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WAS KARL MARX TRULY AGAINST HUMAN RIGHTS?

INDIVIDUAL EMANCIPATION
AND HUMAN RIGHTS THEORY

Justine Lacroix and Jean-Yves Pranchère
Translated from French by Sarah-Louise Raillard, PhD

Almost thirty years ago, Steven Lukes published an article titled “Can a Marxist believe in human rights?” He answered this question in the negative, arguing that “the Marxist canon provides no reasons for protecting human rights”.¹ Lukes does not deny that Marx may have advocated for certain specific rights of man during his life, nor does he discount the possibility that Marxist-leaning individuals “believe” in these rights. According to Lukes, however, human rights cannot be coherently justified – or “taken seriously” – within the Marxist framework; that is to say, prioritizing the interests and obligations presupposed by these issues is “to not take Marxism seriously”.²

In fact, everyone is familiar with the young Marx’s diatribe against human rights, which he reduces to “the rights of egoistic man, of man as a member of bourgeois society, that is to say an individual separated from his community and solely concerned with his self-interest”.³ These alleged universal rights of the abstract individual would in reality promote the interests of one particular social type: the possessive individual of capitalism. Not only due to the context in which they emerged, but also in their very form, these rights would be linked to bourgeois ideology – the ideology which a famous page of the *Communist Manifesto* described as having drowned all emotion “in the icy water of egotistical calculation” and having ripped apart all feudal ties, leaving behind “no other nexus between people than naked self-interest”.⁴ In short, human rights are assumed to translate the ethos of “social atomism” – an ethos which is blind to the class divisions that are its very social conditions for existence.

Nevertheless, in a work on the young Marx published in 2007, David Leopold disagreed with the thesis, now accepted as dogma, that an irreconcilable conflict exists between Marx’s political philosophy and the demands of human rights. He argues that there is “little sign of this purported hostility to moral rights” in Marx;⁵ in fact, the traditional interpretation

1. Steven Lukes, “Can a Marxist believe in human rights?”, *Praxis International*, 1(4), 1982, 334-45 (344).

2. Steven Lukes, *Marxism and Morality* (Oxford: Clarendon Press, 1985), 70.

3. Karl Marx, *La question juive* [1843] (Paris: Union générale d’éditions, 1968).

4. Karl Marx, Friedrich Engels, *Communist Manifesto* [1848], trans. Samuel Moore (Harmondsworth: Penguin, 1967), 21.

5. David Leopold, *The Young Karl Marx. German Philosophy, Modern Politics and Human Flourishing* (Cambridge: Cambridge University Press, 2009), 150.

relied on a poor understanding of the context surrounding *The Jewish Question*, whose arguments can only be comprehended as a response to Bruno Bauer's original thesis. It is not certain, however, that placing greater importance on context suffices to dispel the critique of human rights delivered by the young Marx, a critique which he never revisits and that his later writings radicalize. And yet, without pretending to uncover a positive interpretation of rights adopted by the writer of *Capital* – which would require a serious distortion of his œuvre – we can nevertheless ask ourselves if this area of Marx's thought does not suffer from a certain logical weakness. Although the Marxian denial of a normative conception of social justice is logical, it is hard to see how individual emancipation – the goal of communism, according to Marx – can be successful without demanding certain human rights. Perhaps it would thus be possible to reintegrate the emancipatory intent of Marx's writings, despite Marx himself, within the tradition of the rights of man.

In other words, and rather paradoxically: although Leopold's thesis is not entirely convincing when taken from its own perspective (that of intellectual history), it does nonetheless allow us to clarify contemporary normative debates regarding the articulation to be found between a declaration of rights and social emancipation. In this article, we will attempt to consider these two traditionally separate dimensions – historical and analytic – together by asking not only what Marx really *thought* about human rights, but also what *he should have thought* about them. To this effect, our approach follows in the footsteps of Jon Elster, who assumes the methodological necessity of a sort of “deliberate anachronism” which draws on a certain number of facts and concepts with which Marx could not have been familiar.¹ However, our goal is not to add to the numerous debates that have marked the evolution of analytical Marxism since the beginning of the 1980s.² A large part of analytical Marxism has been devoted to the elaboration, based on Marx's own work, of a theory of justice which is not actually present in Marx. But the specific question which concerns us is that of fundamental rights: we will demonstrate that Marx's critique of the ideology of justice goes hand-in-hand with an understanding of individual liberty which leads to the concept of human rights.

