only a worker like everyone else.”⁸⁴¹ Again, this is the general law of nature: the *equal* liability of all to labour.

Marx distinguishes between social inequality and individual inequality. The first phase of socialism eliminates the former, even if it must acknowledge the latter in its exacting relation between contribution and compensation. It is not that the second phase could or should eliminate the inequalities between individuals resulting from their different natural endowments. Rather, it abolishes the blanket-application of abstract rights that punish not only these inequalities, but also our chosen, legitimate obligations. R. H. Tawney formulates this quite well:

So to criticize inequality and to desire equality is not, as is sometimes suggested, to cherish the romantic illusion that men are equal in character and intelligence. It is to hold that, while their natural endowments differ profoundly, it is the mark of a civilized society to aim at eliminating such inequalities as have their source, not in individual differences, but in its own organization, and that individual differences, which are a source of social energy, are more likely to ripen and find expression if social inequalities are, as far as practicable, diminished.⁸⁴²

As we have seen, the equal liability of all to labour is given a major qualification. This general law is not universal. It is limited to those who are able to work. In other words, it exempts on the basis of age or disability. Marx affirms equality of dignity or treatment irrespective of natural inequalities. He criticizes the principle of equality, not because it must be abandoned in its entirety, but because it is abstract and therefore *insufficient*.

⁸³⁹ Marx, *Critique of the Gotha Programme*, op cit., 9.

⁸⁴⁰ Ibid., 15-16. This edition falsely renders the passage “all social and political equality” rather than “inequality,” but other editions corroborate the correct translation: Karl Marx, ‘Critique of the Gotha Programme,’ in Marx and Engels, *The Marx-Engels Reader*, op. cit., 535.

⁸⁴¹ Marx, *Critique of the Gotha Programme*, op cit., 9.

⁸⁴² R. H. Tawney, *Equality* (New York: Barnes & Noble Inc., 1965), 57.

The other major debate is about whether or not Marx regards the standards of distribution in the two phases of socialism as principles of justice. Some assert that Marx offers principles of distributive justice in one or both phases. Others argue that, for Marx, one or both phases are beyond justice of any kind. We will look at the arguments for each group in turn. I will then offer my interpretation.

First, we will look at those who argue that, for Marx, the standards of distribution under socialism are principles of justice. Within this group, there is a disagreement over whether or not Marx intentionally or consciously intends to offer principles of distributive justice. Theorists like Hancock, Arneson, and Green argue that Marx obviously and consciously asserts this.⁸⁴³ Conversely, theorists like Elster argue that Marx does espouse principles of socialist distributive justice, but he is not aware of it: “When referring to the ‘defects’ of the contribution principle, Marx is implicitly invoking a higher principle of justice.”⁸⁴⁴ Elster contends that Marx offers a “devastating” critique of abstract justice, but “did not notice that in doing so he invoked a theory of the kind he wanted to dispense with.”⁸⁴⁵

Within this broader group there is also an internal debate about the scope of these principles of distributive justice. In other words, there is disagreement over whether or not socialist principles of justice can be applied to other modes of production, including capitalism. As we have seen, for Wood, these principles are specific to the socialist mode of production.⁸⁴⁶ We cannot critique capitalism as unjust according to socialist standards. Conversely, for Nielsen, socialist justice is the standard by which Marx criticizes all class societies, including capitalism.⁸⁴⁷

We turn now to those who argue that, for Marx, the standards of distribution in one or both phases of socialism are not based upon principles of distributive justice. There is some disagreement about why Marx deems socialism beyond justice. Theorists like Buchanan emphasize that, for Marx, the elimination of class divisions fosters harmony between the interests of the individual and the community.⁸⁴⁸ Other theorists, such as Kymlicka, argue that Marx believes that socialism renders justice irrelevant because it is supposed to bring an end to

⁸⁴³ Hancock, op. cit., 66; Arneson, op. cit., 216; Michael Green, ‘Marx, Utility, and Right,’ *Political Theory*, 11.3 (August 1983): 433-446; 442.

⁸⁴⁴ Elster, op. cit., 222.

⁸⁴⁵ Ibid.

⁸⁴⁶ Wood, ‘The Marxian Critique of Justice,’ op. cit., 15-16.

⁸⁴⁷ Nielsen, op. cit., 180.

⁸⁴⁸ Buchanan, op. cit., 65-66.

scarcity.⁸⁴⁹ Kymlicka contends that Buchanan's interpretation is truer of communitarianism than of Marxism.

The most significant disagreement within this broader group, however, is whether or not they approve of what they take to be Marx's stance. As we have seen, both Miller and Ryan affirm that socialist society would be a society beyond justice. Conversely, Buchanan and Lukes disapprove of this idea. Kymlicka and Shandro concur. Kymlicka thinks it implausible that we could overcome scarcity. Therefore, he deems the idea that we could transcend justice doubtful.⁸⁵⁰ Shandro argues that, given Marx's theory of the historical development of human needs, we cannot assume from our vantage-point that transformed needs under socialism will necessarily harmonize: "Even supposing a harmony of needs were attained, it would still not be possible to know whether it would be maintained."⁸⁵¹

Nussbaum also criticizes the idea that socialist society could get beyond justice, but does so on different grounds than Kymlicka and Shandro. In a commentary on Aristotle's theory of the virtues, Nussbaum argues that, for Marx, communist social relations remove the need for certain virtues, including justice.⁸⁵²

I think we might be sceptical here. Aristotle's general attitude to such transformations of life is to suggest that they usually have a tragic dimension. If we remove one sort of problem—say, by removing private property—we frequently do so by introducing another—say, the absence of a certain sort of freedom of choice, the freedom that makes it possible to do fine and generous actions for others.⁸⁵³

This is unpersuasive. Aristotle's argument about society, namely, that the whole is prior to the part, means that the type of political regime influences the extent to which virtuous activity is possible. While virtuous activity in corrupted conditions may be more difficult and therefore

⁸⁴⁹ Will Kymlicka, *Liberalism, Community, and Culture* (New York: Oxford University Press, 1989), 112-14.

⁸⁵⁰ *Ibid.*, 126-27.

⁸⁵¹ A. M. Shandro, 'A Marxist Theory of Justice?' *Canadian Journal of Political Science*, 22.1 (March 1989): 27-47; 40-41.

⁸⁵² Martha C. Nussbaum, 'Non-Relative Virtues: An Aristotelian Approach,' in *Midwest Studies in Philosophy Volume XIII Ethical Theory: Character and Virtue*, eds. French, Peter A., Theodore E. Uehling, Jr., Howard K. Wettstein (Indiana: University of Notre Dame Press, 1988), 50.

⁸⁵³ *Ibid.*

more praiseworthy than comparable behaviour in more congenial conditions, nonetheless, the latter situation is preferable. It is more conducive to our happiness. We should not preserve certain social relations merely because, in making virtuous activity more difficult, it also makes it more admirable. Furthermore, in Marx's theory of socialism, people will have personal property with which they can be generous to others. The question remains, however, whether or not virtue is reducible to the societal conditions such that certain virtues become obsolete in specific forms of society. In other words, can social relations be constructed in such a way that the problems demanding the virtue of justice do not arise? Nussbaum argues that Marx answers this in the affirmative.

Whereas Nussbaum contrasts Aristotle and Marx, Castoriadis compares them, arguing that because the discussion of right in 'The Critique of the Gotha Programme' occurs within the horizons set by Aristotle, Marx deems socialist society a higher form of justice: "According to Marx, communist society in its 'first phase' will base distribution on arithmetic equality that is still unjust. In its 'superior phase' it will be able to establish just distribution conforming to geometric proportionality, according to the principle: 'from each *according to* his capacities, to each *according to* his needs.'"⁸⁵⁴ While Castoriadis is correct about arithmetic and geometric equality in the first and second phases of socialism, there are two problems with his account. First, even if Marx finds that the principle of distributive justice in the first phase is inadequate, that does not necessarily mean that he deems it unjust. Second, we cannot assume that Marx deems the principle of distribution in the second phase to be a principle of distributive *justice* simply because it features the standard of geometric or proportionate equality. Marx might think that a sufficiently subtle notion of geometric equality which is able to account for the sheer complexity of all of these proportions takes distribution beyond the rigidity of right, beyond justice as such.

Putting aside for a moment the comparisons and contrasts between Marx and Aristotle with regard to distributive justice proper, an illuminating way of explaining whether or not Marx deems the phases of socialism to be based in principles of justice is to compare his theory of the needs principle to Plato and Aristotle's theory of 'equity,' with which Marx's needs principle shares some similarities. This will provoke the question as to why, despite these similarities, Plato and Aristotle deem the principle of equity an avowedly ethical doctrine, whereas Marx's articulation of the needs principle attempts to remain silent on questions of ethics and justice.

⁸⁵⁴ Castoriadis, *op. cit.*, 718.

Marx's critique of abstraction, of which equal right is an example, reflects the influence not only of Hegel, but of Plato and Aristotle. Given the common assumptions about ancient Greek thought, this assertion may appear absurd. For example, Adorno and Horkheimer assert:

The mythologizing equation of Forms with numbers in Plato's last writings expresses the longing of all demythologizing: number becomes enlightenment's canon. The same equations govern bourgeois justice and commodity exchange. 'Is not the rule, *'Si inaequalibus aequalia addas, Omnia erunt inaequalia,'* [If you add like to unlike you will always end up with unlike] an axiom of justice as well as of mathematics? And is there not a true coincidence between commutative and distributive justice, and arithmetical and geometrical proportion?' Bourgeois society is ruled by equivalence. It makes dissimilar things comparable by reducing them to abstract quantities. For the Enlightenment, anything which cannot be resolved into numbers, and ultimately into one, is illusion; modern positivism consigns it to poetry. Unity remains the watchword from Parmenides to Russell. All gods and qualities must be destroyed.⁸⁵⁵

This ignores the innumerable occasions when Plato, including in the late writings, criticizes abstract universals. The most relevant for our purposes is a statement we explored in a previous chapter. It occurs in the *Statesman* where Plato criticizes the inherent generality of laws:

Law can never issue an injunction binding on all which really embodies what is best for each; it cannot prescribe with perfect accuracy what is good and right for each member of the community at any one time. The differences of human personality, the variety of men's activities, and the inevitable unsettlement attending all human experience make it impossible for any art whatsoever to issue unqualified rules holding good on all questions at all times.⁸⁵⁶

⁸⁵⁵ Max Horkheimer and Theodor W. Adorno, *Dialectic of Enlightenment: Philosophical Fragments* (Stanford California: Stanford University Press, 2002), 4-5; see also 11-12.

⁸⁵⁶ Plato, 'The Statesman,' in *The Collected Dialogues of Plato*, eds. Edith Hamilton and Huntington Cairns (Princeton University Press, 1973), 294a-b. In 'Philebus,' another of Plato's later works, he rejects equating the good with the pleasant (ibid., 13a-b). Although he asserts that pleasure by itself is unlimited (ibid., 31a) and is therefore irreconcilable with the pleasures of others, he also asserts that the good includes pleasure, that pleasure

This passage is quoted in Hegel's essay on natural law during a critique of bourgeois justice.⁸⁵⁷ It is paraphrased by Marx in *The Holy Family* during an immanent critique of Hegel.⁸⁵⁸ (We will study Marx's citation of this passage in a subsequent chapter because it occurs during a discussion of crime and punishment, which pertains more to the subject of corrective justice. It is enough here to point out Marx's familiarity with it.)

Plato's assertion about the generality of laws emerges through Aristotle's discussion of the virtue of 'equity.' In the *Nicomachean Ethics*, after his explanation of justice, he asserts that as exalted as justice should be, the 'equitable' is both a part of, and superior to, justice.⁸⁵⁹ When the law speaks generally or without qualification, but a given situation constitutes an exception to the rule, it is appropriate to rectify the lawgiver's omission with what the lawgiver would decree if he was present or had been aware of this case when founding the laws.⁸⁶⁰ Most important, the 'equitable person' "is not exacting to a fault about justice, but is instead disposed to take less for himself even though he has the law on his side."⁸⁶¹ The principle of 'equity' receives its highest expression in what Aristotle later describes as the greatest 'external good,' friendship. Indeed, friendship forms the basis of Aristotle's highest form of political community. Here, in this necessarily small community of friends, social relations are not merely just, but equitable. Indeed, Aristotle asserts, "When people are friends, they have no need of justice, but when they are just, they do need friendship in addition."⁸⁶² Nevertheless, 'equity' remains a principle of ethical right.

Marx criticizes the first phase of socialism in somewhat similar terms. It still requires the scrutiny of labour time, the monitoring of respective contributions, and the calculation of more or less precise compensations. In other words, it is exacting to a fault about justice. Only the

reconciled with reason is self-limiting. Indeed, the critique of abstract universals and 'bad' infinities is already here in Plato: "What are we to reckon as making for truth? That which is pure, perfectly clear, and sufficient, or that which is extreme, vast, and huge?" (ibid., 52d). Reason, neither reduced to physical laws nor rigidly demarcated from them, is "an incorporeal ordered system for the rightful control of a corporeal subject" (ibid., 64b).

⁸⁵⁷ Hegel, *Hegel: Political Writings*, op. cit., 143-44.

⁸⁵⁸ Marx and Engels, *The Holy Family*, op. cit., 238-39.

⁸⁵⁹ Aristotle, *Aristotle's Nicomachean Ethics*, op. cit., 1137b10-11. H. S. Harris argues that Hegel's discussion of the virtues of ethical life in his early work, *System of Ethical Life* (1802-3), is influenced by Aristotle's discussion of justice and equity in book V of the *Nicomachean Ethics* (H. S. Harris, 'Introduction,' in G. W. F. Hegel, *System of Ethical Life (1802/3) and First Philosophy of Spirit (Part III of the System of Speculative Philosophy 1803/4)*, eds. and trans., H. S. Harris and T. M. Knox (Albany: State University of New York Press, 1979), 67.

⁸⁶⁰ Aristotle, *Nicomachean Ethics*, op. cit., 1137b20-24.

⁸⁶¹ Ibid., 1137b35-1138a1.

⁸⁶² Ibid., 1155a26-28.

second, higher phase brings to an end the homogenizing, quantifying, calculative exaction of what precisely is owed. If distribution is to be according to needs, there are a series of social conditions that must be achieved, including the development of a culture of mutual trust. In a certain sense, *exceptions are made the rule*. Indeed, as we have seen, Marx aspires to a set of circumstances in which our sense of egalitarianism is subtle enough that, not only does it refrain from penalizing people's unchosen needs, but it also refrains from penalizing people for their chosen but worthy obligations toward institutions that benefit society as a whole. As we have seen, for Marx, the family (which does not necessarily mean the monogamous family), is one such obligation. Thus, in contrast to other forms of egalitarianism, including luck egalitarianism, we can refer to Marx's position as *exceptional egalitarianism*. It is only in these conditions that there can be the fullest expression of distribution according to unequal needs. There is no need of equal right between comrades.

And yet, Marx heaps scorn on notions of the just and equitable. What, in this respect, distinguishes Plato and Aristotle from Marx? It is that in matters of ethics Marx is often more Epicurean than Aristotelian. This is the result, in part, of the intellectual influence expressed by both ancient and modern materialism, and, as we will see, the deeper historical developments that have made the Epicurean theory so prevalent in modern theories of ethics and justice.

The subject of Marx's dissertation is Epicurus. In Marx's preparatory notebooks for his dissertation, written in 1839, he quotes in full a number of Epicurus's statements about ethics and especially justice. The following is a representative sample:

'Natural right is a mutual agreement, contracted for the purpose of utility, not to harm or allow to be harmed.' p. 97.

'For all living beings which could not enter into mutual contracts not to harm each other or allow each other to be harmed, there is neither justice nor injustice. It is the same, too, with peoples who have been either unable or unwilling to enter into contracts not to harm each other or allow each other to be harmed.' p. 98.

‘Justice is not something existing in itself; it exists in mutual relations, wherever and whenever an agreement is concluded not to harm each other or allow each other to be harmed.’ p. 98.⁸⁶³

Whereas Plato and Aristotle assert that justice has a ‘natural part,’ is an integral part of our human nature, Marx, like Epicurus, bases justice in changing historical circumstances. Indeed, Epicurus’s theory of justice as conventional is remarkably similar to Marx’s assertion that “Right can never be higher than the economic structure of society and the cultural development thereby determined.”⁸⁶⁴ In other words, whereas the ancient Greek theorists of natural right cast justice as an immutable aspect of the human condition, for Marx, justice is historically-specific. This makes it possible that there could be a set of social conditions without it.

Beyond this, Marx’s materialism leads to notions of the individual and general interest that distinguish him from Plato and Aristotle. Marx is not a straight-forward materialist. Under the influence of the German Idealists, he develops a specifically *historical* materialism.⁸⁶⁵ He supplements materialism with, first, a theory of universal history that not only accounts for the influence of social relations on the individuals within them, but also gives a general typology and

⁸⁶³ Karl Marx and Friedrich Engels, *Collected Works: Volume One*, op. cit., 409-10.

⁸⁶⁴ Marx, *The Critique of the Gotha Programme*, 10.

⁸⁶⁵ Sebastiano Timpanaro provides an excellent discussion of materialism, and in particular, of historical materialism (Sebastiano Timpanaro, *On Materialism*, trans. Lawrence Garner (London: NLB: 1975); for his definition of materialism, see: 34). Timpanaro argues that Marxists, in order to disassociate their materialism from crude mechanistic materialism, often reduce materialism to an idealistic pragmatism in which nature is only an object of human praxis, not something that conditions human beings—through heredity, aging, environmental change, and so on—even in the freest of societies (29; 236-7; 241). Indeed, this has antecedents in Marx and Engels. Timpanaro notes that some of the seminal works of historical materialism, including *The German Ideology*, often lapse into this pragmatism (41). Furthermore, Engels sometimes speaks of socialism as the absolute liberation from necessity, as if the only causes of human unhappiness were economic and social (42). All of this, I think, is true. Timpanaro also asserts that, for any serious materialism, hedonism is the only plausible, scientific theory of ethics: “If the eighteenth-century theme ‘of pleasure and pain’ was too much neglected by Marxism, that was a result of the fact that Marx and Engels had early on identified hedonism with bourgeois individualism in too summary a fashion” (67). Timpanaro argues that forging a materialist grounding for moral values requires a revival of the Epicurean tradition of seventeenth and eighteenth century Enlightenment thought (68). First, this neglects how the ethics espoused by Marx and Marxism is, knowingly or unknowingly, already deeply Epicurean. Second, if indeed significant material necessity will continue even in communist society, if the tensions associated with relative scarcity and self-preservation will persist, then Marx’s attempt to go beyond justice, to create a set of social conditions that have no need for justice, is, on materialist grounds, quite implausible. In fact, this makes justice as eternal a condition for humankind as is material necessity, the metabolism with nature. If this is the case, then perhaps the Epicurean view of justice is inappropriate. Perhaps it is not only something that arises as a human construction according to the social circumstances at the time. Justice might be as integral a part of human nature and of the relations between humans as mediated by non-human nature, as is the freedom that materialism often ascribes to human beings. If modern materialists are not inclined to think of justice as having the same ontological status as freedom, perhaps this is not a self-evident conclusion of materialism. Perhaps this opinion is more ideological than scientific.

theory of historical progression in his theory of the modes of production; second, he accounts for the relations between individual interests and general interest primarily through his theory of class relations, and in particular, labour as the nexus between the forces of production and the relations of production; and third, the theory of praxis espouses notions of freedom and self-determination that, in their resemblance with Hegel's 'objective idealism,' are critical of the passive materialism of Locke. Despite these qualifications, however, Marx's historical materialism still commits him to certain fundamental materialist premises.

The influence of modern Epicureanism on Marx is quite clear in his exposition of the materialism of Helvetius and d'Holbach in *The Holy Family*.⁸⁶⁶ Marx approves of the following premises of materialism. Humans are not naturally good or bad. Rather, we are subordinate to our material interests. Therefore, social relations have a profound influence on human activities. Society 'educates' us in specific ways. When social relations are arranged in such a way that interests are mutually antagonistic, conflict is inevitable. If morality is the correct understanding of our interests, society must be transformed so that the interests of the individual and the community coincide. This is what Marx means when he asserts that "it is essential to educate the educator himself."⁸⁶⁷ In a set of social relations where interests are reconciled, each could not fulfill their own interests without at the same time benefitting the general interest. In these conditions, only fools would be vicious.

It is worth noting that in the debates about the relation between Marx and utilitarianism, he is almost always compared to the British utilitarians, for whom Marx had mostly contempt, and not the French materialists, who, despite his criticisms, are quite influential for Marx.⁸⁶⁸ As per the Enlightenment materialists, and in particular, the French utilitarians like Helvetius and d'Holbach, Marx thinks that once the social conditions are such that the individual and general interests are reconciled, ethics will be more or less straightforward because anyone who acts against the general interest will necessarily act against their own interests. That Marx thinks that ethics can become straightforward in this way is one of the reasons why he is predisposed to the idea that justice is dispensable under certain social conditions.

⁸⁶⁶ Marx and Engels, *The Holy Family*, op. cit., 175-79.

⁸⁶⁷ Karl Marx, 'Theses on Feuerbach,' in *The Marx-Engels Reader*. 2nd ed.; ed. Robert C. Tucker (New York: W. W. Norton and Company, 1978), 142.

⁸⁶⁸ See, for example, Miller, op. cit., 31-35.

A manifestation of these differences between, on the one hand, Marx, and on the other hand, Plato and Aristotle, is a disagreement about the nature of our needs. For Plato and Aristotle, unless pleasure or need are controlled by our reason, by the moral and intellectual virtues, they are unlimited, which brings people into inevitable conflict. In other words, the standard of need is woefully insufficient. The standard of merit, of virtue, is paramount.⁸⁶⁹ Conversely, for Marx, needs are naturally self-limiting. In a lengthy footnote in *The German Ideology*, Marx and Engels argue that communists “strive to achieve an organisation of production and intercourse which will make possible the normal satisfaction of all needs, i.e., a satisfaction which is limited only by the needs themselves.”⁸⁷⁰ Admittedly, it is crossed out in the manuscript, but it is unlikely that it is this sentence with which they came to disagree given Marx’s virtually identical statement in the *Grundrisse*: “Use value in itself does not have the boundlessness of values as such. Given objects can be consumed as objects of needs only up to a certain point.”⁸⁷¹ With the reconciliation of the individual and general interest, the standard of need suffices to regulate human activity.

Plato and Aristotle deem justice and its highest expression, the ‘equity’ that is more just than justice, as a positive virtue through which individuals achieve their self-realization in and through each other. Conversely, Marx follows the modern trend, which deems justice a primarily negative principle, the primary purpose of which is to protect individuals from each other. As we have seen, this trend is fostered by historical developments in capitalist social relations. That production is primarily for exchange between individuals inclines us toward contractarian notions of justice for which it is something we construct or enter into rather than something of which we are always already a part. Furthermore, the uncoordinated character of production for individual exchange often results in the rejection of notions of our substantive common ends or an objective human good. This leads to an individualization of justice. It is something that must foster the conditions in which individuals can peacefully pursue their own subjective ends. Thus, justice is more of a negative virtue, a protection of individuals from the impositions of the social whole rather than a protection of the common ends from individuals. All of this is best illustrated by Hume’s assertions about the conditions of justice.⁸⁷² As we have seen, he argues that the

⁸⁶⁹ Plato, ‘Philebus,’ in *The Collected Dialogues of Plato*, op. cit., 31a-b.

⁸⁷⁰ Marx and Engels, *The German Ideology*, op. cit., 273.

⁸⁷¹ Marx, *Grundrisse*, op. cit., 405.

⁸⁷² Hume, *A Treatise on Human Nature*, op. cit., 267-68.

primary reasons why we need justice is because of relative scarcity and egoism. If you were to transform social conditions such that these two things would be increased to their furthest possible extent, or reduced to their furthest possible extent, there would be no need for justice. In the first case, this is because justice would be totally ineffective; in the second, because it would be unnecessary. Hume is an exemplary Epicurean in this respect. Similarly, Marx believes that, in communist society, the forces of production and the relations of production are such as to substantially reduce both scarcity and egoism, and therefore, the need for negative justice they provoke. This, I think, is indicative of Marx's perspective as a whole. In that spirit, it is now time to offer some provisional conclusions about the correct interpretation of Marx with regard to the question of justice.

Marx believes that bourgeois justice is the only notion of justice possible in capitalist society. This is why he asserts that it is not unjust. Nevertheless, Marx's immanent critique shows that private property is necessarily based in the appropriation of uncompensated surplus-labour. In other words, Marx does not regard capitalism as positively just in any non-self-contradictory sense of that term. Therefore, he demonstrates that private property necessarily offends its own highest principles. These principles are, first, to each their due, and second, do not steal. Marx completes this immanent critique of private property by showing that its principles can be achieved without these self-contradictions only with communal property. Socialism puts an end to systemic theft. Therefore, it alone provides the conditions where each receive according to their due. This is why I could not offer any definite conclusions about Marx's theory of commutative justice under capitalism until I discussed Marx's theory of distribution under socialism.

Marx explicitly asserts that the standard of distribution in the first phase of socialism is a principle of right or justice. Nevertheless, Marx also deems it to be self-contradictory in its own way. Formally, it is a principle of equal right, but in its content it promotes inequality. It rewards natural endowments and punishes chosen, legitimate obligations. In other words, the right is abstract and therefore becomes its opposite. This principle of equality is, like that within capitalism, in substance a principle of inequality. This is not to say that the first phase of socialism is thereby unjust. Marx argues that while neither capitalism nor the first phase of socialism can be condemned as unjust according to the principle of labour-contribution, nevertheless, in both cases, but in different ways, this principle of 'due' proves to be self-

contradictory. When Marx describes the principle of contribution in the first phase of socialism as such, “*It is therefore a right of inequality in its content, like every right,*”⁸⁷³ there are good reasons to believe that he does not mean specifically bourgeois right, but right in general. Therefore, when it is transcended by the principle of need in the second phase of socialism, Marx seems to suggest that the second phase goes beyond not merely bourgeois right, but right as such. Marx speaks of inscribing slogans on banners, but he does not refer to this as any kind of right, whether it is socialist, human, or otherwise. Consequently, for Marx, whereas the first phase of socialism features a principle of distributive justice, the higher phase of socialism establishes a principle of distribution that is beyond justice. As I noted in my discussion of the transformations of justice throughout the transitions to capitalism, one of its dramatic changes is its increasingly impersonal and rigid character. It demands a uniformity that is skeptical of exceptions. Perhaps Marx uncritically accepts this notion of justice. Therefore, when he articulates a standard of proportionate equality that is subtle enough for his exceptional egalitarianism, he does not embrace an Aristotelian notion of equity, but rather, assumes that this principle of distribution must dispense with what he deems to be the inherent rigidity of justice.

At this point, the most important claim we can make about the relation between Marx and justice is this: Marx never speaks affirmatively about a principle of justice that is not self-defeating and destined to be transcended, either by another principle of justice, or ultimately, by the end of justice as such. This is why Marx does not deem the principle of right in the first phase of socialism a basis by which to evaluate other modes of production, including capitalism. It is not only that Marx asserts, ‘Right can never be higher than the economic structure of society and the cultural development thereby determined.’ His theory already deems justice radically historical in a way untrue of, say, freedom. Marx’s theory already looks forward to a time when social conditions are beyond justice and right as such. Therefore, Marx does not deem justice a plausible basis by which to compare modes of production. For Marx, to critique capitalism as unjust according to socialist principles of justice is utopian. Even when Marx affirms the working class pursuing its own rights against the resistance of capital, as is the case with the legal limitation of the length of the working day, this occurs within the domain of bourgeois right. In those passages where Marx asserts, ‘Between equal rights, force decides,’ Marx goes

⁸⁷³ Marx, *Critique of the Gotha Programme*, op. cit., 9.

out of his way to show how these laws adhere to the laws of private property. The working class is protecting the only piece of productive property they own: their capacity to labour.

This brings us back to the question of contemporary society and standards of redistribution. The principle of commutative justice under capitalism is the same as any other social system, namely, 'due' according to arithmetical proportion. In other words, this is allocation according to equivalent exchange-values. Marx does not explicitly state the standard of distributive justice under capitalism. By all indications, this is because Marx does not think there can be a principle of justice underlying redistributions under capitalism. If pressed Marx would likely say the standard is power. In other words, the distribution of public goods is determined by class struggle. Consequently, the working class must achieve whatever they can get according to the balance of class forces. Perhaps Marx does not reconcile the different standards of redistribution because they all indifferently serve as means to the true standard, the class interests of workers. If this is true, Marx thinks that justice does not provide guidance in our revolutionary activity. As we have seen, Marx's explanation of primitive accumulation is intended to show, in part, that revolutions are not conducted according to laws. Revolutionary activity establishes the social conditions and property relations which will give rise to new principles of justice or the transcendence of justice altogether. This only becomes applicable after these conditions have been established. This point can only be fully demonstrated in a later chapter on the relation between Marx and complete justice.

If Marx does not critique capitalism for its injustice, what is his criterion? Contrary to the assertions of commentators like Cohen and Geras, the consistency of Marx's assertions does not depend on an implicit theory of justice of which he remained unaware. The criterion with which Marx criticizes capitalism is interest, and, specifically, class-interest, which, because of Marx's theory of the unique historical role of the proletariat, is tied to freedom as self-realization. When Marx says that the prevailing social relations are not unjust according to the only possible standards of justice, this is not sarcasm: he means it seriously. When he says that exploitation constitutes theft, this is not rhetorical: he means it seriously. Marx undermines the only possible standard of justice in prevailing social conditions because his critique of capitalism is based entirely in terms of the interests of that class capable of generalizing freedom and self-realization. The question becomes, can 'interest' bear the ethical weight given to it by Marx? Does the struggle by workers animated by this standard, by class interests, make us 'fit to rule,'

much less to rule *well*? In future chapters, my answer will be ‘no.’ Interest may be a sufficient motivation for activity, but it is not a sufficient guide.

Marx does not deem capitalism unjust by any standards, including its own. Rather, what guides his critique is the conflict between equal rights. Nevertheless, there are significant shortcomings to this approach. As we saw, one of Hegel’s major criticisms of Kantian morality is that the principle of non-contradiction is not a sufficient guide to concrete ethical activity. Although Hegel and Marx are much more concrete than Kant in this respect, perhaps their conceptions of the *principle of contradiction* are not sufficient guides either. Furthermore, the extent to which Marx’s assertions about justice are an uncritical, ideological absorption of capitalist social relations remains an open question.

In later chapters I will attempt to get to the foundations of Marx’s ambiguous relation with justice in all of its aspects. Before I do that, however, I will apply this interpretation, as it has been developed so far, to another aspect of justice. This is corrective justice, the question of crime and punishment. Of all the aspects of justice, it has received the least attention in commentaries on Marx. If the conclusions I have drawn so far also prove true of corrective justice, it will provide further confirmation that this is the right interpretation. This will prepare the way for the explanation of those fundamental assumptions that explain Marx’s ultimate rejection of justice as a whole.

Part 4: Corrective Justice

Chapter 11: Hegel on Corrective Justice

In this chapter we look at corrective justice, namely, questions of crime and punishment. It is important to note the interconnection between, on the one hand, exchange and distribution, and on the other hand, crime and punishment. In other words, there is an intimate relation between, on the one hand, commutative and distributive justice, and on the other hand, corrective justice. In the same way that distributive justice is often intended to ameliorate the social inequalities endemic to the commutative justice of capitalist exchange, so too does corrective justice attempt to address the social problems, the antagonisms and crime that arise from these inequalities, and which neither commutative nor distributive justice can resolve.

Marx's contributions to the theories of crime and punishment and of corrective justice are unsystematic and for the most part latent and implicit. In order to understand these contributions we must first examine those theorists to whom Marx is primarily responding: Kant and Hegel.

The modern theory of crime and punishment begins with Cesare Beccaria.⁸⁷⁴ Deeply influenced by Enlightenment thought, Beccaria sought to end the corporal punishment typical of medieval regimes. He also aspired to a more impersonal application of law. Beccaria combined two traditions of Enlightenment thought, and not always harmoniously.⁸⁷⁵ He drew from both the utilitarianism of Helvetius as well as the natural rights tradition of Rousseau. In Beccaria there exists elements of what would become the two major schools of corrective justice: the theory of deterrence and the theory of retribution.

Beccaria asserts that laws originate through a social contract so that isolated humans can leave their constant state of war and enter into civil society.⁸⁷⁶ They therefore 'deposit' some of their liberty for a greater overall happiness. These laws require coercive force to dissuade humans from their naturally selfish inclinations: "for everyone always seeks to withdraw not

⁸⁷⁴ Cesare Beccaria, *On Crimes and Punishments*, ed. and trans., David Young (Indianapolis: Hackett Publishing Company, Inc., 1986).

⁸⁷⁵ David Young, 'Introduction,' in Cesare Beccaria, *On Crimes and Punishments*, ed. and trans., David Young (Indianapolis: Hackett Publishing Company, Inc., 1986), xii.

⁸⁷⁶ Beccaria, *op. cit.*, 7.

only his own share of liberty from the common store, but to expropriate the portions of other men besides.”⁸⁷⁷ This is the basis of the sovereign’s right to punish crimes.⁸⁷⁸

Expressing the influence of French materialism, Beccaria argues that the purpose of punishment is to deter the criminal from committing more crimes as well as other people from becoming criminals in the first place.⁸⁷⁹ Nevertheless, Beccaria also condemned capital punishment. He rejects it not only because it lacks utility, but also because it offends against our natural rights to self-preservation as enshrined in the social contract:

This vain profusion of punishments, which has never made men better, has moved me to inquire whether capital punishment is truly useful and just in a well-organized state. By what alleged right can men slaughter their fellows? Certainly by the authority from which sovereignty and law derive. That authority is nothing but the sum of tiny portions of the individual liberty of each person; it represents the general will, which is the aggregate of private wills. Who on earth has ever willed that other men should have the liberty to kill him?⁸⁸⁰

Indeed, given the right to self-preservation, Beccaria argues that no individual would offer their consent to a social contract that permitted their own execution.⁸⁸¹ If Beccaria holds in a tense unity the two major wings of the Enlightenment, they become separated into competing schools after him.

The utilitarian tendency descending from Helvetius was embraced by Bentham.⁸⁸² He turned the theory of deterrence into a formal system. For Bentham, punishment is a ‘moral lesson.’ It is a calculation that stamps ignominy on an offense in order to create an aversion to it in others. Conversely, Kant and Hegel, critics of the deterrence theory, adopted the natural rights tradition of Rousseau. They espoused a formal theory of retributive justice.

⁸⁷⁷ Ibid.

⁸⁷⁸ Ibid., 8.

⁸⁷⁹ Ibid., 23.

⁸⁸⁰ Ibid., 48.

⁸⁸¹ Ibid., 48; 51.

⁸⁸² Jeremy Bentham, *The Rationale of Punishment*, trans. Richard Smith (London: R. Heward, 1830); Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Mineola, New York: Dover Publications, Inc., 2007), 184, n. 1; see also 170-71, n. 1.

Kant argues that, within civil society, the amount of punishment must be based in a principle of equality that inclines no more to one side than the other:

Accordingly, whatever undeserved evil you inflict upon another within the people, that you inflict upon yourself. If you insult him, you insult yourself; if you steal from him, you steal from yourself; if you strike him, you strike yourself; if you kill him, you kill yourself. But only the *law of retribution (ius talionis)* – it being understood, of course, that this is applied by a court (not by your private judgment) – can specify definitely the quality and the quantity of punishment; all other principles are fluctuating and unsuited for a sentence of pure and strict justice because extraneous considerations are mixed into them.⁸⁸³

How does the thief also simultaneously steal from himself? By making the property of everyone insecure he deprives himself of the security of property.⁸⁸⁴ If he lacks property and is unable to provide for himself, the state, rather than providing for him, justifiably imposes upon him the heinous character of the crime. A crime disrupts the relations of autonomy and equality between individuals. It therefore incurs a debt. Punishment is the payment through which the criminal/debtor re-enters society. Kant even attempts to account for class distinctions in his principle of equal retribution, of exchange of like for like. For example, if all that is expected of a wealthy person is a fine, he could insult indiscriminately the honour of others. Kant proposes that the upper-class person must not only apologize publicly to the lower-class person, but also suffer the indignity of kissing his hand.

Kant takes the principle of retribution to its logical conclusion. He defends capital punishment. If no life, no matter how wretched, can be a substitute for death, then the murderer must be killed. Kant argues that people like Beccaria fail to distinguish between reason and will, between understanding that the punishment is deserved and actually wanting the deserved punishment. People suffer punishment not because they will it, but because they will the punishable action.⁸⁸⁵ This is what it means to be subject to rational laws: “For, if the

⁸⁸³ Immanuel Kant, *The Metaphysics of Morals*, ed. Mary Gregor (Cambridge: Cambridge University Press, 1996), 105-6.

⁸⁸⁴ *Ibid.*, 106.

⁸⁸⁵ *Ibid.*

authorization to punish had to be based on the offender's *promise*, on his *willing* to let himself be punished, it would also have to be left to him to find himself punishable and the criminal would be his own judge."⁸⁸⁶ For Kant, this is "sophistry."⁸⁸⁷

Hegel's theory of corrective justice adopts and extends Kant's theory. Hegel espouses a theory of retributive justice in many of his writings, most famously in the *Philosophy of Right*. As we will soon see, however, other writings express the beginnings of a different theory of corrective justice. Hegel did not resolve the tensions between these two theories. This is significant because the same tension arises in Marx's contributions to theories of corrective justice.

Hegel's theory of right distinguishes between three forms of wrong. The first, unintentional wrong, agrees with the prevailing laws and rules but disagrees about their application in a particular case. The second, deception, acts against the laws, but does 'honour' to them by maintaining the semblance of right. The third, crime, clearly contravenes the law. It is wrong and presents itself as such. The basis of right is the recognition that those who are affected by my actions are also free and should be so treated.⁸⁸⁸ Thus, crime is self-defeating because one free will cancels the existence of another. By contravening their free will, the criminal undermines the basis of right and therefore justifies similar actions against himself. Hegel, like Kant, contends that in willing the crime the criminal also wills the punishment. Corrective justice embodies a logic of action and reaction.

Hegel asserts that corrective justice develops through two historical stages: revenge and retribution. Revenge is the primary form of corrective justice in the state of nature. In the interactions between families the cancellation of a transgression, of a 'crime,' usually takes the form of the blood feud. In its content this is just retribution, but in its form it is the action of the contingent and subjective will of the injured party. Each transgressor interprets their deserved retribution as a new infringement. Consequently, the conflict becomes an infinite regress inherited by each new generation.⁸⁸⁹ This requires a justice freed from these contingent and subjective powers. It requires an institution whose will is expressed not in a particular, but in a

⁸⁸⁶ Ibid.

⁸⁸⁷ Ibid.

⁸⁸⁸ Hegel, *Philosophy of the Right*, op. cit., §92.

⁸⁸⁹ Ibid., §102.

universal form. For Hegel, it requires the state. It alone can confer a genuine retribution. This is the second phase of corrective justice.

Retribution becomes the primary form of corrective justice when private property and the state are founded. The state has a ‘punitive’ rather than an ‘avenging’ justice because, on the basis of its objective judgement, it can punish the crime while also putting an end to the potentially infinite chain of action and reaction.⁸⁹⁰ Indeed, retribution protects the criminal from revenge.⁸⁹¹ For Hegel, private property and the state are necessary for the mutual recognition of freedom. It is the “rational destiny” of human beings to leave the state of nature and live under government.⁸⁹² Hegel, like Kant, argues that even the involuntary imposition of a state is therefore legitimate. The ‘heroes’ who founded states may have acted from partisan motives and used violent means, but this is nevertheless a “rightful coercion” because “goodness alone can have little effect when confronted with the force of nature.”⁸⁹³ The slavery established in the transitions from the state of nature to the full development of civil society “occurs in a world where a wrong is still right.”⁸⁹⁴ Williams asserts that, for Hegel, those who are overly concerned with the origins of states are guilty of the “fallacy of misplaced concreteness.”⁸⁹⁵ Hegel is not concerned with the transition from the pre-social condition of isolated individuals to a social condition. What is significant is not the origins of the state but what the state essentially is. Its violent beginnings do not entail that its nature is essentially coercive.

Strauss argues that for the ancient theorists of natural right, such as Plato and Aristotle, the origin of the state is important because it is necessary to determine whether civil society has its basis in nature or convention.⁸⁹⁶ Paradoxically, Hegel, the exemplification of ‘historicism,’ is unconcerned with the genealogy of the state. According to Strauss, this is because his ‘idea’ of the state rejects nature as the standard. For Strauss, this lack of concern with origins means abandoning any notion of the natural law by which to evaluate the positive law of the state. Quite interestingly, although Marxism is often accused of ‘historicism,’ it bases its ‘idea’ or explanation of the state in its coercive origins. Like Hegel, Marx distinguishes between civil society and the state. Unlike Hegel, Marx rejects the idea that there was ever a pre-social

⁸⁹⁰ Ibid., §103.

⁸⁹¹ Williams, op. cit., 167.

⁸⁹² Hegel, *Philosophy of the Right*, op. cit., §75.

⁸⁹³ Ibid., §93.

⁸⁹⁴ Ibid., §57.

⁸⁹⁵ Williams, op. cit., 60.

⁸⁹⁶ Strauss, op. cit., 96.

condition of any animal properly called ‘human.’ Therefore, the founding of states was not necessary for the development of a social condition. In fact, the emergence of states announces that society has become divided against itself. For Marx, mutual recognition is *disrupted* by the rise of private property and the state.

Marx’s perspective has been enriched by subsequent anthropology. Indeed, as we will see, certain aspects of hunter-gather societies, what Marx calls ‘primitive communism,’ are similar to his vision for the communist society that is to triumph over capitalism. Stanley Diamond, a Marxist anthropologist, asserts that the *lex talionis* does not apply to these primitive societies.⁸⁹⁷ Injury in a joint-family village could sometimes provoke a blood feud, but more often it was treated as a tort, a demand for private restitution. It was not deemed a basis for social retribution demanding injury in kind. Consequently, “the law against homicide was not a ‘progressive’ step, as if some abstract right were involved which the state, the moral idea coming of age, finally understood and sought to establish.”⁸⁹⁸ As the state forms, it appropriates more and more social power from the kinship units. This actually entails less respect for the individual. Diamond quotes Victor Uchendu, an Igbo anthropologist, who notes the absence of the homicide law among primitive Igbo:

It is important to realize that the village has no power to impose capital punishment. In fact, no social group or institution has this power. Everything affecting the life of the villager is regulated by custom. The life of the individual is highly respected; it is protected by the earth-goddess. The villagers can bring social pressure, but the murderer must hang himself.⁸⁹⁹

Indeed, the state and its laws emerge not as a response to, but are in fact a cause of, increasing interpersonal violence. Diamond rejects the sentiment behind ‘law and order.’ In comparison to the stability of customary society, law is the *antonym* of order.⁹⁰⁰ As we will see, this respect for the individual, this insistence on allowing the individual to evaluate, judge, and punish herself, is remarkably similar to Marx’s critique of Hegel’s theory of corrective justice, as well as Marx’s

⁸⁹⁷ Stanley Diamond, *In Search of the Primitive* (New Brunswick: Transaction Publishers, 2007).

⁸⁹⁸ *Ibid.*, 272.

⁸⁹⁹ *Ibid.*, 274.

⁹⁰⁰ *Ibid.*, 279.

contributions to an alternative theory. If these criticisms of Hegel are correct, then the state uses violence to punish the violence that it in fact helps to create. Therefore, Hegel's assertions about the punitive justice of the state may be as guilty of a bad infinite, of an infinite regress, as is the avenging justice of the so-called blood-feud.

Hegel's theory of retributive justice is similar to Kant's. From the perspective of the criminal, punishment appears to be something imposed externally.

When the criminal meets with retribution, this has the appearance of an alien destiny which does not belong to him; yet as we have seen, the punishment is merely a manifestation of the crime, i.e. it is one half which is necessarily presupposed by the other. What is at first sight objectionable about retribution is that it looks like something immoral, like revenge, and may thus be interpreted as a personal matter. Yet it is not the personal element, but the concept itself which carries out retribution. 'Vengeance is mine' is the word of God in the Bible, and if the word *retribution* should evoke the idea of a particular caprice of the subjective will, it must be replied that it signifies merely the shape of the crime turned round against itself. The Euminides sleep, but crime awakens them; thus the deed brings its own retribution with it.⁹⁰¹

Hegel's idea of the state informs his notion of the relation between morality and politics. Hegel asserts in 'The German Constitution,' unpublished in his lifetime, that the state could not survive if its right was not always superior to private right, "for even the taxes which it must impose are a suspension of the right of property."⁹⁰² Hegel condemns caustically the moralizing with which people criticize the state whenever it pursues interests that are not immediately or directly reconciled with their own: "the carping, indifferent public – i.e. that uninterested, unpatriotic mass whose ideal of virtue is the peace of the alehouse – accuses politics of questionable faith and lack of justice and stability."⁹⁰³ These 'philanthropists' do not realize that interests and rights can collide.⁹⁰⁴ In a passage we have studied in a previous chapter, Hegel asserts that "both

⁹⁰¹ Hegel, *Philosophy of the Right*, op. cit., §101.

⁹⁰² Hegel, *Hegel: Political Writings*, op. cit., 67.

⁹⁰³ *Ibid.*, 69.

⁹⁰⁴ *Ibid.*, 69.

contradictory rights are equally true; hence a third factor – i.e. war – must make them unequal so that they can be reconciled, and this occurs when one gives way to the other.”⁹⁰⁵ Speaking favourably of Machiavelli, Hegel asserts that the end justifies the means: “gangrenous limbs cannot be cured by lavender-water, and a situation in which poison and assassination have become common weapons permits no half-measures. Life which is close to decay can be reorganised only by the most drastic means.”⁹⁰⁶ These are not isolated and unpublishable thoughts. They also appear in the *Philosophy of Right*⁹⁰⁷ and the *Philosophy and History*.⁹⁰⁸

On most occasions, therefore, Hegel affirms the right of the state against the individual. This is the basis of his theory of retributive justice. The state must protect itself by cancelling the crimes that challenge its laws. Nevertheless, there is another more muted strain in Hegel’s thought. It is most clearly expressed in writings like the *Phenomenology of Spirit* and his lectures on religion. Hegel acknowledges that not all crime is based in an immoral motive. Sometimes, a contravention of prevailing laws has an ethical impetus. As we saw, Hegel describes this scenario as a ‘rational misfortune,’ as tragic conflict. Furthermore, Hegel seems to argue that modernity, the achievement of individual freedom in and through the state, makes possible a third phase of corrective justice. It transcends the logic of action and reaction that characterizes the phases of revenge and retribution. This is the phase of recognition, the mutual acknowledgement of independence amid our interdependence. It provides the basis for Hegel’s embryonic alternative to retributive justice. This alternative is able to distinguish between immoral crime and the criminal transgression of laws that are based in an ethical conviction.

