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# *Base and Superstructure: A Reply to Hugh Collins*

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## I

The Marxian claim that the economic structure of society constitutes its 'real basis, on which a legal and political superstructure arises' generates a number of problems. In my book on *Karl Marx's Theory of History*<sup>1</sup>, I tried to solve two of them.

The two problems concern the relationship between the economic structure and the legal superstructure only, although an analogue of the second problem could also be posed with respect to the political superstructure. The problems are connected, in that (what I think is) the solution to the first problem generates the second problem.

To say that the legal superstructure *rises on* the economic base is, I believe, a vivid way of saying that the character of the former is explained by the character of the latter. But a number of critics of Marxism, and notably John Plamenatz,<sup>2</sup> have argued that the Marxist pretension that relations of production (which constitute the economic base) explain superstructural relations of law is necessarily false, since a searching explication of what must be meant, and of what Marx himself meant, by relations of production reveals that, being essentially relations of ownership, they are themselves legal in character. They may therefore not be regarded as non-legal phenomena distinct from and explanatory of legal relations.

We can call that *the problem of legality*. As I have indicated elsewhere,<sup>3</sup> the problem is that the following four statements generate a logical contradiction, yet each of the first three seems to be asserted by the theory, and the fourth is manifestly true:

- (1) The economic structure is the sum total of production relations.
- (2) Production relations are relations of ownership.

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<sup>1</sup> Oxford and Princeton, 1978.

<sup>2</sup> See *German Marxism and Russian Communism*, London, 1954, Ch II, section I; *Man and Society*, Vol II, London, 1963, 279–82.

<sup>3</sup> *Karl Marx's Theory of History*, 218.

- (3) The economic structure is (explanatory of and therefore)<sup>4</sup> distinct from the legal superstructure.  
 (4) Ownership is a legal relationship.

My solution to the problem of legality is to reject (2), by interpreting 'ownership', 'property' (etc) in their relevant Marxian uses as denoting not relationships of legal ownership proper, but relationships of *de facto* power. Consider Marx's description of instruments of production which were 'transformed . . . into the property of the direct producers, first of all simply in practice but later also in law'.<sup>5</sup> His formulation implies that, at the first stage, the producer had property in a non-legal sense: Marx must have meant that he first enjoyed over his instruments an effective control structurally analogous to, but unaccompanied by, legal ownership. In the usage I adopted,<sup>6</sup> the said producer first had the powers which *match* (that is, have the same content as) the relevant legal rights of ownership before he came to have those rights themselves. My solution to the problem of legality was to represent production relations, which are commonly described in the language of ownership and rights, as, in fact, relations of effective control, or powers. That a capitalist owns a particular factory is, strictly speaking, a superstructural fact. That he has effective control over it is the matching economic structural fact. His possession of effective control over it is his ability to dispose of it thus and so, *whatever it may be that confers that ability on him*.

But now the theory of base and superstructure faces a second problem. For, in the standard case, when, that is, society, being non-transitional, is law-abiding, it is people's (eg the capitalist's) superstructural rights that confer on them their economic powers. And, if that is so, then how can the economic structure be said to explain the legal superstructure? The explanation seems to go in the wrong direction, from rights to powers. This second problem, which we can call *the problem of explanatory direction*, is the apparent inconsistency between these statements:

- (3) The economic structure is explanatory of (and therefore distinct from)<sup>7</sup> the legal superstructure.  
 (5) In the standard case, people have the economic-structural powers they do because they have the legal rights they do.

My solution to the problem of explanatory direction denies that there is inconsistency between (3) and (5). It says that, despite (5), (3) may be true, since (5) does not contradict the contention (which, indeed, entails (5)) that, in the standard case, people have the rights they do *because* when they have such rights they consequently have powers matching them. In short, (3) is reconciled with (5) when (3) is interpreted as a functional explanation, an explanation which says that a

<sup>4</sup> I parenthesize this phrase because its occurrence is not required to generate inconsistency in the quartet of statements.