The question of the rights of man in Marx's early work

The critique of human rights formulated in *The Jewish Question* is usually awarded the canonical status of a definitive dogma and consists of three parts: human rights are an *ideology* which serves the *constitutive egoism of civil society* while simultaneously exposing this society's *alienation* through the quasi-schizophrenic division it establishes between “men” and “citizens”. Must we take this at face value?

David Leopold's interpretation

The arguments put forth by Leopold allow us to uncover several seeds of doubt. His first line of inquiry regards the moral status of individuals for Marx. In the broadest sense, arguing that individuals have “rights” amounts to granting them an independent moral status and considering them as an end in themselves. It seems evident that the young Marx believed

1. Jon Elster, *An Introduction to Karl Marx* (Cambridge: Cambridge University Press, 1986), 2-3.

2. In particular, see: Gerald A. Cohen, *Self Ownership, Freedom and Equality* (Cambridge: Cambridge University Press, 1995); Jon Elster, *Making Sense of Marx* (Cambridge: Cambridge University Press, 1999); John Roemer, *Theories of Distributive Justice* (Cambridge: Harvard University Press, 1996); Philippe Van Parijs, *Real Freedom for All. What (if anything) Can Justify Capitalism?* (Oxford: Oxford University Press, 1995).

in rights to this extent. When he laments the conditions which “depress” workers “to the level of a machine”, he is condemning the abasement of an individual endowed with an independent moral status to the position of an object.¹ Since Marx railed against “objectification”, he must have believed that individuals possess an intrinsic moral importance.

Consequently, Leopold continues, the fact that the young Marx believed in moral rights as defined above is not surprising: in this light, almost all normative theories may permit a belief in rights in a broad sense. When critics state that Marx is hostile to the idea of human rights, they are exercising a more restrictive definition, according to which rights prohibit certain actions even if these actions are designed to lead to a better overall result. In this framework, rights are deontological paradigms accentuating the moral value of factors *other* than the intended consequences of the action in question, and investing these factors with a degree of importance that may surpass these consequences.

For Leopold, however, Marx’s notion of reification once again corresponds to this narrower conception of rights. Hence, when he condemns the way in which the poor man’s life and labor only count insofar as they offer a guarantee on the loan, “Marx is not simply saying that humans have a ‘moral standing’ which dollar bills lack: he is claiming that human beings have a moral standing which we have a duty to respect, and which we fail to respect if we treat them [...] as if they were objects”.² In other words, for the young Marx individuals do indeed have a moral right to not be treated like objects and if we treat them as such, we are violating their rights.

This injunction expresses a deontological position. One recurring trait of *The Jewish Question* is the critique of the fact that members of civil society treat each other “as means”. Even if Marx had only a limited use for Kantian ethics,³ it is unlikely that his semantic choice was a mere coincidence, Leopold argues. The reference to Kant is implicit in Marx’s criticism directed at the notion of treating an individual as a means, as well as in his description of civil society’s ethos as being contemptuous of “man as an end in himself”. For Kant, treating individuals as an end means respecting their dignity – their incomparable worth – a worth that does not depend on contingent facts and which trumps all other values. The implications raised by Marx’s choice of words seem evident:

“I can see no obvious reason for Marx’s use of this language – language which would certainly be familiar to his intended audience – other than to encourage us to think of the individual as having a value which others have a duty to respect, and which is independent of the goodness of outcomes.”⁴

Nonetheless, one could object here that Marx’s theory of rights should not be reconstructed from what he thought about the moral standing of individuals. We should instead turn our attention to what he explicitly said about rights, and the contempt he displayed towards them. For Leopold, however, Marx’s early writings show little evidence of this apparent hostility towards rights. Reading *The Jewish Question* as an attack on rights *per se* is to forget that the text’s goal was refuting the thesis, put forth by Bruno Bauer, that particularism or

1. D. Leopold, *The Young Karl Marx*, 151.

2. D. Leopold, *The Young Karl Marx*, 153.

3. To wit, his quite cursory critiques of Kantian morality in *L’idéologie allemande* (with Friedrich Engels [1845] (Paris: Éditions sociales, 1976), 185-7). Nevertheless, the fact remains that young Marx, in a letter from 1837 (in *Œuvres III* (Paris: Gallimard-La Pléiade, 1982), 1376), said that he was “brought up on Kant and Fichte”.