Hegel’s theory of recognition cannot be understood without his conception of Christianity as the universal religion, and, in particular, what he regards as its supreme value: the principle of *conscience*. We must briefly study this before we can appreciate his depiction of modernity as the era of recognition. Hegel asserts that Christianity could only emerge in the conditions of the Roman Empire. He describes these conditions as the relentless imperial drive for property and wealth amid relations of impersonal domination. Indeed, social relations consist of atomized individuals reduced to their status as property-owners. This provides the setting for the world-historical significance of the Jewish people. In them are merged the outward suffering

⁹⁰⁵ Ibid., 70.

⁹⁰⁶ Ibid., 80.

⁹⁰⁷ Hegel, *Philosophy of the Right*, op. cit., §337

⁹⁰⁸ Hegel, *Philosophy of History*, op. cit., 30-31.

of a corrupted society and the deep sorrow of the inner person: “He must feel himself as the negation of himself; he must see that this misery is the misery of his nature—that he is in himself a divided and discordant being.”⁹⁰⁹ From this misery there emerged a prophet.

In an early theological essay, ‘The Spirit of Christianity,’ Hegel asserts that Jesus Christ does not command our obedience to laws. Rather, he preaches the fulfilment of needs:

This spirit of Jesus, a spirit raised above morality, is visible, directly attacking laws, in the Sermon on the Mount, which is an attempt, elaborated in numerous examples, to strip the laws of legality, of their legal form. The Sermon does not teach reverence for the laws; on the contrary, it exhibits that which fulfils the law but annuls it as law and so is something higher than obedience to law and makes law superfluous.⁹¹⁰

Thus, Christ and his disciples break the Sabbath and feed themselves. For Hegel, prohibiting some form of activity according to the Kantian categorical imperative imposes a rule on what will prove to be recalcitrant social conditions. The moral ought tries only to cancel the act without addressing the reasons for its occurrence.⁹¹¹ For Hegel, ethics is not a relation between an individual and a thing. It is not the fulfilment of a rule as an end in itself for which other individuals are only a means. Rather, ethics is a social relation between individuals mediated by those obligations necessary for mutual benefit and fulfilment of the individuals involved. In other words, ethics is the fulfilment of a social relation as an end in itself. Duty is its expression. This alone can fulfil the concrete universal, a brotherly love that “does not leave the judge to apportion its rights; it reconciles itself to its enemy with no regard to right whatever.”⁹¹² In this relationship, duty and desire are reconciled. As such, it is not a ‘spurious’ or ‘bad’ infinite in which we are bound by something other than ourselves, but rather, the relation is a ‘genuine’ or ‘good’ infinite because we are self-bounding: “Love, not self-coercive Kantian antinomy, is thus the true basis for the ethical virtues.”⁹¹³

⁹⁰⁹ Ibid., 321.

⁹¹⁰ Hegel, ‘The Spirit of Christianity,’ op. cit., 212.

⁹¹¹ Ibid., 209.

⁹¹² Ibid., 216.

⁹¹³ Terry Pinkard, *Hegel: A Biography* (New York: Cambridge University Press, 2000), 141.

Although justice is a significant part of ethics, Hegel asserts that it has significant shortcomings: “The punishment inflicted by law is merely *just*. The common character, the connection of crime and punishment, is only equality, not life.”⁹¹⁴ For Hegel, justice is limited by the fact that it makes the sinner into “sin existent.”⁹¹⁵ It is an abstract universal. As Bernstein notes, “In a sense, Hegel considers the punishments rendered by penal justice a tortured concession by law that there is *nothing* it can humanly do to respond to trespass; that punishment is not so much a human response to transgression, but what we do when no further human response is possible.”⁹¹⁶ Penal justice turns the individual into a personification of a single sinful act. It neglects that she is a complex being capable of a diversity of acts. These include acts of redemption:

An eye for an eye, a tooth for a tooth, say the laws. Retribution and its equivalence with crime is the sacred principle of all justice, the principle on which any political order must rest. But Jesus makes a general demand on his hearers to surrender their rights, to lift themselves above the whole sphere of justice or injustice by love, for in love there vanish not only rights but also the feeling of inequality and the hatred of enemies which this feeling’s imperative demand for equality implies.⁹¹⁷

These ideas were not merely youthful flourishes. In a lecture delivered in the last year of his life, Hegel criticizes imputing a crime to an individual in such a way that they are reduced entirely to it:

It is characteristic of the region of finitude that all individuals remain what they are. If they have done evil, then they *are* evil: evil is in them as their quality. But already in the sphere of morality, and still more in that of religion, spirit is known to be free, to be affirmative within itself, so that its limitation, which extends to evil, is a nullity for the infinitude of spirit. Spirit can undo what has been done.

⁹¹⁴ Hegel, ‘The Spirit of Christianity,’ op. cit., 238-39.

⁹¹⁵ Ibid., 238.

⁹¹⁶ Bernstein, ‘Love and Law,’ op. cit., 419.

⁹¹⁷ Hegel, ‘The Spirit of Christianity,’ op. cit., 218.

The action certainly remains in the memory, but spirit strips it away. Imputation, therefore, does not attain to this sphere.⁹¹⁸

Jesus Christ, this worldly manifestation of God, reveals that far from a transcendent beyond, heaven is possible in the earthly existence of the religious community. Through suffering, death, and the renunciation of his natural existence, Christ reveals that, in order to achieve unity with God, humankind must overcome its merely natural existence by making the world rational and divine. This is the driving force of history. For Hegel, the principle of Christianity, embodied in the example of Christ, is *conscience*. No appeal to authority, whether sacred or profane, is sufficient to command my allegiance. The world must prove itself rational *for me*, according to my convictions. Indeed, Christ espouses a principle similar to Antigone and Socrates and meets a similar fate. Nevertheless, Christianity does not emerge fully understood. It must also develop. It is not only the starting point, but also the goal of history. To understand why Hegel believes that the teachings of Christ could only be properly understood in the modern period, we must briefly look at how he describes the tortured history of Christendom.

The early Church failed to appreciate the meaning of Christ's message: "Christ says: 'If I depart you, I will send the Comforter, the Holy Ghost...He will guide you into all truth,' He—and not Christ's earthly presence nor His spoken words."⁹¹⁹ This is why Hegel endorses the Biblical saying, "The letter killeth, but the spirit giveth life."⁹²⁰ Christ is not like the Dalai-lama, present in sensuous form. Instead, he dwells in the hearts of humankind. This misunderstanding caused the 'self-alienated culture' of medieval Christianity. These Christians saw that, although the world is their own work, it has the feeling of something external, reacting back on them.⁹²¹ Thus, the feudal world is tortured by the existence of two worlds, the kingdom of life and the kingdom of death. On the one hand, heaven, the afterlife, can only be passed into through the gate of death. Feeling disconnected from this transcendent beyond, we fill it with images of angels, saints, and martyrs drawn from our lived experience. On the other hand, this life, our world, is also a kingdom of death. It is the grave of the crucified prophet and lacks all divinity

⁹¹⁸ G. W. F. Hegel, *Lectures on the Philosophy of Religion: One-Volume Edition: The Lectures of 1827*, ed. Peter C. Hodgson (Berkeley and Los Angeles: University of California Press, 1988), 466-67. This is from the 1831 lectures.

⁹¹⁹ G. W. F. Hegel, *Hegel's Lectures on The History of Philosophy: Volume Three*, trans. E. S. Haldane and Frances H. Simson (London: Routledge and Kegan Paul, 1963), 14.

⁹²⁰ *Ibid.*, 12.

⁹²¹ Hegel, *Phenomenology of Spirit*, op. cit., §484.

because God is outside of nature. All that lives in it is a vision of that other world where true life begins.⁹²²

The Church sought the sensuous externalization of its dead God in wealth, power, and the Crusading reclamation of the holy lands.⁹²³ Refusing to sanctify the real world, and thereby rejecting the idea of rational law, the Church reinforced feudal dependencies.⁹²⁴ It became a theocracy, founding and maintaining a system of government wracked with crime, bribery, and avarice.⁹²⁵ These conditions foster ‘pure inversions’ of culture, the ‘alienation of opposites,’ where what seems good is bad and bad is good. This is particularly true with regard to state power and wealth accumulation. Hegel contends that this is what fosters the Enlightenment, the French Revolution, and the Terror.

As we saw in the two previous chapters on Hegel, his discussion of the law-giving and law-testing reason featured the principles of private and communal property. In other words, this was a tension between the idea of justice as ‘to each their due’ and as ‘to each according to their needs.’ Hegel then transitions to the basis of these laws, the prevailing social relations in their historical development. Thus, whatever profound conflicts arise can be rooted in their objective foundations. Hegel describes this as ‘rational misfortune,’ or tragedy. His example is the conflict between Antigone and Creon, between the family and the state. We can now see that the defeat of Antigone—the personification of familial and religious obligations—by Creon—the personification of our duties to the state—announces the transition from the rule of kinship to that of the law. In other words, this is the development from the phase of revenge to that of retribution. Nevertheless, the higher principle that Antigone represents, the *pathos* of subjective freedom, arises again in the Enlightenment and makes possible a third phase.

The principle of conscience expresses itself against the state, now considered the *ancien régime*. Any authority figure, custom, law, or institution must prove itself rational according to the individual’s conscience. This can have incredibly volatile effects. It results not only in the French Revolution, but also the Terror that follows. This was not an accident. It was a rational misfortune. This is because the French Revolution attempted to build society entirely from the ground up without regard for the necessarily historical character of freedom and the binding

⁹²² Hegel, *History of Philosophy: Volume Three*, op. cit., 95.

⁹²³ *Ibid.*, 103.

⁹²⁴ Gillian Rose, *Hegel Contra Sociology* (London: Verso, 2009), 176.

⁹²⁵ Hegel, *History of Philosophy: Volume Three*, op. cit., 103.

force of the religious community. Despite its destructive consequences, the French Revolution inaugurates the modern era. For Hegel, the meaning of our time is that it need not regard every challenge to prevailing customs, laws, and rules, as a crime. In other words, it makes possible the transformation of the world for the better without needing to resort to violence. The modern era aspires to that which transcends revenge and retribution: the phase of recognition. For Hegel, recognition is the highest stage of corrective justice. In fact, it transcends justice altogether.

In the *Phenomenology of Spirit*, Hegel explains mutual recognition as a series of interactions between what he calls the ‘acting consciousness’ and the ‘judging consciousness.’ The acting consciousness, who Hegel also describes as the ‘beautiful soul,’ wants to transform the world according to her own conscience. She claims responsibility only for what she recognizes in her own deed, not its unpredictable effects. Nevertheless, our claims of conscientiousness cannot be confirmed or denied because no one else has access to our own conscience and introspection.⁹²⁶ Others can easily judge them as unconscientious, inauthentic, or uncharitably motivated. If each person acts according to their own personal convictions, it seems that everyone is an exception. This appears to exempt anyone from rational discussion.⁹²⁷ Like the categorical imperative, the conscience is an empty form that can coincide with any content.

The acting consciousness acknowledges that, no matter how noble and universal her intention, her act is inherently particular. It is based in her own unique conscience. She confronts the embodiment of the community, the judging consciousness who upholds the prevailing laws, and confesses her transgression of the laws. She sees herself as identical with the judging consciousness and expects him to admit to his own partisanship. Refusing to acknowledge their identity, however, the judging consciousness, what Hegel describes as the ‘hard heart,’ does not offer forgiveness.⁹²⁸ The judging consciousness evaluates the beautiful soul’s challenge to the prevailing laws entirely in terms of her self-interest rather than her loftier aspirations. By denying forgiveness, the judging consciousness thereby refuses Spirit, their mutual relations, which, as the master of every deed “can cast them off” and “make them as if they have never

⁹²⁶ Allen Speight, *Hegel, Literature and the Problem of Agency* (New York: Cambridge University Press, 2001), 105.

⁹²⁷ Harris, *Hegel’s Ladder, Volume II*, op. cit., 488-9.

⁹²⁸ Hegel, *Phenomenology of Spirit*, op. cit., §666-67.

happened.”⁹²⁹ In doing so, the judging consciousness fails to acknowledge that every action, no matter how universal the intention, is inherently particular.

No action can escape such judgement, for duty for duty’s sake, this pure purpose, is an unreality; it becomes a reality in the deed of an individuality, and the action is thereby charged with the aspect of particularity. No man is a hero to his valet; not, however, because the man is not a hero, but because the valet—is a valet, whose dealings are with the man, not as a hero, but as one who eats, drinks, and wears clothes, in general, with his individual wants and fancies.⁹³⁰

To be impartial, judging conscience must stand aloof to the side.⁹³¹ From this attempted objective standpoint, the judging conscience contends that, by challenging the laws, the acting conscience is not contributing to the good. Nevertheless, he must recognize that, according to the law, the good must be done. By standing aside, he is doing nothing.⁹³² In other words, the judging consciousness fails to recognize the hypocrisy of passively judging while doing nothing. The hard heart must include himself in his own judgements because objectivity in practical judgements only occurs when he recognizes that everyone has their own concerns at heart. This is a necessary moment of practical concern.⁹³³ This is one of the reasons why Hegel, in a passage from the *Philosophy of History* which we have already discussed, says that:

we may affirm absolutely that *nothing great in the world* has been accomplished without *passion*. Two elements, therefore, enter into the object of our investigation; the first the idea, the second the complex of human passions; the one the warp, the other the woof of the vast arras-web of universal history. The concrete mean and union of the two is liberty, under the conditions of morality in a state.⁹³⁴

⁹²⁹ Ibid., §667.

⁹³⁰ Ibid., §665.

⁹³¹ Harris, *Hegel’s Ladder, Volume II*, op. cit., 494.

⁹³² Ibid., 493.

⁹³³ Ibid., 501.

⁹³⁴ Hegel, *History of Philosophy: Volume Three*, op. cit., 163.

It is only when the judging consciousness, the ‘hard heart,’ acknowledges and confesses his own fallibility that genuine recognition occurs:

The breaking of the hard heart, and the raising of it to universality, is the same movement which was expressed in the consciousness that made confession of itself. The wounds of the Spirit heal, and leave no scars behind. The deed is not imperishable; it is taken back by Spirit into itself, and the aspect of individuality present in it, whether as intention or as an existent negativity and limitation, straightaway vanishes.⁹³⁵

The judging consciousness sees himself in the acting consciousness and abandons his divisive thought. By accepting the confession of the acting consciousness and offering forgiveness, the judging consciousness renounces his separation and partakes in the reciprocal recognition that is “*absolute Spirit*.”⁹³⁶ When the hard heart ‘breaks’ this is the breaking of the standpoint of the ‘moral valet.’ The goal is not to judge but first to comprehend.⁹³⁷ This is a *logical* forgiveness between agent and observer for the inevitable one-sidedness of being agent or observer.⁹³⁸ By offering forgiveness, the judging consciousness also forgives himself. Since the acting consciousness is no longer chained to her transgressive act like a debt that must be repaid in full, the judging consciousness can renounce the role of creditor. Indeed, through the dialectic of confession and forgiveness, the logic of action and reaction typical of revenge and retribution is transcended by recognition. Although it is reciprocal recognition, it is not a mere effect that is chained to its cause, a mere reaction to action. As Williams notes, this is the first mention of reciprocal recognition in the *Phenomenology of Spirit*.⁹³⁹

The acting consciousness admits the impurity of her compromises while the judging consciousness sets aside his moralizing judgements: “Forgiveness renounces revenge and domination.”⁹⁴⁰ This recognition is heaven made real on earth by individuals who recognize not only their fallibility and their necessary interdependence, but also the divine nature that resides in

⁹³⁵ Hegel, *Phenomenology of Spirit*, op. cit., §669.

⁹³⁶ *Ibid.*, §670.

⁹³⁷ Harris, *Hegel's Ladder, Volume II*, op. cit., 522.

⁹³⁸ *Ibid.*, 503.

⁹³⁹ Williams, op. cit., 208.

⁹⁴⁰ *Ibid.*, 211.

each of them: “it is God manifested in the midst of those who know themselves in the form of pure knowledge.”⁹⁴¹ Tragic conflict only finds its resolution, and Antigone, the acting conscience, only finds her reconciliation with others, in the divine-human community of confession and forgiveness, in the reconciliation of religion with the state in Ethical Life. For Hegel, the significance of the modern era is that it makes possible this community of forgiveness. Hegel is critical of the extent to which the separation between church and state consigns religion to the private sphere and thereby renders it superfluous: “It is in religion that the innermost being of mankind is expressed and in which, as a fixed centre, human beings can still recognise themselves, even if all other external things scattered around them are of no consequence.”⁹⁴² Ultimately, he deems a “self-supporting” political constitution devoid of religion completely ‘one-sided.’⁹⁴³ Conversely, the community of forgiveness would make possible those conditions which allow people like Antigone, Socrates, and Christ to express their conscience, to challenge and transgress the prevailing laws of the community without having to die for their convictions.⁹⁴⁴ In other words, the community of forgiveness does not need revolution in order to transform society for the better.

This is why Hegel deems Christianity the universal religion. By becoming incarnate, God reveals the immanence, the this-worldliness of the divine. It exists, at least potentially, within the human community. As we saw before, for Hegel, the promise of the universal religion is a ‘brotherly love’ that transcends what is merely just. The last lines of the *Phenomenology of Spirit* are Hegel’s adaptation of Schiller’s poem ‘On Friendship’: “from the chalice of this realm of spirits / foams forth for Him his own infinitude.”⁹⁴⁵ When we study the *Phenomenology* in the light of Hegel’s theological writings, we can see that he aspires to a transformation of citizens into friends, the passage from a principle of right to a principle of need.

Mutual recognition exists only as latent potential within prevailing circumstances, which have not yet advanced beyond the phase of retribution. Hegel projects the community of forgiveness into the future. That is why it has a much more prominent role in the *Phenomenology of Spirit*, which explores the shapes of human consciousness in their historical development, than in the *Philosophy of Right*, a critique of the contemporary state. Although Hegel asserts the need

⁹⁴¹ Hegel, *Phenomenology of Spirit*, op. cit., §671.

⁹⁴² Hegel, *Hegel: Political Writings*, op. cit., 20.

⁹⁴³ *Ibid.*, 232-33.

⁹⁴⁴ Speight, op. cit., 65, n. 38.

⁹⁴⁵ Hegel, *Phenomenology of Spirit*, op. cit., §808; see also Williams, op. cit., 284, n. 96.

to reconcile subjective freedom with objective freedom and individual conscience with the state, he expresses this abstractly. Therefore, there are unresolved tensions between Hegel's theories of retribution and of recognition. Furthermore, both are beset with bad infinities. In Hegel's theory of retribution, the state can only punish the crimes it helps create: it cannot eliminate them. In Hegel's theory of recognition, the community of confession and forgiveness is expressed so abstractly that he gives no indication of how it can actually be accomplished using the resources of the present. Therefore, it is deferred to the infinite regress of the indefinite future. As we will now see, Marx offers solutions to these dilemmas. He too will espouse a principle of forgiveness.

Chapter 12: Marx on Corrective Justice

In this chapter I will explore Marx's discussion of crime and punishment in both capitalist and socialist societies. Marx criticizes both the deterrence and the retributive theories of corrective justice.⁹⁴⁶ Nevertheless, while he rejects the former in its entirety, he appears to accept certain aspects of the latter. Beyond this, however, Marx seems to pose an alternative theory of crime and punishment. It is fragmentary and in many ways latent. Furthermore, as is typical of Marx, it is a contribution to theories of justice that is not couched in the language of justice. We will see that, as is the case for both commutative and distributive justice, Marx does not affirm any principle of corrective justice without immediately undermining it from a perspective that deems itself beyond justice as such.

12. 1: Correction Under Capitalism

One of Marx's most significant contributions to theories of corrective justice is an article on capital punishment for *The New York Tribune*.⁹⁴⁷ Marx rejects the theory of deterrence:

it would be very difficult, if not altogether impossible, to establish any principle upon which the justice or expediency of capital punishment could be founded, in a society glorying in its civilization. Punishment in general has been defended as a means either of ameliorating or of intimidating. Now what right have you to punish me for the amelioration or intimidation of others?⁹⁴⁸

It appears that Marx is making uncharacteristically explicit claims about right and justice. By what right does the state attempt to dissuade others from crime by punishing an individual more than is merited by their crime? To 'make an example' of someone, to turn them into a cautionary tale, transforms the individual into a pure criminal, a personification of their crime, and renders

⁹⁴⁶ I presented a draft of this chapter at the conference 'Democracy Rising: Global Center for Advanced Studies,' Athens, Greece, July 18, 2015.

⁹⁴⁷ Karl Marx, 'Capital Punishment' (February 17, 1853), in *Dispatches for the New York Tribune*, op. cit.

⁹⁴⁸ *Ibid.*, 121.

them an instrument for deterrence. Nevertheless, as Marx phrases it, his critique of capital punishment has a familiar basis: hypocrisy. Ultimately, he points less to an explicit theory of justice or civility and more to the internal contradictions of those who do. Marx then shifts the critique of capital punishment to more pragmatic grounds: “And besides, there is history—there is such a thing as statistics—which prove with the most complete evidence that since Cain the world has neither been intimidated nor ameliorated by punishment. Quite the contrary.”⁹⁴⁹ Based on the statistics compiled by Adolphe Quetelet, a positivist criminologist, Marx argues that crime has the regularity of physical phenomena.⁹⁵⁰ Therefore, deterrence focuses on effects rather than the consistent causes.

The format of Marx’s critique is quite similar to Beccaria’s. Earlier we noted that Beccaria combines, not always successfully, the utilitarianism of Helvetius and the natural rights of Rousseau.⁹⁵¹ It is interesting that in Marx’s critique of the theories of capital punishment put forward by the utilitarians and the idealists, he replicated Beccaria’s practice, criticizing them on both pragmatic and moral grounds. Perhaps this indicates not only Beccaria’s influence on Marx, but also that Marx believes that the tensions between theories of corrective justice have not been adequately resolved.

Marx clearly prefers retribution over deterrence: “From the point of view of abstract right, there is only one theory of punishment which recognizes human dignity in the abstract, and that is the theory of Kant, especially in the more rigid formula given it by Hegel.”⁹⁵² Nevertheless, precisely because their recognition of human dignity is only abstract, Marx also criticizes Kant and Hegel:

There is no doubt something specious in this formula, inasmuch as Hegel, instead of looking upon the criminal as the mere object, the slave of justice, elevates him to the position of a free and self-determined being. Looking, however, more closely into the matter, we discover that German idealism here, as in most other instances, has but given a transcendental sanction to the rules of existing society.

⁹⁴⁹ Ibid.

⁹⁵⁰ Ibid., 122-23. This is quite similar to Quetelet’s analysis. For example, he asserts: “Experience, however, proves that not only is the annual number of homicides nearly constant, but that even the weapons employed are used in the same proportions” (Quoted in William Adrian Bonger, *Criminality and Economic Conditions*, trans. Henry P. Horton (New York: Agathon Press, Inc., 1967), 32).

⁹⁵¹ Beccaria, op. cit., xii.

⁹⁵² Marx, ‘Capital Punishment,’ op. cit., 121.

Is it not a delusion to substitute for the individual with his real motives, with multifarious social circumstances pressing upon him, the abstraction of ‘free-will’—one among the many qualities of man for man himself! This theory, considering punishment as the result of the criminal’s own will, is only a metaphysical expression for the old ‘*jus talionis*’: eye against eye, tooth against tooth, blood against blood.⁹⁵³

Marx’s accusation that the German Idealists sanctify the *jus talionis* is not a profound discovery. As we saw, Kant describes retribution in these terms.⁹⁵⁴ More significantly, Marx criticizes this version of the *jus talionis* because the German Idealists replace the reductionism of the deterrence theory, in which the individual is made a pure embodiment of their crime, with a reductionism of a different kind. They reduce the individual to her free will, to a will that is abstracted from her social conditions. In this way, the crime is deemed to be a pure manifestation of her will. Therefore, the individual can be said to have willed not only the crime but the punishment as well. The *jus talionis* espoused by the German Idealists is certainly better than the theory of deterrence. It does not trade one eye for two eyes so as to threaten the rest with blindness. Nevertheless, German Idealism must mask its coercive character by pretending to impose on the criminal nothing but her own will.

For Marx, in class divided societies, there are social determinants of conflict. Therefore, antagonisms cannot be attributed entirely, or even mostly, to the self-determining free will, to the personal responsibility of the individual:

If man is unfree in the materialist sense, i.e., is free not through the negative power to avoid this or that, but through the positive power to assert his true individuality, crime must not be punished in the individual, but the anti-social source of crime must be destroyed, and each man must be given social scope for the vital manifestation of his being. If man is shaped by his surroundings, his surroundings must be made human. If man is social by nature, he will develop his

⁹⁵³ Ibid.

⁹⁵⁴ Kant, *Metaphysics of Morals*, op. cit., 105-06.

true nature only in society, and the power of his nature must be measured not by the power of separate individuals but by the power of society.⁹⁵⁵

Marx does not have a systematic theory of law, crime, and punishment.⁹⁵⁶ Nevertheless, he makes important contributions to these theories.

Marx asserts that the law arises from particular social conditions at a specific phase in their historical development. Furthermore, it reflects the interests of the prevailing ruling classes. In contrast to the idea that the law is the general expression of free will, Marx and Engels affirm a form of the materialist theory, namely, might makes right.⁹⁵⁷ In this, they cite Hobbes, who makes power the basis of the law. Marx and Engels offer a qualification to the standard materialist conception. They say that might makes right at all stages of human history where private property and class divisions are still necessary. Nevertheless, the end of private property, class divisions, and the state cannot be willed out of existence. It requires a material, historical, social development that makes such a will possible.

The law reflects the interests of the ruling class not only in its development but often in its application. For example, Marx demonstrates the intersections between class-rule and patriarchy. Although the law is supposed to be enforced on both husband and wife, it is often the case that only the wife is punished for adultery.⁹⁵⁸ Furthermore, even when it is applied impartially, the uniquely formal character of the law under capitalism has the effect of reproducing inequalities. We saw this earlier with Marx's critique of the formal freedom and equality of capitalist exchange. Even though the law claims to treat individuals as equal citizens irrespective of their socio-economic inequalities, its impersonal application sustains what in its content is substantive inequality and exploitation. The formal character of the law is, as Anatole

⁹⁵⁵ Marx and Engels, *The Holy Family*, op. cit., 175-76. Although this was written before Marx encountered Quetelet's positivist criminology, Quetelet makes quite similar assertions: "Society contains within itself the germs of all the crimes that are about to be committed. It is society, in a way, which prepares them, and the criminal is only the instrument that executes them" (quoted in Bonger, op. cit., 32). Quetelet continues: "This remark, which might appear discouraging at first sight, becomes consoling, on the contrary, when we consider it more closely, since it shows the possibility of the improvement of men, by the modification of their institutions and habits and whatever, in general, influences their manner of being" (ibid., 32).

⁹⁵⁶ Karl Marx and Friedrich Engels, *Marx and Engels on Law*, eds. Maureen Cain and Alan Hunt (London: Academic Press, 1979), 148-49; David Garland, *Punishment and Modern Society: A Study in Social Theory* (Chicago: The University of Chicago Press, 1993), 84.

⁹⁵⁷ Marx and Engels, *The German Ideology*, op. cit., 348-49.

⁹⁵⁸ Ibid., 359.

France famously describes it, “the majestic equality of the French law, which forbids both rich and poor from sleeping under the bridges of the Seine.”⁹⁵⁹

For Marx, the notion of the individual as a free will is intertwined with the idea that the law can be universal, impartial, and equal. Those who contend that laws and principles of right arise from general concepts of human nature and free will also tend to argue “that crimes are committed purely because of a wanton attitude towards some concept, that crimes, in general, are nothing but making mockery of concepts and are only punished in order to do justice to the insulted concepts.”⁹⁶⁰ Nevertheless, it is not only the law that is subject to historical development. This is true of crime as well. Indeed, for Marx and Engels, crime and law are two sides of the same relation. Marx asserts, “Like right, so crime,” because “the struggle of the isolated individual against the predominant relations” is not arbitrary.⁹⁶¹ Therefore, those who deem the law an “independently existing general will,” and therefore see in crime nothing but the violation of this dominant will, fail to see that crime “depends on the same conditions as that domination.”⁹⁶²

We can illustrate the implications of the dialectical relation between crime and law by comparing it to Rawls’s distinction between “strict compliance theory” and “partial compliance” theory.⁹⁶³ The former, the ‘ideal theory,’ assumes that individuals, adequately equipped with the sense of justice, will adhere to the rules of the background institutions in a just society. Conversely, partial compliance theory concerns the methods by which to deal with injustice, such as the theory of punishment. He largely limits his focus to strict compliance. This assumption is called into question, however, if it can be shown that inequality, including the inequality that Rawls endorses, is the primary source of crime. The distinction between strict and partial compliance is arbitrary if deviance is in large part the result of social stratification. Thus, even in a society with only that inequality sanctioned by Rawls’s difference principle, crime will not be merely the “mark of bad character.”⁹⁶⁴

⁹⁵⁹ Quoted in Isaac D. Balbus, ‘Commodity Form and Legal Form: An Essay on the ‘Relative Autonomy’ of the Law.’ *Law & Society Review*, 11.3 (Winter 1977): 571-588; 577.

⁹⁶⁰ Marx and Engels, *The German Ideology*, op. cit., 362.

⁹⁶¹ *Ibid.*, 349.

⁹⁶² *Ibid.*

⁹⁶³ Rawls, op. cit., 8.

⁹⁶⁴ *Ibid.*, 315.

Marx points not only to the historical character of crime, but the priority of social, rather than personal, explanations. Take, for example, his explanation of the rise of ‘crime’ amid the catastrophic transitions to capitalism:

The proletariat created by the breaking-up of the bands of feudal retainers and by the forcible expropriation of the people from the soil, this free and rightless proletariat could not possibly be absorbed by the nascent manufactures as fast as it was thrown upon the world. On the other hand, these men, suddenly dragged from their accustomed mode of life, could not immediately adapt themselves to the discipline of their new condition. They were turned in massive quantities into beggars, robbers and vagabonds, partly from inclination, in most cases under the force of circumstances.⁹⁶⁵

Cain and Hunt, in their anthology *Marx and Engels On Law*, criticize Marx for assuming that certain acts are intrinsically criminal.⁹⁶⁶ In other words, they argue that Marx uncritically takes for granted that crime is a self-evident phenomenon. In contrast, Cain and Hunt affirm the theory of deviance that emerged in the 1960s. This theory makes crime itself problematic. It argues that the law is not merely a response to crime, but rather, that the law makes certain acts criminal. Instead of pathologizing criminals or attempting to root their deviance in biological terms, it shows how crime and criminality reflect disparate power relations. Despite their criticisms, however, Cain and Hunt’s anthology includes a passage where Marx argues precisely this:

Violations of the law are generally the offspring of economical agencies beyond the control of the legislator, but, as the working of the Juvenile Offenders’ Act testifies, it depends to some degree on official society to stamp certain violations of its rules as crimes or as transgressions only. This difference of nomenclature, so far from being indifference, decides on the fate of thousands of men, and the moral tone of society. Law itself may not only punish crime, but improvise it, and the law of professional lawyers is very apt to work in this direction. Thus, it has

⁹⁶⁵ Marx, *Capital: Volume One*, op. cit., 27.

⁹⁶⁶ Maureen Cain and Alan Hunt, ‘Introduction to Chapter Five: The State, Law and Crime,’ in Marx and Engels, *Marx and Engels On Law*, op. cit., 149.

been justly remarked by an eminent historian, that the Catholic clergy of the medieval times, with its dark views of human nature, introduced by its influence into criminal legislation, has created more crimes than forgiven sins.⁹⁶⁷

Taylor and Walton argue that Marx's assertions here correspond to "the best of modern deviancy theory."⁹⁶⁸ Furthermore, deeming certain acts as inherently criminal is not necessarily uncritical. Lynch and Groves argue that there are significant shortcomings to those theories that define as crime only that which is labelled as such.⁹⁶⁹ For example, this relativism is unable to describe as intrinsically criminal the socially injurious actions of members of the ruling classes because in the prevailing circumstances they are rarely recognized as crimes requiring punishment. Conversely, the radical criminology that descends from Marx argues that crime should have an "objective referent," namely, its dangerous and undesirable consequences for society as a whole.⁹⁷⁰

Marx argues that governments will refuse to see the sources of crime in the social conditions upon which governmental power is based.⁹⁷¹ Political parties will attribute every social defect to the fact that their rivals are in power. At the most, radical politicians will blame only the prevailing form of state, not the existence of the state as such. For this reason,

The English Parliament combined [Malthus's] philanthropic theory with the view that pauperism is a *state of misery bought on by the workers themselves*, and that in consequence it should not be regarded as a misfortune to be prevented but as a crime to be suppressed and punished.

In this way the system of the workhouse came into being, i.e. houses for the poor whose internal arrangements were devised to *deter* the indigent from seeking a refuge from starvation. In the workhouses charity has been ingeniously

⁹⁶⁷ Marx and Engels, *Marx and Engels On Law*, op. cit., 189.

⁹⁶⁸ Ian Taylor and Paul Walton, 'Correspondence: Radical Deviancy Theory and Marxism, A Reply to Paul Q. Hirst: Marx and Engels on Crime, Law and Morality,' *Economy and Society*, 1:2 (1972): 229-233; 232.

⁹⁶⁹ Lynch and Groves, op. cit., 48.

⁹⁷⁰ Ibid.

⁹⁷¹ Marx, *Early Writings*, op. cit., 411.

combined with the *revenge* of the bourgeoisie on all those wretched enough to appeal to their charity.⁹⁷²

Consequently, Marx asserts that the administrative system no longer attempts to eliminate pauperism. Rather, it tries only “to *discipline* and *perpetuate* it.”⁹⁷³ This has interesting parallels with Foucault’s *Discipline and Punish*. For example, Foucault points to changes in the strategies of punishment: “The body now serves as an instrument or intermediary: if one intervenes upon it to imprison it, or to make it work, it is in order to deprive the individual of a liberty that is regarded both as a right and as property.”⁹⁷⁴ Foucault argues that corporal punishment disappeared because it lost its deterrent effect. This occurred because it came to be misinterpreted by the general public, which deemed the punishment equal to, or worse than, the savagery of the crime itself. Nevertheless, Foucault does not really explain why this change in perceptions arose. Marx’s observations, while much more fragmentary than Foucault’s, are nonetheless superior because they not only describe, but also explain the development of specifically modern forms of punishment and crime.

It is not only the law and crime, but also the form of punishment that is historically-specific. The workhouses or ‘houses of correction’ became the model for the Methodist system of prison cells that are now the normal form of punishment under capitalism.⁹⁷⁵ Developed in Holland and Britain in the sixteenth, seventeenth, and eighteenth centuries, the workhouses, and later prisons, were intended to ‘re-socialize’ prisoners into the industrious habits necessary for capitalist production.⁹⁷⁶ People say ‘I did my time,’ not only when leaving prison, but also upon entering into retirement.

Marx does not entirely reject the need for punishment. In fact, he follows Hegel’s assertions about its purpose:

Plainly speaking, and dispensing with all paraphrases, punishment is nothing but a means of society to defend itself against the infraction of its vital conditions,

⁹⁷² Ibid., 408.

⁹⁷³ Ibid., 409.

⁹⁷⁴ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage Books, 1995), 11.

⁹⁷⁵ Dario Melossi, ‘The Penal Question in ‘Capital,’” *Crime and Social Justice*, 5 (Spring-Summer 1976): 26-33; 29.

⁹⁷⁶ Lynch and Groves, op. cit., 112-13.

whatever may be their character. Now, what a state of society is that, which knows of no better instrument for its own defense than the hangman, and which proclaims through the 'leading journal of the world' its own brutality as eternal law?⁹⁷⁷

For Marx, if capital punishment is deemed a necessary form of punishment, it is the form of society itself that comes under critical scrutiny. If crimes have the regularity of physical phenomena, Marx observes, "is there not a necessity for deeply reflecting upon an alteration of the system that breeds these crimes, instead of glorifying the hangman who executes a lot of criminals to make room only for the supply of new ones?"⁹⁷⁸

Contrary to Hegel's assertions, for Marx, the state can only end the revenge exacted between individuals by mediating between individuals and becoming itself the basis of systematic vengeance. In other words, the state has only replaced one bad infinite with another. As soon as it is recognized that the prevailing Right sanctifies inequality and unfreedom that necessarily give rise to 'Wrongs,' to crime, then the punishment is not a negation of the negation, but rather a 'bad infinite' that preserves both the Right and its inevitable Wrongs, thereby ensuring the indefinite oscillation between the two. It is at this point that it is worth remembering Diamond's assertion that law is the antonym of order. Indeed, the common assumptions about the function of positive law is illustrated by one of the reasons Walzer offers for the need to balance the different spheres of 'distributive justice': "We could provide absolute security, eliminate every source of violence except domestic violence, if we put a street light every ten yards and stationed a policeman every thirty yards throughout the city. But that would be very expensive, and so we settle for something less."⁹⁷⁹ Marx might respond that, in addition to having a police officer every thirty yards, even if you had one in every domicile, at the most, this might eliminate all of the violence not perpetrated by the police themselves. For Marx, the state

⁹⁷⁷ Marx, 'Capital Punishment,' op. cit., 121-22. Compare this with Beccaria: "What are the true and most effective laws? They are those pacts and conventions that everyone would observe and propose while the voice of private interest, which one always hears, is silent or in agreement with the voice of the public interest. What are the sentiments of each person regarding the death penalty? We may read them in the signs of indignation and scorn with which everyone looks upon the executioner, who is, however, an innocent servant of the public will, a good citizen who contributes to the public welfare, the necessary instrument of internal security just as valorous soldiers are of external security" (Beccaria, op. cit., 51-52).

⁹⁷⁸ Marx, 'Capital Punishment,' op. cit., 122-23.

⁹⁷⁹ Walzer, op. cit., 67.

does not emerge as the second, but rather as the first transgression. The state is the crime to which the people must deliver its punishment.

In a commentary on Marx's contributions to theories of corrective justice, Jeffrie Murphy detects an ambiguity.⁹⁸⁰ Marx seems to express admiration for the theory of retribution, but then rejects its applicability in capitalist society. Murphy asks, why is Marx both attracted to and repelled by retribution?⁹⁸¹ Murphy argues that, for Marx, retributive theory is formally correct but materially inadequate.⁹⁸² Murphy rejects the utilitarian deterrence theory in favour of the Kantian theory of retribution and individual autonomy, but also accepts Marx's critique of the so-called autonomous individual in class-societies.⁹⁸³ This makes retributive justice largely inapplicable in contemporary social conditions and constitutes a radical attack on the institution of punishment. Murphy then asks, what practical help can Marx offer for the design of punishment in our prevailing conditions?

The answer, I think, is that he cannot and obviously does not desire to do so. For Marx would say that we have not focused (as all piecemeal reform fails to focus) on what is truly the real problem. And this is changing the basic social relations. Marx is the last person from whom we can expect advice on how to make our intellectual and moral peace with bourgeois society. And this is surely his attraction and his value.⁹⁸⁴

Buchanan, in his brief discussion of corrective justice, follows Murphy in this respect. Murphy's interpretation compliments Buchanan's assertions that Marx criticizes capitalism because, first, any set of social conditions is defective if it makes necessary a reliance on conceptions of justice, and second, these social circumstances make impossible the realization of the standards of justice that they themselves promote.⁹⁸⁵ Thus, Buchanan asserts, "the conditions of class conflict that engender the behavior to which the institution of punishment is a response are just those conditions in which the assumptions of mutually beneficial social relations and of the freedom of

⁹⁸⁰ Jeffrie G. Murphy, 'Marxism and Retribution,' *Philosophy & Public Affairs*, 2.3 (Spring 1973): 217-243.

⁹⁸¹ *Ibid.*, 218, n. 1.

⁹⁸² *Ibid.*, 241.

⁹⁸³ *Ibid.*, 221.

⁹⁸⁴ *Ibid.*, 242.

⁹⁸⁵ Buchanan, *op. cit.*, 50-51.

all to obey (or disobey) the law are not satisfied.”⁹⁸⁶ One is reminded of Lawrence Stone’s assertion that prisons have become “vestigial institutions” that are less useful to society than is the appendix for the human body.⁹⁸⁷

The major difference between Murphy and Buchanan is that, while Murphy aspires to social conditions where retributive justice is not only formally correct but materially adequate, Buchanan argues that, for Marx, socialism would be beyond all notions of justice as such. Nevertheless, both of these interpretations, for which all reforms necessarily entail ‘reformism,’ regard Marx as an insurrectionist. The insurrectionist tendency in theories of revolution assume that capitalism can be overthrown more or less in one-fell swoop. This rejects any programme that, as Luxemburg would put it, proposes a complex series of reforms that are integrally tied to, and prepare the way for, the revolutionary rupture.⁹⁸⁸ Indeed, for insurrectionists, reforms show the flexibility of capitalism and stifle revolutionary spirit. Putting this in Gramscian terms, reducing revolution to one grand war of movement neglects the long-term war of position that must pave its way.⁹⁸⁹ Conversely, a strategy based on the war of position uses the reform of society to illustrate, in however constrained a form, what can only be fully achieved with the overthrow of capitalism and the creation of socialism.

The ‘insurrectionist’ interpretations, frequently found in depictions of Marx’s politics, have not served it well. It becomes too easy to defer problems to a socialist future rather than engage with them in the present. The inadequacies of this approach were an important impetus for the third wave of debate about Marx and ethics. Even if the participants in this debate were too easily incorporated into the hegemony of the liberal political philosophy to which they were reacting, their motives were genuine. Radical criminologists have noted how the insurrectionist approach has undermined the development of an alternative criminology. Cain and Hunt argue that socialist criminology has rarely gone beyond the liberal anti-authoritarian tradition: “In this sense it has been reactive rather than constituting a concrete base for an intervention in the

⁹⁸⁶ Ibid., 73.

⁹⁸⁷ Quoted in Garland, op. cit., 5.

⁹⁸⁸ “For Social Democracy there exists an indissoluble tie between social reforms and revolution. The struggle for reforms is its *means*; the social revolution, its *goal*” (Luxemburg, op. cit., 129). This is not to fall into the trap diametrically opposed to insurrectionism, namely, the ‘opportunism’ of revisionists like Bernstein, who “make social reforms, which are the means of class struggle, into its *end*” (ibid.).

⁹⁸⁹ Antonio Gramsci, *Selections from the Prison Notebooks*, ed. and trans. in Quintin Hoare and Geoffrey Nowell Smith (New York: International Publishers, 1971), 229-39.

politics of crime and crime control.”⁹⁹⁰ Lynch and Groves argue that radicals have had difficulty generating short-range policies.⁹⁹¹ To remedy this they suggest some immediate reforms. These include: “equal justice in the bail system, the abolition of mandatory sentences, prosecution of corporate crimes, increased employment opportunities, and promoting community alternatives to imprisonment. Other policy efforts include programs to reduce prison overcrowding, concerted efforts to inform the public of injustices in the criminal justice system, and the design of programs to combat racism in the administration of justice.”⁹⁹²

Contrary to Murphy and Buchanan’s assertions, however, Marx is not an insurrectionist in these matters. He is not a would-be retributivist who deems it materially inadequate. Rather, Marx does not regard retribution as being even formally correct. There is evidence in Marx’s work, sparse as it may be, that he has a latent, unsystematic theory of rehabilitation. Furthermore, Marx does not defer this to the socialist future. He applies these latent theories to capitalist society. This poses an alternative to the theories of deterrence and retribution. Indeed, Marx’s assertions have significant parallels with what is now usually referred to as ‘restorative justice.’ Nevertheless, as is characteristic of him, Marx never uses the term ‘justice’ on the rare occasions where he is offering the content of a positive alternative to the other theories of corrective justice.

Marx does not merely want to react to crime, but to prevent it. For example, in an article for *The New York Tribune*, he asserts:

Strange to say, the only part of the United Kingdom in which crime has seriously decreased, say by 50, and even by 75 per cent, is Ireland. How can we harmonise this fact with the public-opinion slang of England, according to which Irish nature, instead of British misrule, is responsible for Irish shortcomings? It is, again, no act on the part of the British ruler, but simply the consequence of a famine, an exodus, and a general combination of circumstances favourable to the demand for Irish labour, that has worked this happy change in Irish nature.⁹⁹³

⁹⁹⁰ Cain and Hunt, op. cit., 151.

⁹⁹¹ Lynch and Groves, op. cit., 127.

⁹⁹² Ibid., 128.

⁹⁹³ Marx and Engels, *Marx and Engels On Law*, op. cit., 189.

Putting aside the influence of famine and emigration, Marx cites productive labour as a cause for the reduction in crime. The theory of deterrence can attempt to cast itself as a form of prevention. By imposing harsh punishments on individual criminals it claims to prevent other individuals from engaging in the same behaviour. Nevertheless, Marx's theory, as well as later theories of restorative justice, can claim to be still more preventative because they need not start after a crime has already been committed. For Marx, the opportunity to work will often prevent someone from resorting to crime in the first place.

Marx also affirms the possibility of rehabilitation within capitalism. Take, for example, his response to a principle espoused in *The Gotha Programme*, "The Regulation of Prison Labour":

A petty demand in a general workers' programme. In any case, it should have been clearly stated that there is no intention from fear of competition to allow ordinary criminals to be treated like beasts, and especially that there is no desire to deprive them of their sole means of betterment, productive labour. This was surely the least one might have expected from socialists.⁹⁹⁴

As Melossi points out, there was a fear prevalent in the workers' movement that forced, unpaid labour could lower wages in other branches of production.⁹⁹⁵ Marx asserts that opposition to uncompensated prison-labour should not be motivated by fears of competition. Rather, it should be based in the conviction that prisoners should not be treated as subhuman. Marx deems the opportunity to engage in productive labour a key factor in the prevention of crime. So too is it important for correction. As we saw, when Marx advocates for the struggles to legally limit the length of the working day, he frames it in terms of the right of private property. In other words, workers have the right to protect the only productive property they own, namely, their own labour. In the struggle against capitalists, Marx is using standards that they themselves must recognize. He is turning the ethical principles of capital against it. He is doing the same with regard to corrective justice. He is arguing that if indeed productive labour is the prisoners' sole means of betterment, which is exactly the discipline that the early workhouses and prisons were

⁹⁹⁴ Marx, *Critique of the Gotha Programme*, 22.

⁹⁹⁵ Melossi, op. cit., 33, n. 21.

attempting to instil, then the true goal of corrective justice should not be retribution, but rehabilitation.⁹⁹⁶ Indeed, Marx can be accused of flirting with the ‘work ethic’ here.

Marx’s theory of rehabilitation is part of a long tradition that begins at least as far back as Thomas More. Indeed, according to Bongier, a Marxist criminologist, More was the first to establish scientifically the relation between economic conditions and criminality.⁹⁹⁷ More asserts:

Revive agriculture and the wool industry, so that there’s plenty of honest, useful work for the great army of unemployed – by which I mean not only existing thieves, but tramps and idle servants who are bound to become thieves eventually. Until you put these things right, you’re not entitled to boast of the justice meted out to thieves, for it’s a justice more specious than real or socially desirable. You allow these people to be brought up in the worst possible way, and systematically corrupted from their earliest years. Finally, when they grow up and commit the crimes that they were obviously destined to commit, ever since they were children, you start punishing them. In other words, you create thieves, and then punish them for stealing!⁹⁹⁸

This shows that in Marx’s work there are other grounds to critique retributive justice. Marx often points to the absurdity of the functionalism with which certain political economists argue that the pickpocket is a productive labourer because they produce, albeit indirectly, books on criminal law.⁹⁹⁹ This functionalism, expressed most famously in the subsequent sociology of Durkheim, renders the prevailing conditions eternal.¹⁰⁰⁰ It cannot explain historical change. Therefore, it deems crime a necessary part of society. This concedes that society is permanently irrational.

