

LUKÁCS AND LAW

by Eugene Kamenka¹

I

The place of the Hungarian philosopher György (Georg) Lukács (1885-1971) in the history of Western, intellectual Marxism is assured. For many, the very concept of "Western" Marxism, with its rejection of simple economic determinism and its elevation of totality, dialectic and the work of the spirit (or at least of culture) takes its departure from his first major Marxist work, History and Class Consciousness, published in Berlin in 1923. That coincided with the publication of Karl Korsch's Marxism and Philosophy, also in Berlin. Both men, by then, had identified with revolutionary, communist Marxism against social democracy and the economism and reformism of its trade unions, both elevated, with Lenin, the role of consciousness against mechanistic causality and deterministic formulæ for calculating the incremental growth of social forces. "It is not the primacy of economic motives in historical explanation that constitutes the decisive difference between Marxism and bourgeois thought", Lukács then wrote, "but the point of view of totality". In the language of a Hegelian philosopher steeped in Kantianism and neo-Kantianism as well, Lukács insisted that "the totality of an object can only be posited if the positing subject is itself a totality"². Subject and object must become unified through the socio-historical process and the social totality must be understood dialectically as a complex of complexes - themes that Lukács was to explore for the rest of his life, first in literature and aesthetics and finally in ontology. History and Class Consciousness was condemned by leaders of the Communist International - Béla Kun dubbed it a "Marxist theology". It was based on enthusiasm and idealist ethical preoccupations and sincerely repudiated by Lukács himself at subsequent stages of his life. It nevertheless exercised an enormous influence on some of the ablest European Marxists and neo-Marxists of the inter-War period (until the Nazi and the Stalinist darkneses fell upon them) and again on the radical student movement of the late 1960s. The essays that constituted History and Class Consciousness emphasised the dialectic against mechanical causal determinism, developed a theory of alienation and reification some years before the publication of Marx's early work on these themes and

¹ Australian National University, Canberra and University of British Columbia, Vancouver

² G. Lukács, History and Class Consciousness (Geschichte und Klassenbewusstsein) new ed., transl. R. Livingstone, London, 1971, "The Marxism of Rosa Luxemburg", pp 27-28

helped to create the sociology of knowledge and the Frankfurt School of Critical Theory. Though Lukács' view of philosophy was fundamentally at variance with Lenin's elevation of materialism and the copy theory of knowledge, Lukács' conception of the role of revolutionary consciousness in history closely paralleled Lenin's conception of making history through the conscious revolutionary vanguard, the Party. Lukács, of course, ascribed that revolutionary consciousness to the standpoint of the working class, but his view, like Lenin's, led readily to the recognition that the actual, empirical working class fell far short of understanding or actualising its mission. The emancipation of mankind, the exposure and shattering of bourgeois reification and fragmentation, was best done by the revolutionary intellectual, by a cultural elite understanding the significance of the proletariat as a concept and as a force in history.

In continuing to focus primarily on History and Class Consciousness, Western radicals and critical theorists do Lukács less than justice - finding it easier, perhaps, to elevate the importance of (their own) spirit than to follow Lukács into his extraordinarily rich and subtle acquaintance with the whole range of modern European culture and with the vicissitudes and tragedies of Germany, Eastern Europe and the communist world after 1918. By the time Lukács, a Hungarian Jew born in Budapest, was thirty, he had studied in two Hungarian universities (one of them now in Romania) and in Heidelberg, had formed personal contacts with Max Weber, Georg Simmel, Ernst Bloch, Gustav Radbruch and Hans Kelsen, had passed from neo-Kantian idealism to Marxism as a revolutionary commitment, had dropped his pretensions to nobility and returned to Hungary to take part in Béla Kun's Hungarian Soviet Republic. With the downfall of that Republic, he returned to exile in Germany, writing both theoretical studies and political and agitational pamphlets. Condemned after 1929 to abandon active communist politics by the growing Party disapproval of his History and Class Consciousness and the rejection of his 1929 Blum Theses advocating a popular front seven years before the Communist International was ready to do so, Lukács spent the 1930s and half the 1940s in the Soviet Union. Here, he worked on The Historical Novel (1937) and The Young Hegel (1938) and on literary studies later collected into the three volumes published as Studies in European Realism, Goethe and His Age and Essays on Thomas Mann. Returning to Hungary in 1945, he was heavily involved in cultural and political activities in the communist interest, but compelled to withdraw to philosophical studies after 1949 when cultural life became totally Stalinised. Under new conditions, he became Minister of Culture in Imre Nagy's shortlived government in 1956. With the Soviet invasion "to restore order" he was briefly deported with other members of the deposed government to Romania. He returned to Budapest in the summer of 1957 and resumed

