

## SHOULD A MARXIST BELIEVE IN MARX ON RIGHTS?

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### I

The question I have posed – should a **marxist** believe in Marx on rights? – is instigated by the debates in the literature over Marx, marxism and rights. In 1982 Alan **Buchanan** was able to write, in his widely acclaimed book *Marx and Justice*, that **Marx's** view of civil liberties and political rights 'has been **neglected**'<sup>1</sup>. Things have changed considerably since 1982. There have been a number of attempts recently to establish and evaluate **Marx's** position on civil and political **rights**<sup>2</sup>. For example, Steven Lukes, **Drucilla Cornell** and William **McBride** have engaged in a debate in the pages of *Praxis International* over the status of rights in **Marx's** thought and **marxist theory**<sup>3</sup>. What the proper question is has itself been an important part of the exchange. Lukes asks 'can a **marxist** believe in rights?' He clarifies his question by indicating that he really means to investigate whether a commitment to rights is consistent with the 'central doctrines essential to the **marxist canon**'<sup>4</sup>. Upon an analysis which directs its attention to the '**marxist** tradition', he concludes that a **marxist** cannot be consistent and 'believe in rights'. One way to address Lukes would, of course, be to challenge the notions of 'central doctrines', '**marxist canon**' and '**marxist** tradition'. In his response to Lukes, William **McBride** does this well, arguing that the notion of a canon '**connotes** an essential rigidity' which is neither plausible nor **helpful**<sup>5</sup>, since marxism is indeed an internally diverse and contested terrain. While I too want to reject the notion of a **marxist** canon for all substantial purposes, asking what Marx thought of rights has the more limited potential of destabilizing what tends to be treated as the *received* canon, which provides the basis of Lukes' answer to the **question**<sup>6</sup>.

**Drucilla Cornell** insisted in response to Lukes that the more pertinent question is whether a **marxist** '*should* believe in rights?' I am sympathetic to Cornell's version of the question. One virtue it has is that it extracts us from the straightjacket which Lukes wishes to impose on us by narrowly securing the boundaries of the tradition he is willing to call marxism, and

then requiring us to walk gingerly in its footprints in order to be politically correct, or 'consistent'. Despite the fact that I think Cornell's question is the more pertinent one, pertaining as it does to the strategic questions we must get on with, her question does not mark out clearly enough what I take to be the *double* nature of the issue.

The question 'should a **marxist** believe in Marx on rights?' is intended to raise the double nature of the problem of rights for those working within the **marxist** tradition by indicating that the problem is composed of; first, establishing and evaluating **Marx's** position on rights and, second, asking how contemporary marxists should treat the question of rights.

I originally intended to proceed directly to the second part of the problem, as it seemed very much the more important one. I was prepared to accept the rather widely-held opinion amongst scholars that Marx *rejected* rights'. Therefore, because I want to support rights, my ready answer was: a **marxist** should not believe in Marx on rights. Yet, there is certainly a strand within contemporary marxism that has been supportive of **rights**<sup>8</sup>. So, I was prepared to argue that what counts is using **marxist** methodologies and, above all, relying upon socialist commitments in order to support, argue for and reconceptualize rights. But on some reflection, it seems to me that both aspects of the problem are important to consider. My attention, here, will be overwhelmingly on the first part of the problem both because of the importance of offering a different reading of Marx to that which is prevalent today; and, because, on the basis of this different reading, contemporary marxists will be better able to chart a course which is grounded, but not stuck, in **Marx's** texts.

**Marx's** work, especially 'On the Jewish Question' and 'Critique of the **Gotha** Programme,' has provided the analytical hints that have framed today's discourse within some strands of marxism regarding **rights**<sup>9</sup> and especially the assessment outside of **marxism**<sup>10</sup> regarding marxism's capacity and inclination to 'take rights seriously'. Several recent interpretations of Marx share a broadly similar reading of his position on rights, although they differ on the consequences they draw from this reading. In important treatments of the issue, both Buchanan and Lukes insist that Marx was 'scornful' of rights, and that he rejected **them**<sup>11</sup>. The American Critical Legal Studies critique of rights – an influential 'school' in North American radical academia – has been consistently hostile to rights; or scornful of them. And, much of that critique finds support in **Marx's** comments on, or attitude toward, **rights**<sup>12</sup>. Finally, in developing their 'post-liberal' socialist strategy, Samuel Bowles and Herbert Gintis argue there is little sustenance to be had in **Marx's** treatment of rights, choice and freedom:

Marxism's discursive structure lacks the fundamental theoretical vocabulary to represent the conditions of choice, individual liberty, and dignity, and hence cannot fully address the problem of despotism. . . the **Marxian** theoretical lexicon does not include such terms as freedom, personal rights, Liberty, choice, or even **democracy**.<sup>13</sup>

But is this sort of reading clearly sustainable? My contention, in contrast with Bowles and Gintis, is that, at least with respect to freedom and democracy, and the rights, both personal and political, which are crucial to them, we need not leave marxism, and that those who argue like Lukes that a '**marxist** cannot believe in rights' are misguided. The simplest support for my claim is that despite the fact that Marx did not evince a particularly strong commitment to rights, neither did he 'reject' them. Moreover, marxism can be 'rethought' in such a way as to weave rights commitments more firmly into its theoretical lexicon. And my final contention is that this can be accomplished without moving particularly far away from Marx himself. In fact, I shall argue that by relying upon **Marx's** understanding of, and commitment to, the development of 'rich individuality' and self-development entailed in the notion of 'human emancipation' – commitments which have not been adequately attended to in the contemporary debate over Marx, marxism and rights<sup>14</sup> – a basis may be found in **Marx's** work in which to ground a positive commitment to rights. Moreover, a commitment to rights is, in fact, consistent with many of **Marx's** other commitments in addition to rich individuality, including the development of working class capacities and socialist political strategy.

It is important to emphasize from the outset that the project of reconstructing **Marx's** views on rights is important for several reasons, but it is not important as an exercise in **marxist** fundamentalism. I do not accept that even if Marx and the '**marxist** tradition' had rejected rights, a contemporary **marxist** could not believe in rights. Clearly, we should care what Marx said, just as we care what any other major social theorist said. And, as 'marxists' there must obviously be some degree of agreement – what that degree is, of course, is properly a matter of lively debate. But it is necessary to distinguish between textual fundamentalism, which is to be rejected, and serious study and evaluation. The development and reconceptualization of rights in the **marxist** tradition may benefit by a groundclearing exercise which supports the argument that Marx did not reject rights, especially since the ideas of rich individuality and self-guided self-development have not had a high profile even within the contemporary **marxist** literature which is sympathetic to rights.

The analysis presented here will emphasize the pertinence of individuality, setting aside for the most part the relationship between rich individuality, class capacities and rights, as well as the way in which capitalist social and economic relations founded on private property both influence and stunt individuality. Partly because the treatments of Marx which take him to reject rights typically ground their conclusions on the link between rights and individualism, I believe this is where we might most usefully begin in order to clear the way for a more substantial analysis.