4. D. Leopold, *The Young Karl Marx*, 155.

the adherence to a specific religion justifies the exclusion of that group or individual from the protection of human rights. Marx does not deny that freedom of thought, freedom of speech or freedom of association are good things in and of themselves; neither does he deny that all individuals have a right to these freedoms. What he does criticize is the way in which these rights are understood, and in reality *limited*, by the governments of his era.

This is why, in order to counter Bauer (who refuses to grant Jews equal rights), Marx asks: “does the standpoint of *political* emancipation give the right to demand from the Jew the abolition of Judaism and from man the abolition of religion?”¹ Marx’s response is that the modern state *does not have the right* to discriminate against Jews, as compared to Christians, nor does it have the right to demand atheism as a requirement for citizenship. Here, Marx uses the concept of “right” without commentary or restrictions. Leopold thus concludes that “Marx’s own argumentative strategy in this discussion is not to attack the very concept of rights, but rather to reject this contemporary justification for excluding Jews from the possession of human rights”.² Marx’s critique does not thus address human rights as such, but rather a model of political life that renders citizenship meaningless by absolutizing the partial individual of civil society. Leopold reconsiders a reading proposed by Raymond Aron:

“At the start, Marx does not want to revisit the achievements of the French Revolution – he wants to terminate them. Democracy, freedom, equality, these values appear self-evident to him. What infuriates him is that democracy should be exclusively political, that equality should not extend further than the ballot box, and the freedom proclaimed by the Constitution should not prevent the enslavement of the proletariat, or the twelve-hour workdays of women and children [...] If he termed political and personal freedoms as ‘formal’, it is not because he scorned them, but rather because they seemed ridiculous to him, since the real conditions of existence prevented most men from truly enjoying these subjective rights.”³

Aron uses the expression “ridiculous”, but in light of his own reading, the term may seem excessive: Marx, who does not in fact use the expression “formal freedoms”, qualified political emancipation as “great progress”; he did not, then, see it as an object of ridicule, even if he refused to conflate it with human emancipation.

The separation between the rights of man and of the citizen

The reinterpretation, put forth by Leopold, of the role played by human rights in young Marx’s thought must nevertheless be nuanced. It is true that highlighting the context of *The Jewish Question* allows us to recall that Marx’s *practical* objective is first and foremost obtaining equal rights for Jews. But it is easy to criticize this contextualization as applying only to an early work, and leading to the erasure of the radical nature of the denial of human rights contained in the larger corpus. Starting with *The Holy Family*, which strengthens the thesis of *The Jewish Question* by positing that human rights give a semblance of freedom to what is in fact “[the worker’s] fully developed slavery and inhumanity”,⁴ and moving to the *Critique of the Gotha Program*, which appears to condemn the very idea of rights by declaring

1. K. Marx, *La question juive*, 19. The most recent French translation of this work, completed by Jean-François Poirier for La Fabrique (2006), eliminates the reference to the word “right” [“*droit*”], which existed in the first translation done by Jean-Michel Palmier for Éditions sociales (1971), and substitutes instead “is it permitted that” [“*permet-il*”]. And yet the word found in the original text is indeed “Recht”.