his place as the country's ablest Marxist philosopher - capable of tough and uncompromising identification with communism in some respects and always politically suspect in others. Before 1956, he had already completed The Destruction of Reason and Particularity as an Aesthetic Category, in the latter year, he wrote The Meaning of Contemporary Realism. The last fifteen years of his life were devoted to the volumes that became his two major syntheses, his Aesthetics and his Toward the Ontology of Social Being. The most important disciples of his later years in Hungary, many of them now in exile (some in Australia), bear witness, in their own work, to the power and fertility of his thought and the mixture of cultural sensibility and critical logic that he could inspire. They have tended toward a form of Marxist humanism that describes itself as the Budapest School of Marxism and that seems to me, at least, much sharper logically and more tough-minded than the Marxist humanism of an Erich Fromm and the Yugoslav Praxis group.

Like Karl Marx, and perhaps for the same reason - that an intelligent Jew in a hostile and uncertain society had to secure his status and his livelihood - Lukács began his intellectual career with the study of law, enrolling in the Faculty of Law and Political Sciences of the Royal Hungarian Péter Pázmány University of Sciences in Budapest in 1902, but transferring to the Royal Hungarian Franz Joseph University of Sciences at Kolozsvár (now Cluj-Napoca in Romania). There he received his doctorate in political sciences in 1906 before going to study philosophy in Germany. A study of Lukács' thought on the place and problems of law³ seems at first sight a remarkably unprofitable enterprise. But Dr Csaba Varga, of the Institute of State and Law of the Hungarian Academy of Sciences, who will work in the History of Ideas Unit of the Australian National University in the first half of 1987, has given it both distinction and point.

Even more so than Karl Marx, Lukács paid only occasional and passing attention to law. His concern is usually with law as an illustration of something else. Thus, the chapter on "Reification and the Consciousness of the Proletariat" in History and Class Consciousness sets forth its central (rather Weberian) message on the basis of legal structure, but it deals with reification and with the proletariat. In his politically activist periods, Varga reminds us, Lukács writes about particular laws and tactics and strategies in opposing them, but these, too, are passing and limited interests. Apart from a few works of almost universal interest, such as those of Max Weber or Hans Kelsen, and other volumes acquired on the basis of early friendships, Lukács, an indefatigable collector, collected no books on law. Law is not mentioned in the fifty-five manuscript pages of

3 Csaba Varga, The Place of Law in Lukács' World Concept, Akadémiai Kiadó, Budapest, 1985

Lukács' last work, The Fragments of an Intellectual Autobiography, intended to be a summary of his lifetime experiences. It was not discussed when his students gathered round their dying mentor to glean, in final exchanges, as much as they could of his own view of his life work and experiences. Yet, though for Lukács law remained always an instrument of politics, an example of abstraction and reification and a component of more comprehensive units, in his final published work, the Ontology, it no longer appears in simple functional subordination to the social whole, to politics, the economy, etc. Here, Dr Varga argues, law is seen in its specificity, influenced on the one hand by the formal enactment of a system of norms and on the other hand by the dialectical contradictions that keep breaking through the logic of internal legal development and force it toward practical compromise solutions. In the Ontology, according to Varga, Lukács was making considerable efforts to work out a genuinely Marxist theory of law on a comparative basis, distinguishing his own views from Marxist orthodoxies of the 1920s and of the 1960s. Drawing on an "extraordinary sensitivity towards legal issues" displayed throughout his work but never put to extended theoretical use, Lukács in his final work outlined his approach to law generally.