Finally, the rights to which I direct my attention are individual civil and political rights in the main. I focus on these rights for several reasons. First,

they are the ones to which Marx attended. Second, Marx was particularly critical of the 'rights of **man**'<sup>15</sup>, or personal rights. This position needs to be reevaluated. Third, if a case can be made for such individual civil and political rights within **marxism**<sup>16</sup>, there is no barrier to arguing for collective social and economic rights. These rights are also crucial to the development of a democratic socialist political project.

## II

It is one thing to say that Marx was '**scomful**' of rights and rejected them and quite another to say that he was critical of, and unevenly committed to, them. I will briefly dispute the first interpretation, and defend and assess the import of the second.

The conclusion that Marx rejected rights even within capitalism typically draws upon **Marx's** pointed criticisms of the '**so-called** rights of man,' calling them merely the 'rights of egoistic man', the 'right of the circumscribed individual', of the 'isolated **monad**'<sup>17</sup>. Attention is also drawn to his sarcastic criticisms of the Eisenach faction of the German Social Democratic movement in 'Critique of the **Gotha** Programme.' There, Marx criticized the party's reliance, in its political platform, on such 'pretty little gewgaws' as democratic **rights**<sup>18</sup> and argued that the party should abandon the 'ideological nonsense' of 'bourgeois **right**'<sup>19</sup>. Finally, insofar as Marx can be read as suggesting that communism would be a society beyond rights (because it would eradicate the circumstances which make rights necessary), this is taken to indicate a rejection of rights **tout court**<sup>20</sup>.

This is a reading of Marx that is overly simplistic. And, it has the damaging consequence of laying the groundwork for insisting that a **marxist** cannot, or at the very least should not, 'believe in rights'. A better reading is that Marx did not reject rights *per se*. Rather, as will be demonstrated, **Marx's** treatment of rights is critical, differentiated, underdeveloped and, in more than a few instances, ambiguous.

In '**On the Jewish Question**' Marx distinguishes between the 'rights of man' and the 'rights of the citizen.' He does roundly criticize the **rights** of man, which he believed were found 'in their most authentic form' in the French and American declarations of rights. According to **Marx's** distinction, the rights of man included freedom of conscience and religion, equality, liberty, security and private **property**<sup>21</sup>. He argued that none of these rights 'go beyond the egoistic man, man as he is, . . . that is as an individual separated from the community. . .'; that the only 'bond they admit between people is natural necessity, need and private interest. . .'; and, that they both reflect and are **(re)constitutive** of competitive, egoistic, atomistic individuals who view the community and others as potential enemies. Correspondingly, Marx complains that none of the rights of man address or embrace communal or social concerns, human sociality or species **being**<sup>22</sup>.

But Marx provides a rather different view of *citizens' or political* rights, and political emancipation in general. As distinct from the rights of man, citizens' rights, in Mam's schema, included political liberty, civil rights and democratic participation rights. **Marx's** comments made in this regard are far less hostile. He is critical of citizens' or political rights for, among other things, not touching the real distinctions of status, wealth and ownership in civil society, and for being subordinate to the 'rights of man' such that the 'political community' is 'a mere means to maintain these so-called rights of man'<sup>23</sup>. Yet, he praises them in these terms: they 'can only be exercised if one is a member of a community. Their content is *participation* in the *community* life, in the *political* life of the community, the life of the state. They fall in the category of *political liberty*, of *civil* rights. . .'<sup>24</sup>. He argued that political emancipation, which entails the realization of political *and* civil rights, 'certainly represents a great progress', despite the fact that it is severely **limited**<sup>25</sup>. One year before writing 'On the Jewish Question' Marx argued that the importance of those 'liberals. . .who have assumed the thankless and painful task of conquering liberty, step by step, within the limits imposed by the constitution' should be **recognized**<sup>26</sup>.

To be sure, Marx did seem to believe communism would be a society beyond the circumstances of rights, as most of the commentators suggest. So, what are we to make of all of this? Obviously, Marx provides no 'theory' of rights; indeed, he undertakes few sustained considerations of them. This adds considerably to the difficulty in determining how to assess the comments he does make. There are, nevertheless, a number of indications that these are not the statements of one who is consistently and utterly opposed to rights; who rejects them, or is 'attacking the very concept' of **right**<sup>27</sup> as **Lukes** and Buchanan insist.

First, it is quite clear that Marx was more than marginally supportive of citizens' or political rights; both in terms of restricting the freedom of the state and in providing some participatory rights which permit and encourage certain forms of collective action. According to Marx, while these rights are not sufficient and constitute nothing like human emancipation, the rights of the citizen under capitalism are desirable. His complaint about the subordination of these rights to the 'so-called rights of man' only serves to support the conclusion that he viewed participatory or citizens' rights as worthy of support. We should recall as well that Marx supported freedom of speech, dissent and organization as well as the universal franchise both because he admitted the possibility of achieving socialist transformation through the vote and, perhaps more importantly, as a 'school of **development**'<sup>28</sup>. Hence, to argue that Marx rejected rights as such is simply not supportable.

Second, although Mam was extremely critical of the rights of man entrenched in the French and American rights documents which he reviews, this does not indicate conclusively that he was hostile to rights in principle. This is clear enough when we bear in mind that Mam was supportive of

citizens' rights. It is not even clear that he is rejecting all formulations of liberty, equality, security or property, or 'personal rights', insofar **as** he directs his criticisms to specific formulations of these rights. The fact that Marx complains that none of the rights of man *go beyond* egoistic man would seem to be significant. One of his complaints is that they *only* recognize private interest. This is not an objection to rights. Rather, it is an objection to a particular set of rights – a set of rights which recognizes exclusively 'egoistic man'.

Did Marx, however, reject personal rights because they express individualism or, what may be a rather different thing, because they reinforce individualism by separating 'man from man' and individuals from the community? It is often taken to be the core of **Marx's** wmpaint about the rights of man that they reflect **individualism**<sup>29</sup>. The conclusion which tends to be drawn is that Marx rejected rights because they have an individualistic frame of reference. Yet, given his support for individual citizens' rights, this position is, in fact, difficult to sustain. Moreover, this conclusion is based on a failure to appreciate **Marx's** own distinction between *egoistic*, atomistic individualism and rich **individuality**<sup>30</sup>. The latter is a specific type of individualism of which Marx was not at all critical, but of which he was remarkably supportive. **Marx's** complaint, therefore, is better understood as pertaining to the actually-existing rights of man, which he argued emerged from and contributed to a *particular* form of individualism – bourgeois individualism – rather than a wmpaint about rights because they are individualistic in their form. Moreover, the sort of rights about which Marx complains are those which he asserts are limited to egoistic, competitive, individualism; those which are '*wholly* preoccupied with his private interest and acting in accordance with his private **caprice**'<sup>31</sup>.