⁹⁹⁶ Although it is anecdotal, Vonnegut’s re-interpretation of one of Marx’s most (im)famous statements also serves as evidence of Marx’s sympathy for rehabilitation: “About Stalin’s shuttered churches, and those in China today: Such suppression of religion was supposedly justified by Karl Marx’s statement that ‘religion is the opium of the people.’ Marx said that back in 1844, when opium and opium derivatives were the only effective painkillers anyone could take. Marx himself had taken them. He was grateful for the temporary relief they had given him. He was simply noticing, and surely not condemning, the fact that religion could also be comforting to those in economic or social distress. It was a casual truism, not a dictum” (Kurt Vonnegut, ‘A Dispatch from a Man Without a Country,’ *Spokesman*, 90 (2006): 17-27; 18-19: <http://www.spokesmanbooks.com/Spokesman/PDF/90Vonnegut.pdf>).

⁹⁹⁷ Bongier, op. cit., 1, n. 1.

⁹⁹⁸ Thomas More, *Utopia*, trans. Paul Turner (London: Penguin Books, 1965), 49.

⁹⁹⁹ For example, see: Marx, *Grundrisse*, op. cit., 273.

¹⁰⁰⁰ Taylor and Walton, op. cit., 233.

Marx's critique of functionalism also applies to the theory of retributive justice. As we saw, in theories of retributive justice, crime incurs a debt to society that can only be paid by punishment. In this societal book of credit and debit, there is only a false balance achieved. If we consider it from the perspective of individuals, of the particular criminal and victims, a punished crime pays the debt and restores the balance. From the perspective of society as a whole, however, the harm is not cancelled. Rather, harm is met with counter-harm, thereby creating a net surplus of injury. Furthermore, this 'transaction' requires resources beyond those that are exchanged. Given how much it costs to maintain legal and penal institutions and practices, it is unlikely that these costs could be included in the punishment. Even if they could, however, consider the social needs that could have been served by these resources if one part was not constantly being used to cancel out the other. This situation constitutes a loss overall. The absurdity of this shows that retributive justice is only an exchange of equivalents from the perspective of the individuals involved. That society must constantly pay for punishing the crime that society itself creates is irrational.

Marx's contributions to theories of corrective justice are not limited to capitalist society. We turn now to his discussion of rehabilitation in socialist societies.

12. 2: Correction Under Socialism

In one passage from *The Holy Family*, Marx describes the nature of punishment in socialist society. This is an incredibly significant passage. In it, Marx offers the beginnings of a secular theory of...confession and forgiveness. I will quote the passage in full and then, shortly thereafter, study it line-by-line.

Hegel holds that the criminal must as a punishment pass sentence on himself. *Gans* developed this theory at greater length. In Hegel this is the *speculative disguise* of the old *jus talionis* that *Kant* developed as the *only legal penal theory*. Hegel makes self-judgement of the criminal no more than an '*Idea*,' a mere speculative interpretation of the *current empiric penal code*. He thus leaves the mode of application to the respective stages of development of the state, i.e., he leaves punishment as it is. Precisely in that he shows himself more critical than his Critical echo. A *penal* theory that at the same time sees in the criminal the

man can do so only in *abstraction*, in imagination, precisely because *punishment*, *coercion* is contrary to *human* conduct. Besides, this would be impossible to carry out. Pure subjective arbitrariness would take the place of the abstract law because it would always depend on official ‘honest and decent’ men to adapt the penalty to the individuality of the criminal. Plato admitted that the *law* must be one-sided and must *make abstraction* of the individual. On the other hand, under *human* conditions punishment will *really* be nothing but the sentence passed by the culprit on himself. There will be no attempt to persuade him that *violence* from *without*, exerted on him by others, is violence exerted on himself by himself. On the contrary, he will see in *other* men his natural saviours from the sentence which he has pronounced on himself; in other words the relation will be reversed.¹⁰⁰¹

Murphy dismisses this passage: “Now except for some very brief passages in *The Holy Family*, Marx himself has nothing more to say on the topic of punishment beyond what is contained in this brief *Daily Tribune* article.”¹⁰⁰² Consequently, Murphy says he will construct a Marxist theory of punishment rather than engage in an exegesis because “there are not enough texts.”¹⁰⁰³ This is peculiar because the above-quoted passage from *The Holy Family* provides the explanation for the ambiguity he detects in Marx’s discussion of retributive justice. Murphy’s neglect of this passage is all the more strange because he later went on to make major contributions to theories of forgiveness. As one might expect from a retributivist, he is skeptical of forgiveness. Murphy argues that forgiveness often threatens “self-respect, self-defense, and respect for the moral order.”¹⁰⁰⁴ In other words, a lack of resentment for injuries suffered indicates a “servile personality.”¹⁰⁰⁵ In order to demonstrate that a theory of forgiveness does not entail a servile personality, but rather, can be the expression of revolutionary conviction, we will now engage in the exegesis that Murphy rejects.

¹⁰⁰¹ Marx and Engels, *The Holy Family*, 238-39.

¹⁰⁰² Murphy, ‘Marxism and Retribution,’ op. cit., 218, n. 1.

¹⁰⁰³ Ibid.

¹⁰⁰⁴ Jeffrie G. Murphy, *Getting Even: Forgiveness and its Limits* (New York: Oxford University Press, 2003), 19; see also Jeffrie G. Murphy and Jean Hampton, *Forgiveness and Mercy* (Cambridge: Cambridge University Press, 1988).

¹⁰⁰⁵ Murphy, *Getting Even*, op. cit., 19.

Marx's radical alternative to the prevailing theories of corrective justice is situated in a commentary on the left-Hegelians, the school of so-called 'Critical criticism.' Marx offers familiar criticisms of Kant and Hegel's theory of punishment:

Hegel holds that the criminal must as a punishment pass sentence on himself. *Gans* developed this theory at greater length. In Hegel this is the *speculative disguise* of the old *jus talionis* that *Kant* developed as the *only legal penal theory*. Hegel makes self-judgement of the criminal no more than an '*Idea*,' a mere speculative interpretation of the *current empiric penal code*. He thus leaves the mode of application to the respective stages of development of the state, i.e., he leaves punishment as it is. Precisely in that he shows himself more critical than his Critical echo.¹⁰⁰⁶

This is similar to Marx's assertions in his first critique of Hegel in his early notes on *The Philosophy Right*. There Marx argues that Hegel's seeming sanctification of the Prussian state does not stem from a betrayal of his early radicalism. Rather, it occurs because Hegel's uncritical idealism is necessarily accompanied by an uncritical positivism.¹⁰⁰⁷

Marx continues his critique of retribution: "A *penal* theory that at the same time sees in the criminal the *man* can do so only in *abstraction*, in imagination, precisely because *punishment, coercion* is contrary to *human* conduct."¹⁰⁰⁸ Given the importance of this assertion, it is quite truncated. It would be somewhat ambiguous if we did not have the benefit of comparing it to other of Marx's criticisms of retributive justice. Ultimately, what Marx is saying is that even the theory espoused by Kant and Hegel, which claims to treat individuals as self-determining, autonomous, rational free wills, necessarily reduces the human individual to an abstraction. The form of punishment espoused by the German Idealists is inherently dehumanizing. In the name of the human it is inhumane. This is because it is based in coercion. Marx does not condemn the use of violence as such. Rather, he refers to force insofar as it is expressed by the state and its laws. Elsewhere, Marx describes the state as "the social organ for the maintenance of the social order" that is "separated from society through the division of

¹⁰⁰⁶ Marx and Engels, *The Holy Family*, op. cit., 238.

¹⁰⁰⁷ Marx, *Early Writings*, op. cit., 98-99; et passim.

¹⁰⁰⁸ Marx and Engels, *The Holy Family*, op. cit., 238.

labour.”¹⁰⁰⁹ Since the state is not a genuine self-government, what Marx describes here as inhuman coercion is punishment imposed externally.

Marx continues: “Besides, this would be impossible to carry out. Pure subjective arbitrariness would take the place of the abstract law because it would always depend on official ‘honest and decent’ men to adapt the penalty to the individuality of the criminal. Plato admitted that the *law* must be one-sided and must *make abstraction* of the individual.”¹⁰¹⁰ Marx asserts that, in order to be humane, the law must account for the unique circumstances of the individual. Benevolent and competent adjudicators and administrators are unlikely given the lack of accountability endemic to anything but self-government. Even if there were such officials, however, this difficult process would give way to the subjective whims of those vested with these powers. As we saw, Hegel deems the state and therefore its punitive justice an objective and universal institution. This is why it is superior to the avenging justice of the state of nature. Conversely, Marx depicts the state and its laws as a reflection of the particular interests of the ruling class. This is the significance of his mention of the *jus talionis*. The state, including the modern state, has only avenging justice. As we saw in Diamond’s anthropology, if anything, hunter-gatherer societies, what Enlightenment thought might describe as the ‘state of nature,’ had more of the respect for the individual that Hegel attributes to societies with private property and the state. Indeed, as we will soon see, Uchendu’s aforementioned description of the primitive Igbo has certain parallels with Marx’s vision of a future society.

Marx continues: “On the other hand, under *human* conditions punishment will *really* be nothing but the sentence passed by the culprit on himself. There will be no attempt to persuade him that *violence* from *without*, exerted on him by others, is violence exerted on himself by himself.”¹⁰¹¹ The theory of corrective justice put forward by the German Idealists partially contains in embryo that to which Marx ultimately aspires. In truly human social conditions the individual is not driven toward crimes. The individual has *genuine* autonomy. If the individual nonetheless engages in crime, they are the real culprit, the actual source of the transgression. In the same way that social equality will provide, as Tawney contends, the best possible conditions for the expression and recognition of true talent,¹⁰¹² so too will it provide the best conditions for

¹⁰⁰⁹ Marx, *Critique of the Gotha Programme*, op. cit., 4; 19.

¹⁰¹⁰ Marx and Engels, *The Holy Family*, op. cit., 238-39.

¹⁰¹¹ *Ibid.*, 239.

¹⁰¹² Tawney, *Equality*, op. cit., 57.

the identification of genuine criminality and individual psychopathology. Thus, the criminal is actually blameworthy and punishable. Nevertheless, this does not bring an end to their autonomy. They are *actually* able to impose the judgement and the sentence on themselves. There is no need to pretend that the punishment derives from the free will of the autonomous individual.

Why would the individual exact a punishment on themselves? In the first instance, individuals with genuine autonomy will have a more robust sense of personal responsibility. Furthermore, they will have a more intense commitment to the community in which they actually have a stake. In the last instance, if the individual is genuinely immoral and only laments their transgressions when they are caught, they would impose this punishment on themselves from fear of excommunication by the community. Perhaps this is the other side of the liability of all who are able to labour. In the same way that each must contribute good things according to their ability, anyone who contributes bad things must be punished according to their culpability. In other words, they must make amends before they can again receive according to their needs.

Invoking the criterion of needs reminds us of Marx's critique of abstract right, of the calculation of precise equivalents. So far, what Marx has said seems to confirm Murphy's assertions that Marx basically has a theory of retributive justice. This is in tension with his critique of equivalence elsewhere. Nevertheless, Marx concludes this passage in *The Holy Family* with the following: "On the contrary, he will see in *other* men his natural saviours from the sentence which he has pronounced on himself; in other words the relation will be reversed."¹⁰¹³ Marx shows that corrective justice contains the basis for a dialectical inversion by which it becomes its opposite. The individual is genuinely autonomous. In willing the crime she actually wills the punishment. Despite this robust personal responsibility, however, others may excuse her transgression as a mistake, especially if it is rare for this particular individual. The transgressor makes her appeal to the community. The community may attribute this transgression to a human fallibility that they themselves share.

Although he criticizes Hegel's theory of retribution, Marx's alternative is indebted to Hegel's discussion of confession and forgiveness. Marx offers a secular version of this theory. In other words, this is an *immanent* rather than *transcendental* confession. To see what is meant by this, we can look at a few passages in *The Holy Family* where Marx criticizes the novelist

¹⁰¹³ Marx and Engels, *The Holy Family*, op. cit., 239.

Eugene Sue's *Le Mystere de Paris*. Marx situates a critique of religious confession within a broader critique of retributive justice. It is also worth noting that Sue is sometimes regarded as the first person to say that 'Revenge is a dish best served cold.' Marx notes how Marie, a character in the novel, becomes convinced that she must judge herself from the Christian point of view.¹⁰¹⁴ This means that she must replace her "human and therefore bearable consciousness of her debasement" with the "Christian and hence unbearable consciousness of eternal damnation."¹⁰¹⁵ In other words, the standard by which she judges herself is not internally formed and self-determined. Rather, it is a standard that, because it is beyond all possible human experience, cannot be confirmed. Therefore, it is impossible to attain, but demands our adherence nonetheless. Recall that Hegel is critical of any form of punishment that makes the individual the 'slave of justice.' Marx criticizes the religious forms of retribution on precisely these grounds. The Christian form of confession and forgiveness, which imposes its judgement in a transcendental or external way, renders Marie a "*serf of consciousness of sin.*" In this, the external judgement becomes internalized and made into an end in itself:

In her unhappy situation in life she was able to become a lovable, human individual; in her exterior debasement she was conscious that *her human* essence was *her true essence*. Now the filth of modern society which has come into exterior contact with her becomes her innermost being; continual hypochondriac self-torture because of that filth will be her duty, the task of her life appointed by God himself, the self-aim of her existence. Formerly she boasted: 'I am not the one to have fits of tears' and knew that 'what's done is done.' Now self-torture will be her *good* and remorse will be her *glory*.¹⁰¹⁶

Conversely, in Marx's theory of confession and forgiveness, the process is based in the self-determination of the individuals involved. It is not imposed externally, whether by the state or by religious authority.

Hegel's critique of Kantian and post-Kantian morality, the ethos of the 'beautiful soul,' is similar to Marx's critique of Hegel's theory of retribution. And yet, Marx dismisses Hegel's

¹⁰¹⁴ Ibid., 231.

¹⁰¹⁵ Ibid.

¹⁰¹⁶ Ibid., 232-33.

discussion of the beautiful soul. In Marx's 1844 notes on the final chapter of Hegel's *Phenomenology*, the chapter on 'Absolute Knowing,' he mentions forgiveness in multiple places, but also asserts that "Hegel keeps developing the tedious process of the beautiful soul."¹⁰¹⁷ Perhaps this is because one of the things motivating Hegel's theory of confession and forgiveness is the possibility of conscious societal change without need of violent revolution and counter-revolution. Marx clearly rejects this: revolution is necessary to achieve socialism, the truly human society. Nevertheless, Marx also aspires to communal relations in which societal transformations do not require violence. In other words, he aspires to what we could call a community of forgiveness: "It is only in an order of things in which there are no more classes and class antagonisms that *social evolutions* will cease to be *political revolutions*."¹⁰¹⁸

Marx criticizes the prevailing theories of corrective justice, namely, deterrence and retribution. This is not a purely negative critique. He offers a positive alternative. Nevertheless, he never describes this alternative as a theory of justice, corrective or otherwise. Marx likely deems his alternative theory of crime and punishment to be beyond justice. In other words, what is inadequate in the prevailing theories of corrective justice he deems to be the shortcomings inherent to corrective justice as such. This also has precursors in Hegel. As we saw, Hegel argues that, "The punishment inflicted by law is merely *just*. The common character, the connection of crime and punishment, is only equality, not life."¹⁰¹⁹ In other words, Hegel's account emphasizes some of the limits he deems to be inherent to justice. The law is a kind of failure or defeat. It is the concession that it cannot eliminate crimes. It can only punish them.¹⁰²⁰ Justice proves insufficient against that which is the cause of crimes. Marx roots crime and punishment in the historically mutable conditions of class-divided societies. He aspires to a classless, and therefore, crime-free society. Perhaps this is one of the reasons why Marx deems his theory to be ultimately beyond justice.

As we have seen, this faith in the more or less straightforward reconciliation of individual and general interests in the classless society is deeply rooted in materialist arguments. This has led to a neglect of theorization about ethics and justice in the present. This has also been inspired by the obvious constraints imposed on ethical activity by contemporary class-divided society.

¹⁰¹⁷ These notes are published in English for the first time as an appendix in Hudis, op. cit., 220. Marx also briefly mentions forgiveness (ibid., 219).

¹⁰¹⁸ Marx, *The Poverty of Philosophy*, op. cit., 152.

¹⁰¹⁹ Hegel, 'The Spirit of Christianity,' op. cit., 238-39.

¹⁰²⁰ Bernstein, 'Love and Law,' op. cit., 419.

This silence would only be justified if these determinants were total, permitting no freedom at all, which they rarely, if ever, are. This neglect is particularly disastrous when we consider that such a theory may be necessary for the actions required in any kind of transition from imperfect conditions to less imperfect conditions. Marxism has been quite dependent on the materialist arguments made by Marx. This helps to explain the paucity of material on ethics in general, and justice in particular. This silence is true not only with regard to the projected socialist future, but in the present capitalist society.

This creates significant gaps in Marx's alternative to prevailing theories of corrective justice. For example, he says very little about the extent of personal responsibility and moral culpability within capitalist conditions. Furthermore, Marx contends that the only way that punishment can be adapted to each individual is if it is the individual who undertakes it. Nevertheless, Marx says nothing about how the individual passing self-sentence can avoid falling into the subjective arbitrariness for which he criticizes any attempt to implement concrete justice under capitalism. This also provokes the question, what constitutes a genuine confession and sentence worthy of the forgiveness of others? Although the community is the culprit's 'natural saviours,' this does not imply that they will forgive every transgression and pardon every sentence, especially if the individual is a frequent transgressor. In what Marx describes as the *human* society, deterrence is abandoned altogether because it is illegitimate regardless of social circumstances. Secular notions of confession and forgiveness, what later came to be described as restorative justice, is the primary form of correction. Nevertheless, retribution may be required as the secondary, exceptional form undertaken as a last resort. Marx offers no explanation of the relation between these two forms of correction. Resolving these tensions is all the more important given the experiences of 'actually existing socialism.' For example, De George makes an important observation about the theory of punishment among Marxist-Leninist theorists in the Soviet Union:

Significantly absent from the Soviet ethical literature is also any discussion of punishment, either in theory or in practice. While it is said that an individual's motives, circumstances, and moral makeup should be considered in determining the punishment and education of criminals, there is no discussion of the retributive and utilitarian theories of punishment, and no attempt to analyze

Soviet penal practices in terms either of communist morality or the writings of Marx. Forfeiting human life for offenses against social property, a practice condemned by Marx but practiced in the Soviet Union, draws neither defense nor comment from Soviet philosophers. In like manner Soviet ethics lacks any developed doctrine of rights, and the Soviet treatments of justice are few and suffer from acute paucity of content. It is claimed that communism is the highest form of social justice because under communism all men will be equal: there will be one relationship to the means of production, there will be equal conditions of work and distribution, and each person will take an active part in the direction of social affairs. Two Soviet philosophers, V. P. Tugarinov and E. G. Fedorenko recognize in justice not only the aspect of equality but also that of recompense, but here their analysis abortively ends.¹⁰²¹

Some of these issues have been raised and addressed by subsequent theorizing, but rarely within Marxism. Indeed, Marx's alternative to prevailing theories of corrective justice has significant parallels with, and is therefore an important precursor of, subsequent theories of 'restorative justice.' Unlike Marx, these theories do not only pose an alternative, but cast it explicitly as a theory of justice.

Howard Zehr, in one of the founding texts of restorative justice, characterizes the Enlightenment theories of corrective justice: "The blindfolded goddess with balance in hand symbolizes well the impersonal, process-oriented, nature of the contemporary paradigm."¹⁰²² Indeed, when Zehr contrasts this theory with his alternative, he sounds like Hegel in his criticisms of Kant: whereas retributive justice deems crime a violation of the state and its laws, restorative justice regards it as a violation of people and their communal relations.¹⁰²³ As with both Hegel and Marx, the attempt to promote forgiveness is the foundational aspect of this alternative:

Retribution often leaves a legacy of hatred. Perhaps it is more satisfying as an experience of justice than no justice at all, but it does little to address hostilities.

¹⁰²¹ De George, *op. cit.*, 81.

¹⁰²² Zehr, *op. cit.*, 189.

¹⁰²³ *Ibid.*, 181.

Such hostilities can impede healing. That is the beauty of forgiveness. By addressing hostilities, it allows both the victim and the offender to take control of their own lives. Like reconciliation, however, forgiveness is not easy and cannot be forced.¹⁰²⁴

Zehr asserts that, whereas retributive justice focuses on the past, restorative justice focuses on the future.¹⁰²⁵ As with Hegel, the justice of revenge or retribution chains us to past transgressions. Conversely, the mutual recognition necessary for confession and forgiveness absolves these ‘debts’ for transgressor and victim, for the so-called debtor and creditor alike.

Contemporary theories of restorative justice also begin to resolve some of the aforementioned gaps in Marx’s alternative to corrective justice. Indeed, Zehr notes how retributive justice, often deemed the paradigm of making one accountable, of claiming personal responsibility, actually results in the opposite:

Many offenders are reluctant to make themselves vulnerable by trying to understand the consequences of their action. After all, they have built up edifices of stereotypes and rationalizations to protect themselves against exactly this kind of information. Many are reluctant to take on the responsibility to make right. In many ways taking one’s punishment is easier. While it may hurt for a time, it involves no responsibility and no threat to rationalizations and stereotypes. Offenders often need strong encouragement or even coercion to accept their obligations.¹⁰²⁶

Zehr contends that part of what it means for offenders to take responsibility is to share in deciding what is to be done, what will meet the obligations created by the harm.¹⁰²⁷ In this, theories of restorative justice begin to answer questions about personal responsibility and the subjective arbitrariness of declaring our culpability and determining our punishment.

¹⁰²⁴ Ibid., 192-93.

¹⁰²⁵ Ibid., 211.

¹⁰²⁶ Ibid., 197.

¹⁰²⁷ Ibid., 201.

Most important, perhaps, is that theories of restorative justice prefigure what would be possible in much more amenable social conditions. With this theory of rehabilitation, justice is not about what is deserved but what is needed.¹⁰²⁸ In other words, it shifts the emphasis away from the exacting, abstract requirements typical of commutative justice toward the concrete standards more typical of distributive justice in its highest form.

Marx's immanent critique of crime and punishment demonstrates that the capitalist state offends against its own highest principle of corrective justice: it punishes the crime that it helps to create but cannot eliminate. Therefore, punishment under capitalism is abstract and based in a bad infinite. Conversely, Marx makes contributions to a theory of rehabilitation, of genuine *correction* under capitalism and of forgiveness under socialism. As is by now familiar, however, Marx is hesitant to describe any of this in terms of justice. Although he demonstrates how an alternative arises from the self-contradictions of corrective justice under capitalism, there is every indication that, for Marx, socialism not only fully actualizes rehabilitation, but that this actualization means that it goes beyond corrective justice as such. This confirms the interpretation offered at the end of my exploration of distributive justice.

Marx's contributions to corrective justice are based, in part, in his assertion that, with regard to state power and its laws, essentially, might makes right. This has important implications for every aspect of justice, but most importantly, for that aspect of justice which remains to be discussed: complete justice. This, the ethical orientation of the individual toward the common ends of the social whole, was, in the millennia before capitalism, deemed to be the capstone of justice. It is to it that we must now turn.

¹⁰²⁸ Ibid., 200.

Part 5: Complete Justice

Chapter 13: Hegel on Complete Justice

We turn now to the question of complete justice, the ethical disposition of the individual toward the common goods of the social whole. Complete justice tends to have two components that it attempts to reconcile. The first is the individual who, when deciding how to act, considers not only her own good but also the good of others. The second component is the content of the common good. This is meant both in the sense of what defines the common good, what it is primarily taken to mean, as well as who, if anyone, is primarily responsible for the good of the social whole. Although everyone bears responsibility for the common good to a certain extent, it is often deemed to be the primary task, the social function, of a specific group. This has often been ascribed to the ruling class and the state. In this discussion of complete justice we begin again with Hegel.

Hegel espouses something akin to complete justice in his theory of ‘Ethical Life,’ although he is more inclined to speak of the universal interest and objective freedom than of the common good and complete justice. For Hegel, a good state must integrate every part of society into a more or less coherent organic whole. In the modern era, the middle-class civil servants, what he calls the ‘administration of justice,’ are especially important in this regard. Hegel deems them a universal class tasked with the reconciliation of the plurality of interests, and indeed, the occasional antagonism of interests. For Hegel, the most significant theorist of complete justice, of justice in general, is Plato. In particular, Hegel praises Plato’s attempt to construct the division of labour, the distribution of social functions, in a way that ensures the happiness of the whole society. Nevertheless, Hegel criticizes Plato for suppressing the conscience of the individual. As we have seen, for Hegel, it is only the modern state that has the potential to give due consideration to the ‘subjective freedom’ of individuals. Ultimately, Hegel’s definition of what I call here complete justice is the reconciliation of the objective freedom of the state with the subjective freedom of the individual. This can only occur when the state organizes the various orders of society into estates, which politicizes and educates them, so that each citizen develops

the capacities, the practical reason, necessary to reconcile their own particular interests with the universal interest of the social whole.

In all of the previous chapters on Hegel I have either focused on the *Phenomenology* or made it the foundation of my examination of the Hegelian corpus as a whole. In this chapter, however, I will focus primarily on Hegel's later writings, and in particular, the *Philosophy of Right*. There are at least two reasons for this. First, Hegel's theory of the state in its historical development, as well as its implications for his theory of justice as a whole, only become clearly apparent in his later works. The early works, including the *Phenomenology of Spirit*, are much more speculative in this regard. The second reason is that Marx's theory of the state was in large part forged through a critique of the *Philosophy of Right*. As we will see, there are a number of significant tensions between Hegel's early and late works with regard to questions of justice.

Hegel begins the *Philosophy of Right* with the free will of the individual. He asserts, "The Idea of right is freedom."¹⁰²⁹ Therefore, Hegel's political science will only avoid dogmatism if the starting point of freedom becomes justified *within* the exposition itself. According to Hegel, we must begin with the free will because, for we moderns, there are no immediate or obvious goods: "the will is only what it commits itself to; it is not by nature good, but can become what it is only by its own efforts."¹⁰³⁰ The world does not impose principles of good on us.¹⁰³¹ For Hegel, it is crucial which desires I choose to identify with and pursue because, as Wood notes, "My self-definition is at stake, along with the content of my freedom."¹⁰³² According to Harris, Hegel does not espouse the ancient ideal, 'Know thyself,' which presupposes an already constituted objective human perfection. Rather, his ideal is 'Make thyself.'¹⁰³³ Hegel contends that the only plausible basis for an 'objective spirit' is freedom, namely, acting according to *self-derived* and *self-imposed* principles or laws. The dialectical transitions throughout the *Philosophy of Right* are successive movements through ever more concrete, more encompassing, more robust notions of freedom. Hegel will criticize the formalism of Rousseau's notion of freedom as "obedience to the law one has prescribed for oneself,"¹⁰³⁴ as well as that offered by Kant: "the dignity of humanity consists just in its capacity of giving universal laws, although

¹⁰²⁹ Hegel, *Philosophy of Right*, op. cit., §1.

¹⁰³⁰ Ibid., §131.

¹⁰³¹ Pinkard, op. cit., 349-50; 475.

¹⁰³² Wood, *Hegel's Ethical Thought*, op. cit., 60.

¹⁰³³ Harris, *Hegel's Ladder, Volume II*, op. cit., 21.

¹⁰³⁴ Rousseau, 'On the Social Contract,' in *The Basic Political Writings*, ed. and trans. Donald A. Cress (Indianapolis: Hackett, 1987), 151.

with the condition that it is itself subject to this same legislation.”¹⁰³⁵ Nevertheless, Hegel does not wholly reject these theories. Rather, the *Philosophy of Right* culminates in his own version of the idea of freedom as the law we give ourselves.

For Hegel, the simplest and most abstract shape of freedom is the relation between the individual and things. Hegel refers to this right to own property as ‘abstract Right.’¹⁰³⁶ The relation between two separate wills mediated by property is contract. Each recognizes the right of the other to own and use what is her own property. Like Locke, Hegel more or less assumes, at least within the *Philosophy of Right*, that this must be private property. As we have seen, this property-*relation* gives rise to the principle of justice: to each their due. Nevertheless, Hegel deems this a shallow conception of recognition. Those who enter the contract are ultimately guided by their own self-interest. If this is all that justice amounted to, one or both individuals will break the contract if this is to their greater advantage. Therefore, without any other standard to guide it, abstract Right will lead to its opposite: wrong.¹⁰³⁷ Hegel rejects the idea that abstract Right, the contractual relation, or what we have called here commutative justice, can be the paradigmatic form of justice for society as a whole. The social contract fosters a common or general will but not a will that is universal in and for itself.¹⁰³⁸ We require an objective standard of right elevated above the contingency of these self-interested parties.

The search for a more universal standard is Morality. Rather than mere self-interest, the will of others is a crucial determination of the moral action. Whereas the instrumental relations of abstract Right are more concerned with consequences, Morality is based on the intentions of individuals: “Human beings expect to be judged in accordance with their self-determination, and are in this respect free, whatever external determinants may be at work.”¹⁰³⁹ The moral point of view refuses to recognize anything that is not its own. Hegel believes that modernity makes possible, for the first time, the realization of subjective freedom: “The right to recognize nothing that I do not perceive as rational is the highest right of the subject.”¹⁰⁴⁰ Nevertheless, this ‘right of subjectivity’ is only formal. The purely universal will must often result in the renunciation of desires and inclinations because they are inextricably bound with an outer world to which

¹⁰³⁵ Kant, *Foundations of the Metaphysics of Morals*, op. cit., 58-59.

¹⁰³⁶ Hegel, *Philosophy of Right*, op. cit., §40.

¹⁰³⁷ *Ibid.*, §81.

¹⁰³⁸ *Ibid.*, §75.

¹⁰³⁹ *Ibid.*, §106.

¹⁰⁴⁰ *Ibid.*, §132.

morality is indifferent. Furthermore, this morality of pure inwardness, despite its attempts to escape the particularity of the contractual relation, becomes even more subjective. It asserts that the ethical nature of an action is determined by the individual's conviction and whatever she holds to be right. It is contingent on the particular individual expressing these convictions. In this way, the moral good leads to its opposite: evil.

The only way to overcome the contradiction between good and evil is by surpassing the sheer subjectivity of the individual. This situation requires the 'right of objectivity' embodied by the state: "since action is an alteration which must exist in an actual world and thus seeks recognition in it, it must in general conform to what is *recognized as valid* in that world. Whoever wills an action in the actual world has, *in so doing*, submitted himself to its laws and recognized the right of objectivity."¹⁰⁴¹ As we have seen, the transition from Morality to a more substantive form of ethical recognition is similar to what Hegel describes as the transition from revenge to retribution, from an avenging justice to a punitive justice. If I transgress the prevailing laws according to my convictions, other people, on the basis of their own convictions, are therefore quite justified in regarding my actions as crimes. Others may subject me to a justice which, although it is only my own justice, I experience as someone else's subjective conviction acting upon me as an external force. This clash of subjective convictions can only be resolved through the objectivity of the state. Hegel describes this progress toward a genuinely social ontology as 'Ethical Life.'¹⁰⁴²

According to Hegel, whereas pre-modern societies tend to regard the existing customs and laws as sacrosanct, the 'Bildung' or culture of the modern age gives free thought a leading role in the formation of values and demands. The objective social world must conform to the rational determinations of individuals. If, however, these conscientious individuals do not take heed of their social conditions, do not appreciate that any attempt to change the world according to rational determinations must occur in a particular customary, legal, and institutional context, then these rational determinations will be nothing more than the personal whims of individuals. Like the French Revolution, it will devolve into the Terror. For Hegel, this is the importance of the objectivity conferred by Ethical Life. 'Bildung,' the art of making the individual ethical, demonstrates how these natural beings can be reborn as a second, spiritual nature: "The

¹⁰⁴¹ Ibid., §132.

¹⁰⁴² Ibid., §141.

individual attains his right only by becoming the citizen of a good state.”¹⁰⁴³ In a free society the dynamic balance between institutions prepares the individual for freedom. Thus, we must unfold these institutions and their relations as parts of an organic whole.

The three essential parts of Ethical Life are the family, civil society, and the state. They combine as the universal, particular, and individual moments of a rational syllogism. The family is the *universal* because its basis is love, the recognition of oneself in another. Civil society is the *particular*, the seeming loss of ethical life, because everyone is self-interested and deems society a mere means. The State is the *individual*, the reconciliation of the universal and particular in a *concrete* universal because reason has been realized in the world in the form of public law. For Hegel, the state is a good state if the ‘subjective freedom’ of the individual conscience is successfully reconciled with the ‘objective freedom’ of the state as a whole.

Hegel differentiates the State into three elements: (i) the legislature, or the power to determine and establish the universal; (ii) the executive, or the power to subsume particular spheres under the universal; and (iii) the sovereign, or the constitutional monarch who, as the apex of the state, unites the different powers under a single individual.¹⁰⁴⁴ Hegel believes that all of the institutions of Ethical Life gain a political character through their integration with the political state proper.¹⁰⁴⁵ The most important part of the modern state for Hegel is the executive branch, and its most significant part is the civil service. For Hegel, the civil service is tasked with the integration of all of the particular interests of the familial, civil social, and state organizations. Therefore, civil servants are the particular class which is the most representative of a universal class. They perform the “*universal interest of the state.*”¹⁰⁴⁶

The civil service is largely drawn from the middle class, which, for Hegel, is the most politically conscious and well-educated class. Furthermore, they are prevented from becoming a remote aristocracy by the sovereign above them and the people below.¹⁰⁴⁷ This can only occur, however, under two conditions. First, the people must be transformed from a disorganized “collection of scattered atoms”¹⁰⁴⁸ into organized, guild-like estates through which they can express their common interests. Second, there must be impartiality in the selection of the

¹⁰⁴³ Ibid., §153.

¹⁰⁴⁴ Ibid., §273.

¹⁰⁴⁵ Ibid., §343.

¹⁰⁴⁶ Ibid., §289.

¹⁰⁴⁷ Ibid., §297.

¹⁰⁴⁸ Ibid., §290.

members of this universal class and in the conduct of their activities. The sole standard of evaluation of a civil servant is merit. In other words, Hegel is insisting on reforms, still not achieved in the Prussian state of his time, that offices be open to talent: “The objective moment in their vocation is knowledge and proof of ability; this proof guarantees that the needs of the state will be met, and, as the sole condition [of appointment], at the same time guarantees every citizen the possibility of joining the universal estate.”¹⁰⁴⁹ Hegel asserts that this also requires decent payment and a certain degree of comfort so that their decisions are free from “subjective dependence and influence.”¹⁰⁵⁰ It is only in these circumstances that civil servants will adopt the genuine object of the administration of justice, the “proper interests of all individuals.”¹⁰⁵¹

To take one example of how the civil service acts as a universal class, we can study its relation to distributive justice. As we saw in a previous chapter, Hegel contends that one of the crucial tasks of the civil service is the ‘administration of justice.’ He acknowledges that civil society, the realm of the market, can give rise to both boundless extravagance and endless deprivation. Indeed, deprivation is to civil society what wrong and evil are to abstract Right and Morality. If left unchecked, civil society cannot help but create a ‘rabble’ that threatens the stability of the social order. Thus, harmony requires the forcible intervention of the state.¹⁰⁵² In its attempts to achieve the right balance between absolute free trade and total state control, the civil service demonstrates its capacities as the universal class and the state expresses its ability to integrate every social sphere into a coherent whole. Nevertheless, we should already be skeptical about the extent to which the civil service can be a universal class given that, as we saw, Hegel thinks that deprivation must often be resolved by resorting to colonialism.

In light of his depiction of the state and the civil service, we must ask whether or not Hegel’s theory of Ethical Life offers a robust notion of the common good. It is obvious that Hegel wants to go beyond the methodological individualism of the liberal subject with its subjective good and voluntary contracts. Nevertheless, does Hegel offer an explicit theory of the ethical disposition of the individual oriented toward the common ends, the objective goods, of the social whole? There are longstanding disagreements about this.

¹⁰⁴⁹ Ibid., §291.

¹⁰⁵⁰ Ibid., §294.

¹⁰⁵¹ Ibid., §297.

¹⁰⁵² Ibid., §185.

Pinkard notes that Hegel does not say that the state should prescribe a common set of virtues: “Quite strikingly, Hegel nowhere invokes anything strongly resembling a classical doctrine of the ‘common good’ in his theory of the state”¹⁰⁵³ Conversely, Wood asserts that “the burgher’s concerns as a professional man and a corporation member prominently include concerns about the welfare of others and about the common good of civil society as a whole.”¹⁰⁵⁴ Similarly, Avineri asserts,

Hegel’s attempt to find a sphere which transcends private interests is similar to the Platonic endeavour, but while Plato tried to neutralize his Guardians totally from ‘civil society’ by depriving them of family and private property, Hegel’s solution is less radical; it is also, after all, the very method commonly used by modern states in their attempt to ensure the relative independence of their civil service from the pressures of civil society.¹⁰⁵⁵

Harris also seizes on this connection to Plato, but gives it much wider scope. For Harris, not only does Hegel endorse a notion of the objective common good, he also offers something akin to a theory of complete justice in its classical sense:

‘Social Justice’ is the focal concept in Hegel’s practical philosophy just as it is in that of Plato. The justice of fairness, which is the *individual* virtue that is vital in social relations, must derive its essential criteria of what *is* ‘fair’ from the ideal harmony of the whole. What is fair is not generally or abstractly what is equal, but what is proportioned to the harmony of that whole, or what is required by and for the ‘living bond’ that holds the whole together.¹⁰⁵⁶

There is some evidence for Harris’s interpretation. For example, Hegel asserts that Plato was correct when he contends that justice as a whole, what we are calling here ‘complete justice,’ has its foundation in the state: “Plato had a firm grasp of this point when he showed that what justice

¹⁰⁵³ Pinkard, *op. cit.*, 487.

¹⁰⁵⁴ Wood, *Hegel’s Ethical Thought*, *op. cit.*, 27.

¹⁰⁵⁵ Shlomo Avineri, *Hegel’s Theory of the Modern State* (Cambridge: University of Cambridge Press, 1974), 158.

¹⁰⁵⁶ H.S. Harris, ‘The Social Ideal of Hegel’s Economic Theory,’ in *Hegel’s Philosophy of Action*, eds. Lawrence S. Stepelevich and David Lamb (Atlantic Highlands, New Jersey: Humanities Press, 1983), 55.

is in and for itself—which he correctly understood in its entirety to be included under the right of spirit—can be exhibited only in the objective configuration of justice, namely the construction of the state as ethical life.”¹⁰⁵⁷ Indeed, Hegel asserts that Plato presents the substance of Ethical Life in its “ideal *beauty and truth*.”¹⁰⁵⁸ Furthermore, Harris’s interpretation is not weakened by Hegel’s evident disagreements with Plato. For example, Hegel criticizes Plato’s explanation of the ethical substance of the state because it is devoid of subjectivity. In other words, Plato’s depiction of the state does not sufficiently account for the conscience of the individual:

The principle of the *self-sufficient and inherently infinite personality* of the individual, the principle of subjective freedom, which arose in an inward form in the *Christian* religion and in an external form (which was therefore linked with abstract universality) in the *Roman* world, is denied its right in the merely substantial form of the actual spirit [in Plato’s *Republic*]. This principle is historically later than the Greek world, and the philosophical reflection which can fathom these depths is likewise later than the substantial Idea of Greek philosophy.¹⁰⁵⁹

For Hegel, Plato commits an injustice when, in establishing his ideal state, he abolishes the spheres of intimacy and of private property. This is one reason why Hegel invests such importance in the family and especially civil society in modern Ethical Life. Furthermore, Hegel asserts that Plato denies individuals their rights when his ruling class, the guardians, allocate people to the different castes in the social division of labour.¹⁰⁶⁰ Hegel deems this to be little better than the Indian caste-system, which assigns social functions according to birth alone.¹⁰⁶¹ For Hegel, one of the reasons why the modern era inaugurates the age of freedom is because it increasingly recognizes that individuals should be able to freely choose their own vocation. This is true especially of the civil service which should be open to any citizen with the will and the appropriate merits. Indeed, this freedom to choose our own path, to ‘make thyself,’ indicates what is actually the most important principle in Hegel’s political philosophy.

¹⁰⁵⁷ Hegel, quoted in Williams, op. cit., 92.

¹⁰⁵⁸ Hegel, *Philosophy of Right*, op. cit., §185.

¹⁰⁵⁹ Ibid.

¹⁰⁶⁰ Ibid., §185; §206; §262.

¹⁰⁶¹ Ibid., §262.

Although Harris is probably the most knowledgeable English-language interpreter of Hegel, he dramatically overestimates the significance of justice for Hegel. Harris neglects the extent to which, for Hegel, justice, including complete justice, has no status independent of what is actually the focal concept in his practical philosophy: freedom. For example, in his lecture-notes in the *History of Philosophy*, Hegel asserts that, whereas Plato, in works like *The Republic*, depicts justice as being based in the “organism of the state,” for we moderns, “‘justice’ according to its true concept means ‘freedom’ in the subjective sense.”¹⁰⁶² With this in mind, we can begin to understand Hegel’s theory of what we have called complete justice.

Hegel shows the merely partial character of what we have referred to here as commutative justice, distributive justice, and corrective justice. They must be unified into a coherent whole by the state. Therefore, Hegel does have a theory of something akin to complete justice. In a good society, each individual has a role in, and identifies with, the Ethical Life of the state. When the state organizes its citizens into the system of estates, it politicizes them because each must contribute to the articulation of their own particular interests in ways that situate them in the universal interests of the social whole. This educative function of the state cultivates practical reason in its citizens. This is the way in which subjective freedom and objective freedom are reconciled. Nevertheless, Hegel also seems to collapse justice into his notion of freedom. This occurs primarily because, unlike the ancients, Hegel does not believe that there is a pre-given, ontological good, much less natural right in its classical sense. Therefore, the way to avoid license, or, what Hegel calls ‘arbitrary freedom,’ is not a principle of justice. Rather, it is the sufficient universalization of freedom. This is why Hegel is more inclined to speak of the universal interest rather than the common good.

Hegel also rejects natural right in its modern sense. He criticizes the instrumental reason of the utilitarian reduction of duty to desire and the formalistic reason of the deontological adherence to duty irrespective of desire. Instead, he aspires to their reconciliation. The liberal notion of freedom tends to regard others as limits to my liberty. The only thing that justifies ceding certain liberties in the establishment of ‘civilized’ society is preserving a still greater liberty. This is the best possible situation for a freedom that is based in a conception of ‘rationality’ according to which the most rational outcome is receiving much and giving little.

¹⁰⁶² G. W. F. Hegel, *Lectures on the History of Philosophy 1825-6: Volume II: Greek Philosophy*, ed. Robert F. Brown (New York: Oxford University Press, Inc., 2011), 222-23.

Hegel disagrees with this framework. Although certain forms of social relations certainly do impose constraints, nonetheless, the individual acting in isolation also suffers significant limitations because she is prevented from undertaking important self-defining activities that can only occur in concert with others. Furthermore, Hegel rejects the zero-sum notion of rationality. Certain aspects of our fulfillment are necessarily reciprocal. In other words, they are only possible to the extent that one is giving approximately as much as they are receiving. In this mutual expression of freedom, individuals attempt to not only avoid encroaching on each other, but to positively contribute to each other in their accomplishment of things that neither could do in isolation. This is Hegel's notion of recognition.

Hegel's depiction of Ethical Life as the achievement of recognition inspires questions about whether or not he adequately incorporates abstract Right and Morality. In other words, does Hegel successfully reconcile subjective freedom with objective freedom? There are also long-standing debates about this. Marcuse, for example, deems Hegel's discussion of Morality quite impoverished.¹⁰⁶³ He contends that Hegel simply subsumes it into Ethical Life without adequately preserving its essential aspects, as would be necessary in any genuinely dialectical negation. For Marcuse, this is because Hegel's notion of the state is quite functionalist: "His justification of the strong state was made on the ground that it was a necessary supplement to the antagonistic structure of the individualist society he analyzed."¹⁰⁶⁴ Conversely, Pippin argues that what has vanished in the negation of Morality by Ethical Life is self-will and individualistic conscience, not individual will and conscience itself.¹⁰⁶⁵ The individual's dignity is grounded in ethical substantiality and she is autonomous only by virtue of such participation.¹⁰⁶⁶ While the conscience of each individual must account for the collective good from the very outset, nonetheless, the social whole must also dedicate itself to the self-actualization of each and every one of its numbers.¹⁰⁶⁷ Similarly, Siep argues,

With respect to the existence of such a community, all rules, rights, and duties, as far as they concern individuals' external conduct, are relative, i.e., they can be

¹⁰⁶³ Marcuse, *Reason and Revolution*, op. cit., 200.

¹⁰⁶⁴ *Ibid.*, 61.

¹⁰⁶⁵ Robert B. Pippin, 'Hegel, Ethical Reasons, Kantian Rejoinders,' *Philosophical Topics*, 19.2 (Fall 1991): 99-132; 110-11.

¹⁰⁶⁶ *Ibid.*

¹⁰⁶⁷ *Ibid.*, 123.

restricted for the sake of this existence. But with regard to the freedom of individuals, the community is also relative in its own manner; if it fundamentally or ‘permanently’ ceases to assure the legal, moral, and ethical freedom of individuals, it can no longer lay claim to such duties.¹⁰⁶⁸

Nevertheless, as Siep also notes, “Hegel himself is not very clear on this point.”¹⁰⁶⁹ Hegel does not offer much of an explanation about what this individual conscience portends.

These questions become murkier when we note that, for Hegel, while each nation-state is the ultimate expression of the universal in relation to its own population, in relation to other nation-states, they do not follow a universal will, but rather their own particular wills. Indeed, Hegel argues that the ‘ethical moment of war’ is not an ‘absolute evil’ because warfare bolsters patriotism: “This is apparent in various occurrences in history, as when successful wars have averted internal unrest and consolidated the internal power of the state.”¹⁰⁷⁰ A few questions arise. How can the state, heralded by Hegel as the embodiment of universal freedom, be akin to an individual in a state of nature writ large? Why must the state resort to war to intensify patriotism if it reconciles the duties and interests of its citizens, thereby establishing itself as the basis of their concrete freedom? Is this a bad infinite that is analogous to Hegel’s appeal to colonialism for the resolution of problems of distributive justice?