<sup>5</sup> *Capital*, Vol III, Harmondsworth, 1981, 933.

<sup>6</sup> See *Karl Marx's Theory of History*, 219 ff.

<sup>7</sup> This phrase appears in parentheses because it is not required to generate the apparent inconsistency between (3) and (5).

given legal superstructure obtains because it sustains an analogous structure of economic power.<sup>8</sup>

## II

In his *Marxism and Law*<sup>9</sup>, Hugh Collins essays an extended critique of the account of the relationship between economic base and legal superstructure which is offered in *Karl Marx's Theory of History*, and he also proposes an alternative view of the matter. In sections III and IV below I show that there are two important errors in Collins's presentation of my account, and in section V I show that his critique of my account is also mistaken. I do not examine Collins's alternative view in detail, but I hope, through these defensive remarks, to deprive it of motivation.

## III

Collins represents my account as a 'crude materialism' in which 'the economic base determines the legal super-structure . . . instantaneously and mechanically': I am said to supply no mechanisms by means of which the determination is effected.<sup>10</sup> But that is a misrepresentation. I do not, in the sense in which Collins intends these phrases, offer a 'crudely materialist' or 'economistic interpretation'<sup>11</sup> of the base/superstructure relationship, since it is false that I say nothing about the means whereby conformity between the superstructure and the economic base is achieved or maintained.<sup>12</sup> In section (3) of Chapter VIII of *Karl Marx's Theory of History* I specify, and illustrate, four types of process as a result of which that conformity is ensured: (1) Existing law forbids the formation of relations of production that are now required. The relations consequently form illegally, and they receive legal sanction later when the law is adjusted to accommodate them. (2) As in (1), new relations are required and forbidden, but the law is too well enforced to be violated. Hence, after a period of increasingly 'fettering' relations, the law is changed and only then are the new relations formed. (3) The new relations are not forbidden by existing law, and they form under its legitimating aegis, but legal changes are nevertheless required to make the economic change secure, and they are therefore brought about. (4) The same as (3), except that no changes in the law are at any point required.

Now all four processes instantiate what Collins calls the 'class instrumentalist' view of law,<sup>13</sup> which he is therefore wrong to contrast with my own view.<sup>14</sup> The essential mechanism is the struggle between classes, as I made clear when,

<sup>8</sup> See, for further elaboration, *Karl Marx's Theory of History*, Ch VIII, sections (3) and (4).

<sup>9</sup> Oxford, 1982.

<sup>10</sup> *Marxism and Law*, 25–6, 29, 84.

<sup>11</sup> *Ibid.*, 26.

<sup>12</sup> And even if I had said nothing about that, why would it follow that, on my view, 'men would be free to impose laws which completely obstruct the passage towards communism' (*ibid.*, 84)? To begin with, the premiss of the inference appears to confuse a failure to specify mechanisms with a denial that there are any. And even that denial would not sustain the quoted conclusion, since it is excluded by the immediate determination of superstructure by base which Collins associates with absence of mechanisms of determination.

<sup>13</sup> *Ibid.*, 26–9.

<sup>14</sup> *Eg.*, at *ibid.*, 26, 35.

summarizing my position, I indicated that people 'fight, successfully, to change the law so that it will legitimate powers they either have or perceive to be within their grasp, and lawmakers alter the law to relieve actual or potential strain between it and the economy'.<sup>15</sup>

At a later point in his exposition, Collins belatedly—and inconsistently with what he said earlier—observes that the class instrumentalist view, so far from necessarily conflicting with what he calls economism, is, in one of its versions, dependent on it.<sup>16</sup> That is the version of class instrumentalism, rejected by Collins, in which classes always act in their own best interests. Collins himself favours a different version of class instrumentalism, in which classes act out of perceptions of their interests that may be incorrect.