If we consider the right to liberty, the French Declaration of 1793, which Marx cites, provided: 'Liberty is the power which man has to do everything which does not harm the rights of **others**'<sup>32</sup>. Since Marx makes it clear when discussing citizens' rights that he takes political liberty against the state to be important, his criticism of liberty understood **as** one of the rights of man is better treated as a criticism of its particular articulation rather than as a criticism of the general concept of liberty. We might suppose that had liberty been expressed in a manner to provide a right to refuse work which is exploitative, hierarchical and the like, or if it had been interpreted to mean that no one must sell her labour power to another – that is, had it been expressed as what C.B. Macpherson calls counter-extractive liberty<sup>33</sup> – **Marx's** estimation of liberty might have been quite different. In fact, his objection to the relations which obtain within civil society is that the individual 'acts simply as a private individual, treats other men as means, degrades himself to the role of a mere means, and *becomes the plaything of alien powers*'<sup>34</sup>. This would seem to indicate that he supported the general value attached to negative liberty – non-coercion and being treated as an end

rather than a means.

This does, however, leave the considerable difficulty of assessing **Marx's** criticism of this formulation of liberty as having the effect of separating man from man and individuals from the community because of the 'boundary marker' character of personal rights. The point can be made in one of two ways. As I have argued, **Marx's** overarching argument seems to be directed at the rights of man as a bundle: 'none of the supposed rights of man, go beyond the egoistic man. . .'<sup>35</sup>. This may suggest that **Marx would** not have objected to the rights of man provided they were more fully articulated with rights that recognize and reinforce human sociality. If this is not what is intended, and it is certainly difficult to discern whether it is, then we may have to concede that **Marx** valued too little the right to liberty and other 'rights of man' because of their imputed character as boundary markers – **i.e.** as reinforcing the separation of man from man. The question whether the personal rights such as liberty and privacy can be conceptualized in a way which would not contribute to atomistic, egoistic individualism, but would contribute to rich individuality, is obviously a crucial one and will be taken up in the conclusion.

Even if we accept that **Marx** supported citizens' rights and that he was not in principle hostile to personal rights, we are still left with three further problems. First of all, the literature vigorously supports the contention that **Marx** rejected the need for rights under communism. This reading has resulted in a variety of attempts to construct a basis for supporting rights in communism<sup>36</sup>. I accept both the interpretation and the criticisms which are directed at **Marx** on this point. What has not been explored, however, is the flip side of this contention. If it is correct that **Marx** believed rights would not be necessary under communism – because rights function as a partial corrective to a deeply deficient society and are not, therefore, necessary in one that is free of these **deficiencies** – his position on rights within capitalism is better interpreted as critical, certainly not endorsing all of them, but accepting some as partial, albeit inadequate, 'correctives'. We can take support for the position that if **Marx** believed communism was a place lacking class conflict and lacking a state in the coercive sense of the word at least, then either he did or should have supported the rights in capitalism which protect people against the existing state and capital (**e.g.** the right to strike). Notably, when he argues against the Eisenach's proposition that the party should strive for the 'free basis of the state' he suggests he did:

**It is by no means the aim of the workers. . .to set the state free. . .Freedom consists in converting the state from an organ superimposed upon society into one completely subordinate to it, and today, too, the forms of state are more free or less free to the extent that they restrict the "freedom of the state"<sup>37</sup>.**

And this sentiment is, in fact, reiterated throughout **Marx's** work. He denounced state intrusions into freedom of the press, speech and dissent,

the right of organization and freedom of association, and generally supported rights which 'limited and restrained the independent scope of the executive power' in addition to supporting rights which enhanced 'popular control from below'<sup>38</sup>.

Marx's criticism of abstract, equal right in 'Critique of the **Gotha** Programme' is often taken to be one of the most important indications that he rejected rights. Here we come to the second problem. In the course of a criticism of the **Programme's** principle that 'the proceeds of labour belong undiminished with equal right to all members of society', Marx complains that equal right in this formulation is nothing but 'bourgeois right'. He argues that 'Right by its very nature can consist only in the application of an equal standard. . . .' and complains that this equal right is 'a right of inequality in its content like every right' since, with the application of an equal standard, people are 'taken from one definite side **only**'<sup>39</sup> while other attributes, needs, social contexts, relationships and the like are ignored.

There is some dispute in the literature whether Marx is limiting his discussion to equal rights in this passage, or whether this is an objection to rights per se. For the sake of argument, I am willing to read this as an objection to the generally abstract character of rights. Even on this interpretation, however, it is not self-evident that this admittedly serious criticism of the 'nature of right' entails the necessary conclusion that Marx therefore rejected right. In fact, he goes on to argue that, while to avoid the defect of unequal results right itself would have to be unequal rather than equal, such problems are 'inevitable' in the early stages of communism, and only in higher stages of communism can the 'narrow horizon of bourgeois right be crossed in its **entirety**'<sup>40</sup>. A plausible interpretation is, therefore, that Marx was critical of the abstraction characteristic of right, entailing as it does the application of an equal standard imposed with regard only to the action or attribute in question. This criticism itself requires serious study as it has embedded within it a number of potential problems. But what is important for the present argument is that to criticise rights on this basis does not necessarily imply a rejection of rights within capitalism. Marx recognizes, and perhaps makes too much of, the limitations on the form of rights within capitalism. But he does not indicate that they are, therefore, to be rejected. Moreover, insofar as equal results are clearly not the only thing Marx was concerned to value, his criticism of right as entailing unequal effects does not necessitate the conclusion that he rejected rights.

But what about **Marx's** criticism of the **Gotha** Programme for the party's reliance upon rights talk or rights discourse? This is the third problem. A distinction must be drawn here between his criticism of rights talk and demands in party rhetoric and platform, and his support, which we have seen, for the use and pursuit of rights in concrete political struggles. In 'Critique of the **Gotha** Programme' Marx states that the party's

political demands contain nothing beyond the old democratic litany familiar to all: universal suffrage, direct legislation, popular rights, a people's militia, etc. They are a mere echo of the bourgeois People's Party. . .<sup>41</sup>.

And he chastizes the party for failing to deal with the 'revolutionary dictatorship of the proletariat' necessary to socialist transformation. Once again, the phrase 'nothing beyond' does not unambiguously signal a rejection of all recourse to rights demands. Rather, it might suggest that that which fails to go beyond democratic demands is judged insufficient.

It must be said, however, that Marx was not generally supportive of the use of rights discourse or demands in party rhetoric and political platform. There are a number of reasons for this beyond the textual ones already canvassed. One important reason is the assumption of a universalistic working class with always-already present objective interests with consequently little or no need to dress its demands in the illusion of universal interests as the bourgeoisie did with rights talk, according to Marx, in order to mask the particularity of its interests. As well, this rejection of rights talk is premised upon a rather crude version of materialism in 'Critique of the **Gotha Programme**,' which counterposes a 'realistic outlook' with an ideological one based upon demands for rights. It seems to ignore that the working class's material interest in socialism is a necessary but not sufficient condition for its attainment. But when put in context, that is in relation to why he bothered to write the critique of the party's programme in the first place, it is obvious that he believed that what the party argued *mattered*: going all the way back to 'The Communist Manifesto' we see that for Marx it is parties that organize the proletariat into a **class**<sup>42</sup>. So, the vulgarly materialist cast of his argument in the Critique would seem to belie the fact that he sees the party's role as a necessary condition for the realisation of workers' material interests in socialism.