2. D. Leopold, *The Young Karl Marx*, 161.

3. Raymond Aron, *Essai sur les libertés* (Paris: Calmann-Lévy, 1965), 41.

4. Karl Marx, Friedrich Engels, *La Sainte Famille* [1844] (Paris: Éditions sociales, 1972), 142.

that “all rights” are “rights of inequality”,¹ it would seem that Marx’s condemnation of human rights was “total, consistent and final”.²

Should we thus agree with Lukes and reject Leopold’s interpretation? It would perhaps be a mistake to reach such a hasty conclusion. Leopold shines a light on one particular aspect that stands in opposition to the accepted reading of Marx: Marx’s critique of rights is not equivalent to his critique of religious alienation, which it seeks to supplant. While, according to Marx, the imaginary solace of religion only reflects social alienation, and consequently produces no real forms of emancipation, such a thing as “political emancipation” does in fact exist. The limit of exclusively legal and political freedom is that it does not eliminate *social* alienation: but this does not transform political emancipation into a form of alienation. The rights of citizens are not as such a form of alienation – they are the exercise of an insufficient but real freedom.

This is how the critique of religion leads Marx to emphasize the fact that the separation of church and state is insufficient to overcome the causes of religious alienation. But even if religious freedom does not liberate mankind from religion, it is nevertheless a real freedom which should not be challenged or curtailed by authoritarian measures. Countering Bauer, Marx asserts that this freedom “is a *general human right*”.³ It thus follows that human rights are not, in principle, equivalent to religious illusions: they correspond to freedom of religion, or to what we might term “secularism”, which does not erase religious illusions but nonetheless represents real and *definitive* progress that should not be reversed.

Consequently, social emancipation does not go against political emancipation: the former fulfills or completes the latter by extending political freedom to the social sphere; that is to say, by placing the whole of social relations under the democratic control of collective freedom. Like Claude Lefort, we could easily consider this project of total, undivided democracy to be merely a “totalitarian fantasy” that cancels out the notion of “free association” on which it is allegedly founded, and substitutes for it instead the dream of a transparent society that coincides with itself.⁴ In condemning human rights as an expression of the atomist imagination of capitalism, in this interpretation Marx is thus seen to have overlooked the properly political and truly democratic dimension of “human rights”.⁵ Paradoxically, he appears to have succumbed to the liberal idea according to which the Declaration instituted a separation between the social and the political. And yet, as Étienne Balibar argues, this “is a complete misunderstanding”. In the Declaration, Man “is not a private individual in opposition to the citizen who is the member of the state. He *is* the citizen...”.⁶ Among the “natural and imprescriptible rights of man” proclaimed in the 1789 text, the resistance to oppression and the free communication of ideas and opinions – said to be “one of the most precious of the rights of man” – necessarily establish connections between individual subjects.

But this reasonable critique, which reminds us that it is impossible to separate the rights of man from the rights of the citizen, must not make us forget that by using the umbrella term

1. Karl Marx, *Critique du programme de Gotha* [1875] (Paris: Éditions sociales, 2008), 59.

2. Bertrand Bourgeois, *Philosophie et droits de l'homme* (Paris: PUF, 1997), 101.

3. K. Marx, *La question juive*, 36.

4. Claude Lefort, “Les droits de l'homme et l'État providence” and “Relecture du Manifeste communiste”, in *Essais sur le politique* (Paris: Seuil, 1986), 46 and 188.

5. Claude Lefort, “Droits de l'homme et politique”, in *L'invention démocratique* (Paris: Fayard, 1981).

6. Étienne Balibar, “What is a politics of the rights of man?”, in *Masses, Classes, Ideas. Studies on Politics and Philosophy before and after Marx* (London: Routledge, 1994), 206.

“human rights”, Marx was criticizing precisely this *separation* between the rights of man and the rights of the citizen. The goal of his critique was not the indeterminate totality of human rights, and he was certainly not challenging the specific rights of freedom of association, freedom of the press and political freedom as outlined in the 1789 Declaration – Marx always considered these rights as the first necessary demands of a revolutionary movement. Instead, his critique focused on the idea of rights of man in their opposition to the rights of the citizen – or what *The Jewish Question* termed “the sophistry of the political state”¹ – which gets mixed up with the liberal version of human rights and consists of invoking the latter to limit the scope of political rights.