These questions become murkier still when we note that, for Hegel, the Ethical Life of states in the international domain is not the highest, shall we say, the *most complete* form of justice. This standard of ‘right’ is not a natural law against which the positive law of the state can be judged. Rather, Hegel’s standard is history. Ultimately, the rights embodied by abstract Right, Morality, and Ethical Life are subordinate to the right of world spirit. Hegel asserts that the justice meted out to individuals in the realm of Ethical Life, the sphere of conscious activity, is only an “imperfect justice” relative to the “absolute Right” of “*world history as the world’s court of judgement.*”¹⁰⁷¹

¹⁰⁶⁸ Ludwig Siep, ‘The ‘Aufhebung’ of Morality in Ethical Life,’ *Hegel’s Philosophy of Action*, eds. in Lawrence S. Stepelevich and David Lamb (Atlantic Highlands, New Jersey: Humanities Press, 1983), 152.

¹⁰⁶⁹ Ibid.

¹⁰⁷⁰ Hegel, *Philosophy of Right*, op. cit., §324.

¹⁰⁷¹ Ibid., §340; §345. Hegel expresses his view of history in its most Machiavellian terms in his posthumously published ‘The German Constitution’: “Human beings are foolish enough to allow their ideal visions of selfless champions of freedom in religion and politics, and the inner warmth of their enthusiasm, to distract them from the truth which resides in power, and so to believe that a work of human justice and dreams of the imagination are

When the leading nation that is responsible for the latest progression of humankind finally actualizes all of its potential, the age becomes decadent. Isolated thinkers can express their radically individual conscience, but this is only a negative criticism of the prevailing order. It is not a positive vision of an alternative order to come. Nevertheless, the development of world-Spirit is only abstract and powerless without the motive power of individuals acting according to their own interests. Indeed, it is in this context that Hegel asserts, as we have already studied elsewhere, “*nothing great in the world* has been accomplished without *passion*.”¹⁰⁷² A higher order can only emerge through the actions of those rare ‘world-historical individuals’ who, obsessively committed to their own passion, interests, and vision, unwittingly forge the higher phase of freedom in the development of humankind.

These world-historical individuals, the Alexanders, the Caesars, the Napoleons, have the “right of heroes to establish states.”¹⁰⁷³ Hegel contends that these world-historical individuals and the new “civilization” they are founding may treat all other nations as more or less “barbarian” peoples—after all, “so mighty a form must trample down many an innocent flower.”¹⁰⁷⁴ Indeed, Hegel describes human history heretofore as “the slaughter-bench at which the happiness of peoples, the wisdom of states, and the virtue of individuals have been victimized.”¹⁰⁷⁵ Furthermore, in these most “comprehensive relations” of history there are “momentous collisions” between, on the one hand, the acknowledged rights, laws, and duties, and on the other hand, the ambitions of world-historical individuals who are the unwitting harbingers of a higher order.¹⁰⁷⁶

They who on moral grounds, and consequently with noble intention, have resisted that which the advance of the spiritual idea makes necessary, stand higher in moral worth than those whose crimes have been turned into the means—under the direction of a superior principle—of realizing the purposes of that principle. But in such revolutions both parties generally stand within the limits of the same

secure against the higher justice of nature and truth. But this justice makes use of necessity to compel human beings to accept its authority, in defiance of all their convictions, theories, and inner fervour” (Hegel, *Hegel: Political Writings*, op. cit., 60).

¹⁰⁷² Hegel, *History of Philosophy*, op. cit., 23.

¹⁰⁷³ Hegel, *Philosophy of Right*, §350.

¹⁰⁷⁴ Hegel, *History of Philosophy*, op. cit., 32.

¹⁰⁷⁵ *Ibid.*, 21.

¹⁰⁷⁶ *Ibid.*, 29.

circle of transient and corruptible existence. Consequently it is only a formal rectitude, deserted by the living Spirit and by God, which those who stand upon ancient right and order maintain.¹⁰⁷⁷

What formerly stood within ‘the limits of the same circle of transient and corruptible experience,’ namely, the antinomy of equal rights between which force decides, explodes into the genuinely tragic situations through which the Idea develops, the “truth striving and urging towards itself.”¹⁰⁷⁸ Therefore, the history of the world occupies a higher ground than morality. Although these ultimate results are not the conscious aim of world-historical individuals, the substance of their actions creates an additional result that recoils back upon them.¹⁰⁷⁹ However profound the conflagration, this general Idea remains untouched in the background. Hegel famously calls this the “*cunning of reason*.”¹⁰⁸⁰

Hegel believes that what ethics can accomplish is circumscribed by the spirit of the age. Therefore, our historical judgements of these past eras must account for this in terms of our understanding of history as a whole. This is how Hegel can assert the following, which should also remind us of similar statements by Marx: “Slavery occurs in the transitional phase between natural human existence and the truly ethical condition; it occurs in a world where a wrong is still right. Here, the wrong *is valid*, so that the position it occupies is a necessary one.”¹⁰⁸¹ Nevertheless, for Hegel, this is also the significance of the modern era: it inaugurates the reconciliation of morality, ethics, and politics into a single cohesive freedom. Or does it?

There are also long-standing debates about whether or not Hegel deems the modern era the end of history. Certain theorists, such as Pinkard, argue that, for Hegel, this certainly is the end of history:

Prior to Napoleon’s creation of a new Germany, Hegel had been calling for a new order. Now, having seen his call answered – although not completely and

¹⁰⁷⁷ Ibid., 67.

¹⁰⁷⁸ Ibid., 29.

¹⁰⁷⁹ Ibid., 28.

¹⁰⁸⁰ Ibid., 33.

¹⁰⁸¹ Hegel, *Philosophy of Right*, op. cit., §57.

certainly not in all its details – he became increasingly interested in defending and reforming that order in the face of what he took to be its enemies.¹⁰⁸²

Pinkard contends that this is why a much more speculative and future-oriented work like the *Phenomenology of Spirit* gained an ambiguous relationship to the rest of Hegel's corpus, while he deemed the *Science of Logic* increasingly important for his legacy. Indeed, he was in the process of redrafting it at the time of his death. Similarly, Gadamer argues that, for Hegel, this is the end of history because everyone now acknowledges that, irrespective of our social circumstances, the human essence is freedom. No future order could be based on a new principle: "It is no longer possible for anyone still to affirm the unfreedom of humanity. The principle that all are free never again can be shaken."¹⁰⁸³ Nevertheless, there is still 'history' in the sense that the principle of universal freedom must be translated into reality: "Obviously this points to the unending march of world history into the openness of its future tasks and gives no becalming assurance that everything is already in order."¹⁰⁸⁴ In a similar fashion, Williams asserts that, for Hegel, while logic can be closed, the empirical realm remains open.¹⁰⁸⁵ Indeed, Alexander Kojève, one of the most influential Hegelians of the twentieth-century, took Hegel quite literally in this respect. He largely abandoned theoretical work and joined the French civil service where he was, as he put it, "presiding over the end of history."¹⁰⁸⁶

Conversely, Dickey and Nisbet, the editors of Hegel's *Political Writings*, assert that Hegel aspires to a second Reformation. While Luther's Reformation admirably reformed Christian doctrine, it failed to adequately reform Christian life. Hegel's theory of the state as the embodiment of Ethical Life was to be the agent of this task.¹⁰⁸⁷ Dahlstrom points to similar conclusions. He notes the liberal criticisms of Hegel that, since he says so little about individual conscience in the later stages of the *Philosophy of Right*, his theory of the state does not

¹⁰⁸² Pinkard, op. cit., 374.

¹⁰⁸³ Hans-Georg Gadamer, *Reason in the Age of Science* (Cambridge: MIT Press, 1983), 37.

¹⁰⁸⁴ Ibid.

¹⁰⁸⁵ Robert R. Williams, *Recognition: Fichte and Hegel on the Other* (New York: State University of New York Press, 1992), 267-68.

¹⁰⁸⁶ This humorous anecdote is conveyed by Allan Bloom in his foreword to Leo Strauss, *On Tyranny: Revised and Enlarged* (Ithaca, New York: Cornell University Press, 1975), vii.

¹⁰⁸⁷ Laurence Dickey and H. B. Nisbet, 'General Introduction,' in G. W. F. Hegel, *Hegel: Political Writings*, eds. Laurence Dickey and H. B. Nisbet (Cambridge: Cambridge University Press, 1999), xxv.

sufficiently affirm the dignity of our subjective freedom.¹⁰⁸⁸ Dahlstrom attempts to counter these criticisms by pointing to, among other things, Hegel's discussions of those historical junctures when Ethical Life must cede to individual conscience: "As examples of such periods Hegel mentions Athens at the time of Socrates, the Rome of the Stoics, and just possibly his contemporary Germany. In this way Hegel clearly distinguishes between his systematic account of the relationship of morality to ethical life and the possible, historical forms of this relationship."¹⁰⁸⁹ Finally, Avineri notes Hegel's assertion that because philosophy is only its own time comprehended in thought, political science must concern itself with what is, not with what ought to be. Avineri then asserts: "the consequence is inescapable: that though Hegel is not announcing the advent of a new world or preaching it, his very ability to comprehend his own world may already point to its possible demise."¹⁰⁹⁰

The stakes of this are extremely high. If Hegel does not deem the modern era the end of history, his dialectic falls to pieces. It is not sufficient that Hegel, like Socrates or the Stoics, be an isolated individual criticizing the present because unlike them Hegel professes a theory of universal history. If this is not the end of history, then his dialectic does not become a self-enclosed circle. It does not achieve the Absolute within which everything is contained. It does not become the good infinite within which all truth claims are immanent to possible human experience. Instead, it becomes an infinite regress, a spurious or bad infinite. It cannot verify that it knows the true grounds of thought. Skepticism and doubt thereby persist because Hegel's attempt at an immanent method becomes no less transcendental than any of the other metaphysical frameworks. In order to answer these questions, we must first return briefly to the conclusion of Hegel's *Phenomenology of Spirit*, a much more speculative and optimistic work, before comparing it to the strange relation between his most important late works, the *Philosophy of Right* and the *Science of Logic*.

In the *Phenomenology of Spirit*, Hegel declares Christianity the absolute religion because it shows what it is for a god to die. Therefore, the divine can be interpreted within human experience.¹⁰⁹¹ The death of God is not terrifying because it is only the death of God as

¹⁰⁸⁸ Daniel O. Dahlstrom, 'The Dialectic of Conscience and the Necessity of Morality in Hegel's *Philosophy of Right*,' *The Owl of Minerva*, 24.2 (Spring 1993): 181-89; 181-82.

¹⁰⁸⁹ *Ibid.*, 187-88.

¹⁰⁹⁰ Avineri, *op. cit.*, 129.

¹⁰⁹¹ Harris, *Hegel's Ladder: Volume II*, *op. cit.*, 732.

something wholly external to us.¹⁰⁹² Far from inaugurating a situation where all is permitted, the modern era makes possible the emergence of the divine into human existence. This is the true religious community that creates a world and knows itself as the creators of that world. Heretofore, human history has occurred ‘behind our backs.’ It has been beyond our control, an alien and inhuman thing.¹⁰⁹³ Modernity reveals that our goal is the universalization of the knowledge of history in all of its major stages, as shapes of consciousness, and of ourselves as the product of that history. Since freedom is the comprehension of necessity, this provides the grounds for making our history in a conscious, rational, and free way.

When the divine and the human are reconciled in the true religious community, the relation between good and evil no longer separates into the irreconcilable binary of the pure evil of the fallen condition of human life and the pure goodness of an afterlife that is separate from our own. Therefore, this world is simultaneously good and evil. Absolute Knowing comprehends that selfishness is evil, but that it is only the self that can have knowledge and act. This conscientious individual, as an individual, is open to all manner of contingency and can give rise to devastating unintended consequences. Nevertheless, the situation changes if we consider society as a whole. When someone transgresses the community according to the principles of a higher community, the initial reaction will be to condemn the conscientious individual as ‘evil.’ Therefore, evil is a necessary moment in the developments of the good. Nevertheless, Hegel’s ideal is that the individual with Absolute Knowing can step outside of the community, articulate the conscientious principle through which the community could advance or develop, and then be invited back into the community with forgiveness.¹⁰⁹⁴ Social development will no longer require the violence that characterizes the past history of humankind. For Hegel, the modern state can bring an end to ‘rational misfortune,’ to genuinely tragic situations. This is its educative function.

In this community of forgiveness, Hegel attempts to reconcile what we have called commutative, distributive, corrective, and complete justice. We saw earlier that Hegel distinguishes between private property and common property, as well as the laws to which they each give rise. The principle of justice of private property is to each their due. Its exemplary virtue is honesty and its paradigmatic activity is to ‘honour thy debts.’ In other words, for Hegel, the law of private property is ‘tell the truth.’ Conversely, the principle of justice of communal

¹⁰⁹² I owe this point to David McNally.

¹⁰⁹³ Hegel, *Phenomenology of Spirit*, op. cit., §87.

¹⁰⁹⁴ Harris, *Hegel’s Ladder: Volume II*, op. cit., 732.

property is to each their need. Its exemplary virtue is charity and its paradigmatic activity is ‘love thy neighbour.’ In other words, for Hegel, the law of communal property is ‘do the good.’ As we saw, Hegel raises these points during his criticism of formal law-giving, which is his initial critique of Morality. He argues that one can only tell the truth and do the good if one knows what the truth and the good are. Practical reason is at one and the same time an ethical and an intellectual capacity. These two principles of justice arise again in the final critique of Morality in the *Phenomenology*, his discussion of the ‘beautiful soul.’ As we saw, the practical imperative, ‘do the good,’ emerges with the ‘acting consciousness.’ The theoretical imperative, ‘tell the truth,’ arises again with the ‘judging consciousness.’ It is only with their confession and forgiveness that they come to the realization that whatever the good and the true are, the ways in which we have come to know them is an irreducibly social process. Hegel’s social ontology is thereby consummated in the community of forgiveness.

We also saw that, for Hegel, this community is the transcendence of revenge and retribution by recognition. This is the highest form of corrective justice. It breaks the cycle of reactive violence. Finally, with the reconciliation of the human and the divine, the state with the religious community, Hegel believes that every aspect of justice is integrated into the capstone of justice, what we call here complete justice, but what Hegel would likely call ‘rational freedom’ or ‘objective spirit.’ This community of forgiveness, the manifestation of the divine on earth, brings us closer to what Hegel calls Absolute Knowing. Everything formerly deemed transcendental is absorbed into a self-enclosed circle. This society does not demand uniformity—it achieves unity. It embraces a social cohesion that allows differences and does not devolve into tragic conflict. As Williams notes, the Latin root of ‘absolute’ means ‘to loose,’ ‘absolve,’ or ‘release.’¹⁰⁹⁵ This is the promise held by the *Phenomenology of Spirit*.¹⁰⁹⁶

When we turn to his later works, Hegel’s perspective splits into the pessimistic realism of the *Philosophy of Right* and the abstract optimism of the *Science of Logic*. With regard to the *Philosophy of Right*, individual conscience and the community of forgiveness are muted, if not absent altogether. In contrast to the community of forgiveness, in which conscientious calls for transforming prevailing customs and laws would not provoke state repression, revolution, and counter-revolution, the state that Hegel describes in the *Philosophy of Right* remains dependent

¹⁰⁹⁵ Williams, *Recognition: Fichte and Hegel on the Other*, op. cit., 261.

¹⁰⁹⁶ Although he does not draw out all of these connections, I am heavily indebted to Harris for my interpretation of Hegel: Harris, *Hegel’s Ladder: Volume II*, op. cit., *et passim*.

on retribution, colonialism, war, and patriotic fervour. It is the *Science of Logic* that carries the mantle of attempting to reconcile the theoretical and practical imperatives into a self-enclosed system. The penultimate chapters are about what he calls ‘the Idea of the True’ and ‘the Idea of the Good.’ The former, using the entire course of the dialectical method, attempts to comprehend the world as it is in itself. The latter, using its own reasonable conviction, attempts to actualize the good, to transform the world into a more rational and freer domain.¹⁰⁹⁷ And yet, when Hegel reconciles Theoretical Reason and Practical Reason in the Absolute Idea, he does so only in thought, whereas the *Phenomenology of Spirit* attempted it in reality. It seems that the mature Hegel dramatically curtails his horizons.

Irrespective of where commentators fall in the ongoing debates about Hegel’s political philosophy, it is clear to almost everyone that, for Hegel, the most important ethical principle is freedom. Indeed, as we have seen, Hegel more or less collapses justice into what he thinks is a sufficiently universal freedom. When justice is most conspicuous in Hegel’s writings, it is often for the wrong reasons. Many of his most egregious slides into bad infinities have to do with the different parts of justice. We should consider in this light the fact that, in the *Philosophy of Right*, Hegel’s attempt at a non-dogmatic starting point is freedom. Everyone since Hobbes concedes that individuals imbued with a free will are a necessary condition for a general freedom. Nevertheless, if Hegel cannot successfully close his political philosophy, perhaps ‘The Idea of Right is freedom’ is a dogmatic beginning. Why start there? Why not begin with ‘The Idea of Right is complete justice’? Why not ‘The Idea of freedom is Right’? This is not to reject freedom as a value, but it is to point to unresolved tensions. Of course, Hegel rejects the arbitrary freedom of the individualistic will. But even a ‘social’ freedom may not avoid arbitrariness if it is not accompanied by a sufficiently independent notion of justice. In terms of our interpretation of Marx, all of this shows how far Hegel already goes in devaluing justice. In this, he follows widespread trends in the modern era. This not only raises questions about philosophical tendencies but also about historical conditions. In other words, it raises the question not merely of Marx’s intellectual influences, but of Marx’s absorption, perhaps uncritically, of capitalist social relations. It is to Marx that we now turn.

¹⁰⁹⁷ Hegel, *Science of Logic*, op. cit., 783-824.

Chapter 14: Marx on Complete Justice

We turn now to the question of whether or not there is a notion of complete justice in Marx's critique of capitalism and in his affirmation of socialism. In other words, does Marx offer a theory, or at least the beginnings of a theory, of an ethical disposition of the individual directed toward the common ends of the social whole? A brief canvas of commentators shows profound disagreement about these issues. This is unsurprising. Marx does not use the term 'complete justice' or any of its analogues, such as 'general' or 'total' justice, and he rarely speaks of the justice embodied by the state in general. Nevertheless, when he speaks of things that are relevant to complete justice, such as the general interest and common needs of the social whole, it initially appears that what Marx says about complete justice is rife with tensions. As with the other forms of justice, however, all of Marx's statements about the content of complete justice, rare as they are, can be made consistent with each other. I will explore the role of complete justice in Marx's theories of capitalism, the revolutionary overthrow of capitalism, and in the achievement of socialism. In doing so, I will address questions about the extent to which, for Marx, states and ruling classes actually embody some form of a general interest, and whether or not Marx's depiction of the working class as the bearer of the universal interest entails a notion of complete justice.

For some commentators these questions are moot because they deem notions of complete justice to be obsolete in capitalist modernity. Take, for example, William Leon McBride, who believes that Marx is silent about justice because it will wither away in socialism.¹⁰⁹⁸ He likens this to the way in which older notions of complete justice have dissolved already:

It is often forgotten, because Plato is so familiar to most Western political theorists, that there is a serious difficulty in trying to render Plato's basic schema contemporary. For the expression 'a just man' or 'a just woman' is an archaism, and there is no other phrase in our language (or, to the best of my knowledge, in the other major modern Western languages) that fully translates Plato's intended meaning, when he speaks of justice in the individual, that does not itself strike one as somewhat quaint or old-fashioned. In this one respect, then, we may be

¹⁰⁹⁸ McBride, *op. cit.*

slightly less ideological in our thought and speech than our ancestors were. Is it not barely possible to conceive of a future in which the same state of affairs would obtain on the level of *social* ‘justice,’ as well?¹⁰⁹⁹

McBride does not ask whether or not his acceptance of the prevailing opinion about complete justice is an uncritical absorption of capitalist social processes. Indeed, this might be more ideological than the theory espoused by Plato. Similarly, Donald van de Veer asserts that, in the discussions about the role of justice in Marx’s work, we are clearly concerned with distributive justice, not with what Aristotle described as justice in its general sense: “In regard to the question of Marx’s attitude toward justice, what is at issue is obviously a dispute about ‘justice’ in *one* of its several senses. We are not concerned with justice as regarded as a personal trait or disposition exhibited by the just man.”¹¹⁰⁰ In a similar fashion, William H. Shaw argues that, for Marx, moral objectivity cannot be rooted in human nature or species-being because, contrary to Aristotle and Feuerbach, human nature is too vague an idea to entail a complex moral theory.¹¹⁰¹

The interpretation of Cornelius Castoriadis is somewhat different. Like the others, he notes that the question of what he calls “total justice,” which is frequently discussed in Plato and Aristotle’s political works, “grinds to a halt with the philosopher of history, Marx.”¹¹⁰² Unlike the others, however, for Castoriadis, the question of ‘total justice,’ the most significant issue in any political regime, would persist into the second phase of socialism. He believes that Marx simply dismisses such questions.

There are other commentators, however, who claim that Marx does espouse a theory of something akin to complete justice. Alan Gilbert argues that when Marx, in his early pamphlet ‘Wage-Labour and Capital,’ asserts that wage-labour is “unnatural,” he invokes “natural justice” in an Aristotelian sense.¹¹⁰³ Indeed, Gilbert contends, “Though he and Engels hesitated to characterize their own claim as one of justice, his revolutionary demand coincides with a broad Aristotelian conception of a community based on a common good.”¹¹⁰⁴ Similarly, Paul

¹⁰⁹⁹ Ibid., 217-18.

¹¹⁰⁰ van de Veer, *op. cit.*, 376, n. 31.

¹¹⁰¹ William H. Shaw, ‘Marxism and Moral Objectivity,’ in *Marx and Morality*, eds. Kai Nielsen and Steven C. Patten (Guelph: Canadian Association for Publishing in Philosophy, 1981), 31-32.

¹¹⁰² Castoriadis, *op. cit.*, 725.

¹¹⁰³ Alan Gilbert, ‘Marx’s Moral Realism: Eudaimonism and Moral Progress,’ in *After Marx*, eds. Terence Ball and James Farr (New York: Cambridge University Press, 1984), 158.

¹¹⁰⁴ Ibid., 163-64.

Blackledge argues that Marx criticizes liberal moral philosophy, best typified by Kant, not because he is a nihilist, but rather, because he rejects a morality that attempts to suppress our natural desires: “Against Kantianism, Marx’s ethics amounts to a modern version of Aristotle’s account of those practices underpinning the virtues through which individuals are able to flourish within communities.”¹¹⁰⁵ According to Blackledge, this Aristotelianism is evident in Hegel too. Although Hegel historicized the concept of the human essence, he avoided relativism with his notion of an Ethical Life that rationally articulates the relation between the freedom of the individual and that of the broader community.¹¹⁰⁶ Blackledge does not ask whether or not a ‘historicized’ human nature is fundamentally antithetical to the Aristotelian virtue ethics from which he attempts to develop a Marxist virtue ethics.

George E. McCarthy argues that, with regard to the question of Marx and ethics, the most difficult issue has to do with Marx’s relation to principles of justice.¹¹⁰⁷ Nevertheless, McCarthy detects an unconscious ethical structure and an implicit theory of social justice in Marx that are “clearly there to be uncovered.”¹¹⁰⁸ For McCarthy, Anglo-American philosophers have focused too narrowly on questions of distributive justice. Therefore, they have neglected broader understandings of justice in Marx’s work. McCarthy also contends that, as soon as we appreciate the influence of the ancients for Marx’s thought, “much of the debate over morality and justice in Marx simply disappears.”¹¹⁰⁹ Indeed, McCarthy argues that, as with Aristotle, the focus of Marx’s work is “universal or total justice.”¹¹¹⁰ This should not surprise us, McCarthy notes, because the natural law tradition includes notions of emancipation. Ultimately, for McCarthy, Marx defines social justice as “equality of freedom or self-determination.”¹¹¹¹

McCarthy is beset with a number of problems. As is often the case with Marxists who attempt to draw parallels between Aristotle and Marx, there is a dramatic underestimation of the difference between Aristotle’s ethics and modern moral philosophy, and indeed, between Aristotle’s ethics and, say, Epicurus’s ethics. For example, McCarthy misinterprets Aristotle’s discussion of prudence or practical reason in book VI of the *Nicomachean Ethics*, the book

¹¹⁰⁵ Blackledge, *Marxism and Ethics*, op. cit., 3.

¹¹⁰⁶ *Ibid.*, 35.

¹¹⁰⁷ George E. McCarthy, *Marx and the Ancients: Classical Ethics, Social Justice, and Nineteenth-Century Political Economy* (Savage, Maryland: Rowman & Littlefield Publishers, Inc., 1990), 272.

¹¹⁰⁸ *Ibid.*, 249; 266.

¹¹⁰⁹ *Ibid.*, 274.

¹¹¹⁰ *Ibid.*, 64.

¹¹¹¹ *Ibid.*, 273.

immediately after his discussion of justice. For McCarthy, Aristotle discusses the nature of moral knowledge in book VI because he believes that “moral knowledge can never be universal, necessary, or scientific.”¹¹¹² This, for the most part, is incorrect. Aristotle raises this discussion and argues that ethics is about the “ultimate particulars,” not because he denies the existence of natural justice or ethical universals, but rather, because becoming virtuous, acquiring the ethical disposition, requires the cultivation of that very difficult ability to apply these universals to concrete circumstances.¹¹¹³ That is why, in the transition to book VI, Aristotle ends his discussion of justice with the idea of ‘equity.’ As was discussed before, this accounts for those situations in which the laws speak too generally, in which being exacting to a fault about justice is actually unjust. Indeed, equity, and thus, practical reason, do not constitute a repudiation of justice, but express it in its highest form.

This demonstrates how profoundly different is Aristotle’s theory of natural justice from the conventional justice offered by Epicurus, as well as from the conventionalism typical of modern moral philosophy. McCarthy stresses Marx’s republicanism as a means of relating him to Aristotle, but this is not sufficient. Aristotle’s theory of justice is not merely about our inherently social nature. All this offers is communitarianism. It is about whether or not our commitment to the common good—justice in its fullest sense—has a natural and permanent component irrespective of particular individuals recognizing it as such. If we are to draw parallels between, on the one hand, Aristotle’s theories of complete justice and practical reason, and on the other hand, potential theories in Marx, it will have to be on stronger grounds than McCarthy provides. It cannot simply be a matter of reading Aristotle, or any other thinker, into the supposedly unconscious ethical structure of Marx.

Finally, we should note that there are some theorists who argue that Marxism does offer, or at least is compatible with, a theory of the ethical disposition of individuals, but it is not primarily concerned with justice. For example, John McMurtry contends that Marx does not posit an “amoral collectivism.”¹¹¹⁴ Rather, Marx offers a theory of personal morality, a standard for acting in everyday life, for which individuals can be praised or blamed. Nevertheless, McMurtry does not base this personal morality in a notion of justice, much less complete justice.

¹¹¹² Ibid., 77.

¹¹¹³ Aristotle, *Aristotle’s Nicomachean Ethics*, op. cit., 1141b21-23; 1143b1-5.

¹¹¹⁴ John McMurtry, ‘Is There a Marxist Personal Morality?’ in *Marx and Morality*, eds. Kai Nielsen and Steven C. Patten (Guelph: Canadian Association for Publishing in Philosophy, 1981), 172.

Instead, the ultimate good is freedom in the sense of the full and free development of every individual.¹¹¹⁵

Given such disparate interpretations, we must now turn to Marx himself.

14. 1: Complete Justice Under Capitalism

Initially, it seems that there is substantial evidence that Marx rejects any notion of complete justice, of a genuine universal interest, under capitalism. This begins with his first commentary on Hegel in 1843. Marx clearly rejects Hegel's depiction of Ethical Life. In an often neglected passage, Marx agrees with Hegel's criticisms of the formal character of Morality: "Hegel has often been attacked for his theory of morality. But he has done no more than describe the morality of the modern state and modern civil law."¹¹¹⁶ Nevertheless, though Hegel shows the "illusory" character of the civil and moral law, "he does not proceed to infer from this that the state whose ethical life is based on these presuppositions can only be the society (the social life) of these illusions."¹¹¹⁷ In other words, Marx turns Hegel's critique of Kant's formalism back on Hegel himself.

Marx argues that far from forming an integrated whole, civil society and the sovereign are in irreconcilable conflict with each other. Therefore, he rejects Hegel's assertion that civil servants represent a universal class.¹¹¹⁸ The civil service is not the representative of civil society in the state, but rather, of the state against civil society.¹¹¹⁹ In a 'true state,' it would not be the case that every particular class had a chance to devote itself to the universal interest, but rather, that there was truly a universal class.¹¹²⁰ The examination by which potential civil servants are to demonstrate their talents and merits in Hegel's state is not an expression of citizen equality, but of the privilege of the ruling class. The majority of citizens are not initiated into the 'knowledge of the state,' and therefore, are excluded from it. The constitutional monarchy does not have the educative function that Hegel attributes to it. Even where there is universal suffrage, the modern state is uniquely differentiated from civil society. Indeed, when the abstract citizen of the state is

¹¹¹⁵ Ibid., 186.

¹¹¹⁶ Marx, *Early Writings*, op. cit., 177.

¹¹¹⁷ Ibid.

¹¹¹⁸ Ibid., 109.

¹¹¹⁹ Ibid., 111.

¹¹²⁰ Ibid., 112.

separated from the self-interested person of civil society, the formal equality of citizens in the political realm preserves material inequality in society.¹¹²¹

At this stage of his theoretical development, Marx argues that the development of a genuinely universal class requires republican democracy. Whereas Hegel's constitutional monarchy can only ever be rule by a part that takes itself to be the integrated whole, a democracy would be rule by the whole for the whole. Only in this case would the political constitution be in appearance what it is in reality: the creation of human beings.¹¹²² Hegel misses this point because of what Marx, following Feuerbach, describes as the 'subject-predicate inversion.' Hegel neglects human activity, the 'subject,' in favour of the products of that activity, the 'predicates.' In Hegel's depiction of Ethical Life, it is only the state that produces people as citizens and never the people producing the state as their collective form of organization. By emphasizing the products of human activity, Hegel renders them more or less permanent, whereas a focus on human activity enables due consideration for our capacity to change our social conditions according to, as Hegel might put it, our rational determinations.

As Marx's theories developed and matured, his critique of the abstract thought represented by Hegel's theory of Ethical Life only intensified. As Marx transitioned from a republican democrat to a full-fledged communist, he became much more explicit that the state is dominated by, and reflects the interests of, the ruling class. Marx not only asserts that "The executive of the modern State is but a committee for managing the common affairs of the whole bourgeoisie."¹¹²³ He also argues that irreconcilable antagonisms between class interests foster conflicts that require practical intervention by the state, which acts according to the "illusory 'general' interest."¹¹²⁴ There are numerous passages where Marx appears to be wholly contemptuous of any notion of a general interest under capitalism. For example, he rejects the theory of the invisible hand of the market whereby the aggregate of private interests unintentionally leads to a general interest: "One could just as well deduce from this abstract phrase that each individual reciprocally blocks the assertion of the others' interests, so that, instead of a general affirmation, this war of all against all produces a general negation."¹¹²⁵ In

¹¹²¹ Ibid., 152.

¹¹²² Ibid., 87.

¹¹²³ Marx and Engels, 'The Communist Manifesto,' op. cit., 475.

¹¹²⁴ Marx and Engels, *The German Ideology*, op. cit., 53.

¹¹²⁵ Marx, *Grundrisse*, op. cit., 156.

this respect, Marx asserts, “The general interest is precisely the generality of self-seeking interests.”¹¹²⁶ In other words, it is merely an abstract universal.

Marx also seems to reject any notion of the general interest because he deems class societies to be riven by incommensurable moral standpoints. Although Marx is not as deterministic as Engels in this respect, he does contend that there are class-determined moralities. For example, in 1844, he describes the conflict between the aristocracy and the bourgeoisie as, in part, a conflict between moralities. Whereas the landowner sees the capitalist as the presumptuous slave of yesterday, the capitalist sees the landowner as the idle lord of yesterday. In this bitter opposition, each side tells the truth about the other. The landowner emphasizes his noble lineage, his poetry, and that agriculture is alone productive, and depicts his opponent as huckstering, deceitful, heartless, devoid of honour, and estranged from a community he trades away. The capitalist emphasizes political freedom, freedom of civil society, linking the brotherhood of man in commerce and creating a pure morality, and depicts his opponent as unenlightened and hell-bent on replacing moral capital with brute force.¹¹²⁷ Although the victory of capital over the landowner is inevitable, it is only the victory of enlightened self-interest over superstitious self-interest, self-conscious baseness over unconscious baseness.¹¹²⁸

Another reason why Marx appears to reject the idea of a general interest is because of the way in which capitalism is differentiated into incommensurable social spheres. Marx asks, what does the political economist have to say about prostitution? “His answer will be: your acts do not contravene my laws, but you should find out what Cousin Morality and Cousin Religion have to say about it; the morality and religion of my *political economy* have no objection to make, but...But who should I believe, then? Political economy or morality?”¹¹²⁹ Marx goes on to assert: “It is inherent in the very nature of estrangement that each sphere imposes upon me a different and contrary standard.”¹¹³⁰

For Marx, the impersonal character of the market under capitalism illuminates the true character of class interests. What he initially discovers about modern society, the split between particular and general interests, he soon deems to be true of every class society. Indeed, he believes that capitalism reveals the illusions underlying the ways in which complete justice has

¹¹²⁶ Ibid., 244-45.

¹¹²⁷ Marx, *Early Writings*, op. cit., 338-9.

¹¹²⁸ Ibid., 340.

¹¹²⁹ Ibid., 362.

¹¹³⁰ Ibid.

traditionally been cast, namely, as an objective good common to all humans and continuous with the divine order of nature. This, for Marx, is one of the progressive features of capitalism:

It produced world history for the first time, insofar as it made all civilised nations and every individual member of them dependent for the satisfaction of their wants on the whole world, thus destroying the former natural exclusiveness of separate nations. It made natural science subservient to capital and took from the division of labour the last semblance of its natural character. It altogether destroyed the natural character, as far as this is possible with regard to labour, and resolved all natural relations into money relations.¹¹³¹

This in turn has bearing on our notion of justice under capitalism. Marx argues that if “privilege” is the political expression of the medieval mode of production, then for the capitalist mode of production, “*right as such, equal right*, is the expression.”¹¹³² In other words, the way in which political power secures societal inequality is through the formal character of equal rights.

It therefore seems that the case is overwhelming that Marx wholly rejects the notion of a general interest under class societies, and thus, a bourgeois form of complete justice under capitalism. Nevertheless, there is some counter-evidence that is worth considering.

While Marx rarely speaks about the justice of the state in terms broader than specifically corrective justice, there are some occasions when he does. For example, in the following passage, Marx and Engels make an assertion that directly pertains to the idea of complete justice, although it has potentially ambiguous implications that will require some clarification. They assert:

Since the state is the form in which the individuals of a ruling class assert their common interest, and in which the whole civil society of an epoch is epitomised, it follows that all common institutions are set up with the help of the state and are given a political form. Hence the illusions that law is based on the will, and

¹¹³¹ Marx and Engels, *The German Ideology*, op. cit., 81-2.

¹¹³² *Ibid.*, 346.

indeed on the will divorced from its real basis—on *free* will. Similarly, justice is in its turn reduced to statute law.¹¹³³

What is meant when they assert that the state, as the embodiment of the common interests of the ruling class, reduces justice to statute law? This could mean two things. First, it could mean that there exists a natural law independent of any particular positive law, but that this natural law is neglected by particular ruling classes in order to reduce the law to whatever reproduces their own forms of rule. If this is the case, then the natural law could provide a standard by which opponents of this particular regime could critique its narrow conceptions of justice. Those who impute a notion of natural right to Marx will certainly favour this interpretation.

A second interpretation is nonetheless possible. Marx and Engels could also mean by this statement that there is no natural law independent of each regime. Rather, the only aspect of ‘justice’ that is common to every regime is that each describes as ‘justice’ only that which is functional to its own form of rule. Therefore, when justice is reduced to statute law, it is not reduced from a justice existing independently of it and every other regime. Rather, it is reduced from the form that justice took in the old regime which the new regime has replaced. This second interpretation is more consistent with the broader interpretation offered here. As we will now see, it is also confirmed by what Marx says elsewhere.

Although Marx’s social theory is based in material interests, and for Marx, the interests of producers and ruling non-producers are necessarily antithetical, this does not mean that he entirely dismisses the idea of a general interest under class societies. Take, for example, the defence speech that Marx delivered in 1849 while he and other Rhenish revolutionaries were being tried for fomenting insurrection. We must be tentative with this piece of evidence. Given the pressure of the circumstances in which he delivered the speech, Marx may be casting his views in a certain light. Nevertheless, although it is less rigorous than a theoretical work, it was subsequently published as a political pamphlet. Furthermore, as we will see, it accords with everything he says elsewhere. It also has the virtue of portraying his views with a certain popularizing bluntness.

In his speech, Marx first articulates his opposition to the United Provincial Diet, the representatives of the absolutist monarchy and feudal estates. He then expresses his justification

¹¹³³ Ibid., 99.

for the revolution, indeed, the largely bourgeois revolution, of 1848-49. Marx begins by asking, then answering, what motivates the counter-revolutionary legality of the crown?

To maintain laws belonging to a bygone social era and framed by representatives of vanished or vanishing social interests, who consequently give the force of law only to these interests, which run counter to the public needs. Society is not founded upon the law; this is a legal fiction. On the contrary, the law must be founded upon society, it must express the common interests and needs of society — as distinct from the caprice of the individuals — which arise from the material mode of production prevailing at the given time. This Code Napoleon, which I am holding in my hand, has not created modern bourgeois society. On the contrary, bourgeois society, which emerged in the eighteenth century and developed further in the nineteenth, merely finds its legal expression in this Code. As soon as it ceases to fit the social conditions, it becomes simply a bundle of paper.¹¹³⁴

Marx continues:

To maintain the old laws in face of the new needs and demands of social development is essentially the same as hypocritically upholding the out-of-date particular interests of a minority in face of the up-to-date interests of the community. *This maintenance of the legal basis* aims at asserting minority interests as if they were the *predominant* interests, when they are *no longer dominant*; it aims at imposing on society laws which have been condemned by the conditions of life in this society, by the way the members of this society earn their living, by their commerce and their material production; it aims at retaining legislators who are concerned only with their particular interests; it seeks to misuse political power in order forcibly to place the interests of a minority above the interests of the majority. The maintenance of the legal basis is therefore in

¹¹³⁴ Marx and Engels, *Neue Rheinische Zeitung*, op. cit., 232.

constant conflict with the existing needs, it hampers commerce and industry, it prepares the way for *social crises*, which erupt in *political revolutions*.¹¹³⁵

As Marx and Engel's describe it in *The German Ideology*, the political power of ruling classes must be given "a universal expression," as is evident in the class-determined forms of civil and criminal law: "Their personal rule must at the same time assume the form of average rule."¹¹³⁶ Nevertheless, this only lasts for a certain amount of time:

The more the normal form of intercourse of society, and with it the conditions of the ruling class, develop their contradiction to the advanced productive forces, and the greater the consequent discord within the ruling class itself as well as between it and the class ruled by it, the more fictitious, of course, becomes the consciousness which originally corresponded to this form of intercourse (i.e., it ceases to be the consciousness corresponding to this form of intercourse), and the more do the old traditional ideas of these relations of intercourse, in which actual private interests, etc., etc., are expressed as universal interests, descend to the level of mere idealising phrases, conscious illusion, deliberate hypocrisy.¹¹³⁷

It seems that, for Marx, the notion of a general interest in class societies is not wholly illusory.

If we consider the evidence so far, we can come to some conclusions about Marx's relation to complete justice, at least as it exists in class societies. Marx asserts that a kind of general interest does arise from a newly established mode of production. There is, at least for a certain time, a general interest, a public need, that forms a standard by which to assess the use and misuse of political power. Therefore, it seems that Marx contends that something akin to complete justice exists in every mode of production, or at least, every class-based mode of production. These class societies require a state and a body of laws that functionally reproduce the social order by providing a legitimate standard by which to distinguish between public interest and private whim. This is its standard: the general interest.

¹¹³⁵ Ibid., 233.

¹¹³⁶ Marx and Engels, *The German Ideology*, op. cit., 348-49.

¹¹³⁷ Ibid., 310.

Marx also shows, however, that each state, and thus, its laws, are self-contradictory. A ruling particular interest casts itself as the universal interest without remainder. Although, for a time, the ruling class is the only social force capable of leading the entire society, nonetheless, this entails inevitable antagonisms between classes as well as between the personal interests of individuals and the general interest. At the most, these antagonisms can be held in abeyance, in tense unity. At a certain point in their development, however, they explode into full contradictions. Indeed, the ruling class offends its own highest principle of complete justice, the general interest, as it increasingly becomes a particular interest standing in opposition to the general interest embodied in societal development and transformation. Eventually, the contradiction of the forces and relations of production are such that this common interest breaks upon the open contestation of revolutionary and counter-revolutionary classes. Thus, whatever complete justice exists in a given mode of production is only temporary and even at its peak is inherently self-contradictory. Therefore, Marx's thought about complete justice accords with what we have said about every other aspect of justice.

As we have seen, since Marx deems bourgeois justice, including complete justice, the only possible standard under capitalism, there is no basis by which you can condemn the state, or indeed, the mode of production as a whole, as unjust according to some other standard, whether a trans-historical standard or the 'higher' standard of socialism. Rather, Marx seeks to expose the irreconcilable antagonisms that occur within bourgeois justice, the equal rights between which force decides. That is why Marx also does not deem capitalism positively just according to bourgeois right. Consequently, since bourgeois justice does not exist in any positive, non-self-contradictory way, revolutionary action against capitalist states cannot be described as unjust in any meaningful sense. Does Marx think that the revolutionary overthrow of capitalism is based in a 'higher' principle of justice? Does Marx think that revolutionary classes in general, and the revolutionary proletariat in particular, are motivated and guided by principles of complete justice, a common good against which the prevailing state offends? It is to these questions that we must now turn.

14. 2: Is There Complete Justice in the Revolution Against Capitalism?

Certain theorists argue that, for Marx, revolution is motivated by justice. This includes not only distributive justice, but justice in some of its broader aspects. For example, Elster argues that the somewhat uneven, but nonetheless continuous process of democratization over the last few centuries makes more sense when understood in the context of the motivation that justice provides.¹¹³⁸ Conversely, Paul Smart asserts: “Revolution would never succeed if all it attempted to do was to impose on society a set of radical rules and norms, however laudable they might be.”¹¹³⁹ This, however, is a straw-man argument. None of the Marxist commentators who argue that justice is a necessary motivation for revolution believe that it is a sufficient one. Peter Mew gives a more balanced account.¹¹⁴⁰ He argues that, although Marx does in fact deem capitalism unjust, he does not believe that this provides the basis of revolution: “Communism is to be the precipitate not of moral ardour but of activated self-interest.”¹¹⁴¹ Furthermore, Mew contends that while philosophers are prone to having too much faith in rational argument, Marxists above all should be aware that ruling classes are not likely to change their activities even if the moral ideologies supporting them are exposed as false: “disguised power is more likely to turn into naked power than to disappear in a wake of shame and repentance.”¹¹⁴² This is true, but it is also significant that naked power is much weaker than that clothed in the shroud of justice. Furthermore, the question cannot only be about Marx’s theory of revolution in general, but also about what is unique to proletarian revolution in particular.

As might have been expected, Allen Wood offers the most sophisticated defence of the argument that, for Marx, revolution is not motivated by a sense of justice.¹¹⁴³ According to what Wood calls the ‘class-interests thesis,’ for Marx, our actions can only be historically effective, can only dramatically transform social conditions in ways congenial to historical progress, if these actions are pursued on the basis of class interests.¹¹⁴⁴ Conversely, acting on the basis of ideals such as justice condemns us to historical ineffectiveness. Wood argues that Marx never advocates for the overthrow of capitalism from a disinterested standpoint. Rather, he is a clear partisan of the working class and its allies. Although Marx deems revolution to be in the interests

¹¹³⁸ Elster, op. cit., 529.

¹¹³⁹ Smart, op. cit., 140.

¹¹⁴⁰ Peter Mew, ‘G. A. Cohen on Freedom, Justice, and Capitalism,’ *Inquiry: An Interdisciplinary Journal of Philosophy*, 29:1-4 (1986): 305-313.

¹¹⁴¹ Ibid., 307-8.

¹¹⁴² Ibid., 307.

¹¹⁴³ Wood, ‘Justice and Class Interests,’ op. cit.

¹¹⁴⁴ Ibid., 19.

of the vast majority of people, the interests of the ruling class and its allies must be sacrificed. Therefore, Marx does not confuse the interests of the majority with the common interests of the whole society. Indeed, Marx regards the idea of a universal interest or a common good as purely ideological.¹¹⁴⁵ Thus, the appeal to justice is incompatible with the class-interests thesis.

Although there is some evidence to support this interpretation of Marx, there are a number of problems with Wood's argument so far. First, it is not clear whether or not we should equate justice with a disinterested standpoint, or, if we should, what it is that justice should take no interest in. As we saw in earlier chapters, because Wood defines justice as the laws and rules most functional for a given mode of production, his notion of what justice entails in capitalist social conditions is the distinctly liberal notion of justice. In other words, justice is meant to be a neutral arbiter between separate but equal interests amid a sheer plurality of goods or values. In other words, one interest is not, in and of itself, more or less valuable than any other. If indeed this is what justice entails then it would be difficult, if not impossible, to overthrow capitalism on that basis. Conversely, if justice had some other notion of merit to provide the basis of its disinterestedness, this might not be the case. Wood wrongly assumes that Marx rejects some form of a disinterested standpoint. As we saw in an earlier chapter, Marx actually criticizes other political economists for abandoning what he thought *Capital* had achieved, namely, a disinterested scientific method.¹¹⁴⁶ Furthermore, although Marx is clearly an advocate for the interests of, and revolution by, the working class, this does not necessarily mean that this partisanship is not objective or disinterested. It may appear that way if we consider it only from the point of view of the antagonisms between the proletarian and capitalist classes in capitalist society. Nevertheless, from the perspective of Marx's universal history, his conception of human history as a whole, and, in particular, the significance of labour in that history, Marx's support for the working class might have a more objective, disinterested basis.

There are also some problems with Wood's assertions that Marx rejects notions of the universal interest or the common good as ideological. First, Marx explicitly describes the revolutionary working class as the basis of achieving a genuinely universal emancipation.¹¹⁴⁷

¹¹⁴⁵ Ibid., 15-16.

¹¹⁴⁶ Marx, *Capital: Volume One*, op. cit., 97; 269, n. 24. We should also note that, for Marx, a disinterested study of political economy reveals things like the appropriation of surplus labour. Therefore, the proletariat has an 'interest' in this disinterested inquiry whereas the bourgeoisie does not. Marx attributes this to the abandonment of the labour theory of value by 'vulgar' political economists.

¹¹⁴⁷ Marx, *Early Writings*, op. cit., 256.

This is fairly early on in his theoretical development, but it is not obvious that it is a position he later rejected. The mature Marx speaks of how, even within capitalism, certain measures undertaken by the proletariat are not only in their own interests, but indeed, that of capital. Take, for example, Marx's description of the workers' struggles for a legally limited working day.