**Marx's** failure to develop an analysis of language and ideology which goes beyond a reductionist **account**<sup>43</sup>, did not only severely limit his ability to analyze the potential of rights discourse; but also unnecessarily polarized the issue as one between objective interests and the political capacity to realize them. The problem for Marx is that rights language is typically universalistic; it does not, therefore, represent class interests specifically. What he needed to attend to here, but did not, is that political organization to turn the proletariat into a class is enhanced by rights such as freedom of association, the right to strike, vote and **the** like. By failing to articulate the distinction between rights and rights talk, his objection to the discourse of rights is carried so far as to *appear* to undermine his own, concrete support for citizens' rights – including the vote, association and the like. All of this has had the effect not only of laying the groundwork for a subsequent vulgar **marxism**, but of confusing generations of theorists to this day. While this is a feature of **Marx's** analysis which should not be accepted by contemporary analysts or

strategists, his suspicion of the use of *rights* talk remains a point apart from his position on rights.

It is notable that in addition to his support for actual rights elsewhere, in 'The Communist Manifesto' Marx supports the use, in political struggle, of 'weapons' provided by the bourgeoisie generally. Marx argues that the bourgeoisie is:

**Compelled to appeal to the proletariat, to ask for its help, and thus, to drag it into the political arena. [It] therefore, supplies the proletariat with its own elements of political and general education, in other words, it furnishes the proletariat with the weapons for fighting the bourgeoisie.**

And the role of the party is partly to encourage the people to 'use, as so many weapons against the bourgeoisie, the social and political conditions that the bourgeoisie must necessarily introduce. . .'<sup>44</sup> This would seem to include political emancipation and the rights that go along with it, even if it does not include recourse to rights discourse. When coupled with **Marx's** support for the franchise and political rights in general, his support for the Chartists, his defence of freedom of speech, as well as his support for struggles around concrete rights, like the Ten Hours Bill, the conclusion that must be drawn is that Marx supported the pursuit of legal reforms in the nature of rights victories, always cognizant that these were limited, and potentially limiting, victories. He did not, however, appear to approve of communist parties' reliance on 'bourgeois ideology' and the universalistic language of rights.

Even upon a limited review, therefore, we come not to the simple conclusion of **marxism's** contemporary commentators and critics, but rather to a more complex one. I have tried to support the argument that **Marx** did not reject rights. He provides pointed criticisms of them and raises hard questions; but there is little, if any, indication that he rejects them as 'deontological commitments' (Lukes), as based upon property conceptions or as linked to individualism *per se*. The contention that he did not reject them is pertinent because so many scholars today act as if he did, and use that interpretation to shun either rights or marxism itself.

However, **Marx's** treatment of rights *does not* provide anything like an adequate basis for those who wish to elaborate on them in socialist political theory and political strategy. He did not provide analytical support for abstract rights. Even more damagingly, he did not clearly and unambiguously argue for the necessary but not sufficient character of personal rights, such as liberty and privacy. This was not his project, and as a result we must acknowledge that Marx was not particularly committed to elaborating the principles of right.

There are, to be sure, other reasons for **Marx's** criticisms of and lack of serious commitment to rights beyond those that can be extracted from the passages canvassed. That Marx viewed rights as a result of a particular

constellation of social forces and that he did not develop an especially penetrating analysis of ideology must be counted as two important reasons for this. Bowles and Gintis are quite correct, therefore, that Marx did not establish the ground for rights as an integral part of his 'theoretical lexicon'. Despite instances where he supported rights, he was not, and much of the intellectual tradition in general has not been, particularly attentive to, or enthusiastic about, grounding them theoretically and analytically as part of the socialist project. This is a crucial problem. But it is a problem of a different order from the one that is more typically argued. And, as I shall argue in the next section, to assert as Bowles and Gintis do that Marx provides no vocabulary of freedom or choice is misleading. The problem with Marx in this regard is not that he rejected rights, individuality, freedom or choice. Rather, it is that he undervalued the potential contribution of rights to the development of rich individuality, freedom and choice which he strongly supported.

### III

Marx articulated and was fully supportive of a notion of rich individuality, connected individuality within community, as is attested to by Marshall **Berman's** brilliant recuperation of **Marx's** aspirations for self-guided, **self-development** and **creativity**<sup>45</sup>. Coupled with **Marx's** attention to the substantive basis of freedom is his persistent attention to individual self-development through self-guided activity within the community, and to responsible agents capable of remaking their world through collective and individual efforts. We have here some of the elements for developing a far richer conceptualization of the individual, the community, freedom, choice and rights than is available within the scope of liberalism. Something of **Marx's** commitment to the individual can be seen by commencing with the remarkably individualistic vision of communism in *The German Ideology*, where Marx so famously envisions it as a place where 'nobody has one exclusive sphere of activity, but each can become accomplished in any branch he wishes. . . [I can] hunt in the morning, fish in the afternoon, rear cattle in the evening, criticise **after** dinner, **just as I** have in mind. . .'<sup>46</sup>. From this vision we move to the endorsement of communism as a society in which 'the free development of each is the condition for the free development of **all**'<sup>47</sup>. And finally: 'only in community with others has each individual the means of cultivating his gifts in all directions; only in the community, therefore, is personal freedom **possible**'<sup>48</sup>.

It would appear that a rejection of rights by some contemporary **marxists**, such as many of those in Critical Legal Studies, on the basis that they embody individualism is too simplistic and is not in keeping with Marx. There is in Marx not only a language of, but an abiding commitment to, the individual, to self-guided, self-development and freedom which is strong

and rich. And it is not just richer than liberal treatments; it is also richer than the conceptualizations in many contemporary **marxist** pro-rights positions, such as those found in Thompson and Hall. The commitment to a form of individualism which entails liberation and creativity, not just liberty, has been all but neglected in contemporary **marxist** pro-rights **positions**<sup>49</sup>. Yet, it is precisely this commitment which Marx articulates.

While Marx viewed rich individuality— real, substantive freedom, participation, equality, and self-development— as attainable only within communism, both the aspiration and the contradictory basis for it lay, in **Marx's** view, with the 'new **fangled** men' produced within capitalism which at one and the same time constrains the energy and sociality implicit within it<sup>50</sup>.

Might rights, then, contribute in any meaningful and positive way not just to the development of class struggles and capacities, but also to the development of rich, socialist individuality and democratic socialism? It is clear that Marx saw citizens' rights as containing the possibility for participation in community. But there are other rights which may also contribute to a movement intent upon 'ridding itself of all the muck of ages and **becom[ing]** fitted to found society **anew**'<sup>51</sup>.

In addition to their institutionalized formal status as 'trumps', or 'enforceable claims of individuals or **groups**'<sup>52</sup>, rights are important in another sense: as cultural commitments which pervade and cross society, discourses and social practices. In both senses, rights are a basis for the development of rich, active, creative, individuality. While many existing rights may also encourage atomism and egoism, this is not a characteristic which is naturally and necessarily inscribed into their status as rights, or even as individual rights. Rather, the content and cultural meaning of a right may best be understood as the **crystalization** of past victories and defeats. The extent to which a right expresses and reinforces one rather than another form of individualism depends on the struggles and demands that are, and have been, made around, within and through it. The important issues are, therefore, how to conceptualize and fight for individual, as well as collective, rights which contribute to democratic socialist objectives. I take a few of these objectives to be diversity, plurality, choice and even privacy.