Dr Varga sets this, most ably and seriously, in the context of Lukács' intellectual biography and, even more importantly, in the context of Lukács' wider philosophy. In the process, we learn a great deal not only about Lukács but about the dissolution of the naive social utopianism and aggressive legal nihilism which communists proclaimed in the hour of revolution during and after the First World War and in some countries since. That utopianism and legal nihilism Dr Varga has effectively criticised⁴ and set in historical perspective on his own account.

Following Lukács' own criticism of his early Marxist writings, Varga notes - as other Hungarian communist writers have done - that they were based in enthusiasm, issuing in "the messianic expectation that the dictatorship of the proletariat, as the practical embodiment of the last judgment, would, at one stroke, dissolve all contradictions through revolutionary practice" (p 41). Revolutionary practice, as then seen by Lukács and other determined Marxist theorists, was "in the last resort and to no small extent inspired by a merciless revolutionary intention and a missionary

⁴ Cf, e.g., Varga, "Utopias of Rationality in the Development of the Idea of Codification", in F C Hutley, E Kamenka and A.E S Tay (eds), Law and the Future of Society, being Beiheft N F no 11 of Archiv für Recht und Sozialphilosophie, Wiesbaden, 1979, 27 and Varga, "Rationality and the Objectification of Law", (1979) LVI Rivista Internazionale di Filosofia del Diritto, 4

consciousness" (p 42) Decisions and resolutions were to be the master and not the slave of facts. The circle within which Lukács himself operated in 1918 and 1919 strove to propagate these aspirations "by working out the most radical methods, and by proclaiming a total break with every institution and mode of life stemming from the bourgeois world"⁵ Lukács, indeed, in such lectures and pamphlets as "Terror as a Source of Law", Legal Order and Violence, Tactics and Ethics and "The Changing Function of Historical Materialism", emphasised sharply that law was organised violence. As an institution, it was only an institutionalisation of means subordinate to external ends. Concepts of order possessed at most a relative validity, they were based on violence and its acceptance. Therefore, communists should be fearless in the face of the law. "the risk of breaking the law should not be regarded any differently", he was to write in History and Class Consciousness, "from the risk of missing a train connection when on an important journey"⁶

In History and Class Consciousness, Lukács draws on the neo-Kantian formal analysis of law and on Weber's concept of a calculating, technical rationality as characterising the developing capitalist order to make rationality and the advancing division of labour a universal scapegoat identified with all the dehumanising and negative features of capitalism and responsible for them. Gareth Steadman Jones sees this as representing "the first major irruption of the romantic anti-scientific tradition of bourgeois thought into Marxist theory" - a useful reminder that Marxists can use the term "bourgeois" for anything from the seventeenth century onward that they dislike. Varga reminds us that such romanticism was not Marx's, since Marx always saw industrialism and industrialisation as necessary and potentially liberating elements in human progress. Thus, Lukács in this period elaborated an idealised version of Hellenism as a real alternative to "bourgeois" fragmentation, objectification, alienation and reification - to a calculating rationality that produced only a synthesis of "rationalised" systems and made man a mechanical part incorporated into mechanical sub-systems. (Compare Agnes Heller's idealisation of Renaissance Man) For Varga, all this is utopian - as Lukács himself began to recognise in an unworked-out way in The Destruction of Reason, though his view of the sciences in that work even further radicalises the far from moderate views of History and Class Consciousness. In The Destruction of Reason, Lukács, as Varga argues, treats the legal