With suppressed irony, and using very cautious expressions, the factory inspectors hint that the present Ten Hours' Act also frees the capitalist from some of the brutality natural to a man who is merely an embodiment of capital, and that it has given him time for a little 'culture.' 'Formerly the master had no time for anything but money; the servant had no time for anything but labour.'¹¹⁴⁸

Marx is attempting to show, in an embryonic way, the leadership capacity of the working class. Indeed, this is an early expression of what Gramsci would later theorize as the battle for hegemony.

To return to the rest of Wood's argument, he contends that, according to the class-interests thesis, our primary concern must be with historical results: "We will see our task as historical agents not as one of setting our goals according to abstract values or standards and then trying to find some means of achieving them, but rather of choosing between the goals of already existing historical movements."¹¹⁴⁹ This raises certain questions. How are the historical results themselves to be evaluated? What is the definition of 'effective'? If we begin by examining the already existing historical movements, how do we define and evaluate what they are moving toward? In other words, why identify with one class rather than another?

Although Wood rejects the disinterested standpoint, he concedes that Marx often describes the expected results of a communist revolution in terms of what could be interpreted as impartially good. For example, Marx argues that communism will bring an end to alienation and will promote the universal satisfaction of our needs, the free and creative development of our human capacities, as well as solidarity and community. Wood continues:

¹¹⁴⁸ Marx, *Capital: Volume One*, op. cit., 416, n. 68.

¹¹⁴⁹ Wood, 'Justice and Class Interests,' op. cit., 19.

The passages in which Marx makes such claims are well-known, since they constitute the liturgy which self-styled ‘Marxist humanism’ never tires of chanting. What is striking, however, is that Marx at the same time rejects the preoccupation with disinterested human goods. He displays only contempt for the humanitarianism of the ‘true socialists’ who, he says, ‘have lost all revolutionary passion and proclaim instead the universal love of humanity.’¹¹⁵⁰

When conflicts arise between the class-interests of the proletariat and principles of justice, Marx insists that we, as Wood puts it, “get our priorities straight and thus dampen our enthusiasm for justice, so that we may get on with what really matters.”¹¹⁵¹ Indeed, for Wood, people who make justice the basis of their activities are hypocrites because, ultimately, they must be indifferent to whether or not justice will be victorious in historical struggles.¹¹⁵² Wood does not shy away from the full implications of his interpretation. If justice can and should be sacrificed for the sake of historically effective revolutionary activity, then ideas of justice are only the “vehicles” or “masks” of class-interests.¹¹⁵³ Ultimately, for Wood, it is only by abandoning the pursuit of justice as our highest priority that we can “harmonize our conscious intentions with our historical self-understanding and thus attain to self-conscious historical agency.”¹¹⁵⁴

In his book on Hegel’s ethics, Wood compares Hegel’s account of historical development with Marx’s theory of revolution. For Hegel, the ‘absolute justification’ of world historical individuals is possible only for the reflective historian who, by rejecting moralistic judgements, is capable of discerning the rational meaning of history.¹¹⁵⁵ Consequently, no one could legitimate their own transgression and crimes by availing themselves of the absolute right of world spirit. Wood nonetheless concedes the profound dangers of Hegel’s theory of historical development:

We should not attempt to deny that Hegel’s amoralism is a dangerous doctrine.

Our defense should rather be that the danger is not Hegel’s creation; he is only

¹¹⁵⁰ Ibid., 21-22.

¹¹⁵¹ Ibid., 22.

¹¹⁵² Ibid., 23.

¹¹⁵³ Ibid., 25-26.

¹¹⁵⁴ Ibid., 27.

¹¹⁵⁵ Wood, *Hegel’s Ethical Thought*, op. cit., 231.

the bearer of bad news. Moral restraints should not bind us when they stand in the way of human liberation. If there really are times when the human spirit can be emancipated only through doing wrong, then it would be dreadful if we let our fear of wrongdoing keep us forever in chains.¹¹⁵⁶

In this, Wood sounds remarkably similar to Bertolt Brecht's 'learning play,' *The Measures Taken*:

With whom would the just man not sit
To help justice?
What medicine is too bitter
For the man who's dying?
What vileness should you not suffer to
Annihilate vileness?
If at last you could change the world, what
Could make you too good to do so?¹¹⁵⁷

Indeed, Wood's assertions also resemble Brecht's moral 'realism':

It was not you who sentenced him, but
Reality.¹¹⁵⁸

The implications of Hegel's doctrine are all the more dangerous because, according to Wood, whatever Hegel thought about his own theory of history, it does not preclude radical social change based on a conception of the historical meaning of these transformations. Furthermore, this historical meaning is not dependent on ethics or a determinate conception of the social order being created.¹¹⁵⁹ It is sufficient to identify the prevailing social problems that the new order will have to resolve, the general characteristics of the new ethical order, and the social movement

¹¹⁵⁶ Ibid., 236.

¹¹⁵⁷ Bertolt Brecht, *The Measures Taken and other Lehrstücke* (London: Eyre Methuen, 1977), 26.

¹¹⁵⁸ Ibid., 33.

¹¹⁵⁹ Wood, *Hegel's Ethical Thought*, op. cit., 233.

necessary to create it: “If there is, then it might be possible for you to know of your own action that it possesses a supramoral justification. You might be able knowingly to exercise the world historical right to do wrong.”¹¹⁶⁰ For Wood, this is precisely what Marx does. Although, for Marx, historical development does not occur through the personal ambitions of world-historical individuals, but rather, the interests of classes with a world-historical task, nonetheless, they also “fall outside morality and ethics.”¹¹⁶¹

Wood’s contributions have provoked a number of responses. As is so often the case, Geras sets the tone. He argues that Marx deems the working class to have universal significance from a disinterested standpoint, namely, the actualization of the free development of everyone.¹¹⁶² For Geras, this is the principle of justice upon which Marx’s theory of revolutionary motivation is based, even if Marx is not always aware of this fact. Geras criticizes Wood’s reductionist class-interest thesis:

to limit the ‘historical meaning’ of action along this path to its functional role within a struggle so characterized, just one sectional interest against another, is radically to diminish, to impoverish, the sense which Marx himself—everywhere—gives it. For, as partial and as ‘interested’ as he unashamedly proclaims it to be, such action also has a universal aspect, in virtue of the character of its historical objective, of what the proletariat’s struggle is a struggle *for*.¹¹⁶³

Nielsen also criticizes Wood’s class-interests thesis, but in doing so, adopts many of Wood’s presuppositions. Nielsen contends that moral beliefs, and justice in particular, do have an emancipatory use in class struggles.¹¹⁶⁴ Although, he seems to agree with Wood that justice is an instrument in class struggle and revolution, Nielsen gives it much wider application than does Wood. He asserts that in the debates about the validity of socialism, arguments about the injustice of capitalism and the justice of socialism have a “modest” role to play.¹¹⁶⁵ Nevertheless,

¹¹⁶⁰ Ibid., 234.

¹¹⁶¹ Ibid.

¹¹⁶² Geras, ‘The Controversy About Marx and Justice,’ op. cit., 75.

¹¹⁶³ Ibid., 75-76.

¹¹⁶⁴ Nielsen, op. cit., 164.

¹¹⁶⁵ Ibid.

this does not imply that the standard of justice is the only or most significant critique, or that such criticisms can be effective without practical considerations and an understanding of the mechanisms for change in capitalist conditions.¹¹⁶⁶

This raises the question: is morality to be of use for the class struggle, or is it the point of class struggle? Nielsen seems to affirm the former. Despite his disagreements with Wood, he is almost as ready as Wood to abandon justice in the midst of class struggle and revolution:

the socialist who wishes to condemn capitalism as an unjust system because it systematically treats some human beings, in their conditions of servitude, as means only, could still recognize that sometimes such evils and such injustices are necessary. Not infrequently in morality, we have to choose the lesser evil. Such socialists could grant, as John Rawls would not, that sometimes, in grim circumstances, utility outweighs justice and that we then must accept injustice as morally necessary. This seems to me both a realistic and, if one thinks about it carefully, a morally sensitive reaction. But this does not mean that we have to throw up our hands in the face of arguments about the justice or the lack thereof of whole social systems or regard all such talk as the ideological twaddle of confused ideologues.¹¹⁶⁷

Indeed, Nielsen assures us that if Marx's assertions about capitalism, the working class, and socialism are correct, then proletarian revolution *cannot* conflict with principles of justice: "therefore, a historical agent could not be faced with a situation where he or she must choose between struggling to realize proletarian class interests and supporting what is disinterestedly good."¹¹⁶⁸ Furthermore, Nielsen argues that for most proletarians these arcane debates are somewhat moot: "Proletarian militants, particularly when they are not also theoreticians, need not engage in such complicated reasoning. In the midst of class struggle, furthering proletarian class interests should be their aim."¹¹⁶⁹ Nielsen's endorsing of a division of mental and manual labour within the revolution is quite troubling. If we assume for a moment that Marx does give

¹¹⁶⁶ Ibid.

¹¹⁶⁷ Ibid., 165.

¹¹⁶⁸ Ibid., 235.

¹¹⁶⁹ Ibid., 270.

justice a significant role in revolutionary activity, surely his theory of working class revolution as the emancipation of workers by workers would require that justice extend to, and be embraced by, the majority of participants. Ultimately, Nielsen's position is the mirror opposite of Wood's. Instead of deriving his standards of justice from the capitalist mode of production, Nielsen derives them from the socialist mode of production. Nevertheless, justice provides little guidance in the revolutionary transition between these modes.

Cohen is also susceptible to some of these shortcomings because, according to him, Marxists deem capitalism unjust primarily because it involves the theft of surplus labour:

The criticism that a society based on the capitalist relationship represses the development of human potential is at least as important, but that criticism does not entail that the capitalist relationship is *unjust*. My claim is that, for Marxists, the central justice objection to capitalism is the labour theft objection, and that, to the extent that Marxists have other justice-inspired objections to capitalism, they do not clearly distinguish them from this one.¹¹⁷⁰

Since Cohen discounts the repression of human potential as an aspect of justice, this entails that, for him, principles of justice provide the motivation for revolution, but not a concrete guide for revolutionary activity beyond the elimination of exploitation itself. This risks neglecting the role of practical reason in revolution.

Peffer criticizes Wood on grounds similar to Nielsen, but is more sophisticated in his approach. As is typical of Wood's critics, however, Peffer applies an idealist method. He treats what he regards as the inconsistencies and falsities in Wood's assertions, and indeed, those of Marx, as the result of personal idiosyncrasies. For example, Peffer asserts:

The question, of course, is how Wood gets from the relatively innocuous—if somewhat amorphous—class interest thesis to the conclusion that accepting it is absolutely incompatible with taking justice as one's fundamental concern. Justice and the class interest thesis are certainly not a priori incompatible. After all, one seemingly can take justice as one's fundamental concern and still admit that if the

¹¹⁷⁰ Cohen, *Self-Ownership, Freedom, and Equality*, op. cit., 145-46.

class interest thesis is true and one is serious about advancing the cause of justice in the world, then one should support those class interests that, if realized, will best meet the demands of justice.¹¹⁷¹

This neglects the fact that Wood does not derive his assertions *a priori*. Wood might be wrong to reduce justice to whatever reproduces the prevailing social conditions, but, as we have seen, there are significant social determinants for Wood's functionalism. It is on these grounds that Peffer should be assessing and criticizing Wood.

Despite these shortcomings, Peffer offers important criticisms. He argues that the role of justice in revolution is not primarily for winning public debates about the legitimacy of revolution and socialism. Rather, it is about a set of principles that serve as a guide to our activity in the midst of revolution. Peffer asserts:

Does Wood really mean to suggest that the vigorous prosecution of the class struggle ought not be bound by any constraints imposed by justice, even the requirements of a just war, e.g., bans on indiscriminate killing of civilians, the use of chemical or biological weapons, or the torture of prisoners? Perhaps this will be regarded as a red herring. It might be argued that Wood has in mind only the distribution of such goods as income and wealth when he speaks of justice. But it seems to me extremely important for Marxists to make clear that while they are in favor of utilizing virtually any means to effect the socialist transformation—up to and including popular revolution and civil war if absolutely necessary—they are *not* in favor of violating the Geneva Accords in such situations or in any way violating the constraints of just-war theory, even if doing so would increase the chances for success.¹¹⁷²

Peffer's assertions are cogent, but not completely decisive. Wood could respond with arguments similar to those made by Trotsky, namely, that not all means are permissible, only those that *really* lead to the liberation of humanity.¹¹⁷³ Similarly, Wood could argue that refraining from

¹¹⁷¹ Peffer, *op. cit.*, 349.

¹¹⁷² *Ibid.*, 356.

¹¹⁷³ Trotsky, *op. cit.*, 48.

violations of the Geneva Accords do not depend on principles of justice. Rather, the appeal to class-interests will suffice because the use of such abysmal methods could never actually increase the chances of success for a socialist revolution. Nevertheless, though Peffer's critique is not totally devastating to Wood's arguments, it still raises the question of what is permitted in class struggle and revolution.

Since Peffer at least begins to think through these incredibly difficult issues, he not only criticizes Wood, but also substantively disagrees with Nielsen. Peffer rejects the idea that because the working class is the universal class, the pursuit of its interests can never conflict with the demands of social justice.¹¹⁷⁴ For Peffer, such conflicts are at least logically possible:

This would be the case, for example, if the pursuit of those interests were to result in a situation in which the proletariat is materially better off, but grave injustices are perpetrated against other segments of the population from that point in time on. I am not claiming there is any reason to believe they will diverge, but we at least have to be able to talk about such possibilities.¹¹⁷⁵

This is an important point. Nevertheless, Peffer undermines it when he asserts: "Nor am I suggesting that the discussion of such abstract possibilities is important to the actual class struggle."¹¹⁷⁶ He then quotes approvingly Nielsen's assertion about the division of mental and manual labour with regard to questions of justice in the revolutionary proletarian movement.¹¹⁷⁷ Ultimately, Peffer does not take seriously enough the role of justice as an ethical disposition, as the basis of practical reason, as a guide for the activity of each and every individual amid the difficult circumstances of revolution. Therefore, he unwittingly makes justice a basis by which some revolutionaries can be *guided* by others.

Buchanan and Lukes find a middle ground between Wood and Geras. As we saw, Buchanan argues that, for Marx, justice does not play a major motivational role in the revolutionary overthrow of capitalism. Furthermore, Marx believes that the notion that people, irrespective of their social conditions, have a sense of justice and are bearers of rights, can only

¹¹⁷⁴ Peffer, op. cit., 357.

¹¹⁷⁵ Ibid., 358-59.

¹¹⁷⁶ Ibid., 359.

¹¹⁷⁷ Ibid.

arise in a radically defective society.¹¹⁷⁸ Since they disagree with the proponents of the Tucker-Wood thesis that Marx deems capitalism positively just, they do not think that Marx would regard the revolutionary overthrow of capitalism as unjust according to the only available standards. Nevertheless, because they deem Marx's theory to be ultimately beyond justice, they also disagree with the proponents of the Cohen-Geras thesis that, for Marx, justice plays a significant role in revolutionary motivation or activity. Therefore, with regard to the actual revolutionary activity itself, their interpretation of Marx is similar to Wood's, although unlike him, Buchanan and Lukes substantially disagree with what they take to be Marx's neglect of justice in the practice of revolution. I will discuss Buchanan and Lukes's criticisms of Marx more substantively in the next chapter where I will be better positioned to draw out the major implications of Marx's theory of complete justice. In the meantime, having canvassed the major interpretations, we must now turn to an exegesis of Marx. Ultimately, his assertions reveal definitive answers to the questions of whether or not he believes that the proletariat is the bearer of complete justice and whether or not justice has a significant role to play in revolution.

There is some evidence for the interpretation offered by Geras, Nielsen, and Peffer. In his early article, 'On the Jewish Question,' Marx continues the attempts by Rousseau, Kant, and Hegel to discover a form of freedom that is sufficiently universal to become what Hegel describes as 'justice in and for itself.' As we have seen, in the same way that Hegel criticizes the abstract notions of freedom offered by Rousseau and Kant, Marx criticizes Hegel for his abstract attempt to reconcile in thought the practical contradiction between the self-interested person of civil society with the 'moral' citizen of the political state. On this basis, Marx distinguishes between mere political emancipation and a genuine human emancipation in which the abstract citizen of political society is absorbed back into the real person of civil society. Indeed, Marx quotes Rousseau:

Whoever dares to undertake the founding of a people's institutions must feel himself capable of *changing*, so to speak, *human nature*, of *transforming* each individual, who in himself is a complete and solitary whole, into a *part* of a greater whole from which he somehow receives his life and his being, of

¹¹⁷⁸ Buchanan, *Marx and Justice*, op. cit., 50-1.

substituting a *partial* and *moral existence* for physical and independent existence.¹¹⁷⁹

It was this initial critique of Hegel's abstract notion of freedom that inspired Marx to search for that class or estate most excluded from the supposedly integrated organism of the state. In his subsequent article, 'A Contribution to the Critique of Hegel's *Philosophy of Right*: Introduction,' he tells us that it is the proletariat. It is "a class of civil society which is not a class of civil society," which has "a universal character because of its universal suffering."¹¹⁸⁰ Indeed, Marx explicitly speaks of its exclusion and its historical potential in terms of 'recht' and unrecht.' The proletariat "lays claim to no *particular right* [justice] because the wrong [injustice] it suffers is not a *particular wrong* [injustice] but *wrong* [injustice] *in general*."¹¹⁸¹ In the proletariat is embodied "the *total loss* of humanity," but that is also why it alone can carry through "the *total redemption of humanity*."¹¹⁸² This evidence, while compelling, comes before Marx develops the theory of historical materialism and becomes a full-fledged communist. Marx certainly seems to retain notions of the working class as the total redemption of humanity, as the basis for universal human emancipation. Nevertheless, does he retain the notions of justice and injustice he expresses in 1843? In this respect, the evidence is decidedly against the proponents of the Cohen-Geras thesis. It is much more in favour of the interpretations offered by, on the one hand, Wood, and on the other hand, Buchanan and Lukes.

There is much to suggest that Marx believes that moral principles obscure class antagonisms and thereby stifle the class consciousness of the working class. For example, during the 1848 revolutions, Marx, in his articles for the *Neue Rheinische Zeitung*, notes how one of the watchwords of 1789, 'fraternité,' has emerged again.¹¹⁸³ He argues that there is only a 'brotherhood' between the emerging bourgeoisie and proletariat as long as they are united in their struggles to displace the feudal aristocracy and the Absolutist state. As soon as they are successful, however, these 'fraternal' feelings will be cast aside in the class struggle between capital and labour. It is not that Marx thinks that the working class should *initiate* a civil war against the capitalist class. Given the exploitation of the former by the latter, Marx contends that

¹¹⁷⁹ Marx, *Early Writings*, op. cit., 234.

¹¹⁸⁰ *Ibid.*, 256.

¹¹⁸¹ *Ibid.*

¹¹⁸² *Ibid.*

¹¹⁸³ Marx and Engels, *Neue Rheinische Zeitung*, op. cit., 48.

there already is a “veiled civil war.”¹¹⁸⁴ Rather, Marx calls for the unveiling of this irreconcilable antagonism: “The best form of polity is that in which the social contradictions are not blurred, not arbitrarily—that is, merely artificially, and therefore only seemingly—kept down. The best form of polity is that in which these contradictions reach a stage of open struggle in the course of which they are resolved.”¹¹⁸⁵ In 1879, when Marx and Engels criticize trends in German radical politics, they assert: “When the class struggle is pushed on one side as a disagreeable ‘crude’ phenomenon, nothing remains as a basis for socialism but ‘true love of humanity’ and empty phraseology about ‘justice.’”¹¹⁸⁶ This, however, is potentially ambiguous. Perhaps Marx and Engels do not mean that justice is inherently empty. They may be arguing for a more substantive justice based in the need for class struggle.

It is obvious that Marx adopts substantial aspects of Hegel’s assertion that the ‘right’ of history is higher than the right embodied by the prevailing social order. We can see the implications of this in Marx’s work on three different levels: his micro-level assertions about historically effective action within a mode of production, his meso-level assertions about the revolutionary transition from one mode of production to another, and his macro-level assertions about the course of human history (or, at least, ‘pre-history’) as a whole. We will look at examples from each level in turn.

On the micro-level, Marx, in an 1846 letter, advises fellow communist G. A. Köttgen that if he cannot collect at least five-hundred signatures for a “working men’s petition” demanding freedom of the press and a new constitution, he and the other communists should join the “bourgeois” petitions: “proceed Jesuitically, put aside teutonic probity, true-heartedness and decency.”¹¹⁸⁷ Marx then asserts, “When this has been achieved a new era will dawn for communist propaganda. Our means will be increased, the antithesis between bourgeoisie and proletariat will be sharpened. In a party one must support everything which helps towards progress, and have no truck with any tedious moral scruples.”¹¹⁸⁸ This certainly supports the interpretation of what some commentators have described as Marx’s ‘moral futurism.’

¹¹⁸⁴ Marx and Engels, ‘The Communist Manifesto,’ op. cit., 483.

¹¹⁸⁵ Marx and Engels, *Neue Rheinische Zeitung*, op. cit., 49.

¹¹⁸⁶ This comes from a letter drafted by Engels and approved by Marx: Karl Marx and Friedrich Engels, letter to August Bebel, Wilhelm Liebknecht, and Wilhelm Bracke, September, 1879: http://www.marxists.org/archive/marx/works/1879/letters/79_09_15.htm.

¹¹⁸⁷ Karl Marx, Letter to G. A. Köttgen, June 15, 1846, in Karl Marx and Friedrich Engels, *Karl Marx, Friedrich Engels: Collected Works: Volume Six* (Moscow: Progress Publishers, 1976), 54.

¹¹⁸⁸ *Ibid.*

On a more meso-level, Marx seems to argue that, quite simply, might makes right. Take, for example, his depiction of the battle between the monarchists and the insurrectionists during the 1848 revolutions:

When these two sovereign powers are no longer able to agree or do not want to agree, they become two inimical sovereign powers. The *King* has the *right* to throw down the gauntlet to the *Assembly*, the *Assembly* has the *right* to throw down the gauntlet to the *King*. The *greater right* is on the side of the *greater might*. Power is tested in *struggle*. The test of the struggle is *victory*. Each of the two powers can prove that it is right only by its *victory*, that it is wrong only by its *defeat*.¹¹⁸⁹

Nevertheless, even if the King prevails, Marx would prefer rule by the Assembly. The standard by which Marx makes this assessment need not be an immutable notion of right according to which republican regimes are always better than monarchical regimes. After all, republican regimes are not possible in every set of social conditions. Rather, the standard can be established by what is possible within the prevailing historical conditions, and, in particular, with regard to the expansion and development of freedom. Therefore, although Marx's articulation of might makes right is certainly not moral absolutism, it is not purely relativistic either. In another example, Marx, in his marginal notes on Bakunin's *Statism and Anarchy*, asserts that the proletariat, in order to overthrow capitalism, must nonetheless act on the basis of capitalist society and its corresponding political forms because "it has at that stage not yet arrived at its final organisation, and hence to achieve its liberation has recourse to methods which will be discarded once that liberation has been attained."¹¹⁹⁰ This raises the question about whether the ends justify the means and, if they do, how they are to be weighed. It also provokes questions about the point at which the discarding of these methods may no longer be deferred to future conditions. Marx does not address these questions in his marginal notes.

On the macro-level, with regard to human 'pre-history' as a whole, some of Marx's most revealing assertions occur amid his first critique of Proudhon. Marx asserts that, according to

¹¹⁸⁹ Marx and Engels, *Neue Rheinische Zeitung*, op. cit., 151.

¹¹⁹⁰ Karl Marx, 'Marginal Notes On Bakunin's *Statism and Anarchy* (excerpt), in *Karl Marx: Selected Writings*, ed. Lawrence H. Simon (Indianapolis: Hackett Publishing Company, Inc., 1994), 338.

Proudhon's version of the dialectical method, we must distinguish between the 'good' and 'bad' sides, the advantages and drawbacks of a particular social system, so that we can preserve the good side: "For him, M. Proudhon, every economic category has two sides—one good, the other bad. He looks upon these categories as the petty bourgeois looks upon the great men of history: *Napoleon* was a great man; he did a lot of good; he also did a lot of harm."¹¹⁹¹ As we have seen, Marx later criticizes Proudhon's attempts to transform capitalism according to standards unwittingly derived from capitalism. Conversely, Marx embraces Hegel's assertion that good and evil are inseparable because it is the transgression of current notions of the 'good' by means of the 'evil' that historical development occurs. As Marx puts it, "What constitutes dialectical movement is the coexistence of two contradictory sides, their conflict and their fusion into a new category. The very setting of the problem of eliminating the bad side cuts short the dialectical movement."¹¹⁹² Marx explains the proper method of studying a mode of production: "It must be shown how wealth was produced within this antagonism, how the productive forces were developed at the same time as class antagonisms, how one of the classes, the bad side, the drawback of society, went on growing until the material conditions for its emancipation had attained full maturity."¹¹⁹³ For Marx, a mode of production is anything but the embodiment of eternal laws. Indeed, it is quite significant that Marx begins this critique of Proudhon by paraphrasing the Epicurean poet Lucretius: "There is a continual movement of growth in productive forces, of destruction in social relations, of formation in ideas; the only immutable thing is the abstraction of movement—*mors immortalis*."¹¹⁹⁴

The implications of this account of historical development are perhaps most evident in Marx's controversial articles on British colonialism in India. In these articles, Marx expresses certain ideas about 'Oriental despotism' that he would later call into question.¹¹⁹⁵ Nevertheless, what is relevant for us is the notion of historical development that he retained throughout his life.

Marx asserts that whatever political changes India might have undergone in the past, its social conditions remained unaltered until British colonialism initiated a social revolution.¹¹⁹⁶ We should not lament this too much because these apparently "idyllic" Indian communities were

¹¹⁹¹ Marx, *The Poverty of Philosophy*, op. cit., 97.

¹¹⁹² *Ibid.*, 98.

¹¹⁹³ *Ibid.*, 106-7.

¹¹⁹⁴ *Ibid.*, 95-96; editorial note: 199, n. 30.

¹¹⁹⁵ For an account of this, see Kevin B. Anderson, *Marx at the Margins: On Nationalism, Ethnicity, and Non-Western Societies* (Chicago: University of Chicago Press, 2010).

¹¹⁹⁶ Karl Marx, 'The British Rule in India,' in Marx, *Dispatches for the New York Tribune*, op. cit., 215; 218.

based in “despotism.”¹¹⁹⁷ This does not mean, however, that the British were acting from benevolent intentions. Nevertheless, for Marx, neither Indian nor British despotism is the significant question:

The question is, can mankind fulfil its destiny without a fundamental revolution in the social state of Asia? If not, whatever may have been the crimes of England she was the unconscious tool of history in bringing about that revolution.

Then, whatever bitterness the spectacle of the crumbling of an ancient world may have for our personal feelings, we have the right, in point of history, to exclaim with Goethe:

Sollte diese Qual uns qualen
Da sie unsre Lust Vermehrt,
Hat nicht myriaden Seelen
Timur’s Herrschaft aufgezehrt?¹¹⁹⁸

Translated, Goethe’s poem reads: “Should this torture torment us/Since it brings greater pleasure?/Were not through the rule of Timur/Souls devoured without measure?”¹¹⁹⁹ Timur, conqueror and modernizer of Persia and Central Asia, was both praised and feared by Europeans, demonstrating that civilization and barbarism always go hand-in-hand. Perhaps Proudhon would say that Timur did a lot of good, but he also did a lot of harm.

In a subsequent article on India, Marx asserts that British colonialism will not mend the social contradictions of the mass of people in India.¹²⁰⁰ It will only create the material conditions for their ultimate emancipation: “The Indians will not reap the fruits of the new elements of society scattered among them by the British bourgeoisie, till in Great Britain itself the now ruling classes shall have been supplanted by the industrial proletariat, or till the Hindoos themselves shall have grown strong enough to throw off the English yoke altogether.”¹²⁰¹ Only when the

¹¹⁹⁷ Ibid., 218.

¹¹⁹⁸ Ibid., 218-19.

¹¹⁹⁹ Ibid., 318, n. 126.

¹²⁰⁰ Karl Marx, ‘The Future Results of British Rule in India,’ in Marx, *Dispatches for the New York Tribune*, op. cit., 223-24.

¹²⁰¹ Ibid.

“most advanced peoples” expropriate and bring under common control the modern powers of production “will human progress cease to resemble that hideous, pagan idol, who would not drink the nectar but from the skulls of the slain.”¹²⁰² In other words, no longer will the economic and cultural development of the species necessarily be monopolized by a minority at the expense of the majority of individuals. Again, what Marx says about a mode of production he also deems to be true of history in general. With the achievement of socialism, not only production, but indeed, human history, will be planned in a conscious way.

If Marx follows in significant respects Hegel’s theory that the right of history is higher than that of any particular social form, does that mean that Marx believes that revolutionaries confront prevailing notions of justice with a higher principle of justice? We must distinguish between, on the one hand, the revolutionary overthrow of feudal relations as well as radical attempts to create greater self-government—a ‘social republic’—that nonetheless remain within capitalism, and on the other hand, the revolutionary overthrow of capitalism. With regard to the former, as is to be expected, Marx engages in an immanent critique by turning prevailing notions of justice against themselves. For example, during the bourgeois revolutions of 1848, Marx uses bourgeois notions of right to go beyond the measures of the bourgeoisie. In a passage I have already cited, Marx not only affirms the ‘moral influence’ exerted by revolutions, but also advocates for the right to revolution:

The right of the democratic popular masses, by their presence, to exert a moral influence on the attitude of constituent assemblies is an old revolutionary right of the people which could not be dispensed with in all stormy periods ever since the English and French revolutions. History owes to this right almost all the energetic steps taken by such assemblies. The only reason why people dwell on the ‘legal basis’ and why the timorous and philistine friends of the ‘freedom of debate’ lament about it is that they do not want any energetic decisions at all.¹²⁰³

This evidence repudiates all of those commentators who deem Marx an amoralist or as someone who is solely concerned with so-called ‘non-moral’ goods. Indeed, he also describes as a

¹²⁰² Ibid., 225.

¹²⁰³ Marx and Engels, *Neue Rheinische Zeitung*, op. cit., 129.

revolutionary duty and right the refusal to pay taxes, the parliamentary form of protest par excellence: “The resolution of the National Assembly regarding the refusal to pay taxes had the force of law both formally and materially. We went further than the National Assembly in our appeal. This was our right and our duty.”¹²⁰⁴ This may seem inconsistent with Marx’s assertion that revolutions do not occur according to laws. We must note that Marx believed that the bourgeois revolution in 1848 had established itself through the National Assembly, had created the political form adequate to the emerging capitalist economic conditions, and therefore, had developed the capacities necessary to found a constitution and declare law.

With regard to the establishing of a social republic within capitalism, the best example is his commentary on the Paris Commune. The Commune is a somewhat ambiguous example because it exists somewhere between the establishing of a social republic and the attempt to create what Marx would describe as the first phase of socialism. The evidence suggests that Marx never thought that the Commune could actually achieve socialism.¹²⁰⁵ If we assume for the sake of argument, however, that Marx deemed the Commune socialistic, even in these circumstances he is hesitant to speak of justice in any sense, including complete justice. Marx does argue that the “revolution had become the legal status of France.”¹²⁰⁶ He also notes how one of the measures of the Commune was to make judicial functionaries subject to immediate recall and directly accountable to the people. Consequently, they were “divested of that sham independence which had but served to mask their abject subserviency to all succeeding governments to which, in turn, they had taken, and broken, the oaths of allegiance.”¹²⁰⁷ Indeed, Marx invokes something like the right to revolution, without actually using the terminology, when he asserts that “the war of the enslaved against their enslavers” is “the only justifiable war in history.”¹²⁰⁸ Nevertheless, the only time that Marx, in his own words, explicitly addresses justice, he points to the hypocrisy of bourgeois justice: “The civilisation and justice of bourgeois order comes out in its lurid light whenever the slaves and drudges of that order rise against their masters. Then this civilisation and justice stand forth as undisguised savagery and lawless

¹²⁰⁴ Ibid., 246.

¹²⁰⁵ See, for example, Marx’s letter to Domela Nieuwenhuis: “apart from the fact that this was merely a revolt of a city under exceptional conditions, the majority of the Commune was in no way socialistic, and could not be” (Marx and Engels, *The Karl Marx Library Volume I*, op. cit., 66).

¹²⁰⁶ Marx and Engels, *Neue Rheinische Zeitung*, op. cit., 47.

¹²⁰⁷ Ibid., 58.

¹²⁰⁸ Ibid., 77.

revenge.”¹²⁰⁹ We must now turn to what Marx says about genuinely socialist conditions, about a society that has successfully left behind counter-revolution and its lawless revenge.

14. 3: Is There Complete Justice Under Socialism?

In Marx’s discussions of the genuinely socialist society, although he speaks of distributive justice in the first phase of socialism, he does not characterize either the first or the second phase in terms of complete justice or anything akin to it. In the *Communist Manifesto*, Marx explicitly asserts that, with regard to ‘eternal truths’ such as ‘Freedom’ and ‘Justice,’ “Communism abolishes eternal truths, it abolishes all religion, and all morality, instead of constituting them on a new basis; it therefore acts in contradiction to all past historical experience.”¹²¹⁰ These ‘eternal’ truths are common forms to all preceding societies as much as is exploitation and class antagonism: “No wonder, then, that the social consciousness of past ages, despite all the multiplicity and variety it displays, moves within certain common forms, or general ideas, which cannot completely vanish except with the total disappearance of class antagonisms.”¹²¹¹ Of course, Marx cannot deem freedom to be a mere ‘eternal truth.’ After all, two pages after his critique of these “common forms,” Marx endorses a notion of freedom, a set of social conditions in which “the free development of each is the condition for the free development of all.”¹²¹² It is clear that, for Marx, whereas the freedom of the disembodied free will is an abstract universal, his materialist notion of freedom becomes an ever more concrete universal as it develops historically through its particular social forms. It is not clear that Marx regards justice in the same way.

As we have seen, Marx affirms a notion of distributive justice in the first phase of socialism even though there is no private property or state. He argues that this is because socialism, at least in this respect, cannot immediately escape bourgeois right. It is important to note that Marx says, “What we have to deal with here is a communist society, not as it has *developed* on its own foundations, but, on the contrary, as it *emerges* from capitalist society; which is thus in every respect, economically, morally and intellectually, still stamped with the

¹²⁰⁹ Ibid., 74-75.

¹²¹⁰ Marx and Engels, ‘The Communist Manifesto,’ op. cit., 489.

¹²¹¹ Ibid.

¹²¹² Ibid., 491.

birthmarks of the old society from whose womb it emerges.”¹²¹³ He does not say *politically*. This is not pedantry. It is highly relevant that Marx deems politics inextricable from the state.

In his ethnological notebooks, Marx notes how Theodor Mommsen describes the primitive communism of hunter-gatherer societies in terms of ‘political sovereignty,’ which causes Marx to respond with “asinus!”¹²¹⁴ In his article praising the Silesian weavers’ strike, Marx asserts that socialism will require a political revolution, but can then cast off its ‘political mask.’¹²¹⁵ For Marx, politics does not exist in periods before or after state societies. He contends that, in socialism, public power will lose its political character because political power is “merely the organised power of one class for oppressing another.”¹²¹⁶ If Marx has an alternative theory of a politics that will persist in socialist society, he never explicitly defines it. This makes all the more significant Marx’s belief that the reconciliation of the individual and general interests will be more or less straightforward.

Since Marx describes a principle of distributive justice in the first phase of socialism, but does not describe something akin to complete justice in either the first or the second phases, perhaps this is because, like politics, he deems this specific form of justice inextricable from the state. Perhaps the eclipse of the state brings an end to the need for this kind of justice. Indeed, when Marx speaks of the withering away of the state, he does not cast it in terms of justice. Rather, he depicts it using the familiar standard: “Freedom consists in converting the state from an organ standing above society into one completely subordinated to it.”¹²¹⁷

If all of this does not seem to be strong enough evidence, Marx and Engels, in their discussion of communist society in *The German Ideology*, state their point unequivocally: “As far as *Recht* is concerned, we with many others have stressed the opposition of communism to *Recht*, both political and private, as also in its most general form as the rights of man.”¹²¹⁸ This seems to affirm Wood’s interpretation. And yet, in this paragraph from *The German Ideology*,

¹²¹³ Marx, *Critique of the Gotha Programme*, op. cit., 8.

¹²¹⁴ Karl Marx, *The Ethnological Notebooks of Karl Marx*, ed. Lawrence Krader (Assen, The Netherlands: Van Gorcum & Company B.V., 1974), 224.

¹²¹⁵ Marx, *Early Writings*, op. cit., 420.

¹²¹⁶ Marx and Engels, ‘The Communist Manifesto,’ op. cit., 490-91.

¹²¹⁷ Marx, *Critique of the Gotha Programme*, op. cit., 17.

¹²¹⁸ This is quoted in Steven Lukes, *Moral Conflict and Politics* (New York: Oxford University Press, 1991), 179). His translation is better than that of the *Collected Works*, which, in most cases, translates *Recht* as ‘law’: “As far as law is concerned, we with many others have stressed the opposition of communism to law, both political and private, as also in its most general form as the rights of man” (Karl Marx and Friedrich Engels, *Karl Marx, Friedrich Engels: Collected Works: Volume Five* (Moscow: Progress Publishers, 1976, 209).

Marx and Engels support their rejection of justice by citing three of their previous articles in which they criticize certain aspects of justice without rejecting justice altogether. These articles are Engels's 'Outlines of a Critique of Political Economy' and Marx's articles, 'On the Jewish Question' and 'Contribution to the Critique of Hegel's Philosophy of Law: Introduction.' This is peculiar because Marx's essays, and especially the latter one, provide some of the strongest evidence for the interpretation offered by the proponents of the Cohen-Geras thesis. After all, it is there that Marx describes the exclusion of the proletariat as unjust and their redemption of humanity as total justice. By citing these articles, Marx and Engels are pointing to the continuities between their 1843 articles and the 1845 draft of *The German Ideology*. If this is true, the question arises, what inspired the change with respect to the theory of rights specifically? The secret is in Marx's first engagement with political economy in the manuscripts of 1844. There he discovers the foundation for his theory of historical materialism, namely, the actualization of our 'species-being,' or, what has traditionally been described as the good life for human beings. In the process, Marx comes to regard justice not as something that gives rise to alienated expressions, but as itself the alienated expression of what, according to this newly discovered theory of history, are transitory social relations: private property and the state. In other words, justice becomes as mutable as they are.

Up until 1844, Marx had in large part followed Feuerbach's critique of Hegel, including Feuerbach's rejection of the negation of the negation. In 1844, however, Marx's first exploration of political economy yields what is the most important among a number of significant discoveries. He realizes that, heretofore, he had been guilty of a subject-predicate inversion the likes of which he earlier criticized Hegel's theory of the state. Marx discovers that he was viewing the development of human history as if private property was a separate and autonomous predicate. He thereby neglected the human activity, the subject, that gives rise to it, namely, labour in its alienated forms:

How, now ask, does *man* come to *alienate his labour*, to estrange it? How is this estrangement founded in the nature of human development? We have already gone a long way towards solving this problem by *transforming* the question of the *origin of private property* into the question of the relationship of *alienated labour* to the course of human development. For in speaking of *private property* one

imagines that one is dealing with something external to man, in speaking of labour one is dealing immediately with man himself. This new way of formulating the problem already contains its solution.¹²¹⁹

Although private property appears to be the cause of alienated labour, rather, it is an effect of this alienation.¹²²⁰ The profundity of his realization that private property is not an external thing, but an internal relation, is that the developing dialectic between alienated labour and private property becomes the basis of his own theory of universal history.

The alienation of labour, of humans from themselves, creates the master of labour, whether this latter takes the form of the slave-owner, the feudal lord, the capitalist, and so on.¹²²¹ This is crucial because it is only if labour ultimately produces the ruling non-producers that the latter can be incorporated back into the labourers as self-ruling producers. This is why Marx asserts that in the emancipation of the working class is contained universal human emancipation: “The reason for this universality is that the whole of human servitude is involved in the relation of the worker to production, and all relations of servitude are nothing but modifications and consequences of this relation.”¹²²² Marx’s first exploration of political economy, the science of capitalist society, reveals that it makes possible the end of this alienation. Capital becomes the master of the division of labour and the perfection of private property through its total dispossession of the proletariat. Consequently, the proletariat becomes the perfection of labour because, in order to assert their freedom, they must overthrow this perfected form of private property. In other words, they must take control of a division of labour shorn of private property altogether. In light of this discovery, no longer is the proletariat merely excluded from an overly abstract notion of freedom. Its newfound significance is that it becomes the basis for the negation of the negation in history. Marx does not become a communist until he discovers the grounds for this universal history.

Marx describes communism as the positive supersession of private property as self-alienation and the conscious restoration of humankind as a social being: “It is the solution of the

¹²¹⁹ Marx, *Early Writings*, op. cit., 333.

¹²²⁰ *Ibid.*, 332.

¹²²¹ *Ibid.*, 331-32.

¹²²² *Ibid.*, 333.

riddle of history and knows itself to be the solution.”¹²²³ This is full of obscure, but profound meaning. Marx is echoing similar sentiments expressed by Hess in his own theorization of universal history in ‘The Philosophy of the Act (1843)’:

History has already broken through the closed circle of slavery. The revolution is the break from captivity, from the condition of bigotry and oppression in which the spirit found itself before it became self-conscious. But, as we have seen, this anarchy only broke through the limits imposed from the outside, without progressing further to self-determination or self-limitation, to morality. The revolution is still incomplete, and it knows that it is still incomplete. Even so, the anarchy could not stay as it was at the beginning, and has in fact not stayed that way. And as we, the children of the revolution, move on from it forward into morality, the riddle is thus being solved.¹²²⁴

Characteristically, Marx does not speak of morality as freely as does Hess. Nevertheless, with their invocations of the riddle of history, both Marx and Hess are drawing from Hegel. In the *Phenomenology of Spirit*, during his critique of the merely ‘observing reason’ that treats the world with detachment and considers it a dead thing—as if a human head were just a skull—Hegel quotes Goethe’s *Faust*:

It despises intellect and science
The supreme gifts of man
It has given itself to the devil
And must perish.¹²²⁵

Hegel then offers the ‘active reason’ that aspires to the kind of knowledge that only occurs through deeds.¹²²⁶ Although this Faustian figure attempts to know himself through his deeds, he gives rise to consequences he does not intend: “Consciousness, therefore, through its experience

¹²²³ Ibid., 348.

¹²²⁴ Moses Hess, ‘The Philosophy of the Act’ (1843), in *Socialist Thought: A Documentary History*, eds. Albert Fried and Ronald Sanders (Garden City, New York: Anchor Books, 1964), 274.

¹²²⁵ Hegel, *Phenomenology of Spirit*, op. cit., §360.

¹²²⁶ Speight, op. cit., 24.

in which it should have found its truth, has really become a riddle to itself, the consequences of its deeds are for it not the deeds themselves [...] The *abstract necessity* therefore has the character of the merely negative, uncomprehended power of universality, on which individuality is smashed to pieces.”¹²²⁷ As Speight notes, Hegel deems this figure to be tragic.¹²²⁸ For Marx, although the proletariat is mired in a tragic conflict with capital, they are at the center of his universal history because he believes that, unlike any such conflict heretofore, the proletariat can make history consciously. It can know its tasks and intend its deeds. It knows itself to be riddle of history solved.

Most of the significant aspects of Marx’s theory of revolution are well known by commentators. Nevertheless, few, if any, have asked whether or not Marx, in his adaptation of the dialectical method, offers a notion of the Absolute. As we saw before, the dialectic, the circle of circles, needs an Absolute in order to be a self-enclosed system. Otherwise, it will fall into infinite regress, the bad infinite. For Hegel, the Absolute, the good infinite, is providential history, the developing self-knowledge of the universe itself culminating in an immanent God, the reconciliation of the divine and the human. It is significant that at the end of the manuscripts of 1844, Marx criticizes Hegel’s notion of the Absolute for being too abstract to sufficiently account for nature.¹²²⁹ We have also documented numerous instances where Marx ridicules the idea of the eternal, especially with regard to moral principles such as justice. Does he ever speak favourably of the eternal, the infinite, the Absolute, in a way that does not immediately undermine these notions? Indeed he does.

For Marx, the Absolute is, in successive levels of concreteness, nature, or the metabolism between human nature and non-human nature, or the nexus between natural history and human history in the entire course of its development. Put succinctly, the basis of Marx’s dialectic and the principle of his universal history is free creative labour pursued as an end in itself in the conscious transformation of nature and our own nature. That Marx had developed this theory by 1844 is evident when he praises the “final result” of Hegel’s *Phenomenology*, which “conceives the self-creation of man as a process,” as “alienation and as supersession of this alienation.”¹²³⁰ That Marx deems the culmination of this process the basis of his notion of the Absolute is most

¹²²⁷ Hegel, *Phenomenology of Spirit*, op. cit., §365.

¹²²⁸ Speight, op. cit., 26.

¹²²⁹ Marx, *Early Writings*, op. cit., 396.

¹²³⁰ *Ibid.*, 385-86.

obvious in a famous assertion in *The Grundrisse* where Marx uses the term ‘absolute’ more than once. First, Marx notes how the ancients are not concerned with wealth in itself, but only insofar as it creates the best citizens.¹²³¹ This seems quite “lofty” in comparison to the modern world. Marx then asserts:

In fact, however, when the limited bourgeois form is stripped away, what is wealth other than the universality of individual needs, capacities, pleasures, productive forces etc., created through universal exchange? The full development of human mastery over the forces of nature, those of so-called nature as well as of humanity’s own nature? The absolute working-out of his creative potentialities, with no presupposition other than the previous historic development, which makes this totality of development, i.e. the development of all human powers as such the end in itself, not as measured on a *predetermined* yardstick? Where he does not reproduce himself in one specificity, but produces his totality? Strives not to remain something he has become, but is in the absolute movement of becoming?¹²³²

Marx retains this notion of actualized species-being, of the good life, of the objective good of human beings, throughout his life.¹²³³

That free labour is Marx’s Absolute is evident in his depiction of the modes of production as the different shapes of increasingly more concrete freedom. Marx’s theory of history is not a simple unilinear chronology. The Asiatic, Greco-Roman, and Germanic modes of production are different ways of transitioning from hunter-gatherer societies, or, as Marx calls, them, ‘primitive communism.’ Nor does he schematize the modes of production according to geography. For example, the ‘Asiatic’ mode of production includes Mexico and Peru as well as the Celtic and Slavic peoples. Rather, Marx’s theory of history is based on the development of individual freedom, particularly in our productive activities. This development corresponds to the shifting relations between communal and private property. In the Asiatic mode no one owns private property in land because there is a unity of agriculture and manufacture in the common property

¹²³¹ Marx, *Grundrisse*, op. cit., 487.

¹²³² *Ibid.*, 487-88.