Privacy, and the 'rights of man' in general, or personal rights, have received little support and analytical elaboration even in contemporary **marxist** treatments of **rights**<sup>53</sup>. As we have seen, Marx supported rights which contribute to participation and self-direction or, as C.B. Macpherson has defined it, 'the ability to live in accordance with one's own conscious purpose. . .'<sup>54</sup>. The problem in Marx is that he underestimated the potential role of personal rights in contributing to self-direction, participation and creativity. As we have also seen, Marx supported political liberty. His treatment of personal liberty and personal rights as boundary markers **vis-à-vis** the community is more ambiguous. But, notwithstanding **Marx's** ambiguity here, a strong case **can** be made that self-development, participation and

creativity require 'negative liberty'. In order to realize self-directed **self-development**, one must first be free of the strictures of others. This points towards an answer to the question posed in the last section of the paper: can the personal rights such as liberty and privacy be conceptualized in a way which would not contribute to atomistic, egoistic individualism, but would contribute to rich individuality? At least some boundary marker conceptions are necessary, but are clearly not sufficient, to realizing the fuller concept of liberation and creative self-development. The proper conceptualization of personal rights, and negative liberty itself, is, of course, a matter of debate. Macpherson has perhaps made the case most persuasively for the Left that the breadth of negative liberty must be wide enough to encompass the non-deliberate, as well as deliberate, interference of others. Macpherson calls this counter-extractive liberty. For present purposes, the important point is to argue that negative liberty broadly defined is necessary to, but not sufficient for, a **marxist** conception of liberation.

One particularly problematic aspect of **Marx's** treatment of rights arises from what Jean Cohen has called his pre-modern conception of the desirability of dedifferentiating the public and private **spheres**<sup>55</sup>. This has led not just to the dismissal of rights as unimportant in the future as a protection against state intrusion, but as well to a reluctance on the part of contemporary marxists to rethink and reinvigorate a democratic private sphere. It is one of the contributions of the 'post-marxist' literature to draw our attention to the **question**<sup>56</sup>. If we take the vexing case of **privacy**<sup>57</sup> it is not, however, at all clear that **marxism** cannot and should not support a reconceptualization and valorization of the private. A socialist conception would not be the anxious privatism that dominates the current conception of privacy. Rather, a socialist privacy right would require a reconceptualization of, and a material commitment to, among other things, freely chosen private spaces; not ones where I just happen to be stuck by virtue of my class, gender and race or other source of a relative lack of power. This would require, amongst other things, a commitment to resources to make the choice meaningful. Freely chosen privacy may conflict with **Marx's** emphasis on the dedifferentiation of private and public spaces and may conflict with his view of the negative consequences of rights as boundary markers. But it is congruent with, and probably necessary to, free self-development. Private space is one of the places where the 'rich I' may get nourished with sensuality, free time, freedom from other gazes. But in order for privacy rights to contribute to personal and collective liberation, not just to liberty, privacy must exist along with vital socialist public spaces where diversity, plurality and difference are permitted and encouraged, as Rosa Luxemburg so clearly recognized long ago - not to mention democratized relations of production and socialised property relations.

If it is a socialism which values this, then the abstract character of rights about which Marx appears to have been so critical (and the work which draws

from his analysis *is* unremittingly **critical**<sup>58</sup>) will also have to be reassessed. Abstract rights, by virtue of their abstract quality, **mark** out a realm of 'basic equality' of respect such that asserting a rights claim 'implies the existence of a similar claim' for other members of **society**<sup>59</sup>. Or, to state the point slightly differently, as Martha **Minow** has put it: 'This form of discourse draws each claimant into the community and grants each a basic, if minimal, equality to participate in the process of communal debate.' It encourages an 'equality of **attention**'<sup>60</sup>. It is on the basis of the abstraction, that freedom of expression, for example, permits and encourages, in principle if not in practice, diverse expressions, dissent, the shockingly new to flourish. Under this ideal, expression is judged not on a substantive basis of whether or not it is useful speech or 'correct' expression. This abstract form of freedom is crucial to the socialist project as it is only on the basis of being their own arbiters of what is valuable, what is decent, what is progressive, determined through the process of public debate and struggle that, as both Marx and Luxemburg recognized, the subordinate classes are capable of transforming themselves into a ruling class, and one with democratic and pluralistic aspirations and capabilities. Moreover, to draw on and extend another radical woman's position, if I can't dance as my creative spirit moves, I don't want the revolution. Even more to the point perhaps, if I can't dance as my creative spirit moves, the revolution, the success of which is dependent upon the full creative energy and inspiration of individuals as well as classes, probably doesn't need me.

There are undoubtedly important insights in **Marx's** critique of abstract rights. Formal rights do not even out or even attend to unequal access to rights (such as unequal ability to take advantage of freedom of expression) and do produce unequal outcomes where they are applied in situations marked by substantive inequality in the first place. However, as I have argued above, there is an important democratic consequence which flows from abstract rights. Moreover, supplemental principles can be conceived and demanded which give abstract rights more equal content and consequences. Thus, the abstract quality typical of rights does not logically preclude the adoption of substantive content principles. Many liberal democracies have, for example, developed limits to spending on political campaigns, and this has not been undertaken as an exception to free speech, but rather as a condition of its more equal attainment. And this raises an important point for contemporary **marxist** analysis: Marx showed a certain insensitivity to the variations of rights forms and articulations across time and space in capitalism. While this may be understandable enough given the period in which Marx worked, it is not so easily dismissed in the analyses of contemporary **marxists**.

Reconceptualizations of and struggles for more egalitarian and substantive visions of rights and the commitment to abstract rights principles can be expected to go only so far, however, within the property and social relations which obtain under capitalism. But the essential point is that struggles for rich

individuality and the contribution of rights to those struggles may increase peoples' capacities, even as a thriving socialist politics is crucial to the potential for achieving rich, rather than atomistic and egoistic, individuality. **This** is not at all to imply that rights conceptions are sufficient to constitute rich individuality. Rather, they are one way of laying a cultural and legal groundwork for it; a groundwork which is necessary, but not sufficient.

A socialist 'belief in rights does not necessarily entail a naive belief in their instrumental effectivity. Rather, it entails a recognition of their role in encouraging and reinforcing a political culture which is attentive to and, at best, respectful of individuality. In turn, this political culture affects and infuses social practices. This highly general notion does not imply that the existence of bills and charters of rights necessarily infuses political culture with rights commitments or that even when they do, other goals might not be considered more important and will, sometimes, trump rights. Nor does it guarantee that these goals might not sometimes be nefarious ones. Finally, it does not suggest that this is the only way to build a political culture which respects individuals and promotes socialist individuality. Rather, it indicates that social commitment to rights principles depends upon historical circumstances, practices and the like and that rights have been an important way of asserting and infusing important commitments (imperfectly) into social practices. The practices which may be said to be influenced by rights commitments include those of the state, of social movements, including the trade union movement, and of civil society itself.