In this perspective, “human rights” are defined by the distinction between the “rights of man” and the “rights of the citizen”. However, this distinction separating the two simultaneously prohibits any social impact produced by political rights, while excluding any political impact stemming from human rights. *The Jewish Question* is categorical on the issue (our emphasis):

“Who is *homme* as distinct from *citoyen*? None other than the *member of civil society* [...] the *droits de l’homme* as distinct from the *droits du citoyen*, are nothing but the rights of egotistic man, of man separated from other men and from the community.”²

Defined by their difference with the rights of the citizen, the rights of man inevitably become the rights of the isolated monad, in contrast with political rights, which are those of “species” and community-oriented existence, but ultimately of an existence so narrowly defined that it loses all semblance of reality.

It is doubtful, therefore, that Marx’s argument intended to deny the social or political nature of rights such as the freedom of the press or the freedom of association; on the contrary, Marx refused to let human rights serve as an argument to limit the rights of the citizen by viewing them as a mere means, subordinated to the guarantee of apolitical rights. We should note here that, historically, the National Assembly which promulgated the Declaration of the Rights of Man likewise voted through the *Le Chapelier* law, which prohibited workers’ organizations: the “rights of man” differentiated from the “rights of the citizen” firmly accompanied a restriction on the freedom of association.³ Which is not to suggest that Lefort was wrong to highlight the fact that freedom of press and freedom of association are rights of intersubjectivity, of social relations, and do not pertain to the egotistical monad; it is simply that these rights were not those targeted by Marx’s critique. Instead, his attention was concentrated on the way in which the Declarations of 1789 and 1793 subordinated the rights of social relations to the rights of the isolated individual.

Simply put, Marx’s critique targets the fact that the rights of man have at their very core the intangible right to private property. Even in the 1793 Constitution, “the practical application of man’s right to liberty is man’s right to *private property*”.⁴ The subordination of the rights of the citizen to the rights of man (as differentiated from the citizen) concretely

1. K. Marx, *La question juive*, 25.

2. K. Marx, *La question juive*, 37.

3. “During the very first storms of the revolution, the French bourgeoisie dared to take away from the workers the right of association but just acquired. By a decree of June 14, 1791, they declared all coalitions of the workers as ‘an attempt against liberty and the declaration of the rights of man’” (K. Marx, *Le Capital*, Book I [1867], ch. XXVIII, 3 (Paris: PUF, 1993), 833).

4. K. Marx, *La question juive*, 38.

translates into the primacy of the right to private property. Freedom as “the relation of man with other men” is thus obscured by freedom as the selfish enjoyment of the property-owner, “without regard to other men, independently of society”. The right to property, like the “rights of egotistic man”, cancels out the “relational” rights which provide the content of the “rights of the citizen”. As soon as political rights cannot encroach on the right to private property, they lose all social meaning. Doomed to ensure the existing system of wealth distribution, these rights are now merely a secondary dimension of the security required by possessive individualism and attest to what *The Jewish Question* analyzed as the impotence of “political power” when separated from “social power”.

Going beyond the rights of man, in this scenario, means eliminating the separation with the rights of the citizen, “absorbing” them into political rights, while expanding the scope of political rights to encompass the entire social sphere. This is communism’s goal: to render “political power” indistinguishable from “social power”. The vocabulary of the rights of man and of the citizen seems inadequate for such a task, as it is both a question of eliminating the difference between man and citizen, and of redefining “political rights” in such a way that they are in fact no longer “political” rights – that is to say, *solely* political – but indeed a social force. Marx never defined communism by a *right* to collective property, but rather by the *process* of the collective *appropriation* of the means of production.¹ Communism is the conscious and deliberate organization of production and society itself by “freely associated individuals”. It does not then clamor for the establishment or the safeguarding of human or citizen rights: communism is the actual exercise of the collective power of individuals. In opposition to legal constructs, which only provide a framework for interactions between separate individuals, we find the practice of a collective freedom which is not separated from itself under the objectified form of the law, but which instead preserves its autonomy by recognizing no other rule than the immanence of its own decision-making. The concept of communism unearthed when analyzing the works of the young Marx remains identical throughout his *œuvre* – communism is not a system of rights, but rather, as Antonio Labriola writes, “the democratic socialization of the means of production”.²

Should we therefore consider the arguments put forth in *The Jewish Question* as the sum total of Marx’s thoughts on the rights of man? The question posed here is two-fold. From the perspective of intellectual history, we must first determine why Marx, without ever reassessing the conceptual articulations of his initial critique of human rights, conserved until the end of his life a rather crudely principled opposition to a highly unspecified “legal ideology”. From a normative standpoint, the challenge is thus to determine if Marx’s understanding of freedom does not presuppose a theory of human rights which it otherwise glosses over.