5 N. Tertulian, "L'evoluzione del pensiero di György Lukács", in G. Oldrini (ed.), Lukács, Milan, 1979, p 52, cited by Varga, on p 42

6 G. Lukács, History and Class Consciousness, (vol cit), p 263

7 G. S. Jones, "The Marxism of the Early Lukács" in Editorial Board of the New Left Review (eds), Western Marxism, London, 1977, p 33

theoretician Carl Schmitt as an example of the way in which German sociology is attracted to Nazism. Yet Lukács identifies with Schmitt's attack on the neo-Kantian emphasis on formal relations as constituting the essence of state and law. He objects to the neo-Kantian use of dogmatism masquerading as exact epistemology to turn law into an autonomous sphere of values, with rules of its own, and pays no attention to any connection between this and Schmitt's support of the Nazis and Führer. By 1948, writing on the tasks of Marxist philosophy in the Hungarian "New Democracy", Lukács still insisted "Nothing that a democracy can formally give is valuable in itself". This means that actually and practically, the political and social content is prior at any time to the legal form.⁸ But he proclaimed that "this priority of content should not deteriorate into an abolition of all forms". That was the line of fascism, that would lead to the chaos and anarchy that the New Democracy is established to overcome.

Here, then, lies the fundamental tensions or "contradiction" - no doubt to be resolved "dialectically" - that stands at the centre of Lukács' earlier view of law and at the centre of many contemporary radical views. The second, and more substantial part of Dr Varga's book seeks to show that Lukács' Ontology constitutes a Copernican revolution that points the way to such resolution.

II

The difference between the older Lukács and Dr Varga on the one hand, and contemporary Western radicals, the Frankfurt School of Critical Marxism, the students of the 60s and their offshoot, the Critical Legal Studies movement on the other - not to speak of the Red Army Faction and other "Red" terrorists - is that the former have to live in and accept some degree of responsibility for and commitment to what Dr Varga calls "the institutional set-up of socialism". Varga attacks sharply in the second part of his book Pashukanis' emphasis on the direct contradiction between socialism and law and his direct reduction of law to bourgeois economic categories. He writes equally sharply of Western radicalism.

In our days it is the New Left which regards History and Class Consciousness as the only intellectual food fit for consumption from the array of Lukács' Marxist work, the New Left would limit interest in socialist legal theory exclusively to the experiments of the first decade of the Russian revolution. One of the characteristic features of the legal theories in the West is that they see the question of the withering away of law as the most

8 Cited from the Hungarian by Varga, p 65, fn 109

original contribution of Marxism to theorizing on law and also as one of its most acute theoretical problems (p 81)

Against this, Varga believes, we can find a less simplistic and more responsible understanding of law by following the general theme and the specific references to law to be found in Lukács' Ontology and in some passages of The Destruction of Reason and of The Aesthetic. The fundamental theme of the Ontology, for Varga - who leaves aside as a matter for philosophical rather than legal discussion whether the Ontology really contains two inconsistent ontologies, as Feher, Heller, Markus and Vajda suggest - is the contrast between the epistemological approach (condemned as simplistic and leading to unmediated antinomies) and the ontological approach. The epistemological approach contents itself with conceptual analysis, presenting as true or false the results of reflections about social processes and their components treated analytically. The ontological approach concentrates on the effects of social processes and their components in a given social context and their relation to the totality. On this basis, Varga elevates what is in effect a historical and sociological approach to law - none the worse for that. He distinguishes between Marxist theory of law, which attempts to become a general social scientific theory of law, and socialist theory of law, which has to lay the theoretical foundations for a socialist system of law in harmony with the legal-political and social requirements of the society in which it arises. Even the general Marxist theory of law as a social phenomenon has to be based on an historical outlook. It has to be comparative, appreciating that contemporary socialist legal systems with their roots in the Civil Law tradition constitute only one of several possible historical alternatives, even if each is, in a given context, historically inevitable. It has to describe the actual workings, regularities and effects of the legal system and not its preferred or projected principles.

