

Socialists and rights

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Do socialists still have an alternative concept rights

asks
David Renton

An obvious starting point is Karl Marx's position on human rights. We can begin with his response in 1844 to Bruno Bauer's pamphlet *The Jewish Question*, in which Bauer opposed Jewish demands for political liberation on the grounds that no one in Germany was emancipated and that Jews should fight not for their liberation but for universal liberation. This sparked some caustic remarks from Marx on the limited notion of liberation espoused by Bauer. Political emancipation, Marx observed, took the form of negative liberties such as the right not to be imprisoned or the right not to be prohibited from having a profession. Marx wrote: 'Liberty ... is the right to do everything that harms no one else ... [T]he right of man to liberty is based not on the association of man with man, but on the separation of man from man. It is the *right* of this separation, the right of the *restricted* individual, withdrawn into himself. The practical application of man's right to liberty is man's right to *private property*.'

Over the next forty years, Marx and Engels were to sharpen this critique of rights and develop a richer sense of how an alternative society might work. But they never wavered from this original scepticism to



equal point of view, are taken from one definite side only -- for instance, in the present case, are regarded only as workers and nothing more is seen in them, everything else being ignored. Further, one worker is married, another is not; one has more children than another, and so on and so forth. Thus, with an equal performance of labour, and hence an equal 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'.

Marx's *Critique* is worth bearing in mind when considering, for example, the employer's duty under section 20 of the Equality Act 2010 to make reasonable adjustments for a disabled worker. If an employer employs two workers, one of whom is disabled and uses a wheelchair and one of whom does not, and the doors to enter the workplace are beside a short flight of stairs, an equal balance between disabled worker and employer can only be achieved by the employer buying a ramp to the door. The same treatment of both workers would result in the employer discriminating against the disabled worker. An equal outcome depends on unequal treatment. Even contemporary law, at its present limited stage of development, obliges the employer to buy the ramp; although it allows the hegemony of the employer back in by making the purchase necessary only if it would be 'reasonable' to require it. What for contemporary law is a heavily-qualified anomaly is in Marx's hands, the principle under which an entire legal system would be constructed:

'In a higher phase of communist society', he wrote, 'after the enslaving subordination of the individual to the division of labour, and therewith also the antithesis between mental and physical labour, has vanished; after labour has become not only a means of life but life's prime want; after the productive forces have also increased with the all-around 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 crossed in its entirety and society inscribe on its banners: *From each according to his ability, to each according to his needs!*'

This is one of those concentrated passages of careful thought that repays careful re-reading. First of all, it is clear from it that Marx, despite, his rights scepticism, understood the desire for justice that lies behind most rights discourse, whether the rights themselves are virtuous or otherwise. He was not hostile to justice but passionate about going much further in the same direction.

Second, in referring to 'phases' of communist society Marx is describing socialism not as a one and for all process, but as a series of steps towards an ideal. Like the novelist who writes and rewrites the same book, or like Marx himself in his decades long struggle to complete *Capital*, we should not assume that the first draft will be the final version.

Third, long before a just system of 'rights' could possibly be practical, all sorts of conditions will have to be encountered and passed: the breaking down of the division of the day between work and non-work, the spread of co-operative forms of production, and the extraordinary increase in human

productive capability that we could have if only the whole world had universal access to the very latest technology on the same terms. In contemporary terms, Marx is envisaging a world in which all of Africa and all of Asia had access to the same levels of agriculture and industry as the most developed regions of the West; Marx is asking what law there might be during, and beyond, transitions of this scale.

In these circumstances, the revolutionary fragment buried even in laws such as the present-day Equality Act law could be developed and generalised, i.e. there would be 'rights', but unlike the rights enshrined in the European Convention on Human Rights, the equality principle would be equality of outcome rather than equality of opportunity. Everyone should give what they can; everyone must have what they need.

Drawing on Marx, a useful approach to the problem of right in the crisis of the present day, could be to disregard temporarily the search for further and better lists of rights in order to focus on their revolutionary kernel: i.e. the right to a just outcome. Part of establishing a fair outcome depends on a system of expropriation.

There are models, even under contemporary law, of how this could work. In the emerging field of environmental law, there is a developing concept of environmental 'responsibility'. For example, Section 24 of the South African constitution provides a right of all people to have access:

'a. to an environment that is not harmful to their health or well-being; and
b. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that:

- i. prevent pollution and ecological degradation;
- ii. promote conservation; and
- iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.'

A moment's thought will show that the idea of a right to prevent ecological degradation is a right that is only capable of enforcement if there are others, i.e. people holding property, who have caused or risk causing that degradation.

Polly Higgins' *Eradicating Ecocide* uses interchangeable terms of environmental 'responsibility' and 'stewardship' and portrays the key task of the moment as being to shift the focus from commodity to responsibility.