Now Collins is right that my own version of class instrumentalism demands that classes see their interests in a broadly correct way. But, in proposing his laxer alternative version, he fails to see that my more demanding one is required by historical materialist theory. Classes may, of course, misprosecute their interests in this or that particular respect, but, unless they pursue their larger interests competently, the class structure obtaining at a given historical stage would not be, as Marx said it was, determined by the level of development of the productive forces. Capitalists might sometimes press for legislation which defeats their own ends, but the 'steam mill' would not give 'you society with the industrial capitalist'<sup>17</sup> if industrial capitalists systematically misread the opportunities the steam-mill provides and did not act to sustain the property law on which their seizure of those opportunities depends.

#### IV

Collins's second misrepresentation of my position lies in his excessive emphasis on my point that relations of production can form in violation of the law and only later receive legal sanction. I indeed made that point, and I put it to theoretical use, but it was not the essence of my solution to the problems of legality and explanatory direction. As I conceive that solution, it would stand even if respect for the law was so deep and universal in society that new relations of production could never form without legal endorsement: the solution would remain intact, and all that would follow is that conformity between base and superstructure is never achieved by the route numbered (1) in section III above. For I do not say, as Collins reports, that that route is the 'regular pattern' of development<sup>18</sup>: the distinction I make between powers and norms is not a distinction between 'powers . . . and norms which arise *subsequently*'.<sup>19</sup>

Consider a process of accommodation of superstructure to base of my type (2), one of the types of process which Collins implies I do not acknowledge. Suppose

<sup>15</sup> *Karl Marx's Theory of History*, 231.

<sup>16</sup> *Marxism and Law*, 40–1.

<sup>17</sup> *The Poverty of Philosophy*, in *Marx and Engels, Collected Works*, Vol 6, London, 1976, 166.

<sup>18</sup> *Marxism and Law*, 83.

<sup>19</sup> *Ibid.*, 84, my emphasis.

that it becomes more and more plain that capitalist relations of production are inhibiting the optimal use and/or development of the productive forces, so that a transition to socialist relations of production is widely perceived as desirable. As a result, a socialist government is elected which establishes those socialist relations, by passing revolutionary legislation. The socialist relations of production are not themselves legal relations, but relations of effective power, of the power of the associated producers to direct, and reap the fruits of, their own production, without any able-bodied people who do not work profiting from their labour. But in a law-abiding society such effective powers will obtain if and only if they match (in my technical sense) rights which the law confers. In the foregoing account, the law is changed to confer such rights precisely so that such effective powers will obtain. Base and superstructure are, in the account, entirely distinct, since rights and powers are, but at no point is the distinction exhibited in a pre-legal exercise of power. My theory therefore does not require, and, contrary to Collins's presentation, does not restrict itself to, the point that relations of production may pre-legally precede the superstructure that corresponds to them.

## V

The centre of Collins's critique of my position proceeds from a premiss I endorse to a conclusion I reject. He does not note that I abundantly acknowledge the premiss, and, partly for that reason, he fails to spell out why, contrary to my view, the conclusion he asserts follows from it.

The premiss is that norms are required for stability and order in relations of production. (I mainly discussed legal norms, not moral ones, and Collins emphasizes moral ones in the present connection, but I did say, *en passant*, of moral norms what I said about legal ones,<sup>20</sup> and the shift from the legal to the moral makes no relevant difference here). Collins's conclusion is that such norms are therefore *in* the relations of production, which consequently cannot be conceived independently of them.<sup>21</sup>

Collins states the premiss of his argument when he rightly remarks that 'only if the arrangements for production are governed by norms could they be sufficiently stable and reliable for a regular pattern of social institutions to arise upon them'.<sup>22</sup> In other words, to put the point as I myself did, 'bases need superstructures',<sup>23</sup> but nothing adverse to my position follows from that acknowledgement: it does not, in particular, follow that the superstructure is *in* the base that needs it.