Linked with all this is Varga's recognition, also ascribed to the later Lukács, of the "relative autonomy" of law. Lukács' totality in the Ontology, Varga rightly insists, is complex and heterogeneous, sub-structures are determined both by their place and function in the totality and by their consequent internal requirements and characteristics and their internal history. The connection between relatively autonomous complexes is dealt with by Lukács' theory of "mediation" - a role that is both complex and the source of historically inevitable contradictions that make complexes historical, not eternal.

All this, as in Engels, leads to a more "differentiated", "complex", i.e., unclear and problematic, treatment of the three important categories of objectification, reification and alienation. Even the

two latter come to be tendencies to be watched and combatted, especially in law, rather than simply aufgehoben

Dr. Varga approaches all this very seriously, though it is one major weakness of his book that its historical mode of presentation brings Lukacs to life at the expense of sustained and systematic examination of his views. The only reference to justice in the book is in the Index, where it says "See law as dikaion", which leads us not to a concept of justice, but to the problem of adapting rules and principles to concrete cases. On validity as a central legal concept, Dr Varga has a little more to say, but what his book cries out for is missing - the specificity of law, or of particular legal systems, as social traditions. Before a social institution can have an effect, it must be something. Marxists now recognise the social value of law as such, but they are still not at home with discussing in what that social value might lie. In the end, there is - one feels - no real progress, except in scholarship, from Engels' belief that law serves ruling economic classes but does so by appealing to a sense of justice and order that gains wider social response and mitigates the harshness of oppression. Has Lukacs made any of this clearer or more convincing by reformulating it all in the language of Hegelian philosophy, substituting ontological for "socio-historical", "mediation" for functional interconnection, "objectification" for the recognition that things work independently of our will? To discover the "dialectic" of law, or one of them, in the difference between "the immanence" and closed nature of the legal system and its incessant correction through the facts and demands of social life is not to make a great discovery or, indeed, any discovery at all. To call that a "contradiction" is to place a Hegelian gloss on facts, on social and historical complexes that carry an anti-Hegelian message. This is the message that conflict and "contradiction" are neither unnatural nor ultimately resolvable, the tensions of life and of social systems are not like the contradictions of logic. They exist and will continue to exist, much as their forms may change. Without this basic assumption being clearly brought to the fore, the "ontological" (i.e., socio-historical) approach to law cannot do its work. Nor can we write about historical systems of law, or even "law generally" (if there is such a thing) without more complex tools than "state", "economy" and "classes", "feudal", "bourgeois" and "socialist", without substituting complex institutions, traditions, social activities and social longings for formal categories and logical concepts. Nowhere is that approach more necessary, or less welcome, than in the countries of "actually existing socialism".

The movement of Lukacs' thought, it is often implied, is from an early idealism to a thorough going Marxist "materialism". Yet Lukacs' conception of reality remains, like Marx's, in a crucial sense idealist through

its continued elevation of the concepts of the dialectic, of contradiction, of the totality, of coherence and mediation. All of these terms, in the use made of them by Lukacs, and Marx, are not features of reality, of processes in space and time, but of theories, of explanations, of mental constructions. They arise from the problematic of Kant's antinomies and those antinomies are not antinomies found in reality, but antinomies that arise from misdescription of reality, from the false belief that there is a finite totality to be called "the world" or that time itself, as opposed to events, has a duration. "Contradiction", "partiality of view", "mediation" are characteristics of or relations between theories and statements, not events. For the idealist, this distinction is annihilated by a fundamental assumption that what exists is a theory, or an idea in the mind of God. When the true reality is treated as an Idea in nobody's mind, both the concept of an idea and the concept of reality become incoherent. But incoherence, contradiction, inadequacies are all terms that apply to statements, ideas, theories, not to events, processes, to what actually is.