Now we are used to hearing 'responsibility' as a weasel-word to justify, for example, right-wing arguments that welfare benefits should not be universal, but should be made conditional, e.g. on a person taking up low-paid part-time work, which will contribute to a general lowering of the average wage.

But there are other notions of 'responsibility' which point in more interesting directions. When family members ask a court to determine where a child should live, the starting question is whether the applicant has 'parental responsibility'. The idea is very simply that a child, as a human being, cannot be subject to the ordinary principles of private property, they cannot be owned. Accordingly rather than asking first 'who has the right to care for the child?', the court's first question is 'who has the duty of care?' Contrary to the

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demands for a universal 'freedom'. Faced with the proposal that there should be a right to work, Marx's instinctive answer was to demand what his son-in-law Paul Lafargue nicely formulated as 'the right to be lazy', i.e. rather than just demanding that all should be able to work, Marx and his allies wanted everyone to be free from having to work.

Perhaps the best developed example of Marx's critique of rights was his 1875 *Critique of the Gotha Programme*. All universal rights, Marx argued, by their nature, result in unequal treatment: 'Right, by its very nature, can consist only in the application of an equal standard; but unequal individuals (and they would not be different individuals if they were not unequal) are measurable only by an equal standard insofar as they are brought under an



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demands of campaigns such as 'Fathers for Justice', the answer will not necessarily be 'the father', it may not even be either of the parents. Section 3 of the Children Act 1989 defines parental responsibility as 'all the rights, duties, powers, responsibilities which by law a parent of a child has...'

When a local authority's social workers have reached an interim view that a child is suffering or likely to suffer significant harm living with their parents (section 31 Children Act), they initiate care proceedings. The initial step in these proceedings is often for the local authority to ask the court if it may share parental responsibility with the parents.

Children Act 1989 proceedings are not by any means 'model' instances of the law at its best. In 'private' Children Act 1989 proceedings involving disputes between parents there are many examples of the law getting it wrong, whether by disregarding the views of victims of domestic violence, or by reaching the right decisions in the event but doing so slowly. In 'public' Children Act 1989 care proceedings, courts are torn between competing instincts including the knowledge that children in care are often bitterly unhappy, and the consciousness also that some families are actually so unsafe that there is no alternative but to remove the child. The positive feature of this litigation is the absence of a 'parents' rights' discourse. A parent who says merely that their child is their child, therefore it is their right that the child should live with them, will not get far; the court will expect a much more serious focus on the true best interests of the child. If only we could learn to treat the ownership of property with the same scepticism with which we already treat the purported ownership of children.

As a conceptual example in considering

how a fully developed legal concept of environmental responsibility might work, a person who believes that a polluter risks causing ecological degradation on a piece of land, might petition a court complaining that the polluter has lost the right to environmental responsibility for that piece of land. A court would investigate. It might find that the applicant's case was made out, in which case, they could listen to proposals that the responsibility for that piece of land should be given to another. They might find that the applicant's case was hopelessly weak. They might instead find that the land should remain with its present owner, but only on an interim basis, subject to the present owner demonstrating that their custodianship was rapidly improving and they were taking all steps to prevent pollution.

There is no reason of principle why there should not equally be an overriding duty of 'social responsibility'. In order for someone to exercise any right as an owner of property, or for any contract to be enforced, the owner should be capable of being challenged by anyone – a worker, consumer, anyone – on the grounds that their stewardship of the property was deficient, and should be given to another. Where an employer did not pay the minimum wage or their workplace was unsafe, the ordinary principle should apply that their workplace should be passed to another.

The rule that is proposed is simple and intuitive. Questions of whether a workplace is properly run could easily be determined by juries, to whom we already leave inquests and sometimes very complex questions of criminal law.

There is no political will in Parliament for anything like this model of social responsibility because the large majority of political forces

are signed up to a vision of untrammelled corporate power, with all the disasters that has caused, in terms of recession, bankers' bail outs, and collective austerity. We are not going to see the expropriation of capital without social upheaval.

In working out the next step for the rights discourse, socialists should go further than the majority of rights activists. We have a concept of right in which the highest categories are human need, and agency to answer human need. The next step is a right of expropriation where property ownership limits human potential.

The simplest rebuttal of the present proposal – for an overarching concept of social and/or ecological responsibility which would be capable of taking priority over all other property rights and any contractual agreements – is that class society has been in existence for around 10,000 years without having anything like such a practice. For around a third of that time we have had an idea, through contract law, that property is disbursed in agreements, the terms of which are binding on the contracting parties. No commercial agreement could be attractive if its effect was constantly uncertain. This is exactly the spirit in which socialists should respond to big questions about what the law should be in the future. Socialists should demand what is absolutely incompatible with the conditions of capital and the State: the right not to be exploited. We ask of course in a modest fashion, pointing out in this way the absurdly limited conditions under which capitalism allows billions of people worldwide to live.

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