Rights are conceptualized in this tradition neither as inalienable, nor as based upon trans-historical human nature. Rather, as **McBride** suggests, they are 'the conventional products of collective human action and decisions'<sup>61</sup>. While pitched at a high level of generality, this sort of understanding of rights is useful for emphasizing that rights are not natural, but are socially constructed and contestable. And this point is relevant not just in terms of thinking about the possibilities for expanding rights, but in terms, as well, of collectively determining whether, how and when to undermine or renounce particular rights, such as private property rights. That rights are the products of human action underlines that we are in no way forced to a position of respecting or protecting all of them simply by virtue of their contemporary status as rights within capitalism.

A commitment to take rights seriously by socialists highlights one large problem; it is the old problem of means and ends. What does one do in a socialist transformation? The issue of rights, here, is connected to, but is not coextensive with, constitutionalism. It is not so much a matter of working through legal channels, nor even of following legal rules as it is developing and sustaining a set of socialist ethics which should include, but is clearly not exhausted by, an ethic of rights. Insurrectionary politics must be considered with regard to rights **commitments**<sup>62</sup>. Equally, in considering reformist or constitutionalist transformation, we do not evade the problem

of rights. Part of the 'problem' here is entailed in the universality of rights. What, then, about the rights of counter-revolutionaries? Of capitalists and the enemies of socialism? Perhaps just as problematic, what about the rights of socialism's supporters which may have to be encroached upon in the name of restraint and restructuring of the economy? Does one violate their freedom of association? The commitment to rights does not take us very far in terms of providing specific answers to these very general questions. What a commitment to rights does do, however, is suggest that the answer to the question, how much may one encroach upon the rights of others, demands at the very least this answer: as little as possible congruent with the importance of realizing the objective to be secured by that encroachment. This answer resides, it should be stressed, less in the formal application of the rules laid down than it does in the cultural commitment to rights. Thus, the commitment does not entail the conclusion that we never limit or even deny rights. Rather, it indicates that each limitation and denial must be justified and if not abhorred at least undertaken with the recognition that an accumulation of limits and denials chips slowly away at the culture which sustains respect for the protections and entitlements we call rights.

All of this of course raises a host of problems which need to be addressed by socialists. A reconsideration of *which* rights are valuable as abstract rights is necessary. When and on what bases should we fight for concrete and collective rights? Systems for supplementing abstract individual rights with substantive and concrete rights must be considered. The constitutive effects of rights and rights struggles on class and social movements' struggles in capitalism must be seriously explored. And, crucially, questions involving the relationship between socialist transformation and rights must be addressed far more seriously than has been done so far. One of the pressing issues involves the assessment of the utilization of rights discourses and rights strategies in ways which may empower progressive social movements and create the conditions for counter-hegemonic socialist struggles.

To articulate, demand and fight for socialist conceptions of the rights of persons, citizens' rights and social rights is crucial. But it is only by being comfortable with the realm of right as **marxists** that we can begin to argue for and conceptualize socialist approaches to rights; individual and collective, civil, political, economic and social. This may benefit by steps such as those taken here in terms of groundclearing and reemphasizing **Marx's** commitment to rich individualism. Given the current propensity to read Marx as rejecting rights and individualism of all types, the exercise of rethinking Marx and marxism is not unimportant. By emphasizing not only class, class struggles, exploitation and the like, but also giving a higher profile to rearticulating rights consistent with and supportive of socialist goals we will have come a great distance. For one thing, such an exercise begins to address the deeply felt suspicion with regard to the status of the individual within **marxism**. It is, moreover, prefigurative of a socialism committed

to diversity, plurality and the rule of law. Secondly, it gives us a way of combatting the Liberal, and especially neo-conservative, conceptions of the individual, choice and freedom; conceptions which have been successful in asserting atomistic, consumerist individualism. Finally, it requires serious consideration of socialist tactics, as much in terms of socialist political strategy in the present as socialist transformation in the future. Such a rethinking may, in sum, contribute to the development of political theory which is in aid of socialist political strategy – precisely what any analysis with marxist aspirations should do.

## NOTES

I would like to thank Leo Panitch for his substantive and critically important contribution to this article. Even more than usual given the unconventional interpretation put forward here, the typical caveats apply. Thanks also to Marc Cezar who has substantially contributed to my understanding of rich individuality.

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1. Allen E. Buchanan, *Marx and Justice: The Radical Critique of Liberalism* (Totowa N.J.: Rowman and Allanheld, 1982) 50.
2. Without attempting to list exhaustively the recent contributions, in addition to Buchanan, *ibid*, see the contributions listed in note 3 and; Steven Lukes, *Marxism and Morality* (Oxford: Oxford U. Press, 1987); Alan Hunt, 'The Future of Rights and Justice,' 9 *Contemporary Crises* 309 (1985); and, Jeremy Waldron, 'Karl Marx's "On the Jewish Question"' in Waldron, *Nonsense Upon Stilts: Bentham, Burke and Marx on the Rights of Man* (London: Methuen, 1987).
3. Steven Lukes, 'Can a Marxist Believe in Rights?' 1 *Praxis International* 334 (1982); Drucilla Cornell, 'Should a Marxist Believe in Rights?' 4 *Praxis International* 45 (1984); and William McBride, 'Rights and the Marxian Tradition,' 4 *Praxis International* 57 (1984).
4. Lukes, *Marxism and Morality* 66. It is not entirely clear throughout his argument what Lukes takes to be the doctrines which are essential to the marxist canon. The most likely candidate is that marxism is a form of consequentialism; that is, it is 'a theory which judges actions by their consequences only.' *Marxism and Morality*, 142.
5. McBride, 'Rights and the Marxian Tradition,' 60.
6. Lukes concludes that a marxist cannot believe in rights initially on the basis of a review of Marx. According to Lukes, because marxism views rights as 'expressive of the egoism of bourgeois society', and approaches rights as 'unwarrantably abstract and decontextualized', rights are not supported in the tradition. *Marxism and Morality* 70, see 60–70.

Lukes also argues that a marxist cannot believe in rights because marxism does not and cannot take the limitations imposed by rights seriously. He argues that marxism is consequentialist, and therefore anti-deontological. Deontological theories 'standardly hold that it is sometimes *wrong* to produce the best outcome overall, and *right* not to do so, by imposing 'side-constraints' or 'agent-centred' restrictions. . . . It therefore comes as no surprise that marxism is deeply and unremittingly anti-deontological. . . .' *Marxism and Morality*, 142.

It should be noted that Lukes also maintains that Marx was not sufficiently

supportive of rights. It is one of the central claims of this paper that we must **distinguish** between the claim that **Marx rejected** rights and that **he was** insufficiently attentive to and **supportive** of them. Marx did not reject **rights**. But, Lukes is correct that he did not **value** them highly enough. To **argue** that **Marx did not** reject rights also entails arguing against Lukes that Marx (as a '**marxist**') must have been deeply anti-deontological. The entire cast of **Marx's** discussion of rich individuality **discussed** in the **final section** of this paper suggests he was not anti-deontological.