¹²³³ See for example his discussion of the ‘realm of freedom’: Marx, *Capital: Volume Three*, op. cit., 958-59.

of the village. (Marx, heavily reliant on English accounts, downplays the variety of state forms and the extent of market exchange in these societies.) In the Greco-Roman mode the emergence of private property in the family plot is nevertheless subordinate to the communal property of the public area. In the Germanic mode the separate households are independent centers of production united by common pastures that serve only as their complement. In the feudal mode crafts manufacture and independent guilds feature the greatest possible individualization of labour outside of capitalism.¹²³⁴ This is why Marx describes communism as the ‘freedom of each is the condition of the freedom of all,’ rather than the other way around.¹²³⁵

Even if free creative activity is Marx’s notion of the Absolute, why is this relevant for his theory of justice? This is the major discontinuity between 1843 and 1845. Marx comes to deem justice as functional to, and inextricable from, certain aspects of the alienation of labour, namely, private property and the state. Marx criticizes Hegel on grounds similar to Hegel’s critique of Kant: he reconciles social contradictions merely in thought and therefore does not address practical transformations of the social conditions that give rise to those contradictions: “Thus, for example, having superseded religion and recognized it as a product of self-alienation, he still finds himself confirmed in *religion as religion*.”¹²³⁶ This critique of the abstract character of Hegel’s Absolute Idea extends beyond religion: “Man, who has realized that in law [*Recht*], politics, etc., he leads an alienated life, leads his true human life in this alienated life as such. Self-affirmation, self-confirmation in *contradiction* with itself and with the knowledge and the nature of the object is therefore true *knowledge* and true *life*.”¹²³⁷ This reveals the significance of the manuscripts of 1844 for our question. Marx believes that justice is not something that gives rise to alienated expressions, but rather, that justice is itself an alienated expression of something else. In this, justice is less like freedom and more like religion and politics. As with the latter, certain aspects of justice may persist in socialism, in a genuinely human society, but they will not have the form of justice, just our search for spiritual meaning or our public responsibilities will not have the form of religion or politics. With Marx’s discovery of the negation of the negation, he now has the basis by which to envision the end, the withering away, of not only private property and the state, of not only religion and politics, but also the need for justice.

¹²³⁴ Marx, *Grundrisse*, op. cit., 472-74.

¹²³⁵ McNally provides a good explanation of this: McNally, op. cit., 189-90.

¹²³⁶ Marx, *Early Writings*, op. cit., 393.

¹²³⁷ Ibid.

Up until 1843, Marx continues the project of Rousseau, Kant, and Hegel. Marx's search for a sufficiently universal notion of freedom leads to his initial discovery of the excluded proletariat. But Marx also continues Hegel's search for the Absolute. This is what Marx discovers in 1844. The proletariat is not merely excluded, but the unique form of their exclusion makes their struggle for a more inclusive freedom the negation of the basis of all exclusion. Once he discovers that private property and the state are not isolated predicates, but rather, alienated features of the subject, they become historically transitory. Unlike Hegel, Marx's notion of freedom as the Absolute is not 'justice in and for itself.' Quite the opposite. Marx associates the need for justice with private property and the state. Therefore, any freedom that still requires principles of justice demonstrates precisely that it is not yet sufficiently universal and concrete. It is not yet Absolute.

Support for this interpretation is provided by a series of passages in *Capital*, the significance of which has not, to my knowledge, been understood heretofore. During a discussion of the difference between what he calls the 'social' and 'technical' divisions of labour, Marx makes a number of allusions to Plato's theory of justice. What Marx says about the division of labour here demonstrates that he thinks the essence of justice is the functional reproduction of private property and the state, and therefore, that justice is as historically transitory as they are.

To understand what Marx is doing in these passages, we must briefly review a key section in Plato's *Republic*. At the beginning of book IV, Socrates has stripped his guardians, his ideal ruling class, of family and private property. His interlocutors ask, how can the guardians be happy in such a state? If the best are not happy, who could be? Socrates responds that the most just city is founded with an eye for the happiness of the whole, not any specific part. Indeed, the justice embodied by the guardians is their concern for the common ends of the social whole. Socrates likens this to a painting in which the colors of one part may appear wrong when they are considered in isolation, but are correct when we consider the balance of the whole:

Just as if we were painting statues and someone came up and began to blame us, saying that we weren't putting the fairest colors on the fairest parts of the animal—for eyes, which are fairest, had not been painted purple but black—we would seem to make a sensible apology to him by saying: 'You surprising man,

don't suppose we ought to paint eyes so fair that they don't even look like eyes, and the same for the other parts; but observe whether, assigning what's suitable to each of them, we make the whole fair. So now too, don't compel us to attach to the guardians a happiness that will turn them into everything except guardians.¹²³⁸

It is also on this basis that Plato legitimates that other feature of his theory of justice, namely, that everyone remains with the tasks for which they are naturally suited. Indeed, those in the bronze and silver classes are not adequate judges of the gold classes, the guardians, who are primarily concerned with the good of the whole. This is why the guardians are much more important than, say, the cobbler:

That men should become poor menders of shoes, corrupted and pretending to be what they're not, isn't so terrible for a city, but you surely see that men who are not guardians of the laws and the city, but seem to be, utterly destroy an entire city, just as they alone are masters of the occasion to govern it well and to make it happy.¹²³⁹

Before we can interpret Marx's allusions to these passages, we must first understand three aspects of Marx's theory of the division of labour. First, Marx argues that the division of labour has a merely 'natural' character if the distribution of tasks does not occur voluntarily according to a common plan: "man's own deed becomes an alien power opposed to him, which enslaves him instead of being controlled by him."¹²⁴⁰ Second, as long as the division of labour retains this "naturally evolved" character, there will necessarily be a conflict between particular interests and the common interest.¹²⁴¹ Finally, Marx describes the state as an organ that stands separate from and above society "through division of labour."¹²⁴²

Keeping these things in mind, we can now turn to Marx's discussion of the social and technical divisions of labour in *Capital*. The social division of labour into different branches of production exists in a wide variety of societies. Conversely, the technical division of labour

¹²³⁸ Plato, *Republic*, op. cit., 420b-421a.

¹²³⁹ Ibid.

¹²⁴⁰ Marx and Engels, *The German Ideology*, op. cit., 53.

¹²⁴¹ Ibid.

¹²⁴² Marx, *Critique of the Gotha Programme*, op. cit., 19.

within the factory is unique to capitalism. With it, all of the tasks of production are broken down into their constituent parts. During this discussion, Marx notes, in a statement that should remind us of his assertions about the ‘absolute state of becoming’ in *The Grundrisse*, that Plato’s theory is the “standpoint of use-value.”¹²⁴³ In other words, Plato is not concerned with the accumulation of wealth in itself, which is the standpoint of exchange-value, but rather, in wealth that creates good citizens. Furthermore, Plato’s division of society into estates is based on the social division of labour: “Plato’s *Republic*, in so far as the division of labour is treated in it as the formative principle of the state, is merely an Athenian idealization of the Egyptian caste system, Egypt having served as the model of an industrial country to others of his contemporaries, e.g. Isocrates.”¹²⁴⁴ That Marx deems this a paradigmatic example of the natural division of labour is evident in the footnote to this statement, which approvingly quotes James Harris: “The whole argument to prove society natural i.e. (by division of employments)...is taken from the second book of Plato’s *Republic*.”¹²⁴⁵ Marx asserts that, for Plato, the division of labour results from the fact that individuals are many-sided in their needs but only one-sided in their capacities. Furthermore, the worker must adapt herself to the work rather than the work to the worker or else critical points in the production process can be missed and the article spoiled. Marx notes that this ‘Platonic idea’ had arisen recently when the English bleachers opposed the clause in the Factory Act guaranteeing fixed meal times for workers. The bleachers argued that interrupting these operations might damage valuable goods. Marx responds, “*Le platonisme où va-t-il se nicher!* [‘Where will Platonism be found next!’]”¹²⁴⁶

Marx then asserts that, in the development of capitalism through the early manufacturing period, the establishing of a technical division of labour in the workshops came up against significant obstacles, namely, handicraft production and guild protections. Marx cites Andrew Ure, a forerunner to theories of scientific management of production. Ure criticizes guild protections as “the scholastic dogma of the division of labour” and praises Richard Arkwright, whose invention of the throstle revolutionized cotton-spinning and broke through this ‘dogma.’¹²⁴⁷ This is how the technical division of labour emerges within the social division of labour. Marx notes that, by abolishing the regulation of production by handicraftsmen, “the

¹²⁴³ Marx, *Capital: Volume One*, op. cit., 487.

¹²⁴⁴ Ibid., 488-89.

¹²⁴⁵ Ibid., 486-87, n. 54.

¹²⁴⁶ Ibid., 487-88, n. 57.

¹²⁴⁷ Ibid., 490.

technical reason for the lifelong attachment of the worker to a partial function is swept away.”¹²⁴⁸ Nevertheless, this also paves the way for the domination of production processes by capital.

As we saw, Hegel criticizes Plato’s theory of complete justice because, among other things, his ruling class assigns people to their positions in the social division of labour rather than permitting them the freedom to choose their own vocation. Marx now demonstrates that, despite what Hegel says about modern freedom, this choice is only formal. Although people have more choices over their vocation, for the majority, these choices nonetheless remain within their being assigned to the producing classes. The social, and now technical, divisions of labour are still under the control of a ruling class, though this is mediated by competition. Sandel notes that, for most modern thinkers, justice is not about ‘fit’ but rather ‘choice.’¹²⁴⁹ They are wary of teleological theories of the human purpose because they tend to lead to the belief that tasks can be externally imposed. This is contrary to human freedom: “To allocate rights is not to fit people to roles that suit their nature; it is to let people choose their roles for themselves.”¹²⁵⁰ As Marx demonstrates, Sandel misunderstands the nature of capitalism. A ruling minority still divides the majority into the different social functions, but this now occurs economically through the market rather than politically through the state. Furthermore, it is done from the standpoint of exchange-value and therefore disregards which forms of wealth create the best citizens.

Marx details, over the course of hundreds of pages, the effects of this domination on workers before concluding the chapter with a synoptic statement about the long-term tendencies of the technical division of labour. Under capitalism, large-scale industry necessitates the variation of labour but does so in a way that reproduces the old “ossified” division of labour.¹²⁵¹ In other words, it is imposed involuntarily. Furthermore, with the technical division of labour, the workers’ specialized function upon which they depend for subsistence is under constant threat of being rendered superfluous by automation. In this way, workers are forcibly adapted to the needs of the work, of capitalist exploitation. Nevertheless, Marx contends that the “possibility of varying labour must become a general law of social production, and the existing relations must be adapted to permit its realization in practice.”¹²⁵² In other words, capitalism creates conditions in which “the partially developed individual, who is merely the bearer of one

¹²⁴⁸ Ibid., 491.

¹²⁴⁹ Sandel, *op. cit.*, 200.

¹²⁵⁰ Ibid., 201.

¹²⁵¹ Marx, *Capital: Volume One*, *op. cit.*, 617.

¹²⁵² Ibid., 618.

specialized social function,” can eventually become “the totally developed individual, for whom the different social functions are different modes of activity he takes up in turn.”¹²⁵³ This requires, however, a revolutionary transformation of social conditions.

Though the Factory Act, that first and meagre concession wrung from capital, is limited to combining elementary education with work in the factory, there can be no doubt that, with the inevitable conquest of political power by the working class, technological education, both theoretical and practical, will take its proper place in the schools of the workers. There is also no doubt that those revolutionary ferments whose goal is the abolition of the old division of labour stand in diametrical contradiction with the capitalist form of production, and the economic situation of the workers which corresponds to that form. However, the development of the contradictions of a given historical form of production is the only historical way in which it can be dissolved and then reconstructed on a new basis. ‘*Ne sutor ultra crepidam,*’ a phrase which was the absolute summit of handicraft wisdom, became sheer non-sense from the moment the watchmaker Watt invented the steam-engine, the barber Arkwright the throstle and the jeweller Fulton the steamship.¹²⁵⁴

In a footnote to this passage, Ben Fowkes, the translator of *Capital*, asserts this about ‘*Ne sutor ultra crepidam*’: “‘Let the cobbler stick to his last,’ the reply supposed to have been made by the Greek painter Apelles to a shoemaker who criticized one of his works. It is reported by Pliny the Elder, *Historia Naturalis*, Bk xxxv, para. 84.”¹²⁵⁵ Another way to translate it is, ‘The cobbler should not judge above the sandal.’ Fowkes does not realize that this is a reference to the *Republic*. Where will the critique of Platonism be found next!

Indeed, this is not the only time Marx references the cobbler as the paradigmatic example of the merely ‘natural’ division of labour, of the idea of justice as ‘minding your own business.’ Take, for example, Marx’s first critique of Hegel. His refutation of Hegel’s depiction of the civil

¹²⁵³ Ibid.

¹²⁵⁴ Ibid., 619.

¹²⁵⁵ Ibid.

servants as the universal class includes a criticism of the division of labour embodied by the state:

In a rational state it would be more appropriate to ensure that a cobbler passed an examination than an executive civil servant; because shoe-making is a craft in the absence of which it is still possible to be a good citizen and a man in society. But the necessary 'knowledge of the state' is a precondition in the absence of which one lives outside the state, cut off from the air one breathes and from oneself. Thus the 'examination' is nothing but a Masonic initiation, the legal recognition of the knowledge of citizenship, the acknowledgement of a privilege.¹²⁵⁶

In the young Marx's vision for radical republican democracy, he deems the role of guardianship as more important than cobbling, but unlike Plato, and, for that matter, Hegel, he does not think that these tasks should be divided according to class. Not only manual labour but also the mental labour required for rule are different roles in which every citizen in the self-governing democratic republic should share. Everyone should have 'knowledge of the state.' Heretofore, the majority of people have been excluded from rule and self-rule. Therefore, we are unaccustomed to seeing how society as a whole functions and taking responsibility for it. This disrupts our capacity to think of how our own particular interest relates to the universal interest. He retains this theory in his adoption of communism. When every individual takes up different social functions in turn, we have a better understanding of how society as a whole works, and therefore, the knowledge necessary to reconcile our interests. Alienated forms of human activity, whether in the state or in private property, are absorbed back into the community of well-rounded individuals. A precondition of this are forms of class struggle and political activities through which the working class can educate themselves about society, about social laws and processes, so that they are better able to determine for themselves the best ways in which to unite their individual interests with the general interest. In other words, a genuine socialism requires the cultivation of the democratic capacities, of what I have been referring to as practical reason, by which workers make themselves 'fit to rule.'

¹²⁵⁶ Marx, *Early Writings*, op. cit., 112.

Let us return to the allusions to Plato in *Capital*. Given how significant education of the virtuous citizens is in the *Republic*, it is interesting that Marx, in his discussion of the transformations of the division of labour in and through capitalism, speaks of future education in the schools of the workers. When he speaks of technological education that reconciles both practical and theoretical aspects, he is envisioning the end to the separation of manual and mental labour, the latter of which he deems to be a hallmark of the entrenched power of private property and the state. This is why, when Marx describes the second phase of socialism, he speaks not only of free labour becoming our primary need and of the eclipse of distributive justice by the principle of need, but also the end of “the enslaving subordination of individuals under the division of labour, and therewith also the antithesis between mental and physical labour.”¹²⁵⁷

Indeed, Marx’s vision of the end of the ‘natural’ division of labour inaugurates the age of ‘the totally developed individual, for whom the different social functions are different modes of activity he takes up in turn.’ It is not that Marx thinks we can, or should, overcome the differences in natural endowments between individuals. His exceptional egalitarianism embraces these differences. Rather, Marx seeks the abolition of a division of labour that is ‘natural’ insofar as it is spontaneously arisen and under the control of a ruling minority. This is in large part a refutation of Plato’s notion of justice as keeping to the specialized function to which each is declared to be ‘naturally’ suited, and therefore, the notion that responsibility for the social whole is monopolized by a part of society, rather than each and every individual throughout the whole of society. Indeed, one of the reasons Marx rejects classical notions of natural right is because he associates them with ideological attempts to turn historically-specific class inequalities into theories of the natural and immutable hierarchies between human beings. All of this contributes to the interpretation that Marx regards justice in the form of complete justice to be inextricable from the natural division of labour, the most significant aspects of which are the various forms of private property and the state. Conversely, Marx aspires to a rational division of labour that is controlled and planned by the association of self-ruling producers, of free labour, which has shed its class character. The question arises, is this not complete justice in another form?

We must now come to an overall interpretation of Marx on the question of justice in all of its most significant aspects. In doing so, I will also provide a summary of the results found with regard to Marx’s theory of what I have referred to as complete justice in capitalism and

¹²⁵⁷ Marx, *Critique of the Gotha Programme*, op. cit., 10.

socialism. Marx contends that the only possible standard of justice in a given set of conditions is that which corresponds to the prevailing mode of production. What is unjust in those conditions are actions by individuals and groups that transgress the laws and rules that functionally reproduce those historically-specific social relations. Therefore, both a mode of production and the people within it cannot be praised as just or condemned as unjust according to standards external to that mode of production, whether these standards are trans-historical or those of a 'higher' mode of production. This is no less true with regard to the capstone of justice. Marx thinks that each class-based mode of production has something akin to complete justice. Consequently, there is a bourgeois form of complete justice that corresponds to the needs of commodity production under capitalism. Its standard is the general interest defined as the neutral arbitration between a plurality of competing interests.

This does not mean, however, that Marx deems each mode of production as unproblematically just. His immanent critique reveals that no form of justice exists in any positive, non-self-contradictory sense of that term. Marx shows how the capitalist social structure as a whole systemically offends against its own highest principles. Under capitalism, surplus appropriation occurs through production for exchange. Therefore, the principles of commutative justice, 'to each their due' and 'do not steal,' are both offended by the inherently exploitative wage-relation between labour and capital. The highest principle of distributive justice under capitalism, providing for those needs excluded by commutative justice, is fraught with tensions because the state, incapable of truly confronting the systemic inequality that forms its basis, cannot ameliorate needs—it can only discipline them. The highest principle of corrective justice, the punishment of crime, is transgressed because the state is not a response to crime, but rather, its cause. It punishes the crimes it creates. All of this also applies to complete justice. With regard to its bourgeois form, its apparent neutrality obscures its many-layered support for the particular rule of the capitalist class. In fact, the split between the particular and the general interest under capitalism, made so obvious by the differentiation of competitive economic activity from citizenship in the 'purely political' state, reveals the underlying essence of the forms of complete justice that are typical of pre-capitalist modes of production. The idea that complete justice is based in the common ends of the social whole and the objective goods of a human nature that is continuous with the divine structure of the universe masks what are the particular interests of a ruling class.

Therefore, although forms of complete justice exist in every class-based mode of production, they are self-contradictory. For the duration of its historical development, the rulers in a particular mode of production are typically able to maintain a tense, sometimes combative, unity of the particular and general interests. They are able to do so, in part, because they cast their own particular interest as the general interest, indeed, the most general possible interest. They deem themselves the primary representatives of justice, and especially, of complete justice. Nevertheless, this ‘complete’ justice is never actually complete because it is dependent on the subordination and exclusion of producing classes. Therefore, the highest principle of complete justice, the protection of the general interest against the personal whims of individuals, is increasingly undermined by a ruling class that, in the unfolding of societal tendencies and historical laws, becomes an ever more particular interest standing in opposition to the general interests of social development. For this reason, when the contradiction between the forces and relations of production provoke revolutionary fervour, the representatives of this dying order cannot plausibly claim that this revolutionary activity is unjust.

Does Marx think that, even if the revolutionary working class should not condemn capitalism as unjust, it should be motivated and guided by a ‘higher’ socialist principle of justice? If Marx rejects the bourgeois notion of complete justice as neutral arbitration, does he base revolutionary activity in a notion of justice as the objective good of humankind? He does not. As we have seen, although he rejects the ‘conscious baseness’ of the bourgeoisie, he thinks it reveals that all notions of a common good were reflections of the ‘unconscious baseness’ of pre-capitalist ruling classes. The revolutions of the past might have clothed the limited character of their goals in notions of justice, but the revolutionary proletariat, a historically-conscious class, needs no such thing. Justice, and specifically, complete justice, has meant stable compromises between necessarily antagonistic classes. Therefore, justice can only obscure the class interests of potential working class revolutionaries, the objective bearers of a genuinely universal interest. For Marx, a necessary condition of achieving this universal interest is abandoning notions of complete justice.

Although the proponents of the Cohen-Geras thesis are correct that Marx deems the working class the objective bearer of the universal human interest, the proponents of the Tucker-Wood thesis are right that Marx rejects any role for justice as a motivation or guide for revolutionary activity. As is the case with the other forms of justice, Buchanan and Lukes

provide the best interpretation so far, although Lukes is wrong in his assertion that, for Marx, there is no objectivity in the sense of perspective-neutrality. Rather, Marx regards the working class as the bearer of the achievement of the Absolute in history: free creative labour as an end in itself.

The inherently contradictory character of justice is also true of the first phase of socialism. Marx's immanent critique shows that the principle of due espoused by proponents of private property can only actually be achieved in relations of communal property. And yet, by imposing the same abstract standard on every individual irrespective of differences in natural abilities, chosen obligations, and contingent circumstances, this right of equality becomes a right of inequality...*like every right*. Distributive justice, like commutative, corrective, and complete justice, is inherently deficient. This is why Marx never speaks affirmatively about a principle of justice without also demonstrating that it is self-defeating and destined to be replaced by a new standard of justice or the end of justice altogether. The basis of what I have called Marx's exceptional egalitarianism is the eclipse of justice.

While the first phase of socialism features a principle of distributive justice, Marx never describes either phase of socialism in terms of complete justice. The reasons for this are similar to why he never describes socialism in terms of corrective justice. Marx deems both forms of justice as inextricable from the state, the dissolution of which is the precondition for a socialist society. With the state, so too goes corrective and complete justice. This is another reason why the revolutionary working class is not motivated or guided by standards of complete justice. For Marx, they are consciously preparing the way for a society that eliminates the class-determined split between the particular interests of individuals and the general interest of the social whole. This abolishes the conditions in which principles of justice are needed at all. As we have seen, Marx's most important intellectual influences argue that the best way to avoid license or arbitrary freedom is not by constraining freedom with an independent standard of justice, but to make freedom sufficiently universal so that the freedom of each can account for the freedom of all. Marx takes this to its furthest logical extent. The precondition of universal freedom, of its becoming sufficiently concrete, is that it transcends the need for justice altogether.

Although Marx deems the working class the bearer of the universal interest of humanity, he casts this universal interest in terms of freedom as distinct from justice. In other words, what the revolutionary working class accomplishes by establishing socialism is an end to the 'pre-

history' of humankind whereby the freedom of some necessarily comes at the expense of the freedom of others. For Marx, socialism inaugurates the actualization of freedom in a positive, non-self-contradictory way. It is a freedom that is sufficiently universal and concrete. It is not, however, what Hegel would describe as a universal freedom that is 'justice in and for itself.' In certain significant respects, for Marx, justice is actually *the opposite* of the universal interest. In other words, principles or standards of justice only arise when a ruling particular interest needs to cast itself as the general interest and establish the laws necessary for the reproduction of that rule amid the necessary antagonism of class-interests. Therefore, justice becomes obsolete when the particular interests of individuals are also genuinely the universal interest. Ultimately, though Marx takes much from Hegel's theory of historical development, he would not speak of the 'absolute right of history.' Rather, Marx's Absolute, free activity as an end in itself, is only sufficiently realized in history when all need for right has withered away. This, I believe, is the correct interpretation of Marx on justice in all of its most significant aspects. Therefore, all that remains is the critique of Marx's theory of justice.

I have spoken of the significance of the allusions to Plato's theory of complete justice in Marx's *Capital*. It is quite interesting how Marx ends the chapter in which they are contained. In one of the final footnotes, Marx quotes David Urquhart's criticisms of the "unnatural" division of labour represented by the separation between town and country: "You divide the people into two hostile camps of clownish boors and emasculated dwarfs."¹²⁵⁸ Marx then responds, "This passage demonstrates both the strengths and the weaknesses of the kind of criticism which knows how to judge and condemn the present, but not how to comprehend it."¹²⁵⁹ In this, Marx sounds remarkably like Hegel in the preface to *The Philosophy of Right* where, amid his critique of Plato, he asserts that "since philosophy is *exploration of the rational*, it is for that very reason the *comprehension of the present and the actual*, not the setting up of a *world beyond*."¹²⁶⁰ And yet, while Hegel argues that a world-historical individual cannot foresee the future order sufficiently to justify the historical right to do wrong, Marx deems the revolutionary working class to be conscious of its historical task and of the future order it is to bring about. We turn now to the dangers of this theory, and, in particular, Marx's attempt to go beyond justice as such.

¹²⁵⁸ Marx, *Capital: Volume One*, op. cit., 637, n. 48.

¹²⁵⁹ *Ibid.*, 638, n. 48.

¹²⁶⁰ Hegel, *Philosophy of Right*, op. cit., 20.

So far, I have focused on assessing the accuracy of the interpretations of Marx. I have attempted to understand Marx, as well as the different schools of Marxist commentators, on their own terms. Now, in the conclusion, it is time to shift our focus to assessing the broader moral and political implications of Marx's theory of justice, as well as the variety of interpretations offered by commentators. As I hope to show, this required our voyage through the major aspects of the comprehensive theory of justice.

Chapter 15: Conclusion: Before Them, The Flood

In every stock-jobbing swindle everyone knows that some time or other the crash must come, but everyone hopes that it may fall on the head of his neighbour, after he himself has caught the shower of gold and placed it in secure hands. *Après moi le déluge!* is the watchword of every capitalist and of every capitalist nation. Capital therefore takes no account of the health and the length of life of the worker, unless society forces it to do so. Its answer to the outcry about the physical and mental degradation, the premature death, the torture of over-work, is this: Should that pain trouble us, since it increases our pleasure (profit)? But looking at these things as a whole, it is evident that this does not depend on the will, either good or bad, of the individual capitalist. Under free competition, the immanent laws of capitalist production confront the individual capitalist as a coercive force external to him.

Karl Marx, *Capital: Volume One*¹²⁶¹

This is a significant passage, and not only because it quotes Louis XV's purported statement, 'After me, the flood,' a prescient, perhaps apocryphal, intuition of the French Revolution fifteen years after his death. It is rarely noticed that Marx also paraphrases Goethe, who asks, as we recall from Marx's article on British colonialism in India, 'Should this torture torment us/Since it brings greater pleasure?' For Marx, the generation of profit within capitalism is analogous to the appropriation of surplus throughout the pre-history of humankind. Indeed, what Marx says in the preface to *Capital* about the ruling class under capitalism is characteristic of his view about all ruling classes: while he does not paint capitalists in "rosy colours," nonetheless, because they are mere "personifications" of economic processes that are tantamount to "natural history," his standpoint cannot "make the individual responsible for relations whose creature he remains, socially speaking, however much he may subjectively raise himself above them."¹²⁶²

¹²⁶¹ Marx, *Capital: Volume One*, op. cit., 381.

¹²⁶² *Ibid.*, 92.

Nevertheless, we should be wary of the extent to which Marx's assertions about the wills of individuals, whether good or bad, closely correspond to broader transformations of ethics in the modern era.

As we have seen, Marx, in one of his most sustained discussions of his historical method, asserts: "Human anatomy contains a key to the anatomy of the ape. The intimations of higher development among the subordinate animal species, however, can be understood only after the higher development is already known."¹²⁶³ In Hegel's essay on 'Natural Law,'¹²⁶⁴ he says much the same thing with regard to the lion and the polyp, respectively, the king of the jungle and its lumpen-proletariat. For Marx, as with Hegel, science is its own time comprehended in thought. As I noted before, one of the most well-known examples of this is Marx's assertion that Aristotle is not to be faulted for failing to discover the source of commensurability between different commodities.¹²⁶⁵ It was only when capitalism had levelled most forms of labour into abstract commodified labour that this secret could be discovered. We have recently seen an example of this with regard to the question of justice. The young Marx notes how in the modern era there is a split between the private, egoistic individual and the public, political citizen. This not only leads to his mature assertion that, under capitalism, the particular interests of individuals are irreconcilable with the general interest of the state. It also leads to his assertion that the antinomy between particular and general interests is true of every human society heretofore. Nevertheless, this provokes questions about how to distinguish between, on the one hand, the way in which current conditions may reveal hidden truths about human history as a whole, and on the other hand, the way in which we often ideologically generalize across all historical periods what is true only of our own specific circumstances.

Although I will soon point to some flaws in their approach, Buchanan and Lukes offer the best interpretation of Marx so far. As we saw, they criticize Marx because he deems both proletarian revolution and the establishing of communism to be beyond justice. Let us briefly examine their criticisms. We turn first to their criticisms of Marx's theory of proletarian revolution.

As we saw, Buchanan attributes to Marx a multidimensional critique of justice:

¹²⁶³ Marx, *Grundrisse*, op. cit., 104.

¹²⁶⁴ Hegel, *Hegel: Political Writings*, op cit., 173-74.

¹²⁶⁵ Marx, *Grundrisse*, op. cit., 151-52.

- i) One of the most serious indictments of capitalism—and of all class-divided societies—is not that they are unjust or that they violate persons’ rights, but that they are based on defective modes of production which make reliance upon conceptions of justice and right necessary.
- ii) The demands of justice cannot be satisfied in the circumstances which make conceptions of justice necessary; thus efforts to achieve justice inevitably fail.
- iii) Conceptions of rights and justice will not play a major motivational role in the revolutionary struggle to replace capitalism with communism.
- iv) Communism will be a society in which juridical concepts—including the juridical concept of respect—have no significant role in structuring social relations.
- v) The concept of a person as essentially a being with a sense of justice and who is a bearer of rights is a radically defective concept that could only arise in a radically defective form of human society.¹²⁶⁶

Following from this, Buchanan interrogates Marx’s theory of revolutionary motivation because its ‘realism’ is often regarded as its greatest strength.¹²⁶⁷ Buchanan seeks to undermine the plausibility of this realism in order to call into question Marx’s dispensing of moral principles as merely juridical concepts. He does this by arguing that Marx’s theory of revolution is saddled with significant ‘public goods’ problems. Buchanan provides a useful summary:

There are five features of public goods which together result in a basic problem of social coordination. (i) Action by some but not all members of the group is sufficient to provide each member with the good. (ii) If the good is produced, it will be available to all, even to those who did not contribute to its production. (iii) There is no practical way, or no way not involving excessive costs, to prevent those who did not contribute from enjoying the good. (iv) The individual’s contribution is a cost to that individual. (v) The value of what each individual would gain from the good outweighs his share of the costs of producing it.¹²⁶⁸

¹²⁶⁶ Buchanan, *Marx and Justice*, op. cit., 50-1.

¹²⁶⁷ Allen Buchanan, ‘Revolutionary Motivation and Rationality,’ *Philosophy and Public Affairs*, 9.1 (Autumn 1979): 59-82.

¹²⁶⁸ *Ibid.*, 63-64.

On this basis, Buchanan claims that while Marx exposes the ways in which capitalists fall prey to collective action problems, he did not ask whether or not these could prove to be a significant hindrance for proletarians as well, especially with regard to something as dangerous, as ‘costly,’ as revolution: “Unfortunately, the psychological transformation produced by a process of revolutionary cooperation cannot explain how untransformed individuals came to participate in the process in the first place.”¹²⁶⁹ Buchanan’s strategy to undermine the ‘realism’ of Marx’s theory of revolution has certain merits, but it can only be partial. A complete analysis would still require a discussion of the intrinsic merits of moral principles like justice. Whereas Buchanan notes the collective action failures that stifle revolution, Lukes more substantively addresses the dangers of unintended consequences for those already in the midst of revolution.

In some of Lukes’s early articles, he argues that Marxism, at least as it was formulated by its originators, rejects entirely the idea of human rights.¹²⁷⁰ Lukes asserts that Marxism is not only a form of consequentialism, but a form of long-range consequentialism, because the consequences by which it judges current actions exist in an indeterminate future. For this reason, Marxism is even less interested in the rights of individuals in the immediate future than is utilitarianism.¹²⁷¹ These articles inspired Lukes to explore these issues more deeply in his book, *Marx and Morality*. There he explicitly asks about the extent to which Marxism’s morality is an “action-guiding theory.”¹²⁷² Lukes contends that, when Marxism attempts to judge actions according to their long-term contribution to our perfection or self-realization, it is typically beset with three illusions: (i) that envisaging these long-term goals in any kind of detail is utopian; (ii) that Marxists can predict the future with any kind of accuracy, which is exacerbated by the belief that the proletarian standpoint gives us privileged access to this knowledge; and (iii) that the ultimate objectives of emancipation are immanent in world-history and therefore we simply need to bring them about.¹²⁷³ In sum, Marxism presumes to know the long-term trajectory of history while foreswearing a specification of its ultimate aim. This precludes a non-dogmatic evaluation of the different possible courses of action.¹²⁷⁴

¹²⁶⁹ Ibid., 73.

¹²⁷⁰ These articles were compiled in Lukes, *Moral Conflict and Politics*, op. cit., 188.

¹²⁷¹ Ibid., 208-9.

¹²⁷² Lukes, *Marxism and Morality*, op. cit., 145.

¹²⁷³ Ibid., 145-46.

¹²⁷⁴ Ibid., 146.

Ultimately, Lukes contends that Marxism has unresolved problems with regard to the questions of justice and rights, ends and means, and ‘dirty hands.’¹²⁷⁵ After a survey of Marx, Engels, Lenin, Trotsky, Luxemburg, Sartre, and Merleau-Ponty, Lukes asserts that what he calls the “mainline Marxist tradition” cannot account for three things: (i) that bad means, though they contribute to an overall good, are nonetheless an “uncancelled moral wrong”; (ii) that, as per Kant, the interests of every person are owed equal consideration simply because they are persons; and (iii) that it is only a socialist movement that is sensitive to these thoughts that is capable of bringing about a socialism worth fighting for.¹²⁷⁶ Lukes provides a much better diagnosis of the major problems of the Marxist theory of revolution than does Buchanan. Nevertheless, this is all Lukes provides. He does not offer much by way of solutions.

Buchanan and Lukes also criticize Marx’s theory of socialist society. Buchanan argues that Marx and Marxists have been narrowly focused on ‘distributive’ justice to the neglect of non-distributive rights such as civil rights and the rights of political participation.¹²⁷⁷ Buchanan focuses his critique on Marx’s early essay *On the Jewish Question*. There he criticizes elements of the *Declaration of the Rights of Man and of the Citizen*. Take, for example, article 16 from the constitution of 1793: “The right of *property* is that right which belongs to each citizen to enjoy and dispose *at will* of his goods, his revenues and the fruit of his work and industry.”¹²⁷⁸ Marx criticizes this:

The right to private property is therefore the right to enjoy and dispose of one’s resources as one wills, without regard for other men and independently of society: the right of self-interest. The individual freedom mentioned above, together with this application of it, forms the foundation of civil society. It leads each man to see in other men not the *realization* but the *limitation* of his own freedom.¹²⁷⁹

In other words, Marx deems these to be the rights of “egoistic persons.”¹²⁸⁰ As Buchanan notes, however, there are other rights enshrined in the *Declaration* that are not as susceptible to Marx’s

¹²⁷⁵ Ibid., 147.

¹²⁷⁶ Ibid., 148-49.

¹²⁷⁷ Ibid., 50.

¹²⁷⁸ Marx, *Early Writings*, op. cit., 229.

¹²⁷⁹ Ibid.

¹²⁸⁰ Ibid., 229.

critique of egoism. For example, the *Declaration* also affirms, “The right to freedom of expression, thought, and belief (especially religious belief)” as well as “the right to equality before the law (the rights of due process).”¹²⁸¹ Buchanan argues that, although Marx’s critique of certain of these rights is warranted, his critique is nonetheless one-sided:

The charge that the *other* rights of man are valuable only or even chiefly for the isolated, egoistic individual of civil society is much less plausible. The right to equality before the law and the right to free speech, for example, do not seem to be criticizable as boundary line rights for isolated persons who view each other only as means or as dangerous competitors. It is true that the right to free speech established boundaries to prohibit certain sorts of interferences, but in what sense is this a *criticism* of the right?¹²⁸²

According to Buchanan, Marx believes that in communism, although there will be extensive freedoms, there will be no need for rights, for legal guarantees of these freedoms.¹²⁸³ Buchanan’s formal concept of right contains three elements: (i) right is a claim to that which is due to us, not because we desire it, but because we are entitled to it; (ii) justified claims to right take precedence over considerations of welfare, whether social or individual; and (iii) rights can be backed by appropriate sanctions, including peer pressure, public censure, or coercion.¹²⁸⁴ He believes that Marx would basically agree with his characterization of rights.¹²⁸⁵ Buchanan gives three reasons to support his assertion that Marx condemns rights as an artifact of defective modes of production.¹²⁸⁶ First, Marx nowhere asserts that defective bourgeois rights will be replaced with communist rights. Second, Marx describes talk about equal rights, not merely bourgeois rights, as rubbish. Third, Marx asserts that rights entail the application of an equal standard that, given their abstract character, are inherently unsatisfactory.

¹²⁸¹ Buchanan, *Marx and Justice*, op. cit., 60-61.

¹²⁸² *Ibid.*, 64.

¹²⁸³ *Ibid.*, 66.

¹²⁸⁴ *Ibid.*, 163.

¹²⁸⁵ *Ibid.*, 163-64.

¹²⁸⁶ *Ibid.*, 68.

Buchanan disapproves of this wholesale attack on rights because he believes that there will be a vital need for rights even when egoism and class division are overcome.¹²⁸⁷ These rights will still serve at least five functions, none of which requires that these rights to be universal or eternal:

- i) as constraints on democratic procedures (e.g., for the protection of minorities) or as guarantees of access to participation in democratic procedures;
- ii) as constraints on paternalism, i.e., as limits on when and how we may interfere with a person's liberty for the sake of benefitting that person (where benefit is understood as welfare or freedom or some combination of these);
- iii) as constraints on what may be done (and how it may be done) to maximize social welfare, or some other specification of the common good, such as freedom;
- iv) as safeguards constraining the ways in which coercion or other penalties may be used in the provision of *public goods* (in the technical sense) and
- v) as a way of specifying the scope and limits of our obligations to provide for future generations.¹²⁸⁸

Furthermore, Buchanan deems implausible Marx's assumption that these rights can be achieved without coercive sanction.¹²⁸⁹ Therefore, this will have to be regulated in some way. Otherwise, as the attempts to establish socialism demonstrate, the theoretical rejection of rights becomes in practice a kind of self-fulfilling prophecy: "The Marxian charge that rights are merely formal and empty then becomes all too true. The withering away of rights is accompanied by the rank growth of unrestrained coercive power."¹²⁹⁰

It is an open question whether or not there will be 'coercion' in a genuinely socialist society. At the very least, this requires a distinction between the kind of coercion enacted by the

¹²⁸⁷ Ibid., 165.

¹²⁸⁸ Ibid.

¹²⁸⁹ Ibid.

¹²⁹⁰ Ibid., 177.

state and that which is deployed by a public institution, what Marx would call a ‘social organ,’ that has been absorbed back into the direct democratic control of society. Nevertheless, Buchanan raises important points. As we saw in an earlier chapter, there are some ambiguous implications and unresolved tensions in Marx’s critique of corrective justice. These arise because Marx associates crime with the mutable conditions of class divided societies. Therefore, with the end of class society, so too will there be an end to most crime and punishment. For whatever transgressions do occur in socialist society, Marx follows Hegel’s theory of forgiveness. Nevertheless, Marx does not explain what would constitute a genuine confession or forgiveness in these circumstances. He also does not articulate how this process will escape the subjective arbitrariness for which he criticizes attempts to establish more concrete, more circumstantial forms of corrective justice under capitalism. Finally, he provides no hints as to the appropriate procedures when the democratic community is unwilling to forgive a repeat offender. It seems that Marx neglects consideration of negative rights in these cases because he believes that, under socialism, the reconciliation of particular interests with the general interest will be more or less straightforward.

Like Buchanan, Lukes deems Marx’s notion of freedom sophisticated, but rejects Marx’s attempt to transcend justice. Affirming Buchanan’s interpretation, Lukes argues that Marx’s account of liberal rights in *On the Jewish Question* has an “impoverished” view of the significance of the rights of man.¹²⁹¹ Aspects of the ‘Declaration,’ such as the seventh article against lawful detention, have a world-historical significance that is ignored by Marx’s narrow critique of egoism.¹²⁹² “It is probably true,” Lukes asserts, “that an exclusively rights-based morality would be an impoverished one, unable to accommodate collective goods and the role of virtue in moral life: these are hard to capture in the form of individuated interests generating obligations.”¹²⁹³ Nevertheless, he asks, “Is emancipation conceivable, let alone feasible, without the recognition of principles of justice and of rights?”¹²⁹⁴ According to Lukes, Marx thinks that self-interest is the product of private property. Therefore, eliminating private property will harmonize self-interests and the common-interest. Nevertheless, Lukes argues that we are not likely to ever overcome scarcity, limited altruism, conflicting moralities, and constraints on

¹²⁹¹ Lukes, *Marxism and Morality*, op. cit., 63.

¹²⁹² *Ibid.*, 65.

¹²⁹³ *Ibid.*

¹²⁹⁴ *Ibid.*, 94.

knowledge. Therefore, the circumstances of justice, the condition of *Recht*, cannot wither away in the fashion envisioned by Marx.¹²⁹⁵

Lukes argues that when Marxism rejects principles of justice and right, it deprives itself of “moral resistance” to the measures taken in its own name.¹²⁹⁶ “Most important of all,” Lukes concludes, “can a theory of justice and of rights be developed which incorporates the insight and vision of marxism’s conception of freedom? Though marxism sees no need to answer any of these questions, it inescapably raises them, both by its critique of morality in theory and by its moral record in practice.”¹²⁹⁷

Both Buchanan and Lukes find much that is worthy in the needs principle, but think it must also be balanced with consideration of negative rights, of the criterion of due. Lukes argues that even this would be insufficient if it was not also balanced by considerations of virtue. There is at least one respect where this would certainly be true: the election of people to public functions. Regardless of whether we describe them in terms of freedom or justice, even the public functions and administrative responsibilities that would still be necessary in a stateless society could not be ‘distributed’ according to need. Rather, the appropriate standard would be merit, the ability to deliberate about the common good. This is true even if one of the consequences of this meritorious virtue is the correct consideration of what is due to, and needed by, others. Marx does not provide much indication about the characteristics of this standard. For example, he asserts that, “The Commune was formed of the municipal councillors, chosen by universal suffrage in the various wards of the town, responsible and revocable at short terms. The majority of its members were naturally working men, or acknowledged representatives of the working class.”¹²⁹⁸ This is a thin account of the virtues necessary for leadership. Here too it appears that Marx thinks that the reconciliation of particular and general interests will be straightforward.

Perhaps we are being unfair to Marx here. These silences might pervade his work because he refuses to engage in utopian speculation. Even if that is the case, Marx thereby defers to the future those present considerations and activities necessary to bring this future order about. This is inadequate in our circumstances. These democratic deliberations cannot be cast as the

¹²⁹⁵ Ibid., 95.

¹²⁹⁶ Ibid., 141.

¹²⁹⁷ Ibid., 149.

¹²⁹⁸ Marx, *Civil War in France*, op. cit., 57.

concern of future peoples. They are us. If justice is taken in its comprehensive sense, especially with regard to complete justice, it is not something that can be deferred to the future. If justice is not merely a principle of judgement, but a guide to activity, it is about developing the ethical disposition, the democratic capacities, and practical reason, in the here and now. In his biography of Marx, Francis Wheen offers a revealing anecdote: “A friend once suggested that she couldn’t imagine Marx living contentedly in an egalitarian society. ‘Neither can I,’ he agreed. ‘These times will come, but we must be away by then.’”¹²⁹⁹ Marx, like his paradigmatic capitalist, asserts ‘After me, the flood,’ though for Marx this deluge will not bring crisis, but rather, the replenishment of humanity. The dangers endemic to this theory saturate the history of Marxism.

As we have seen, each of the three waves of debate about Marxism and ethics have tended to result in consequentialism or deontology. The determinism of the former is expressed by Brecht in his poem, ‘To Those Born Later’:

You who will emerge from the flood
In which we have gone under
Remember
When you speak of our failings
The dark time too
Which you have escaped [...]

Oh, we
Who wanted to prepare the ground for friendliness
Could not ourselves be friendly.¹³⁰⁰

Conversely, the abstract formalism of deontology is illustrated by Koestler’s *Darkness at Noon*, when, like the revisionists before him and the neo-revisionists after, he provides eloquent criticisms of the ethics of the Commissar, but can only replace it with the ethics of the Yogi:

¹²⁹⁹ Francis Wheen, *Karl Marx* (London, Fourth Estate Ltd., 1999), 97.

¹³⁰⁰ Bertolt Brecht, ‘To Those Born Later,’ in *Bertolt Brecht Poems 1913-1956*, eds. John Willett and Ralph Manheim (London: Eyre Methuen Ltd., 1976), 319; 320.

That was the generation which had started to think after the flood. It had no traditions, and no memories to bind it to the old, vanished world. It was a generation born without umbilical cord.... And yet it had right on its side. One must tear that umbilical cord, deny the last tie which bound one to the vain conceptions of honour and the hypocritical decency of the old world. Honour was to serve without vanity, without sparing oneself, and until the last consequence.¹³⁰¹

The three waves of debate have ended in the same impasse between, on the one hand, an uncritical affirmation of historical materialism that reduces it to a dogmatic determinism, and on the other hand, a resort to utopian socialism that abandons a non-deterministic historical materialism as well as its critical insights about abstract formalism. One of the reasons this has occurred is because each wave failed to apply historical materialism to Marx and Marxism.

This is no less true of Buchanan and Lukes even though, with regard to the question of justice, they offer the most sophisticated interpretation of Marx so far. They raise perceptive points, and in particular, they show that any plausible socialism will require, among other things, standards of due and of merit to accompany that of need. Nevertheless, like the other commentators their interpretation is essentially idealist. They point to the importance of immanent critique *in* Marx's work but neglect the importance of an immanent critique *of* Marx's work. They do not engage in a Marxist critique of Marx. In Marx's own terminology, they describe the problems in Marx's theory of justice but they do not *explain* them.

In light of all of this, we must ask whether or not Marx, in his theory of justice, uncritically absorbs certain aspects of capitalism. Marx clearly rejects significant features of bourgeois notions of justice. For example, he denies the idea that we are inherently selfish individuals. Marx believes that liberals have ideologically transformed a premise arising from historically-specific conditions into a characteristic of human nature in general. This is one of the reasons why Marx thinks that, in socialist society, when there are no laws of competition imposing egoistic behaviour on the mass of people, there will be no need to enshrine this egoism with rights that protect it from society and the state. Nevertheless, Marx may be accepting certain

¹³⁰¹ Arthur Koestler, *Darkness at Noon*, trans. Daphne Hardy (London, Penguin Books, 1964), 149. This passage, as well as the Brecht poem above, are quoted in Lukes, *Marxism and Morality*, op. cit., vii; 130-31.

aspects of bourgeois justice even in the act of rejecting them. Although he dismisses bourgeois notions of our inherent egoism, he accepts the functionalist concept of justice to which they give rise. Therefore, when a society abolishes what Marx deems to be historically-determined egoism, we will no longer need the notions of justice either. He agrees with the reduction of justice to bourgeois justice when, in dispensing with bourgeois justice, he believes that he is dispensing with justice in all of its possible forms. But one need not claim that humans are inherent egoists in order to see a certain value in notions of negative rights—one need only note human fallibility. This is all the more true in the highly contingent circumstances of revolutionary fervour.