The reason why nothing adverse follows is that the dependence of relations of production on norms does not prejudice the distinction between those norms and what depends on them, and does not exclude a functional explanation of the norms

<sup>20</sup> Eg at *Karl Marx's Theory of History*, 236.

<sup>21</sup> Steven Lukes directs substantially the same argument against me in his 'Can the Base be Distinguished from the Superstructure?', (*Analyse und Kritik*, Vol 4, No 2, 1982, 217-18), and my reply to Lukes (Reply to Four Critics, *Analyse und Kritik*, Vol 5, No 2, 1983, 214, reprinted in *History, Freedom and Marx*, Oxford, 1988, 35) applies, almost unchanged, to Collins as well. (I do not mean to imply that Collins derived the argument in question from Lukes).

<sup>22</sup> *Marxism and Law*, 78-9.

<sup>23</sup> That was the title of section (4) of Ch VIII of *Karl Marx's Theory of History*.

in terms of the powers they sustain, an explanation which says that the norms are as they are *because* they sustain those powers. So when Collins argues, correctly, that without a certain rule about hunting, that 'mode of production could be prone to disaster', it simply does not follow that the rule is 'part of' the mode of production.<sup>24</sup> Nor does the fact that the law closely regulates 'the relations of production, to the extent of being the sole institution giving them concrete form and detailed articulation' show that law 'function[s] in the material base'.<sup>25</sup>

The dictions in Collins's conclusions ("*in the base*", "*part of the base*") seem to me to reflect a too literal reading of the spatial metaphor of base and superstructure. If one identifies the base as Collins<sup>26</sup> and I do, as a set of relations of production, and one then proceeds, as I do, to construe relations of production as sets of *de facto* powers, then it does not and cannot follow from anything that law is *in* the base. Collins is entitled, of course, to define relations of production differently, but he never actually does so. Either, then, he accepts my definition of what they are or he does not define them at all, in which case nothing constrains what may be said about them, and, in particular, anything which relations of production need can be said to be 'in' them.

Of a piece with Collins's mistaken polemic against my own position is his misconstrual of 'the classic Marxist writers' if, as I surmise, Karl Marx was one of them. Collins says that they failed

to appreciate that laws not only operate to repress subordinate classes, but . . . also serve to construct the relations of production on which . . . structures of class domination arise . . . By limiting their perception of the function of law to the problem of coercion, the classic Marxist writers failed to realize the importance of law in helping to establish a set of relations of production.<sup>27</sup>

Yet Marx said, as I have elsewhere had occasion to emphasize,<sup>28</sup> that

regulation and order are themselves indispensable elements of any mode of production, if it is to assume social stability and independence from mere chance and arbitrariness,

and he knew that it is the law which standardly supplies that regulation and order. Collins can suppose that Marx failed to perceive that fact only because he wrongly thinks that it undermines the classical distinction between base and superstructure.

<sup>24</sup> *Marxism and Law*, 77–8. If, moreover, it indeed did follow, then why would it not similarly follow that all the 'law or morality' (ibid, 78) which the mode of production requires is also a part of it, or 'in' it? I cannot discover the principle of selection employed by Collins when he makes some required norms part of the economic base and some not. I do not know why he presents (at ibid, 80) an elaborate example to suggest that a rule regarding the pollution of streams is not superstructural because it so 'directly' regulates the relevant relations of production. Why select that rule for special attention? In Collins's example, the courts resolved a conflict of property rights in a particular way. But the property rights themselves, which thoroughly structure the relations of production, could on the same inadequate basis be said to be part of them. The purpose served by the elaborate example therefore eludes me.

<sup>25</sup> Ibid, 88–9, my emphasis.

<sup>26</sup> See 19 and 77 of ibid for Collins's commitment to the stated identification.

<sup>27</sup> Ibid, 107.

<sup>28</sup> At *Karl Marx's Theory of History*, 233: the Marx passage comes from *Capital*, Vol III, 929.