7. Waldron is one of the few who do not take this **position**. See Waldron, 'Karl **Marx's** "On the Jewish Question"' in Waldron, *Non-sense Upon Stilts*.
8. Some of the most notable are Stuart Hall, *Drifting into A Law and Order Society* (Amersham, Buckinghamshire: Robendene Ltd., 1980); Ralph **Miliband**, *Marxism and Politics* (Oxford: Oxford U. Press, 1977); Leo **Panitch**, 'The State and the Future of Socialism' in **Panitch**, *Working Class Politics in Crisis: Essays on Labour and the State* (London: Verso, 1986), and 'Liberal Democracy and Socialist Democracy: The Antinomies of C.B. Macpherson,' *Socialist Register 1981*, Ralph **Miliband** and John Saville eds. (London: **Merlin Press**, 1981); Nicos Poulantzas, *State, Power, Socialism* (London: **New Left Books**, 1978); E.P. **Thompson**, *Whigs and Hunters: The Origin of the Black Act* (New York: pantheon **Books**, 1975), and *Writing by Candlelight* (London: **Merlin Press**, 1980); and Mike Davis and Sue Ruddick, 'Los Angeles: Civil Liberties between the **Hammer** and the Rock' 170 *New Left Review* 37 (1988). See for example, Bob Fine, *Democracy and the Rule of Law* (London: Pluto Press, 1984); and Staughton **Lynd**, 'Communal Rights' 62 *Texas Law Rev.* 1417 (1984).
10. See for example, Buchanan, *Marx and Justice* and Lukes, *Marxism and Morality*.
11. Lukes, *Marxism and Morality*, 27. Buchanan concludes that Marx 'is attacking the very concepts of the rights of man and of civil and political rights. . . . *Marx and Justice*, 67-68.
12. Peter Gable, for example, states that rights are 'exactly what people don't need' in 'Roll Over Beethoven' 36 *Stanford Law Rev.* 1 at 33 (1984); and **Gabel**, 'Book Review' 91 *Harvard Law Rev.* 302 (1977). Also see Duncan Kennedy, 'Critical Labor Law Theory; A Comment' 4 *Indus. Rel. Law J.* 503 (1981). For a useful discussion of the **CLS's** indebtedness to (a particular reading of) Marx, see Ed Sparer, 'Fundamental Human Rights, Legal Entitlements and the Social Struggle: A Friendly Critique of the Critical Legal Studies Movement' 36 *Stanford Law Rev.* 509. For a critique of **CLS's** critique of rights, see Amy Bartholomew and Alan Hunt, 'What's Wrong with Rights?' unpublished manuscript, 1989.
13. Samuel Bowles and Herbert Gintis, *Democracy and Capitalism: Property, Community and the Contradictions of Modern Social Thought* (New York: Basic Books, 1986) 18-19 and 20, emphasis mine. They elaborate: '**Classical Marxism** is theoretically anti-democratic in the same sense that any political philosophy that fails to conceptualize the threat of state authoritarianism and the centrality of privacy and individual liberty to human emancipation, provides a haven for despots and fanatics.' Unlike the CLS, Bowles and Gintis insist that radical social movements have typically used the discourse of liberal rights in their struggles and that rights provide radical democratic resources. In my estimation, Bowles and Gintis are correct on this point.
14. In *Marxism and Morality* Lukes provides a useful discussion of **Marx's** view of emancipation, freedom and the individual. My argument is that he miscalculates the potential within **marxism** for connecting these commitments and rights.
15. **Marx's** gender-specific language is reproduced throughout this paper when relying upon his discussion and concepts. To rewrite Marx would be both inappropriate in the context of the specific project at hand and would 'cleanse' his analysis in a misleading way.

16. I argue that individual rights are necessary to protecting and promoting pluralistic, democratic socialism. Positions like Staughton **Lynd's** which reject individual rights and promote 'communal rights' are **inattentive** to the **need** to link **individual** interests with communal ones, and to protect individual interests from at least some communally desired ends. See Lynd 'Communal Rights'. Lynd suggests: 'if we desire a society in which we share life as a common creation and genuinely care for each other's needs, then this rhetoric [of individual rights] which pictures us as separated owners of our respective bundles of rights, stands as an obstacle' (1419). He argues that we must, therefore, displace the property basis of rights. Hence his support for communal rights which do not 'require a choice between our own well-being and the well-being of others' (1421). This undermines at least one important aspect of rights. Rights are 'trumps' or 'side constraints'. Even positive rights, rights to something, such as entitlement rights, rely on rights language in order to emphasize that even if the entitlement comes into conflict with 'the well-being of others', or their perceived well-being, it is to be honoured *prima facie*. Note as well that the property-based aspect of individual rights is not self-evidently contradictory to marxism. Marxism does not oppose all property. It calls for the communal ownership of productive property.
17. Karl Marx, 'On the Jewish Question' 40, emphasis in the original. All references to 'On the Jewish Question', 'Critique of the **Gotha Programme**' and Marx and **Engels** 'Manifesto of the Communist Party' are taken from Robert C. Tucker, ed. *The Marx-Engels Reader* (New York: W.W. Norton, 1972).
18. Marx, 'Critique of the **Gotha Programme**' 395. Marx criticizes the party for articulating democratic demands that 'contain nothing beyond the old democratic litany familiar to all: universal suffrage, direct legislation, popular rights etc. . . . They are the mere echo of the bourgeois People's Party. . . They are all demands which. . . have already been realised. But one thing has been forgotten. . . **all those pretty little gewgaws rest on the recognition of the so-called sovereignty of the people and hence are appropriate only in a democratic republic.**'
19. This is in the **context** of **complaining** about the **party's** reliance on equal right and fair distribution: 'what a crime it is to attempt. . . to force on our Party again, as dogmas, ideas which in a certain period had some meaning but have now become obsolete verbal rubbish, while again perverting. . . the realistic outlook [within the Party] by means of ideological nonsense about right and other trash so common among the democrats and French Socialists.' 'Critique of the **Gotha Programme**' 388.
20. Buchanan, Marx and Justice and Lukes, *Marxism and Morality*. Note that **McBride** disyutes this in 'Rights and the **Marxian** Tradition.' Lukes states: 'Marx and **Engels scorned**' the faith of individuals in the **conceptions of Recht**' *Marxism and Morality* 27. I take this to be **equivalent** to stating that Marx scorned rights.
21. Marx, 'On the **Jewish Question**' 38-40.
22. Marx, 'On the Jewish Question' 41.
23. Lukes, *Marxism and Morality* 27-28. Marx criticises, therefore, their lack of priority and vigorousness.
24. Marx, 'On the Jewish Question' 39, emphasis in the original.
25. Marx, 'On the Jewish Question' 33.
26. Cited in Waldron, 'Karl **Marx's** "On the Jewish Question"' 121.
27. Buchanan, Marx and Justice 67-68.
28. Miliband, *Marxism and Politics* 76-81.
29. See for example Lukes, *Marxism and Morality*; Buchanan, Marx *and Justice*; and Lynd 'Communal Rights.' Similarly, Eric Hobsbawm states, 'Marx was not only indifferent to "rights of man" but strongly opposed to them, since they are essentially individualistic.' *Workers* (New York: Pantheon, 1984) 304-305.