Marx's assertions that the only available standards of justice are those that functionally reproduce the given social order closely mirror the transformations of justice, in practice and in theory, that arise from the development of capitalist social relations. With the displacement of production for use by production for exchange the individualization of the dominant material relations inspires similar changes in justice. The material goals of society are no longer contested and coordinated before the production process. Rather, these are uncoordinated decisions made by individuals or groups whose societal worth, the realized values, are determined after production through individual exchanges that are more or less indifferent to the aggregate of exchanges. As commutative justice overtakes distributive justice as the primary form of proprietary justice, proportionate distribution according to the merits of participating individuals and groups is supplanted by exchange according to the sheer equivalence of commodities irrespective of the merits or purposes of the parties involved. This differentiation of the economic from the political transforms justice from the totality of common ends to which individuals are subordinate into a kind of private protection against society and the state.

Traditionally, justice was deemed a positive virtue, a necessary aspect of our self-realization, which can only be achieved with others in common activities toward mutual goals. Now it is more of a negative virtue that is satisfied simply by abstaining from interfering with the pursuits of others. The role of the state and the practice of politics are less about educating people into a social hierarchy at the apex of which stands a common good that confers notions of objective merit. In the modern era, this is often regarded as an intolerant intrusion of private morality into political affairs. Rather, the state, as the embodiment of a general interest, is supposed to approximate a neutral arbiter between a sheer plurality of interests and values.

Government should limit itself to providing and safeguarding the conditions within which individuals can pursue their own particular interests without interference and conflict. This undermines the notion that justice resides in the actualization of our irreducibly social essence and fosters instead the idea that justice is a set of abstract principles that create the conditions which functionally reproduce the aggregate of individuals peacefully pursuing their own self-determined goods.

Another crucial dimension of this is the centralization of significant aspects of justice in the state. The ever-expanding accumulation of private property by capital annihilates the ownership of productive property by the majority of families and communal associations. Widespread dependence on a generalized market that is indifferent to individual needs makes the principle of need an imperative standard. Consequently, distributive justice increasingly becomes the exclusive purview of government, the one entity capable of providing for immiserated needs on a social scale. Furthermore, the impersonal standards required by increasingly interdependent national and international exchange fosters the decline of customary law relative to common law. This also causes the concentration of corrective justice in the state. Therefore, distributive and corrective justice are no longer activities within the grasp of the majority of individuals in familial and communal associations. Rather, they become the responsibility conferred to a minority by various offices of the state. All of these changes inspire the widespread sentiment that a considerable part of justice involves chosen obligations arising from specific institutions. Furthermore, given the impersonal character of capitalist social relations, as well as widespread assumptions about our inherent egoism, these centralized practices of justice adopt a rigid character that is skeptical of exceptions and largely blind to the complexity and nuances of concrete circumstances.

Indeed, the most dramatic transformation undergone by justice throughout capitalist modernity is its eclipse by freedom as the highest principle of the modern table of values. It is not only that certain features traditionally ascribed to justice are now considered the terrain of freedom. For example, as we saw, the question of political offices is no longer considered a question of distributive justice, but of liberty. More importantly, it is that freedom is deemed to be an ontological part of our human nature that exists even before we enter into any properly social relations, whereas justice is regarded as those conventions which, in the creation of societies, attempt to preserve this original freedom with as little conflict as possible. In other

words, justice is less an independent standard and more a support for a freedom with a greatly expanded meaning and mandate.

These transformations of justice under capitalist modernity are reflected in Marx's ambiguous relationship with ethics. If justice is a human convention, not human nature, then, like most conventions, we can imagine humans existing without it. This is exactly what Marx does. For him, justice is radically historical in a way untrue of freedom. We cannot evaluate different modes of production as just or unjust according to an independent standard. Justice is whatever is functional for that mode of production and no other. Of course, the justice of each mode of production is self-defeating and this speaks to the broader array of internal contradictions through which these modes of production inevitably develop into something qualitatively new. Nevertheless, for Marx, the standard by which to compare these modes of production is freedom in its historical development. The basis of Marx's historical materialism, of his universal history, is the development of the particular interest that can become the more general interest, and ultimately, the universal interest.

In light of this, Allen Wood exaggerates the differences between Hegel and Marx's accounts of historical change: "For Marx, world historical agency assumes the shape not of the 'great man' but of the revolutionary class, and so the lever of historical change is not the passionate ambition of the world historical individual, but class interest, conceived not as the private interest of the class's individual members, but as the interest that the class as a whole has in fulfilling its historic mission."¹³⁰² While Marx obviously replaces Hegel's notion of world-historical individuals with the idea of world-historical classes, Wood neglects the similarities between Marx's idea of historical change and Hegel's notion of the 'passionate ambition' of historical 'heroes.' It is not only that Hegel and Marx both assert that, for example, at a certain phase of history, slavery is just according to the only available standards. It is also that Marx adopts significant aspects of Hegel's theory of tragedy, of 'pathos,' and explicitly describes revolutionary transformations in terms of passion: "From that moment, new forces and new passions spring up in the bosom of society, forces and passions which feel themselves to be fettered by that society. It has to be annihilated; it is annihilated."¹³⁰³

¹³⁰² Wood, *Hegel's Ethical Thought*, op. cit., 234.

¹³⁰³ Marx, *Capital: Volume One*, op. cit., 927-28.

This notion of passion has an extensive pedigree in the modern era. Indeed, Marx is not the only person to draw parallels between the unintended consequences of the capitalist market and human history as a whole.¹³⁰⁴ Vico asserts that Providence is the only explanation as to how personal passions, such as ferocity, avarice, and ambition, can lead to the military, merchant, and governing classes that create the strength, riches, and wisdom of the commonwealth.¹³⁰⁵ Mandeville, with his typical candour, argues that private vice leads to public virtue.¹³⁰⁶ Ferguson notes how there seems to be some artificer behind social circumstances that are the product of human activity but not of human design.¹³⁰⁷ Smith praises the ‘invisible hand,’ whereby the pursuit of self-interest unconsciously leads to the general interest more surely than would occur if everyone was somehow motivated from the outset by the general interest.¹³⁰⁸ Hume speaks of how the intellect is the slave of the passions and Kant of how history progresses toward a cosmopolitan future by means of our unsocial sociability.¹³⁰⁹ Hegel contends that because history occurs ‘behind our backs,’ by means of the ‘cunning of reason,’ nothing great has ever been accomplished without passion. Gramsci speaks about how a truly historical act requires that a multitude of dispersed individual wills become assimilated through an overriding passion that empowers this ‘collective man’ to act ‘at any price.’¹³¹⁰ This tradition culminates in Hayek and Nozick who argue that human history is a ‘spontaneous’ and ‘self-generating’ invisible-hand process that is largely the result of unintended consequences.¹³¹¹

Marx’s account of history, at least as that history has proceeded so far, is quite similar to those offered from Vico to Hayek: “Men make their own history, but they do not make it as they please; they do not make it under self-selected circumstances, but under circumstances existing already, given and transmitted from the past.”¹³¹² And yet, unlike most of these other explanations, Marx asserts that the working class will be uniquely capable of making history consciously. The revolutionary proletariat is supposed to know its historical tasks:

¹³⁰⁴ For a fuller explanation of what appears in this paragraph, see Gray, ‘The Divine Right of Things,’ op. cit.

¹³⁰⁵ Giambattista Vico, *The New Science of Giambattista Vico*, trans. Thomas Goddard Bergin and Max Harold Fisch (London: Cornell University Press, 1970), paragraphs 131-33.

¹³⁰⁶ Bernard Mandeville, *The Fable of the Bees*, ed. Phillip Harth (Middlesex: Penguin Books, 1970), 118.

¹³⁰⁷ Adam Ferguson, *An Essay on the History of Civil Society*, 5th ed. (London: T. Cadell, 1782), 205.

¹³⁰⁸ Adam Smith, *The Wealth of Nations* (New York: The Modern Library, 2000), 15; 485.

¹³⁰⁹ Kant, *Kant: Political Writings*, op. cit., 44.

¹³¹⁰ Gramsci, op. cit., 349; 413.

¹³¹¹ F. A. Hayek, ‘History and Politics,’ in *Capitalism and the Historians*, ed. F. A. Hayek (Chicago: The University of Chicago Press, 1963), 14-15; Nozick, op. cit., 18.

¹³¹² Karl Marx, ‘The Eighteenth Brumaire of Louis Napoleon,’ in Marx and Engels, *The Karl Marx Library Volume I*, op. cit., 245.

The social revolution of the nineteenth century cannot take its poetry from the past but only from the future. It cannot begin with itself before it has stripped away all superstition about the past. The former revolutions required recollections of past world history in order to smother their own content. The revolution of the nineteenth century must let the dead bury their dead in order to arrive at its own content. There the phrase went beyond the content; here the content goes beyond the phrase.¹³¹³

Although the proletarian revolution is, like all significant historical developments, rooted in its particular interests, in ‘passion,’ socialism is supposed to be an *intended consequence*. For Marx, it will be not only the product of human activity, but of human design. Nevertheless, Marx’s assertions that the particular interests of the working class are sufficient to spontaneously realize the universal interest, and that the coercive apparatus of the state will wither away, smack of an ‘invisible hand explanation.’ If Marx deems revolution by the working class to be uniquely conscious, he must go all of the way with this. He must question the idea that ‘passion,’ the right form of the particular interest, will straightforwardly result in the universal interest. Otherwise, for all of his statements that ‘the root for man is man,’ Marx can be justly criticized for offering another theodicy, a secular providence. As long as this characterizes the historical practice of Marxism, it will remain an *unintended consequentialism*.

In this respect, Marx can be criticized on his own terms. As we have seen, he rejects Proudhon’s attempt to fundamentally change capitalism according to standards he unwittingly adopts from capitalism—a self-defeating strategy. And yet, Marx can be accused of the same thing when he more or less adopts the notion that might makes right. For example, Marx and Engels criticize Max Stirner’s attempt to discover the empirical basis of right: “In this connection, he could have spared himself all his clumsy machinations, since, starting with Machiavelli, Hobbes, Spinoza, Bodius and others of modern times, not to mention earlier ones, might has been represented as the basis of right.”¹³¹⁴ They go on to assert that,

¹³¹³ Ibid., 247.

¹³¹⁴ Marx and Engels, *The German Ideology*, op. cit., 340.

If power is taken as the basis of right, as Hobbes, etc., do, then right, law, etc., are merely the symptom, the expression of *other* relations upon which state power rests. The material life of individuals, which by no means depends merely on their ‘will,’ their mode of production and form of intercourse, which mutually determined each other—this is the real basis of the state and remains so at all the stages at which division of labour and private property are still necessary, quite independently of the *will* of individuals.¹³¹⁵

Marx and Engels seem to assume that the only alternative to the idea that might makes right is the formal notion of free will offered by the idealists. They uncritically adopt the dichotomy, so typical in the modern era (including the three waves of debates about Marxism and ethics), between determinism and formalism. Indeed, Marx and Engels appear to neglect the possibility of a practical reason that can argue why what it deems right is justifiable in and of itself, irrespective of the immediate circumstances, without thereby becoming too abstract to be applicable in practice. Although their alternative to capitalism is certainly deeper than Proudhon’s, in this respect, Marx and Engels also do not go far enough. Socialists who deny any ethics common to the class-divided and classless societies, who, like Engels, put off a ‘truly human morality’ until after the revolution, separate the present from the future with “the pledge of a tomorrow in whose name today could in good conscience be allowed to perish.”¹³¹⁶ We think that a flood separates this day and the next. This is one of the most significant reasons why socialism has remained a tomorrow that never comes.

Although Marx attempts to resolve a number of Hegel’s bad infinites, Marx himself becomes mired in one. The principle of contradiction, of clashes between equal rights, is too formal. In revolutionary circumstances, it cannot determine the extent to which the ‘higher’ freedom of socialism permits the cancellation of freedom for anyone who espouses the ‘lower’ freedom of capitalism. Furthermore, the assertion that class-interests are a sufficient guide to revolutionary activity is also too abstract. Attacking one positive law from the perspective of the more universal freedom of a ‘higher’ positive law does not give us the necessary resources to remain self-critical of our societal alternative in the midst of our attempts to create it. This

¹³¹⁵ Ibid., 348-49.

¹³¹⁶ Reinhart Koselleck, *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society* (Massachusetts: The MIT Press, 1988), 10.

predisposes proletarian revolutionaries to regard as freedom whatever is deemed functional to the prevailing conditions of the developing socialist society. This notion of freedom runs the great risk of being swallowed by these social conditions even as they become too degraded to change. Even if the interests of a particular class can be rooted in the universal interest, reducing action to class-interest is not a sufficient guide to action. It can give the aspiration to rule, but not make us *fit* to rule. Any practical activity that reduces its motivations entirely to that of interest, whether individual, group, or class interest, transforms the pursuit of power from a means into an end in itself.

In one of his most famous depictions of the dynamism of capitalist society, Marx asserts: “All that is solid melts into air, all that is holy is profaned, and man is at last compelled to face with sober sense, his real conditions of life, and his relations with his kind.”¹³¹⁷ This may be true, but it also inclines Marx to the belief that certain things will melt, will *wither away*, more easily than has proven to be the case. In this respect, Marshal Berman raises significant questions:

Even if the workers do build a successful communist *movement*, and even if that movement generates a successful revolution, how, amid the flood tides of modern life, will they ever manage to build a solid communist *society*? What is to prevent the social forces that melt capitalism from melting communism as well? If all new relationships become obsolete before they can ossify, how can solidarity, fraternity and mutual aid be kept alive? A communist government might try to dam the flood by imposing radical restrictions, not merely on economic activity and enterprise (every socialist government has done this, along with every capitalist welfare state), but on personal, cultural and political expression. But insofar as such a policy succeeded, wouldn't it betray the Marxist aim of free development for each and all? Marx looked forward to communism as the fulfillment of modernity; but how can communism entrench itself in the modern world without suppressing those very modern energies that it promises to set free? On the other hand, if it gave these energies free rein, mightn't the

¹³¹⁷ Marx and Engels, 'The Communist Manifesto,' op. cit., 476.

spontaneous flow of popular energy sweep away the new social formation itself?¹³¹⁸

Berman goes on to ask:

If bourgeois society is really the maelstrom Marx thinks it is, how can he expect all its currents to flow only one way, toward peaceful harmony and integration? Even if a triumphant communism should someday flow through the floodgates that free trade opens up, who knows what dreadful impulses might flow in along with it, or in its wake, or impacted inside? It is easy to imagine how a society committed to the free development of each and all might develop its own distinctive varieties of nihilism.¹³¹⁹

In a response to Berman, Perry Anderson argues that, for Marx, each person is from the outset a social individual whose self is not prior to, but constituted by, relations with others: “If the development of the self is inherently imbricated in relations with others, its development could never be an *unlimited* dynamic in the monadological sense conjured up by Berman, for the coexistence of others would always *be such a limit*, without which *development itself could not occur*.”¹³²⁰ Anderson’s response is cogent, but not sufficient. As we have seen, a broad trend in capitalist modernity is the erosion of what has traditionally been called ‘complete justice,’ the commitment to the common ends of the social whole rooted in the objective goods of human nature. Marx offers profound criticisms of merely *formal* freedom, equality, and rationality, as well as alternative notions of *substantive* freedom, equality, and rationality. And yet, his critique of formal, merely procedural justice never puts forward a positive assertion of substantive justice. Without some notion of complete justice, however, any freedom, no matter how ‘social,’ becomes license, an arbitrary freedom that knows no bounds. “The vocation of a socialist revolution,” Anderson concludes, “would be neither to prolong nor fulfill modernity but to

¹³¹⁸ Marshall Berman, *All That is Solid Melts Into Air: The Experience of Modernity* (New York: Penguin Books, 1988), 104-05.

¹³¹⁹ *Ibid.*, 114.

¹³²⁰ Perry Anderson, ‘Modernity and Revolution,’ in *Marxism and the Interpretation of Culture*, eds. Cary Nelson and Lawrence Grossberg (Chicago: University of Illinois Press, 1988), 330-31. Anderson also quotes the above two passages from Berman.

abolish it.”¹³²¹ But this is precisely why Marx’s notion of freedom, and therefore, Anderson’s response to Berman, are inadequate. Insofar as Marx affirms a freedom he deems ontological and neglects a justice he condemns as merely deontological, he uncritically absorbs significant trends of capitalist modernity that, in other respects, he does so much to critique.

One of the reasons I have stressed the ways in which Marx has embraced the modern devaluation of justice is because a purely functional notion of justice, a justice that does not have the same ontological status as freedom, is quickly abandoned as a guide for revolutionary activity in the interregnum between modes of production. Marxists will often deny that there can be a complete justice, a common good, as long as there are antagonistic class interests. Nevertheless, by complete justice we do not necessarily mean a neutral balancing of antagonistic interests, although this may be the correct practical endeavour in specific circumstances. This takes as given that there are no objective criteria of the common good by which to evaluate the respective merits of competing interests. Conversely, certain notions of complete justice could affirm and pursue objective human goods even if they override the specific interests of particular individuals or even classes. This does not preclude the possibility that the working class is the main social force capable of achieving this.

If we are critical of Marx’s functionalism and want to pursue the immanent critique of justice in a more critical fashion, an excellent illustration of how this project could proceed is found in one of the unlikeliest of places: Geras’s essay ‘Our Morals.’¹³²² At first, it may seem absurd that Geras could provide a model for an immanent critique of capitalist ethics given that he rejects immanent critique and the dialectical method in favour of trans-historical moral principles. Nevertheless, although Geras does not cast it in these terms, his essay engages in a kind of immanent critique of capitalism by applying ‘bourgeois’ principles of ‘just war’ doctrine to what Marx describes as the ‘only justifiable war in history,’ that of the oppressed against their oppressors. Indeed, one could say that *Geras mistakenly thought that Geras did not believe in the immanent critique of capitalist ethics*. Although his interpretation of Marx is quite similar to that of Nielsen and Peffer, unlike Nielsen, Geras does not deem justice an instrument to be abandoned when necessary, and unlike Nielsen and Peffer, Geras does not regard debates about the theory and practice of justice as the privileged terrain of a revolutionary intelligentsia. In fact,

¹³²¹ Ibid., 332-33.

¹³²² Norman Geras, *Discourses of Extremity: Radical Ethics and Post-Marxist Extravagances* (New York: Verso, 1990).

of all the commentators who affirm utopian socialism, Geras offers the most sophisticated account of what is worth preserving in Marx's historical materialism.

Geras agrees in large part with Lukes's assertions that Marxism needs to take individual rights more seriously.¹³²³ For example, Geras finds wanting Trotsky's assertions about the kind and extent of ethical conduct during class struggle and revolution. The formula, "To the degree that contingencies allow," is a recipe for "moral cynicism."¹³²⁴ Nevertheless, Geras also faults Lukes because he fails to articulate the extent to which the oppressed must respect the rights of their oppressors. For this reason, Geras explores the principles of just war doctrine as a potential guide for revolutionary activity. Geras argues that, as is the case with a just war, a revolution is justified in terms of self-defence of rights and freedoms against an oppressor.¹³²⁵ Furthermore, just war doctrine can provide theories of revolution some insight about how to fight—even to the death—within "certain moral limits."¹³²⁶ There are two fundamental questions in just war doctrine. First, who are the legitimate targets, or how do we distinguish between combatants and non-combatants? Second, in what circumstances and in what ways may combatants be attacked and killed?¹³²⁷ Geras looks at each in turn.

Geras asserts that in a revolutionary struggle against a tyrannical regime, the definition of a combatant must be "narrowly drawn" around those directly involved in the imposition and enforcement of oppressive laws.¹³²⁸ This will include a regime's "leaders, soldiers, police, security agents, jailers, torturers," as well as "police informers and collaborators."¹³²⁹ It will not include state employees like teachers or health care workers. Most importantly, just as one cannot kill civilian supporters of an enemy regime during a time of war, neither can revolutionaries target those civilians who are "political supporters and economic beneficiaries" of the regime.¹³³⁰ Furthermore, Geras argues that Trotsky elides the distinction between the intentional and unintentional injuring or killing of non-combatants. Instead, Geras affirms the "principle of double effect," which permits actions that are likely to have some evil

¹³²³ Ibid., 31-32.

¹³²⁴ Ibid., 35.

¹³²⁵ Ibid., 37.

¹³²⁶ Ibid.

¹³²⁷ Ibid., 38-39.

¹³²⁸ Ibid., 40.

¹³²⁹ Ibid.

¹³³⁰ Ibid.

consequences as long as the evil is not an intended part of one's ends or means and as long as, at some costs to oneself, precautions are taken to minimize likely evils.¹³³¹

With regard to the second fundamental question, the permitted forms of attack, Geras affirms the principle of "minimum force" whereby one is permitted to stop enemy combatants, even if this means killing them, but cannot gratuitously accentuate their suffering.¹³³² The only way in which purposeful cruelty could be justified in terms of an activity that deems itself to be defensive in character is if socialist society can be envisioned as embracing retributive punishment, which Geras rejects.¹³³³

For Geras, the ultimate "normative basis" of extending just war doctrine to revolutionary struggle is that individuals have rights "unless they forfeit them by making war themselves in defence of tyranny or grave injustice."¹³³⁴ Nevertheless, the way in which the relevant rights may be forfeited must be defined within narrow limits and applied to each individual in an "individualized" way.¹³³⁵ Otherwise, individual rights are meaningless. Geras concludes:

The question will be raised at this juncture whether individual rights against being killed or violated are then, in every other circumstance, absolute. They are all but absolute. If this answer is deemed to be insufficiently precise, its superiority over the meaningful alternative to it appears to me compelling. One such alternative is to say that the rights are indeed absolute, inviolable everywhere save when forfeited by their holders in the manner described. The trouble with this is that it is always possible to envisage cases (one has to kill an innocent person to avert a massacre of hundreds; or to save the population of city; etc.) for which it would be conceded by all but a few doctrinaire fanatics that the moral horror of the consequences has – tragically – to be allowed to override the rights of the innocent.¹³³⁶

¹³³¹ Ibid., 42.

¹³³² Ibid., 43.

¹³³³ Ibid.

¹³³⁴ Ibid., 46.

¹³³⁵ Ibid., 47.

¹³³⁶ Ibid., 49.

Like Buchanan and Lukes, Geras also raises questions about the extent of continuity between capitalism and socialism with regard to questions of justice. Geras contends that the idea of ‘smashing the state’ implies a “total discontinuity,” which obscures certain rights and institutions that a socialist democracy must preserve, including

a national representative assembly elected by direct universal suffrage, some separation of powers, the independence of judicial from political processes, the protection of basic individual rights, a constitutionally guaranteed political pluralism. Even if a socialist democracy can only emerge by replacing the institutions of the old state, there is reason to dwell on a line of continuity here all the same.¹³³⁷

Although the interpretations of Marx offered by Buchanan and Lukes are more accurate than that of Geras, nonetheless, Geras is to be commended for a discussion of the role of justice in revolutionary activity that is more sophisticated than any of the other commentaries with which I am familiar. He persuasively shows the importance of justice for even the most robust notions of emancipation.

In contrast to commentators like Cohen and Geras, I argue that everything Marx says about justice is internally consistent. Where Marx is indeed inconsistent is the way in which he separates justice from other aspects of ethics. As we have seen, Marx’s immanent critique of bourgeois freedom and equality demonstrates that they result in unfreedom and inequality. He proposes alternative, more substantive notions of freedom and equality that, though they can only be fully actualized in socialism, nonetheless provide a basis by which to critique capitalism as unfree and unequal. Marx’s immanent critique of justice does not yield the same result. He does not offer a more substantive notion of justice by which capitalism, and, indeed, all class-based modes of production, can be criticized as unjust. Is there something about immanent critique that automatically precludes a substantive justice by which capitalism can be criticized? No, it only rejects trans-historical principles of justice. And yet, Marx denies a substantive justice all the same. It is not what Marx says about justice that is internally inconsistent, but rather, the unique way in which he applies immanent critique to justice. As I hope to have

¹³³⁷ Ibid., 54.

shown, the reasons why Marx is inconsistent on this score can only be revealed by applying immanent critique to Marx himself. This demonstrates why Marx needs a more robust theory of justice *on his own terms, according to his own principles*.

This is also one of the reasons why the method I offer here is different from, on the one hand, Cohen and Geras, and on the other hand, Lukes. Although I critique Marx's silence on justice, this does not entail embracing utopian socialism. Rather, I argue that Marx, for ideological reasons, casts his rejection of utopianism too wide. He assumes that any theory of justice by which the capitalist mode of production can be criticized as unjust is necessarily utopian. This neglects what a more consistent immanent critique of bourgeois justice could produce, especially if it adopts the comprehensive schema of justice pursued here.

What would Marx's universal history look like if justice was deemed to be as fundamental as freedom? As we saw in the discussion of Marx's *Capital*, he distinguishes between three phases of human history. The first phase includes all non-capitalist class societies, the second phase is capitalism, and the third phase is socialism. He compares these three phases according to the foundational principle of his universal history: freedom.¹³³⁸

Although the first phase features slave-labour and serfdom, it also includes circumstances in which producers own their conditions of production, as is the case with land-owning peasants and artisans who possess their own tools. Marx deems the latter forms of production the 'classical' expression of this first phase because, if only to a limited extent, producers can express their free individuality through the conditions of production they possess. These small pockets of freedom are constrained by two things. First, they are hemmed in by the limited forces of production. Private property is small-scale and dispersed. There is no concentration or socialization of private property on a mass scale. Although there is certainly a social division of labour, these conditions preclude the technical division of labour within the separate branches of production, and thus, the free development of the productive forces. Second, whatever expression of free individuality is permitted by the possession of productive property, this is constrained by the prevailing relations of production, by direct unfreedom, by the political coercion through which the ruling classes appropriate surplus.

The second phase is the capitalist mode of production. It is initiated by primitive accumulation, the expropriation of the productive property of the mass of producers. This creates

¹³³⁸ Marx, *Capital: Volume One*, op. cit., 927-29.

immense dependence on commodity exchange, bringing productive property itself into the competitive imperatives of the market. This causes the relentless drive for increasing productivity, which dissolves small-scale private property and increasingly socializes the conditions of production. The dissolution of non-capitalist production relations through the spread of market exchange is deemed the ‘great leveller.’ It is now a common assumption that human beings are inherently equal and are deserving of the same freedom and rights. Nevertheless, as Marx goes to great lengths to show, this is a merely formal freedom that faces two major constraints. First, with regard to the forces of production, because they have been alienated from the possession of workers, the socially-determined worth, the value, of their abstract labour is determined by an independent pricing mechanism. Consequently, since production is dictated by the imperative to constantly increase average productivity, the determination of production goals is largely beyond the control of workers. Second, as far as the relations of production are concerned, the widespread ownership of private property creates illusions of equality, but this abstracts from the class differences between those who can own both the means of production and the means of consumption, and those who can only own the latter. Therefore, the standards of ethics and politics under capitalism are ‘universal,’ but they are also abstract. Capitalist freedom and equality are actually unfreedom and inequality.

Finally, the third phase, the socialist mode of production, combines the best elements of the preceding two phases. If the second phase negated the first, then the third phase is the negation of the negation. By abolishing alienated labour, it not only brings the conditions of production back under the possession and control of workers, but also establishes cooperative production on a genuinely universal scale. Since each person is a worker like everyone else, the development of the general wealth of the species need no longer come at the expense of the individual. This is a substantive freedom and equality.

Whatever faults we might find in Marx’s historical materialism, and as sympathetic as we are with the utopian critique of the consequentialist tendency within Marxism, one of the aspects of Marx’s work that I think is worth preserving is his discussion of labour, especially as it occurs in his criticisms of utopian socialists. The labour theory of value not only explains the character of exploitation under capitalism, but also how to bring exploitation to an end. The inequalities inherent to capitalism cannot be overcome simply by abolishing money, commodity markets, and private property. This is why mutualism, mixed economies, market socialism, and state-

controlled command economies only reproduced these inequalities in different forms. Capitalist unfreedom and inequality can only be brought to an end by abolishing alienated labour and the production of value. Workers must have collective and genuinely democratic control over their conditions of production. Before the production process begins, they must deliberate about production goals, about the manifold social needs they plan to meet, as well as what distributions of labour duration and intensity across the various branches of production are necessary to meet those needs. In other words, production must be planned and coordinated from the outset according to democratically determined patterns of distribution. Only then are production goals liberated from the law of value, the imperative of ever-increasing average productivity. Only then are workers producing for specific needs, not exchange-values. Only then can workers be compensated according to their actual labour, not an abstract labour that is beyond their control.¹³³⁹

These insights about freedom throughout the three phases, as well as the foundations of freely associated labour in the final phase, contribute to our understanding about justice in human history. As we have seen, in the first phase of human history, production is under the overt normative control of the political authorities and the common associations of producers. This production is primarily for the direct needs of the immediate communities. These different needs, as well as the contributions and compensations of the hierarchy of estates, are coordinated—though not without class conflict—before the production process begins. Therefore, production and consumption are directly connected. From the outset, producers take into consideration that their accumulation is subordinate to the common ends of the social whole. These relations of production are more congenial to the idea that individuals are always already embedded within social relations toward which they have mandatory obligations. In other words, this fosters the more positive conception of justice for which individuals can only become what they essentially are through their cooperative relations with others. It therefore leads to the notion of complete justice as the substantive common good to which every individual is subordinate. Nevertheless, since the division of labour is based in a hierarchy of castes or estates, these notions of justice are based in unequal privilege. Indeed, tangible political inequalities are often deemed continuous with the order of the cosmos. Consequently, it is the common belief

¹³³⁹ This paragraph draws heavily from Gray, ‘Planning for the Feast,’ *op. cit.*

that there is a natural hierarchy of humankind, and thus, natural rulers over humankind. We can refer to these conditions as ‘concrete particularity.’

In the second phase, under capitalism, production is primarily for exchange. For this reason, production and consumption are separated from each other by the market. What is produced and how is not socially coordinated. Rather, production is by owners of private property making largely individualized economic decisions. The value of productive activities and their products, and thus, the rationality of these decisions, can only be determined after the production process through market exchange. The resultant allocations are the unintended result of all of these private pursuits. Although each individual is more or less indifferent to the ends pursued by all of the others, as the possessors of exchange-values or abstract wealth, they are also formally equal and free. This is more congenial to the negative notion of justice. It is the protection of every individual from society and the state. Therefore, the laws of justice and the principles of right become increasingly universal and impersonal. They are supposed to apply to everyone equally by remaining neutral to their substantive ends, to the ways in which their pursuits give rise to conflicting ideas of the good life. Indeed, it is a common assumption that human beings are inherently equal, but that the subsequent developments in their talents and efforts lead to different amounts in the holdings of property. Therefore, this material inequality is housed within untrammelled political equality. As Marx has so ably shown, however, these principles of right are formal. Commutative justice fosters exploitation. Distributive justice under capitalism can only ameliorate, but not address widespread necessity. Corrective justice, or, equality before the law, obscures the unequal determinants of both crime and punishment. Finally, complete justice casts as the neutral and universal interest what is actually the particular interests of the capitalist class. We can refer to this situation as ‘abstract universality.’

Marx criticizes both systems of justice, the one based in equal rights as much as that based in unequal privileges. Furthermore, when he describes the third phase of human history, the socialist mode of production, he casts it beyond justice. Unlike freedom, which has its full realization in socialist conditions, there is no substantive justice to be actualized in Marx’s socialism. This separates justice from other ethical values. Indeed, Marx treats justice like an abstract negation, not a determinate negation. It is not preserved in a higher form. It is annihilated. Therefore, when it comes to justice, he does not pursue the dialectical method consistently. What if we were to preserve the best aspects of the two preceding phases through

their reconciliation in the third phase? Perhaps capitalist social conditions make latently possible, and socialist conditions actually possible, the reconciliation of robust notions of the common good of the social whole with the criterion of universality. These conditions might make possible more positive notions of justice, of our irreducibly social processes of self-actualization, of creative activity as an end in itself, without thereby requiring notions of the natural hierarchy of humankind. Can we refer to this as ‘concrete universality’? Perhaps it is on the basis of this more substantive justice that we can criticize capitalist justice as being, in actuality, capitalist injustice.

At the outset, it may not appear all that significant if we argue that capitalism is unjust. If all we focus on is the critique of exploitation, for example, then it might seem a trivial matter whether or not we do so according to a principle of justice. It might appear only slightly less trivial if we do so according to a more comprehensive notion of justice. After all, the only change is that we deem capitalism not only commutatively unjust, but also unjust according to its own notions of distributive, corrective, and complete justice. The critique of capitalist injustice can only become profound when our theory of justice, and in particular, of complete justice, deems justice to be not only a principle of judgement, but also a guide to activity. This more comprehensive theory of justice would not only provide the standards by which to judge capitalism as unjust and socialism as just, but would also show that the revolutionary transition from one to the other can only occur in very specific ways according to highly rigorous principles and practices. It requires a socialist politics in which the mass of workers and their allies engage in agonistic and educative class struggle and political organizing based in the long-term and widespread cultivation of practical reason, which connects an ever deepening understanding of social conditions with a developing ethical disposition toward the common good.

Marx follows the modern tradition in the search for a sufficiently universal freedom. Nevertheless, like Rousseau, Kant, and Hegel before him, his notion of freedom is formal. For Marx, the Absolute is free labour or creative activity as an end in itself. But if creativity can be used for bad as well as good, can this be the Absolute? If one person’s self-realization encroaches on that of another and both have plausible claims to the legitimacy of their own self-realization, is the notion of freedom as self-realization sufficient to resolve the dispute? By what standards do we judge between them? Can we say that the standard is ‘need’? But Marx never really indicates how needs are to be evaluated. He does not assert whether or not some are

objectively better than others. Rather, he assumes that the reconciliation of these needs, the integrating of self-interests with the general interest, will be more or less straightforward. Even in ideal circumstances, however, those democratic deliberations will have to appeal to standards independent of needs themselves. Otherwise, how do you decide which needs to prioritize? The criterion of urgency is not enough. Someone may profess a great deal of urgency for a need that others deem unworthy or unimportant.

The universalization of freedom which, if conflicts arise, legitimates, in the name of a higher freedom, either the constraint of freedom or the imposition of a genuine unfreedom, is too formal. It becomes too easy to abuse, as did the Soviets when they distinguished between liberty and stability, between the formal freedom of the capitalist West and the ‘genuine’ freedom of ‘actually existing socialism.’ Even if one is unwilling to say that, under socialism, the freedom of some will necessarily come at the expense of the freedom of others, nonetheless, there will surely be a great deal of ethical negotiation about our mutual interactions given that there is likely to be disagreement about priorities, obligations, and so on. The appeal to freedom alone is not sufficient for this negotiation given that there could still be substantive disagreements over that in which our positive freedoms consist.

If the self-realization of each as the condition for the self-realization of all is not straightforward enough to avoid conflict, if we can imagine disputes arising from two equally plausible but antithetical claims to positive freedom, does the idea of freedom as a universal law we give ourselves provide a sufficiently independent standard of adjudication between them? Or, will there arise the temptation to...let force decide? If so, then the robust conception of freedom offered by Marx is an important part of the Absolute, but is incomplete. Indeed, Marx’s theory of justice could be criticized as an example of a subject-predicate inversion. He transforms justice, an integral part of the subject, into a reified thing, a predicate, something so alienated from humans that we could conceivably exist without it.

As we saw, Marcuse’s immanent critique of Soviet moral philosophy and practice shows how it suffers a dialectical inversion and embraces the elitism of the Western morality to which it is opposed.¹³⁴⁰ I hope to have shown that the immanent critique of Marx offers similar results. Marx uncritically absorbs fundamental aspects of the bourgeois justice he rejects. His theory of a socialist society devoid of justice does not transcend the conditions of tragic confrontation.

¹³⁴⁰ Marcuse, *Soviet Marxism: A Critical Analysis*, op. cit. 232.

Rather, it establishes them in another form. Ultimately, the story of Marx and justice is a theory of tragedy which itself becomes tragic.

Even if the natural division of labour is replaced by the voluntary division of labour, even if the division of social tasks occurs according to a collective and conscious plan, even if everyone participates through democratic deliberation in choosing the distributions of social tasks, there will still be need to compromise. This includes assigning onerous tasks for which the appeal to the common good is necessary. This voluntary division of labour can acknowledge inequality of intrinsic talents, as well as the ways in which these talents are cultivated over the lifetime of each individual according to the various standards of merit, without thereby denying the equal intrinsic dignity of everyone. Nevertheless, the need for a robust theory and practice of justice is all the more profound given Marx's aspiration for what I have called 'exceptional egalitarianism.' Distributing the means of consumption according to its standards will demand a vigorous communal spirit. This is especially true with regard to those chosen obligations arising from institutions and practices which, because they benefit the social whole, are not penalized in the distributions according to individual needs. Indeed, an exceptional egalitarianism capable of accounting for complex, concrete circumstances will require a robust practical reason.

It is not that justice should be valued more highly than freedom. Nor is the inverse true. Rather, justice, as much as freedom, is an inextricable part of that which is the genuinely highest value, and that for which there may be an even more deafening silence than justice. The most conspicuous absence in Marx and Marxism is 'the good.' We have seen several reasons why the good cannot be reduced to freedom as an end in itself. It also requires a notion of justice, the transcendence of which cannot mean the simple annihilation of justice, but rather, its replacement by something deemed to be more just than justice, as is the case, for example, with 'equity,' or perhaps, with exceptional egalitarianism. This is why the critique of justice is a taproot into the broader questions of ethics. Indeed, Marxism, unlike most worldviews, envisions an end to politics proper. Therefore, more than any other worldview, Marxism needs a theory of ethics sufficient to regulate the interactions between individuals in a stateless society.

Those who have attempted to construct a Marxist ethics have tended to pursue an idealist method. They either try to generate a systematic ethics directly out of Marx's sparse statements about ethics, or they attempt to synthesize Marx with some other theorist more explicitly concerned with ethics, such as Aristotle, Spinoza, or Kant. Conversely, this immanent critique of

Marx puts on the agenda the need for a full scale historical materialist critique of capitalist ethics. One of the reasons I needed to use Aristotle as a general—perhaps too general—paradigm of pre-capitalist ethics is because, in the absence of a historical materialist critique of ethics, we cannot account for the development of ethics through human history as a means of comprehending the transformations of ethics under capitalism. It is not enough to simply condemn as abstract Hegel's theory of the state as the embodiment of Ethical Life. We require the critique of capitalism not only as an economic and political system, but as a form of Ethical Life. The dramatic transformations of justice under capitalism are only a part—albeit, a significant part—of the broader changes to ethics as a whole. R. H. Tawney eloquently describes these changes:

Between the conception of society as a community of unequal classes with varying functions, organized for a common end, and that which regards it as a mechanism adjusting itself through the play of economic motives to the supply of economic needs; between the idea that a man must not take advantage of his neighbour's necessity, and the doctrine that 'man's self-love is God's providence'; between the attitude which appeals to a religious standard to repress economic appetites, and that which regards expediency as the final criterion – there is a chasm which no theory of the permanence and ubiquity of economic interests can bridge, and which deserves at least to be explored. To examine how the latter grew out of the former; to trace the change, from a view of economic activity which regarded it as one among other kinds of moral conduct, to the view of it as dependent upon impersonal and almost automatic forces; to observe the struggle of individualism, in the face of restrictions imposed in the name of religion by the Church and of public policy by the State, first denounced, then palliated, then triumphantly justified in the name of economic liberty; to watch how ecclesiastical authority strives to maintain its hold upon the spheres it had claimed and finally abdicates them – to do this is not to indulge a vain curiosity, but to stand at the sources of rivulets which are now a flood.¹³⁴¹

¹³⁴¹ Tawney, *Religion and the Rise of Capitalism*, op. cit., 26-7.

These transformations of ethics in early modern Europe can be generalized across the capitalist world. Again, we must ask, has Marx, in the development of his theories of capitalism and history as a whole, critically adopted these modern trends or has he uncritically absorbed them? The virtue of turning the method on the master is that it liberates the method from the master. Indeed, this leads to questions of whether that method can actually incorporate ethics into its circle of circles.

The dialectic, as a universal history, is opposed to the Parmenidean notion that, because the true and the good are eternal, whatever they are, they have always been such. Rather, the dialectic contends that the true and the good are timely. At the beginning they are only latent potential. They can only become actual at the end of a history which comprehends itself as a rational process. The idea that the true and the good develop can only avoid the relativism of the infinite regression if the dialectic can become a self-enclosed Absolute. The only way to assert, on the one hand, that thought is a child of its time, and on the other hand, that the dialectical system as a whole is true, is if our own time is the end, or reveals the end, of unconsciously historical time. Otherwise, there is no way to tell whether or not our initial immersion in the prevailing conditions does not dogmatically absorb elements of these conditions. More profoundly, we cannot tell whether or not this immersion, without recourse to foundations or potential truths beyond possible human experience, is in itself dogmatic through and through.

We must consider the implications of Marx's depiction of free creative activity as the 'absolute state of becoming.' This is reflected in Marx's criticism of questions of 'infinite progression' as abstract and his assertion that communism will not be the last historical form.¹³⁴² These assertions sound too much like the endless regression of the bad infinite. Again, it is a tomorrow that never comes. This is not to reject the importance of free activity for human nature. Rather, it is to point to unresolved tensions in our conception of the Absolute, which, as long as they persist, preclude a completely critical, non-dogmatic comprehension of our present circumstances and what is possible in the future.

Marx famously advocates for 'the ruthless criticism of everything that exists.' What happens when this ruthless criticism is turned against itself? What would an immanent critique of immanent critique look like? The dialectical method should be able to account for this self-imposed immanent critique because the Absolute is supposed to exist within possible human

¹³⁴² Marx, *Early Writings*, op. cit., 356-58.

experience. In other words, an immanent critique of the dialectical method should result in the Absolute without remainder. What a ruthless criticism of immanent critique could reveal, however, is that if the dialectic has not been successfully self-enclosed by its most able proponents, Hegel and Marx, perhaps this is because it cannot be closed. Perhaps the dialectic is inherently flawed. Perhaps it results in a remainder that is precisely what the anti-foundationalism of immanent critique rejects: the need for a trans-historical standard, a foundational notion of the good against which all socio-historical forms must be measured. Perhaps this is why ethics is the rock upon which the dialectic so often breaks. The collapse of the dialectical method would not necessarily entail the rejection of socialism, but it would fundamentally change our notion of socialist thought and activity. Perhaps our means have been inadequate because our conception of the end has been inadequate. To achieve in substance what our historical method deemed to be the next phase of human society may require abandoning the primarily historicist character in which we have cast the activity that could bring about that society.

This is the central paradox: if the immanent critique of immanent critique reveals a remainder, this calls into question immanent critique and its rejection of foundations, of 'external' or 'transcendental' standards. Why then engage in immanent critique in the first place? Why not do what Cohen and Geras do, namely, make an immediate appeal to natural right? If immanent critique is the best strategy for refuting immanent critique, does this, quite paradoxically, affirm the strength, or at least certain strengths, of immanent critique? Not necessarily. If the dialectic breaks down, then immanent critique need not be rejected entirely. It is only demoted from the primary method to one of many potential philosophical strategies, albeit one with a unique rhetorical persuasiveness. It demonstrates to proponents of the dialectical method why the dialectic breaks down according to their own highest principles, the dialectical method itself.

The reason I have emphasized and criticized the many occasions when Marxists, mired in moral quandaries, have had recourse to liberalism is not because the notion of negative rights should be rejected altogether. I am not prepared to say to what extent negative rights must play a role in any coherent ethics. It remains an open question. Rather, it is because Marxism has rarely engaged in any substantive way with what is often regarded as the exclusive terrain of conservatism, namely, theorists of classical natural right who reject the liberal notion of

complete justice as a neutral arbitration between subjective interests, affirming instead complete justice as the common ends of the social whole based in objective human goods.

Marxists have not taken these considerations very seriously. For example, Nielsen argues that it would be difficult to determine the content of natural rights with any “objectivity” because human societies have proffered such diverse and often incompatible ideas of what is naturally right.¹³⁴³ A modern theorist of classical natural right like Leo Strauss easily rebuts claims like these: “In the first place, ‘consent of all mankind’ is by no means a necessary condition of the existence of natural right. Some of the greatest natural right teachers have argued that, precisely if natural right is rational, its discovery presupposes the cultivation of reason, and therefore natural right will not be known universally.”¹³⁴⁴ Even if every principle of justice has been denied somewhere this tells us nothing about whether or not those denials are reasonable.¹³⁴⁵ To take another example, Wood argues that every formal principle of justice that is abstracted from concrete historical circumstances is “empty and useless.”¹³⁴⁶ Furthermore, these principles of justice become “distorting” when they are applied to specific historical circumstances because “they encourage us to treat the concrete context of an act or institution as accidental, inessential, a mere occasion for the pure rational form to manifest itself. But the justice of the act or institutions is its concrete fittingness to *this* situation, in *this* mode of production.”¹³⁴⁷ Nevertheless, when another modern theorist of classical natural right, Jacques Maritain, criticizes Machiavelli’s ethics, he could just as easily be refuting Wood’s historicism:

The first complication comes from the fact that Machiavelli, like many great pessimists, had a somewhat rough and elementary idea of moral science, plainly disregarding its realist, experiential, and existential character, and lifting up to heaven, or rather up to the clouds, an altogether naïve morality which obviously cannot be practiced by the sad yet really living and labouring inhabitants of this earth. The man of ethics appears to him as a feeble-minded and disarmed victim, occasionally noxious, of the beautiful rules of some Platonic and separate world of perfection. On the other hand, and because such a morality is essentially a self-

¹³⁴³ Nielsen, *op. cit.*, 245.

¹³⁴⁴ Strauss, *Natural Right and History*, *op. cit.*, 9.

¹³⁴⁵ *Ibid.*

¹³⁴⁶ Wood, ‘The Marxian Critique of Justice,’ *op. cit.*, 16.

¹³⁴⁷ *Ibid.*

satisfying show of pure and lofty shapes—that is, a dreamed-up compensation for our muddy state—Machiavelli constantly slips from the idea of well-doing to the idea of what men admire as well-doing, from moral virtue to appearing and apparent moral virtue; his virtue is a virtue of opinion, self-satisfaction and glory. Accordingly, what he calls vice and evil, and considers to be contrary to virtue and morality, may sometimes be only the authentically moral behavior of a just man engaged in the complexities of human life and of true ethics: for instance, justice itself may call for relentless energy—which is neither vengeance nor cruelty—against wicked and false-hearted enemies.¹³⁴⁸

Perhaps even Geras, an avowed supporter of a doctrine of natural rights, does not take it seriously enough. As we saw, he applied ‘just war’ doctrine to the right of revolution and revolutionary conduct. Nevertheless, he applies *modern* just war doctrine. Although he cites contemporary thinkers like Michael Walzer and Thomas Nagel, there is no evidence that he thought to explore pre-modern theorists of just war like Aquinas.¹³⁴⁹ And yet, if these principles are based in natural right, if they arise from permanent features of the human condition, presumably, the accessibility of these truths is not exclusive to we moderns. After all, Aquinas is the discoverer of the principle of ‘double effect’ that Geras embraces.¹³⁵⁰ Despite his advocacy of natural right, his historicism bleeds through.