1. On the difference between collective property and the appropriation of production, see Louis Althusser, *Sur la reproduction* (Paris: PUF, 2011), 91, and Antonio Labriola, *Essais sur la conception matérialiste de l'histoire [1895-1899]* (Paris: Gordon & Breach, 1970), 12.

2. A. Labriola, *Essais sur la conception matérialiste de l'histoire*.

The historicist reinterpretation of the critique of human rights

From 1845, all of Marx's works included the project of social emancipation within an analysis of the historical dynamics of capitalist accumulation. Countering Proudhon, who founded the theory of "distributive justice" and did not comprehend that property relations should be analyzed in their "real form" as the "relations of production" rather than through "their *legal* aspect as *relations of volition*", Marx denies any other normative perspective than that of a "critical knowledge of the historical movement, a movement which itself produces the *material conditions of emancipation*".¹ It is a question of showing that we need to go beyond the "stage of society" founded on capital – or the "high cultural level" of the "social human being [...] as rich as possible in needs, because rich in qualities and relations" – towards a higher form of socialization which must also be a higher mode of individualization.

"The universality towards which it irresistibly strives encounters barriers in its own nature, which will, at a certain stage of its development, allow it to be recognized as being itself the greatest barrier to this tendency, and hence will drive towards its own suspension."²

The emancipation sought by "a critical knowledge of the historical movement" is not formulated in terms of a theory of justice: Marx clearly states that justice is no more than compliance with the law as naturally arises from the means of production.³ No injustice exists in legal relations, as long as these relations adequately correspond to the necessities of the means of production. Reducing legal relations to economic relations explains why the author of *Capital* had only contempt for human rights phraseology, in which he saw only an ideological transformation of the legal constructs of the mercantile relation. Under the guise of an ahistorical law, the rights of man are the illusory projection of the "deceptive appearance", according to which exchange is a "free and equal relation".⁴ To counter this "deceptive appearance", Marx traced the ideology of the eternal rights of man to the historical conditions of legal relations which human rights distort; he sought to prove that capitalist mercantile relations, whose corresponding legal fantasy is the existence of human rights, are relations of *exploitation* – even though they are relations entered into between "formally" equal individuals, and are thus irreproachable from the point of view of the fairness of transactions.

The historicity of law

The German Ideology marked a turning point in Marx's philosophy: the materialist historicism that reconnected human thought and activity to the material conditions of their social production was incompatible with the notion of a human essence which might have been lost in religion or the state, and that mankind should recapture. *The Jewish Question* critiqued human rights in the name of the unity of an "essential species-being"; *The German Ideology* denounced the idea of an eternal essence of man as an ideological illusion to be countered by the fact that only "real individuals" exist, people glimpsed in the "definite conditions" of

1. Karl Marx, "Lettre à J.-B. Schweitzer" [1865], in *Misère de la philosophie* (Paris: Éditions sociales, 1977), 185-7.

2. Karl Marx, *Grundrisse. Manuscrits de 1857-1858*, IV, 19 (Paris: Éditions sociales, 1980), vol. I, 348-9.

3. For example, see Karl Marx, *Le Capital*, Book III, ch. XXI (Paris: Éditions sociales, 1977), 320, and *Critique du programme de Gotha*, 54.

4. K. Marx, *Grundrisse I*, IV, 48, 403.

their history¹ – in other words, in the social relations from which stems the specific form of their individuality. Marx repeatedly argued that man is a social being who “can only constitute himself as an independent individual in society”.² It follows that human nature does not exist: “all history is nothing but a continuous transformation of human nature”,³ as it is the succession of social formations that produce each category of humanity correlating to given social relations.