30. Waldron defines atomism as a conception of individuals as 'free of any essential dependence on others,' *Nonsense Upon Stilts* 128. Abercrombie, **III** and Turner mark out individuality as a concern for each person's uniqueness. For social theories which support individuality society should be arranged so that individual qualities and differences can be recognized and individual talents developed. **Self-development** is a prime virtue.' Nicholas Abercrombie, Stephen **III** and Bryan S. Turner, *Sovereign Individuals of Capitalism* (London: Allen and Unwin, 1986) 79. That Marx supported rich individuality will be argued in part **III** of this paper. Also see, Marshall **Berman** *All that is Solid Melts into Air: The Experience of Modernity* (New York: Simon and Schuster, 1982).
31. Marx, 'On the Jewish Question' 41, my emphasis.
32. Marx 'On the Jewish Question' 40.
33. C.B. Macpherson, 'Berlin's Division of Liberty' in Macpherson *Democratic Theory: Essays in Retrieval* (Oxford: Clarendon Press, 1973) 95.  
To take the example of security, had it been expressed as the right to be free from state interference, rather than being defined as society's obligation to protect property and individuals, which Marx takes to be 'the concept of the police' (41), his estimation may again have been quite different.
34. Marx, 'On the Jewish Question' 32.
35. Marx, 'On the Jewish Question' 41.
36. See for example, Alan Hunt, 'The Future of Rights and Justice.'
37. Marx, 'Critique of the **Gotha** Programme' 394.
38. Hal Draper, *Karl Marx's Theory of Revolution, Volume 1: State and Bureaucracy* (New York: Monthly Review Press, 1977) 297. At 304, Draper quotes Marx denouncing the British government for passing a law which regulated assembly in public parks: "'This regulation carefully kept hidden from the London press destroyed with one stroke of the pen one of the most precious rights of London's working people – the right to hold meetings in parks when and how they please. To submit to this regulation would be to sacrifice one of the people's rights.'"
39. Marx, 'Critique of the **Gotha** Programme,' 387.
40. Marx, 'Critique of the **Gotha** Programme,' 388.
41. Marx, 'Critique of the **Gotha** Programme,' 395.
42. Marx and Engels, 'The **Communist Manifesto**'. For an elaboration of this point, see Leo **Panitch**, 'Capitalism, Socialism and Revolution: The **Contemporary Meaning** of Revolution in the West' *Socialist Register 1989* **Ralph** Miliband, Leo **Panitch** and John **Saville** eds. (London: Merlin Press, 1989).
43. See Bowles and **Gintis**, *Democracy and Capitalism* for an important and accessible discussion of **language**; and, Herbert Gintis, 'Communication and Politics: Marxism and the 'problem' of **Liberal Democracy**,' 50–51 *Socialist Review* (1980) 189; Stuart Hall, 'The Toad in the Garden: Thatcherism among the Theorists' in *Marxism and the Interpretation of Culture* **Cary** Nelson and Lawrence Grossberg eds. (Urbana: Univ. of Illinois Press, 1988), and 'The Battle for Socialist Ideas in the 1980's,' *Socialist Register 1982* Martin Eve and David **Musson**, eds. (London: Merlin Press, 1982).
44. Marx and Engels, 'The Communist Manifesto' 343, 362.
45. **Berman**, *All that is Solid Melts into Air*. For the fullest elaboration of rich individuality and emancipation, see Bertell **Ollman**, *Alienation: Marx's Conception of Man in Capitalist Society* second edition (Cambridge: Cambridge U. Press, 1976).
46. Karl Marx and Frederick Engels, *The German Ideology* (Moscow: Progress Publishers, 1976) emphasis added, 53.
47. Marx and Engels, 'The Communist Manifesto' 353, emphasis added.
48. Quoted in **Berman**, *All that is Solid Melts into Air* 97.

49. See however, Charlie Leadbeater, 'Power to the Person' *Marxism Today* October 1988, 14 who argues for the development of a concept, and politics, of socialist individuality. Also see C.B. Macpherson, 'Berlin's Division of Liberty'. Some feminists have contributed useful interventions in this area as well. See especially, Virginia Held, 'Liberty and Equality from a Feminist Perspective' in Neil MacCormack and Z. Bankowski eds. *Enlightenment, Rights and Revolution* (Aberdeen: Aberdeen Univ. Press, 1989).
50. See Berman, *All that is Solid Melts into Air* 109. In 'The Communist Manifesto' 347, Marx and Engels argue: 'The abolition of bourgeois individuality, bourgeois independence, and bourgeois freedom is undoubtedly aimed at.' And: 'In bourgeois society capital is independent and has individuality while the living person is dependent and has no individuality.' This suggests a recognition of other individualities.
51. Marx and Engels, *The German Ideology* 60.
52. Martha Minow, 'Interpreting Rights: An Essay for Robert Cover,' 96 *Yale Law J.* (1987) 1860, 1866.
53. Cornell, for example, attendsonly to participation rights. Cornell, 'Should a Marxist Believe in Rights?' Stuart Hall and E.P. Thompson do not attempt to reconceptualize them, just rehabilitate them. The latter was certainly necessary. However, we must now go further.
54. Macpherson, 'Berlin's Division of Liberty' 109.
55. See Jean Cohen for a defence of the argument that this is pre-modern. Jean L. Cohen, *Class and Civil Society: The Limits of Marxian Critical Theory* (Amherst, Ma: The U. of Ma. Press, 1982). Also see John Keane, *Democracy and Civil Society* (London: Verso, 1988) 61-64.
56. See in particular, Bowles and Gintis, *Democracy and Capitalism* and Jean Cohen, *Class and Civil Society*.
57. In the radical legal and feminist literature, it has been commonplacetodenounce the 'public-private distinction' for insulating the so-called private sphere from scrutiny of a desired kind. All too often, the argument has been made that the problem is privacy itself, rather than the particular forms which privacy has taken under particular social conditions.
58. See for example, Mark Tushnet, 'An Essay on Rights' 62 *Texas Law Rev.* (1984) 1363.
59. Martha Minow, 'Interpreting Rights: An Essay for Robert Cover,' 1874, n. 52.
60. Minow, 'Interpreting Rights: An Essay for Robert Cover,' 1877, 1879. For another treatment of abstraction see Waldron, 'Nonsense Upon Stilts? - A Reply,' in Waldron, *Nonsense Upon Stilts*.
61. McBride, 'Rights and the Marxian Tradition' 69.
62. See Norman Geras, 'Our Morals: The Ethics of Revolution,' *Socialist Register* 1989, Ralph Miliband, Leo Panitch and John Saville eds. (London: Merlin Press, 1989).