This is not to say that modern natural right theorists have adequately considered the most significant arguments of historicist approaches either. When Strauss speaks of the natural inequality of humans and the existence of natural rulers, he often becomes his most metaphorical. For example, when he argues that there is only a small number of people capable of the competence necessary to correctly judge a ruler, much less a philosopher, he contends, “For try as one may to expel nature with a hayfork, it will always come back.”¹³⁵¹ If Marxists have not taken seriously enough the most sophisticated proponents of natural right, then the latter have not taken seriously the Marxist contention that the hierarchy of human beings is more historically-determined than naturally-determined. This is not to deny a hierarchy of objective

¹³⁴⁸ Jacques Maritain, *The Range of Reason* (New York: Charles Scribner’s Sons, 1952), 138.

¹³⁴⁹ For list of citations, see: Geras, *Discourses of Extremity*, op. cit., 55-58.

¹³⁵⁰ Paul E. Sigmund, ‘Law and Politics,’ in *The Cambridge Companion to Aquinas*, eds. Norman Kretzmann and Eleonore Stump (New York: Cambridge University Press, 1993), 227-28.

¹³⁵¹ Strauss, *On Tyranny*, op. cit., 217-18.

human goods, of ethical values. But these modern theorists of classical natural right have not sufficiently appreciated that capitalism may make latently possible, and socialism actually possible, the universal ‘cultivation of reason’ necessary to comprehend and pursue those goods. Ultimately, testing the dialectical method against justice in particular and ethics in general puts on the agenda, to paraphrase the greatest modern critic of historicism, the question of natural right and historical materialism.

This brings us back to the question of standards. It appears that whatever the good is, it cannot be reduced simply to one or another standard, whether it is merit, due, or need. The correct balance of negative rights, positive needs, and objective virtues is still very much an open question. We do not know what the balance of our multiple standards should be:

To each according to her merit.

To each according to her due.

To each according to her need.

The question remains, who should receive the nicest flutes? It is the same old song because we still do not know who plays it, let alone who ought to call the tune.

Bibliography

Alfarabi, *Alfarabi: The Political Writings: Selected Aphorisms and Other Texts*, trans. Charles E. Butterworth (Ithaca: Cornell University Press, 2001).

Derek P. H. Allen, 'Marx and Engels on the Distributive Justice of Capitalism,' in *Marx and Morality*, eds. Kai Nielsen and Steven C. Patten (Guelph, Ontario: Canadian Association for Publishing in Philosophy, 1981).

Louis Althusser, *For Marx*, trans. Ben Brewster (Middlesex: Penguin Books Ltd, 1969).

Kevin B. Anderson, 'The 'Unknown' Marx's *Capital*, Volume I: The French Edition of 1872-75, 100 Years Later,' *Review of Radical Political Economics*, 15.4 (1983): 71-80.

Kevin B. Anderson, *Marx at the Margins: On Nationalism, Ethnicity, and Non-Western Societies* (Chicago: University of Chicago Press, 2010).

Perry Anderson, 'Modernity and Revolution,' in *Marxism and the Interpretation of Culture*, eds. Cary Nelson and Lawrence Grossberg (Chicago: University of Illinois Press, 1988).

G. E. M. Anscombe, 'Modern Moral Philosophy,' in *Virtue Ethics*, eds. Roger Crisp and Michael Slote (New York: Oxford University Press, Inc., 1998).

Daisuke Arie, 'Marx and Distributive Justice,' in *Marx for the 21st Century*, ed., Hiroshi Uchida (New York: Routledge, 2006).

Aristotle, 'Poetics,' in *The Basic Works of Aristotle*, ed. Richard McKeon (New York: The Modern Library, 2001).

Aristotle, *Aristotle's Nicomachean Ethics*, trans. Robert C. Bartlett and Susan D. Collins (Chicago: The University of Chicago Press, 2011).

Aristotle, *Aristotle's Politics*, trans. Carnes Lord (Chicago: The University of Chicago Press, 2013).

Richard T. Arneson, 'What's Wrong With Exploitation?' *Ethics*, 91.2 (January 1981): 202-227.

Thomas Aquinas, *On Law, Morality, and Politics*, eds., William P. Baumgarth and Richard J. Regan, S. J. (Cambridge: Avatar Books, 1988).

Shlomo Avineri, *Hegel's Theory of the Modern State* (Cambridge: University of Cambridge Press, 1974).

Gracchus Babeuf, 'Babeuf's Defence (From the trial at Vendôme, February-May 1797), in *Socialist Thought: A Documentary History*, eds. Albert Fried and Ronald Sanders (Garden City, New York: Anchor Books, 1964).

Gopal Balakrishnan, 'The Abolitionist—I,' *New Left Review*, 90 (November/December 2014): 101-138.

Isaac D. Balbus, 'Commodity Form and Legal Form: An Essay on the 'Relative Autonomy' of the Law.' *Law & Society Review*, 11.3 (Winter 1977): 571-588.

Cesare Beccaria, *On Crimes and Punishments*, ed. and trans., David Young (Indianapolis: Hackett Publishing Company, Inc., 1986).

Ronald Beiner, 'Do We Need a Philosophical Ethics? Theory, Prudence, and the Primacy of *Ethos*,' in *Action and Contemplation: Studies in the Moral and Political Thought of Aristotle*, eds. Robert C. Bartlett and Susan D. Collins (New York: State University of New York Press, 1999).

- Jeremy Bentham, *The Rationale of Punishment*, trans. Richard Smith (London: R. Heward, 1830).
- Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Mineola, New York: Dover Publications, Inc., 2007).
- Marshall Berman, *All That is Solid Melts Into Air: The Experience of Modernity* (New York: Penguin Books, 1988).
- Eduard Bernstein, *Evolutionary Socialism: A Criticism and Affirmation*, trans. Edith C. Harvey (New York: Schocken Books, 1961).
- Eduard Bernstein, *The Preconditions of Socialism*, ed. Henry Tudor (Cambridge: The University of Cambridge Press, 1993).
- Eduard Bernstein, *Selected Writings of Eduard Bernstein: 1900-1921*, ed. Manfred Steger (New Jersey: Humanities Press International, Inc., 1996).
- J. M. Bernstein, 'Love and Law: Hegel's Critique of Morality,' *Social Research*, 70.2 (Summer 2003): 393-432.
- Paul Blackledge, 'Alasdair MacIntyre: Social Practices, Marxism and Ethical Anti-Capitalism,' *Political Studies*, Vol. 57 (2009): 866-884.
- Paul Blackledge, *Marxism and Ethics: Freedom, Desire, and Revolution* (Albany: State University of New York Press, 2012).
- William Blake, 'Auguries of Innocence,' in *The Poetry and Prose of William Blake*, ed. David V. Erdman (Garden City, New York: Doubleday & Company, 1965).
- Louis Blanc, *The Organization of Labour* (London: H. G. Clarke, 1848).
- Louis Blanc, *Plus de Girondins* (Paris: Charles Joubert, Passage Dauphine, 1851).
- William Adrian Bonger, *Criminality and Economic Conditions*, trans. Henry P. Horton (New York: Agathon Press, Inc., 1967).
- Bertolt Brecht, 'To Those Born Later,' in *Bertolt Brecht Poems 1913-1956*, eds. John Willett and Ralph Manheim (London: Eyre Methuen Ltd., 1976).
- Bertolt Brecht, *The Measures Taken and other Lehrstücke* (London: Eyre Methuen Ltd., 1977).
- George G. Brenkert, 'Freedom and Private Property in Marx,' in *Marx, Justice, and History: A Philosophy & Public Affairs Reader*, eds. Marshall Cohen, Thomas Nagel, Thomas Scanlon (Princeton: Princeton University Press, 1980).
- Allen Buchanan, 'Revolutionary Motivation and Rationality,' *Philosophy and Public Affairs*, 9.1 (Autumn 1979): 59-82.
- Allen E. Buchanan, *Marx and Justice: The Radical Critique of Liberalism* (Totowa, New Jersey: Rowman & Allanheld, 1982).
- Stephen Buckle, 'Natural Law,' in *A Companion to Ethics*, ed. Peter Singer (Oxford: Basil Blackwell Ltd, 1993).
- Susan Buck-Morss, *Hegel, Haiti, and Universal History* (Pittsburgh: University of Pittsburgh Press, 2009).
- Etienne Cabet, *Voyage et aventures de Lord Villiam Carisdall en Icarie* (Paris: H. Souverain, 1840).
- Etienne Cabet, *Voyage en Icarie* (Paris: Bureau du Populaire, 1845).

- Maureen Cain and Alan Hunt, 'Introduction to Chapter Five: The State, Law and Crime,' in Karl Marx and Friedrich Engels, *Marx and Engels on Law*, eds. Maureen Cain and Alan Hunt (London: Academic Press, 1979).
- Cornelius Castoriadis, 'From Marx to Aristotle, from Aristotle to Us,' trans. Andrew Arato, *Social Research*, 45.4 (Winter 1978): 667-738.
- R. N. C. Coe, 'The Fortunes of the 'Code de la Nature' Between 1755 and 1848,' *French Studies*, II (1957): 117-26.
- G. A. Cohen, 'Freedom, Justice and Capitalism,' *New Left Review*, I.126 (March-April 1981): 3-16.
- G. A. Cohen, 'Review of Allen Wood's *Karl Marx*,' *Mind*, 92.367 (July 1983): 440-445.
- G.A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995).
- G. A. Cohen, *If You're an Egalitarian, How Come You're So Rich?* (Cambridge, Massachusetts: Harvard University Press, 2000).
- G. A. Cohen, *On the Currency of Egalitarian Justice, and Other Essays in Political Philosophy*, ed. Michael Otsuka (Princeton: Princeton University Press, 2011).
- Lucio Colletti, *From Rousseau to Lenin: Studies in Ideology and Society*, trans. John Merrington and Judith White (London: NLB, 1972).
- George Comninel, 'English feudalism and the origins of capitalism,' *Journal of Peasant Studies*, 27.4 (2000): 1-53.
- Frederick Coplestone, *A History of Philosophy: Book Two: Volume VI* (New York: Doubleday, 1985).
- Lawrence Crocker, 'Marx's Concept of Exploitation,' *Social Theory and Practice*, 2.2 (Fall 1972): 201-215.
- Daniel O. Dahlstrom, 'The Dialectic of Conscience and the Necessity of Morality in Hegel's *Philosophy of Right*,' *The Owl of Minerva*, 24.2 (Spring 1993): 181-89.
- James Daly, *Marx: Justice and Dialectic* (Holywood, Northern Ireland: Greenwich Exchange, 1996).
- James Daly, 'Marx and Justice,' *International Journal of Philosophical Studies*, 8.3 (2000): 351-370.
- J. Morrison Davidson, *The Old Order and the New* (London: William Reeves, 1902).
- Richard T. De George, *Soviet Ethics and Morality* (Ann Arbor: The University of Michigan Press, 1969).
- G. E. M. de Ste. Croix, *The Class Struggle in the Ancient Greek World* (London: Gerald Duckworth & Company Ltd., 1983).
- Giorgio Del Vecchio, *Justice: An Historical and Philosophical Essay*, ed. A. H. Campbell (New York: Philosophical Library, 1953).
- Stanley Diamond, *In Search of the Primitive* (New Brunswick: Transaction Publishers, 2007).
- Laurence Dickey and H. B. Nisbet, 'General Introduction,' in G. W. F. Hegel, *Hegel: Political Writings*, eds. Laurence Dickey and H. B. Nisbet (Cambridge: Cambridge University Press, 1999).
- Hal Draper, *Karl Marx's Theory of Revolution: Volume IV: Critique of Other Socialisms* (New York: Monthly Review Press, 1990).

Raya Dunayevskaya, 'Marx's Humanism Today,' in *Socialist Humanism: An International Symposium*, ed. Erich Fromm (New York: Anchor Books, 1966).

Raya Dunayevskaya, *Marxism and Freedom: from 1776 until Today* (New York: Columbia University Press Morningside Edition, 1988).

Ronald Dworkin, *Taking Rights Seriously* (Cambridge, Massachusetts: Harvard University Press, 1978).

Terry Eagleton, 'Self-Realization, Ethics, and Socialism,' *New Left Review*, I/237 (September-October 1999): 150-161.

Editors, *The Collected Works of Karl Marx and Friedrich Engels, 1845-47, Volume V* (Moscow: International Publishers, 1975).

Editors, 'Notes from the Editors,' *Monthly Review*, 66.3 (July-August 2014):
<http://monthlyreview.org/2014/07/01/mr-066-03-2014-07/>

Geoff Eley, *Forging Democracy: The History of the Left in Europe, 1850-2000* (New York: Oxford University Press, Inc., 2002).

Jon Elster, *Making Sense of Marx* (Cambridge: Cambridge University Press, 1987).

Frederick Engels, *Herr Eugen Dühring's Revolution in Science (Anti-Dühring)* (New York: International Publishers, 1976).

Tim Enright, 'Materialism or Eclecticism?' *The New Reasoner*, No. 3 (Winter 1957): 105-112.

Adam Ferguson, *An Essay on the History of Civil Society*, 5th ed. (London: T. Cadell, 1782).

John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980).

Norman Fischer, *Marxist Ethics within Western Political Theory: A Dialogue with Republicanism, Communitarianism, and Liberalism* (New York: Palgrave Macmillan, 2015).

Samuel Fleischacker, *A Short History of Distributive Justice* (Cambridge, Massachusetts: Harvard University Press, 2004).

Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage Books, 1995).

Erich Fromm, *To Have Or To Be?* (New York: Bloomsbury, 2009).

Hans-Georg Gadamer, *Reason in the Age of Science* (Cambridge: MIT Press, 1983).

David Garland, *Punishment and Modern Society: A Study in Social Theory* (Chicago: The University of Chicago Press, 1993).

Norman Geras, *The Legacy of Rosa Luxemburg* (Thetford, Norfolk: Verso, 1985).

Norman Geras, 'The Controversy About Marx and Justice,' *New Left Review*, I/150 (March-April 1985): 47-85.

Norman Geras, *Discourses of Extremity: Radical Ethics and Post-Marxist Extravagances* (New York: Verso, 1990).

Norman Geras, 'Bringing Marx to Justice: An Addendum and Rejoinder,' *New Left Review*, I/195 (September-October 1992): 37-69.

Heide Gerstenberger, *Impersonal Power: History and Theory of the Bourgeois State*, trans. David Fernbach (Chicago: Haymarket Books, 2009).

Alan Gilbert 'Historical Theory and the Structure of Moral Argument in Marx,' *Political Theory*, 9.2 (May 1981): 173-205.

Alan Gilbert, 'An Ambiguity in Marx's and Engels's Account of Justice and Equality,' *The American Political Science Review*, 76.2 (June 1982): 328-346.

Alan Gilbert, 'Marx's Moral Realism: Eudaimonism and Moral Progress,' in *After Marx*, eds. Terence Ball and James Farr (New York: Cambridge University Press, 1984).

Maurice Godelier, *Rationality and Irrationality in Economics*, trans. Brian Pearce (London: New Left Books, 1972).

Lucien Goldmann, 'Socialism and Humanism,' in *Socialist Humanism: An International Symposium*, ed. Erich Fromm (New York: Anchor Books, 1966).

Carol C. Gould, *Marx's Social Ontology: Individuality and Community in Marx's Theory of Social Reality* (Cambridge, Massachusetts: The MIT Press, 1978).

Keith Graham, *Karl Marx: Our Contemporary: Social Theory for a Post-Leninist World* (Toronto: University of Toronto Press, 1992).

Antonio Gramsci, *Selections from the Prison Notebooks*, ed. and trans. in Quintin Hoare and Geoffrey Nowell Smith (New York: International Publishers, 1971).

Paul Christopher Gray, 'Doves Devoured, the Serpent Remains: On the Need for a Scientific Ethics,' *Socialist Studies*, 8.2 (2012): 202-214.

Paul Christopher Gray, 'Planning for the Feast,' *Radical Philosophy*, 189 (January-February 2015): 65-67.

Paul Christopher Gray, 'The Divine Right of Things: On the 'Impersonal Dependence' of Capitalism,' in *A New Social Question: Capitalism, Socialism and Utopia*, ed. Casey Harison (Newcastle-upon-Tyne: Cambridge Scholars Publishing, 2015).

Michael Green, 'Marx, Utility, and Right,' *Political Theory*, 11.3 (August 1983): 433-446.

Philip T. Grier, *Marxist Ethical Theory in the Soviet Union* (Dordrecht, Holland: D. Reidel Publishing Company, 1978).

Jürgen Habermas, *Knowledge and Human Interests*, trans. Jeremy J. Shapiro (Boston: Beacon Press, 1971).

Roger Hancock, 'Marx's Theory of Justice,' *Social Theory and Practice*, 1.3 (Spring 1971): 65-71.

Harry Hanson, 'An Open Letter to Edward Thompson,' *The New Reasoner*, No. 2 (Autumn 1957): 79-91.

H. S. Harris, 'Introduction,' in G. W. F. Hegel, *System of Ethical Life (1802/3) and First Philosophy of Spirit (Part III of the System of Speculative Philosophy 1803/4)*, eds. and trans., H. S. Harris and T. M. Knox (Albany: State University of New York Press, 1979).

H.S. Harris, 'The Social Ideal of Hegel's Economic Theory,' in *Hegel's Philosophy of Action*, eds. Lawrence S. Stepelevich and David Lamb (Atlantic Highlands, New Jersey: Humanities Press, 1983).

H. S. Harris, *Hegel's Ladder, Volume II: The Odyssey of Spirit* (Indianapolis: Hackett Publishing Company, Inc., 1997).

- F. A. Hayek, 'History and Politics,' in *Capitalism and the Historians*, ed. F. A. Hayek (Chicago: The University of Chicago Press, 1963).
- F. A. Hayek, *Studies in Philosophy, Politics and Economics* (Chicago: The University of Chicago Press, 1967).
- G. W. F. Hegel, 'The Spirit of Christianity and its Fate,' in *Early Theological Writings*, trans. T. M. Knox (Chicago: The University of Chicago Press, 1948).
- G. W. F. Hegel, *The Philosophy of History*, trans. J. Sibree (New York: Dover Publications, Inc., 1956).
- G. W. F. Hegel, *Hegel's Lectures on The History of Philosophy: Volume Three*, trans. E. S. Haldane and Frances H. Simson (London: Routledge and Kegan Paul, 1963).
- G. W. F. Hegel, *The Science of Logic*, trans. A.V. Miller (Amherst, New York: Humanity Books, 1969).
- G. W. F. Hegel, *The Philosophy of Fine Art: Volume IV*, trans. F. P. B. Osmaston (New York: Hacker Art Books, 1975).
- G. W. F. Hegel, *Phenomenology of Spirit*, trans. A.V. Miller (New York: Oxford University Press, 1977).
- G. W. F. Hegel, *Lectures on the Philosophy of Religion: One-Volume Edition: The Lectures of 1827*, ed. Peter C. Hodgson (Berkeley and Los Angeles: University of California Press, 1988).
- G. W. F. Hegel, *Lectures on the History of Philosophy: Greek Philosophy to Plato*, trans. E.S. Haldane (Lincoln, University of Nebraska Press, 1995).
- G. W. F. Hegel, *Hegel: Political Writings*, eds. Laurence Dickey and H. B. Nisbet (Cambridge: Cambridge University Press, 1999).
- G. W. F. Hegel, *Introductory Lectures on Aesthetics*, trans. Bernard Bosanquet (London: Penguin Books, 2004).
- G. W. F. Hegel, *Elements of the Philosophy of Right*, ed. Allen W. Wood; trans. H. B. Nisbet (Cambridge: Cambridge University Press, 2006).
- G. W. F. Hegel, *Lectures on the Philosophy of Religion, Volume III: The Consummate Religion*, ed. Peter C. Hodgson (Oxford: Oxford University Press, 2007).
- G. W. F. Hegel, *Lectures on the History of Philosophy 1825-6: Volume II: Greek Philosophy*, ed. Robert F. Brown (New York: Oxford University Press, Inc., 2011).
- Agnes Heller, *The Theory of Need in Marx* (New York: St. Martin's Press, 1976).
- Agnes Heller, 'Can 'True' or 'False' Needs be Posited?' in *Human Needs: A Contribution to Current Debate*, ed. Katrin Lederer (Cambridge, Massachusetts: Oelgeschlager, Gunn & Hain, Publishers, Inc., 1980).
- Moses Hess, 'The Philosophy of the Act' (1843), in *Socialist Thought: A Documentary History*, eds. Albert Fried and Ronald Sanders (Garden City, New York: Anchor Books, 1964).
- Paul Q. Hirst, 'Marx and Engels on Law, Crime and Morality,' *Economy and Society*, 1.1 (1972): 28-56.
- Thomas Hobbes, *Man and Citizen*, trans. Charles T. Wood, T. S. K. Scott-Craig, and Bernard Gert (Indianapolis: Hackett Publishing Company, 1991).
- Nancy Holmstrom, 'Exploitation,' *Canadian Journal of Philosophy*, 7.2 (1977): 353-369.

Istvan Hont and Michael Ignatieff, 'Needs and Justice in the *Wealth of Nations*: an introductory essay,' in *Wealth and Virtue: The Shaping of Political Economy in the Scottish Enlightenment*, eds. Istvan Hont and Michael Ignatieff (Cambridge: Cambridge University Press, 1983).

Max Horkheimer and Theodor W. Adorno, *Dialectic of Enlightenment: Philosophical Fragments* (Stanford California: Stanford University Press, 2002).

Peter Hudis, *Marx's Concept of the Alternative to Capitalism* (Leiden: Brill, 2012).

David Hume, *A Treatise on Human Nature and Dialogues Concerning Natural Religion: Volume Two* (London: Longmans, Green, And Co., 1882).

David Hume, 'On the Original Contract,' in *Social Contract: Essays By Locke, Hume, and Rousseau*, ed. Ernest Barker (New York: Oxford University Press, 1960).

David Hume, *Enquiries Concerning the Human Understanding and Concerning the Principles of Morals* (Oxford: Clarendon Press, 1975).

E. K. Hunt, *History of Economic Thought: A Critical Perspective* (Belmont, California: Wadsworth Publishing Company, Inc., 1979).

Ziyad I. Husami, 'Marx on Distributive Justice,' in *Marx, Justice, and History: A Philosophy & Public Affairs Reader*, eds. Marshall Cohen, Thomas Nagel, and Thomas Scanlon (Princeton: Princeton University Press, 1980).

David James, *Fichte's Social and Political Philosophy: Property and Virtue* (New York: Cambridge University Press, 2011).

Philip J. Kain, *Marx and Ethics* (Oxford: Oxford University Press, 2005).

Bruno Kaiser and Inge Werchan, *Ex Libris: Karl Marx Und Friedrich Engels: Schicksal und Verzeichnis* (Berlin: Dietz Verlag, 1967).

Immanuel Kant, *Foundations of the Metaphysics of Morals and What is Enlightenment?* trans. Lewis White Beck (Indianapolis: The Liberal Arts Press, Inc., 1959).

Immanuel Kant, *Kant: Political Writings*, ed. Hans Reiss (Cambridge: Cambridge University Press, 1991).

Immanuel Kant, *The Metaphysics of Morals*, ed. Mary Gregor (Cambridge: Cambridge University Press, 1996).

Immanuel Kant, *Critique of Practical Reason*, trans. Werner S. Pluhar (Indianapolis: Hackett Publishing Company, Inc., 2002).

Immanuel Kant, *Critique of Pure Reason*, trans. J. M. D. Meiklejohn (Mineola, New York: Dover Publications, Inc., 2003).

Claudio Katz, 'The Socialist Polis: Antiquity and Socialism in Marx's Thought,' *The Review of Politics*, 56 (1994): 237-260.

Karl Kautsky, *Selected Political Writings*, ed. Patrick Goode (London: The MacMillan Press, 1983).

Arthur Koestler, *Darkness at Noon*, trans. Daphne Hardy (London, Penguin Books, 1964).

Leszek Kolakowski, *Main Currents of Marxism: Volume II. The Golden Age*, trans. P.S. Falla (Oxford: Oxford University Press, 1985).

Reinhart Koselleck, *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society* (Massachusetts: The MIT Press, 1988).

Will Kymlicka, *Liberalism, Community, and Culture* (New York: Oxford University Press, 1989).

Hannes Lacher, *Beyond Globalization: Capitalism, Territoriality and the International Relations of Modernity* (London: Routledge, 2006).

John Ladd, 'Translator's Introduction,' in Immanuel Kant, *The Metaphysical Elements of Justice: Part I of The Metaphysics of Morals*, trans. John Ladd (Indianapolis, New York, Kansas City: The Bobbs-Merrill Company, Inc., 1965).

Andrew Levine, 'Toward a Marxian Theory of Justice,' *Politics & Society*, 11 (September 1982): 343-62.

Jack Lindsay, 'Discussion: Socialist Humanism,' *The New Reasoner*, No. 3 (Winter 1957): 95-102.

Michael Löwy, *The Theory of Revolution in the Young Marx* (Leiden: Brill, 2003).

Georg Lukács, *Tactics and Ethics: Political Essays, 1919-1929*, ed. Rodney Livingstone; trans. Michael McColgan (New York: Harper and Row, Publishers Inc., 1975).

Steven Lukes, *Marxism and Morality* (New York: Oxford University Press, 1987).

Steven Lukes, *Moral Conflict and Politics* (New York: Oxford University Press, 1991).

Rosa Luxemburg, *The Rosa Luxemburg Reader*, eds. Peter Hudis and Kevin B. Anderson (New York: Monthly Review Press, 2004).

Michael J. Lynch and W. Byron Groves, *A Primer in Radical Criminology*, 2nd ed. (New York: Harrow and Heston, 1989).

Alasdair MacIntyre, *After Virtue* (Indiana: University of Notre Dame Press, 1984).

Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Indiana: University of Notre Dame Press, 1988).

Alasdair MacIntyre, *Dependent Rational Animals: Why Human Beings Need the Virtues* (Chicago: Carus Publishing Company, 1999).

Alasdair MacIntyre, *Alasdair MacIntyre's Engagement With Marxism*, eds. Paul Blackledge and Neil Davidson (Chicago: Haymarket Books, 2006).

C. B. Macpherson, *Democratic Theory: Essays in Retrieval* (Oxford: Clarendon Press, 1973).

C. B. Macpherson, *The Rise and Fall of Economic Justice and Other Papers* (Oxford: Oxford University Press, 1985).

Bernard Mandeville, *The Fable of the Bees*, ed. Phillip Harth (Middlesex: Penguin Books, 1970).

Frank E. Manuel, *A Requiem for Karl Marx* (Cambridge, Massachusetts: Harvard University Press, 1995).

Herbert Marcuse, *Reason and Revolution: Hegel and the Rise of Social Theory* (Boston: Beacon Press, 1968).

Herbert Marcuse, *Soviet Marxism: A Critical Analysis* (New York: Columbia University Press, 1985).

Jacques Maritain, *The Range of Reason* (New York: Charles Scribner's Sons, 1952).

Mihailo Markovic, 'Humanism and Dialectic,' in *Socialist Humanism: An International Symposium*, ed. Erich Fromm (New York: Anchor Books, 1966).

Gyorgy Markus, 'Praxis and Poiesis: Beyond the Dichotomy,' *Thesis Eleven*, 15.1 (1986): 30-47.

Karl Marx, letter to Friedrich Engels, November 4, 1864:
https://www.marxists.org/archive/marx/works/1864/letters/64_11_04-abs.htm

Karl Marx, *Le Capital* (Paris: Maurice Lachatre et C(ie), 1875).

Karl Marx, *Value, Price and Profit*, ed. Eleanor Marx Aveling (New York: International Publishers Co., Inc., 1935).

Karl Marx, *Critique of the Gotha Programme* (New York: International Publishers, 1938).

Karl Marx, *Das Kapital: Kritik Der Politischen Ökonomie: Buch I* (Berlin: Dietz Verlag, 1960).

Karl Marx, *Civil War in France: The Paris Commune* (New York: International Publishers Co., Inc., 1969).

Karl Marx, *The Poverty of Philosophy* (Moscow: Progress Publishers, 1973).

Karl Marx, *The Ethnological Notebooks of Karl Marx*, ed. Lawrence Krader (Assen, The Netherlands: Van Gorcum & Company B.V., 1974).

Karl Marx, *The First International and After: Political Writings: Volume Three*, ed. David Fernbach (London: Penguin Books, Ltd., 1974).

Karl Marx, letter to G. A. Kötting, June 15, 1846, in Karl Marx and Friedrich Engels, *Karl Marx, Friedrich Engels: Collected Works: Volume Six* (Moscow: Progress Publishers, 1976).

Karl Marx, *Capital: A Critique of Political Economy: Volume One*, trans. Ben Fowkes (New York: Vintage Books, 1977).

Karl Marx, 'Theses on Feuerbach,' in *The Marx-Engels Reader*. 2nd ed.; ed. Robert C. Tucker (New York: W. W. Norton and Company, 1978).

Karl Marx, *Zur Kritik der Politischen Ökonomie (Manuskript 1861-1863), Karl Engels-Friedrich Engels Gesamtausgabe (MEGA): Zweite Abteilung, 'Das Kapital' Und Vorarbeiten, Band 3, Teil 6* (Dietz Verlag Berlin, 1982).

Karl Marx, *Capital: A Critique of Political Economy: Volume Three*, trans. David Fernbach (London: Penguin Books Ltd., 1991).

Karl Marx, *Early Writings*, trans. Rodney Livingstone and Gregor Benton (London: Penguin, 1992).

Karl Marx, *Grundrisse: Foundations of the Critique of Political Economy (Rough Draft)*, trans. Martin Nicolaus (London: Penguin Books, 1993).

Karl Marx, 'Marginal Notes On Bakunin's *Statism and Anarchy* (excerpt), in *Karl Marx: Selected Writings*, ed. Lawrence H. Simon (Indianapolis: Hackett Publishing Company, Inc., 1994).

Karl Marx, 'Notes on Adolph Wagner,' in *Later Political Writings*, trans. Terrell Carver (Cambridge: Cambridge University Press, 1996).

Karl Marx, *Dispatches for the New York Tribune: Selected Journalism of Karl Marx*, ed. James Ledbetter (London: Penguin Books, 2007).

Karl Marx and Friedrich Engels, letter to August Bebel, Wilhelm Liebknecht, and Wilhelm Bracke, September, 1879: http://www.marxists.org/archive/marx/works/1879/letters/79_09_15.htm.

Karl Marx and Friedrich Engels, *The Holy Family or Critique of Critical Criticism* (Moscow: Foreign Languages Publishing House, 1956).

Karl Marx and Friedrich Engels, *The Karl Marx Library Volume I: On Revolution*, ed. Saul K. Padover (New York: McGraw-Hill Book Company, 1971).

Karl Marx and Friedrich Engels, *Articles from the Neue Rheinische Zeitung 1848-49* (Moscow: Progress Publishers, 1972).

Karl Marx and Friedrich Engels, *Karl Marx, Friedrich Engels: Collected Works: Volume One* (Moscow: Progress Publishers, 1975).

Karl Marx and Friedrich Engels, *Karl Marx, Friedrich Engels: Collected Works: Volume Five* (Moscow: Progress Publishers, 1976).

Karl Marx and Friedrich Engels, *Karl Marx, Friedrich Engels: Collected Works: Volume Six* (Moscow: Progress Publishers, 1976).

Karl Marx and Friedrich Engels, 'Manifesto of the Communist Party,' in *The Marx-Engels Reader*, 2nd ed.; ed. Robert C. Tucker (New York: W. W. Norton and Company, 1978).

Karl Marx and Friedrich Engels, *Marx and Engels on Law*, eds. Maureen Cain and Alan Hunt (London: Academic Press, 1979).

Karl Marx and Friedrich Engels, *The German Ideology* (Amherst: Prometheus Books, 1998).

William Leon McBride, 'The Concept of Justice in Marx, Engels, and Others,' *Ethics*, 85.3 (April 1975): 204-218.

Joseph McCarney, *Social Theory and the Crisis of Marxism* (London: Verso, 1990).

Joseph McCarney, 'Marx and Justice Again,' *New Left Review*, 195 (September–October 1992): 29–36.

George E. McCarthy, *Marx and the Ancients: Classical Ethics, Social Justice, and Nineteenth-Century Political Economy* (Savage, Maryland: Rowman & Littlefield Publishers, Inc., 1990).

John McMurtry, 'Is There a Marxist Personal Morality?' in *Marx and Morality*, eds. Kai Nielsen and Steven C. Patten (Guelph: Canadian Association for Publishing in Philosophy, 1981).

David McNally, *Against the Market: Political Economy, Market Socialism, and the Marxist Critique* (London: Verso, 1993).

Scott Meikle, *Aristotle's Economic Thought* (Oxford: Clarendon Press, 1995).

Dario Melossi, 'The Penal Question in 'Capital,'' *Crime and Social Justice*, 5 (Spring-Summer 1976): 26-33.

Peter Mew, 'G. A. Cohen on Freedom, Justice, and Capitalism,' *Inquiry: An Interdisciplinary Journal of Philosophy*, 29:1-4 (1986): 305-313.

David Miller, *Social Justice* (Oxford: Clarendon Press, 1989).

Richard W. Miller, *Analyzing Marx: Morality, Power and History* (Princeton: Princeton University Press, 1984).

Molière, *Eight Plays By Molière*, trans. Morris Bishop (New York: The Modern Library, 1957).

- Thomas More, *Utopia*, trans. Paul Turner (London: Penguin Books, 1965).
- Etienne-Gabriel Morelly, 'Code of Nature (1755),' in *Socialist Thought: A Documentary History*, eds. Albert Fried and Ronald Sanders (Garden City, New York: Anchor Books, 1964).
- Jeffrie G. Murphy, 'Marxism and Retribution,' *Philosophy & Public Affairs*, 2.3 (Spring 1973): 217-243.
- Jeffrie G. Murphy, *Getting Even: Forgiveness and its Limits* (New York: Oxford University Press, 2003).
- Jeffrie G. Murphy and Jean Hampton, *Forgiveness and Mercy* (Cambridge: Cambridge University Press, 1988).
- Alan G. Nasser, 'Marx's Ethical Anthropology,' *Philosophy and Phenomenological Research*, 35.4 (June 1975): 484-500.
- Kai Nielsen, *Marxism and the Moral Point of View: Morality, Ideology, and Historical Materialism* (Boulder, Colorado: Westview Press, Inc., 1989).
- David L. Norton, 'Moral Minimalism and the Development of Moral Character,' *Midwest Studies in Philosophy*, 13.1 (1988): 180-195.
- Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).
- Martha C. Nussbaum, 'Non-Relative Virtues: An Aristotelian Approach,' in *Midwest Studies in Philosophy Volume XIII Ethical Theory: Character and Virtue*, eds. French, Peter A., Theodore E. Uehling, Jr., Howard K. Wettstein (Indiana: University of Notre Dame Press, 1988).
- Bertell Ollman, *Alienation: Marx's Conception of Man in Capitalist Society* (New York: Cambridge University Press, 1977).
- Bryan Palmer, 'Reconsiderations of Class: Precariousness as Proletarianization,' in *Socialist Register 2014: Registering Class*, eds. Leo Panitch, Greg Albo, and Vivek Chibber (London: Merlin Press, 2013).
- Evgeny B. Pashukanis, *Law and Marxism: A General Theory*, ed. Chris Arthur; trans. Barbara Einhorn (London: Ink Links Ltd., 1978).
- R. G. Peffer, *Marxism, Morality, and Social Justice* (Princeton, New Jersey: Princeton University Press, 1990).
- Terry Pinkard, *Hegel: A Biography* (New York: Cambridge University Press, 2000).
- Robert B. Pippin, 'Hegel, Ethical Reasons, Kantian Rejoinders,' *Philosophical Topics*, 19.2 (Fall 1991): 99-132.
- Plato, *The Collected Dialogues of Plato*, eds. Edith Hamilton and Huntington Cairns (Princeton University Press, 1973).
- Plato, *The Republic of Plato*, trans. Allan Bloom (New York: Basic Books, 1991).
- Georgi Plekhanov, *Georgi Plekhanov: Selected Philosophical Works: Volume III* (London: Lawrence & Wishart, 1974).
- Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Times* (Boston: Beacon Press, 2001).
- Karl R. Popper, *The Open Society and Its Enemies, Volume II: The High Tide of Prophecy: Hegel, Marx, and the Aftermath* (New Jersey: Princeton University Press, 1966).

- Pierre-Joseph Proudhon, *What is Property? An Inquiry into the Principle of Right and of Government*, trans. Benjamin R. Tucker (London: William Reeves, 1876).
- Peter Railton, 'Moral Realism,' *The Philosophical Review*, 95.2 (April 1986): 163-207.
- D. D. Raphael, *Concepts of Justice* (Oxford: Clarendon Press, 2001).
- John Rawls, *A Theory of Justice* (Cambridge, Massachusetts: Harvard University Press, 1971).
- Jeffrey H. Reiman, 'The Possibility of a Marxian Theory of Justice,' in *Marx and Morality*, eds. Kai Nielsen and Steven C. Patten (Guelph, Ontario: Canadian Association for Publishing in Philosophy, 1981).
- D. G. Ritchie, 'Aristotle's Subdivisions of 'Particular Justice,'' *The Classical Review*, 8.5 (May 1894): 185-192.
- Heinrich A. Rommen, *The Natural Law: A Study in Legal and Social History and Philosophy*, trans. Thomas R. Hanley (St. Louis: B. Herder Book Co., 1964).
- Gillian Rose, *Hegel Contra Sociology* (London: Verso, 2009).
- Jean-Jacques Rousseau, *The Basic Political Writings*, ed. and trans., Donald A. Cress (Indianapolis: Hackett, 1987).
- Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York: Russell and Russell, 1968).
- Alan Ryan, 'Justice, Exploitation and the End of Morality,' in *Moral Philosophy and Contemporary Problems*, ed. J. D. G. Evans (New York: Cambridge University Press, 1987).
- Cheyney C. Ryan, 'Socialist Justice and the Right to the Labor Product,' *Political Theory*, 8.4 (November 1980): 503-524.
- Michael J. Sandel, *Justice: What's The Right Thing To Do?* (New York: Farrar, Straus and Giroux, 2010).
- Sean Sayers, *Marxism and Human Nature* (London: Routledge, 1998).
- J. B. Schneewind, 'Modern Moral Philosophy,' in *A Companion to Ethics*, ed. Peter Singer (Oxford: Basil Blackwell Ltd, 1993).
- Steven Seidman, *Liberalism and the Origins of European Social Theory* (Los Angeles: University of California Press, 1983).
- Howard Selsam, *Socialism and Ethics* (New York: International Publishers, 1943).
- Amartya Sen, *Inequality Reexamined* (Cambridge: Harvard University Press, 1995).
- A. M. Shandro, 'A Marxist Theory of Justice?' *Canadian Journal of Political Science*, 22.1 (March 1989): 27-47.
- William H. Shaw, 'Marxism and Moral Objectivity,' in *Marx and Morality*, eds. Kai Nielsen and Steven C. Patten (Guelph: Canadian Association for Publishing in Philosophy, 1981).
- Ludwig Siep, 'The 'Aufhebung' of Morality in Ethical Life,' in *Hegel's Philosophy of Action*, eds. Lawrence S. Stepelevich and David Lamb (Atlantic Highlands, New Jersey: Humanities Press, 1983).
- Paul E. Sigmund, 'Law and Politics,' in *The Cambridge Companion to Aquinas*, eds. Norman Kretzmann and Eleonore Stump (New York: Cambridge University Press, 1993).
- Yves R. Simon, *The Tradition of Natural Law: A Philosopher's Reflections* (New York: Fordham University Press, 1965).

- Maynard Solomon, *Beethoven Essays* (Cambridge, Massachusetts: Harvard University Press, 1988).
- Paul Smart, *Mill and Marx: Individual Liberty and the Roads to Freedom* (New York: Manchester University Press, 1991).
- Adam Smith, *The Theory of Moral Sentiments*, eds. D. D. Raphael and A. L. Macfie (Indianapolis: Liberty Fund, Inc., 1982).
- Adam Smith, *The Wealth of Nations* (New York: The Modern Library, 2000).
- Steven B. Smith, *Hegel's Critique of Liberalism: Rights in Context* (Chicago: The University of Chicago Press, 1989).
- Kate Soper, *On Human Needs: Open and Closed Theories in a Marxist Perspective* (Sussex: The Harvesters Press Ltd., 1981).
- Allen Speight, *Hegel, Literature and the Problem of Agency* (New York: Cambridge University Press, 2001).
- Leo Strauss, *Natural Right and History* (Chicago: The University of Chicago Press, 1953).
- Leo Strauss, *On Tyranny: Revised and Enlarged* (Ithaca, New York: Cornell University Press, 1975).
- R. H. Tawney, *Equality* (New York: Barnes & Noble Inc., 1965).
- R. H. Tawney, *Religion and the Rise of Capitalism* (Middlesex, England: Penguin Books Ltd, 1975).
- Charles Taylor, 'Marxism and Humanism,' *The New Reasoner*, No. 2 (Autumn 1957): 92-98.
- Charles Taylor, *Philosophy and the Human Sciences: Philosophical Papers 2* (New York: Cambridge University Press, 1985).
- Charles Taylor, *Sources of the Self* (Cambridge: Harvard University Press, 1989).
- Ian Taylor and Paul Walton, 'Correspondence: Radical Deviancy Theory and Marxism, A Reply to Paul Q. Hirst: Marx and Engels on Crime, Law and Morality,' *Economy and Society*, 1:2 (1972): 229-233.
- E. P. Thompson, 'Socialist Humanism: An Epistle to the Philistines,' *The New Reasoner*, No. 1 (Summer 1957): 105-123.
- E. P. Thompson, 'Socialist Humanism: An Epistle to the Philistines: Part II,' *The New Reasoner*, No. 1 (Summer 1957): 124-143.
- E. P. Thompson, 'Agency and Choice—I: A Reply to Criticism,' *The New Reasoner*, No. 5 (Summer 1958): 89-106.
- E. P. Thompson, *The Poverty of Theory and Other Essays* (London: Merlin Press Ltd., 1978).
- E. P. Thompson, 'The Moral Economy of the English Crowd in the Eighteenth Century,' in *Customs in Common: Studies in Traditional Popular Culture* (New York: The New Press, 1993).
- Michael J. Thompson, *Constructing Marxist Ethics: Critique, Normativity, Praxis* (Leiden: Brill, 2015).
- Sebastiano Timpanaro, *On Materialism*, trans. Lawrence Garner (London: NLB: 1975).
- Alexander Ivanovich Titarenko, *Morality and Politics: Critical Essays on Contemporary Views About the Relation Between Morality and Politics in Bourgeois Sociology* (Moscow: Progress Publishers, 1972).

- Leon Trotsky, *Their Morals and Ours: Marxist vs. Liberal Views on Morality* (New York: Pathfinders Press, Inc., 1973).
- Robert C. Tucker, *Philosophy and Myth in Karl Marx* (New York: Cambridge University Press, 1961).
- Robert C. Tucker, *The Marxian Revolutionary Idea* (New York: W. W. Norton & Company, 1969).
- Harry van der Linden, 'Review: Marx and Morality: An Impossible Synthesis?' *Theory and Society*, 13.1 (January 1984): 119-135.
- Donald van de Veer, 'Marx's View of Justice,' *Philosophy and Phenomenological Research*, 33.3 (March 1973): 366-386.
- Giambattista Vico, *The New Science of Giambattista Vico*, trans. Thomas Goddard Bergin and Max Harold Fisch (London: Cornell University Press, 1970).
- Kurt Vonnegut, 'A Dispatch from a Man Without a Country,' *Spokesman*, 90 (2006): 17-27; 18-19: <http://www.spokesmanbooks.com/Spokesman/PDF/90Vonnegut.pdf>.
- Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, Inc., 1983).
- Paul Warren, 'Why Marxists Should Still Be Interested in Exploitation,' in *Justice: Key Concepts in Critical Theory*, ed. Milton Fisk (New Jersey: Humanities Press, 1993).
- Max Weber, *Sociological Writings*, ed. Wolf Heydebrand (New York: Continuum, 1999).
- Max Weber, *The Vocation Lectures*, eds. David Owen and Tracy B. Strong; trans. Rodney Livingstone (Indianapolis: Hackett Publishing Company, Inc., 2004).
- Lloyd L. Weinreb, *Natural Law and Justice* (Cambridge, Massachusetts: Harvard University Press, 1987).
- Francis Wheen, *Karl Marx* (London, Fourth Estate Ltd., 1999).
- Robert R. Williams, *Recognition: Fichte and Hegel on the Other* (New York: State University of New York Press, 1992).
- Robert R. Williams, *Hegel's Ethics of Recognition* (Berkeley: University of California Press, 1997).
- Eric R. Wolf, *Europe and the People Without History* (Berkeley: University of California Press, 1997).
- Allen W. Wood, 'The Marxian Critique of Justice,' in *Marx, Justice, and History: A Philosophy & Public Affairs Reader*, eds. Marshall Cohen, Thomas Nagel, and Thomas Scanlon (Princeton: Princeton University Press, 1980).
- Allen W. Wood, 'Marx on Right and Justice: A Reply to Husami,' in *Marx, Justice, and History: A Philosophy & Public Affairs Reader*, eds. Marshall Cohen, Thomas Nagel, and Thomas Scanlon (Princeton: Princeton University Press, 1980).
- Allen W. Wood, *Karl Marx* (Boston: Routledge & Kegan Paul, 1981).
- Allen W. Wood, 'Marx and Equality,' in *Issues in Marxist Philosophy, Volume IV: Social and Political Philosophy*, eds. John Mepham and David-Hillel Ruben (New Jersey: Harvester Press, 1981).
- Allen W. Wood, 'Justice and Class Interests,' *Philosophica*, 33.1 (1984): 9-32.
- Allen W. Wood, *Hegel's Ethical Thought* (New York: Cambridge University Press, 1990).

Ellen Meiksins Wood, *Democracy Against Capitalism* (New York: Cambridge University Press, 1995).

David Young, 'Introduction,' in Cesare Beccaria, *On Crimes and Punishments*, ed. and trans., David Young (Indianapolis: Hackett Publishing Company, Inc., 1986).

Gary Young, 'Doing Marx Justice,' in *Marx and Morality*, eds. Kai Nielsen and Steven C. Patten (Guelph, Ontario: Canadian Association for Publishing in Philosophy, 1981).

Eli Zaretsky, *Capitalism, the Family, and Personal Life* (New York: Harper & Row, Publishers, 1986).

Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Waterloo, Ontario: Herald Press, 1990).