This historical perspective could not lead to the rehabilitation of human rights: if man does not exist, he cannot have rights. Marx maintains the definition of communism presented in *The Jewish Question*, which challenged the right to property as well as the separation between the political and the social, but he adds to this negation the double thesis of the *historicity* and radical *secondarity* of the law. The rights of man are false in that they are, by definition, presented as natural, eternal or innate rights. However, all laws are historical, since they depend on the possibilities offered by the state of productive powers, and the relations of production that correspond to them. Marx writes that “legislation, whether political or civil, never does more than proclaim, express in words, the will of economic relations”, and that “law is only the official recognition of the fact”.⁴ It is not that the law is reduced to confirming existing power relations of whatever sort, but rather that it *does not have* the power to abolish the historical limits of productive powers and of the mode of production that the latter impose. The societies of classical Antiquity, which could not abolish the institution of slavery upon which their technical and spiritual development was founded, could not have conceived of “human rights” as such being incompatible with slavery.⁵

The concept of *ahistorical* human rights, which could be unconditionally demanded in any context, is thus an absurdity that should lead us to lament the entire course of human history. The latter has always progressed via the “bad side”,⁶ and has only managed to develop civilization through the social forms of slavery and feudalism, which are unacceptable from the perspective of human rights. Taken seriously, a belief in eternal rights can only cultivate a properly *religious* frustration when faced with the irrationality of history, where the rights of man have been constantly violated and where reality has never conformed to the ideal. Marx repeatedly denounces this “sentimental” point of view, which he sees at play in the legal versions of socialism that condemn the injustices of capitalism without understanding the historical necessity of these very “injustices”.

Nevertheless, throughout his later works Marx maintained that “the production of the richness of human nature”, or the integral development of individuals, is “an end in itself”.⁷ But this means that the goal is less the preservation of individual rights than the development of their power; and yet, this development – which under communism will be realized in the form of “free individuality, based on the universal development of individuals and on their subordination of their communal and social productivity as their social wealth” – needs to experience capitalism, which destroys the close “relations of personal dependence” and

1. K. Marx, F. Engels, *L'idéologie allemande*, 15 and 19ff.

2. K. Marx, “Introduction de 1857”, in *Grundrisse I*, 18.

3. K. Marx, *Misère de la philosophie* [1847], 153.

4. K. Marx, *Misère de la philosophie*, 93 and 96.

5. Engels emphasizes this point in *Anti-Dühring* (Paris, Éditions sociales, 1977), 208-9: “Without the slavery of Antiquity, no modern socialism”.

6. K. Marx, *Misère de la philosophie*, 130.

7. Karl Marx, *Théories sur la plus-value*, Tome II (Paris: Éditions sociales, 1975), 125.

substitutes instead the progress of “personal independence founded on *objective* dependence” (dependence on the market having become an autonomous force).¹ Hence the resulting paradox which requires that “the higher development of individuality is thus only achieved by a historical process during which individuals are sacrificed”:² the expansion of the powers of individual freedom dialectically passes through the divisions of labor which cruelly violate “human rights” and starts by restricting freedom to a minority of individuals.

Legal equality as exploitation

The notion of human rights is not only blind to the necessity of violence (including the emancipatory violence of all revolutionary action); it is equally blind to its own violence, the violence of the relations of enslavement for which it serves as a formal framework. Human rights are first presented as the realization of a system for the equality of individual rights; however, this configuration overlooks the fact that real “social relations” are “based on class antagonism”, and that they are “not relations between individual and individual, but between worker and capitalist, between farmer and landlord, etc.”. The individualist fantasy that expresses the competitive nature of the capitalist market should not make us forget that the reality of this market is not purely “individualistic” or “atomist”, since it is structured by “the difference between capitalists and workers” – a difference that the law ignores and which “exists in fact only from the point of view of society”.³

It would be futile to pit human rights against the power relations that inevitably establish themselves in a mercantile relation between those who own the means of production and those who only own their labor power. For market relations conform to the concept of human rights: the “attributes of the juridical person” are “precisely [those] of the individual involved in exchange”. The contractual relation of the “exchangers” is a relation of *equality* between proprietors who “recognize each other reciprocally” as *free* persons. It is thus the achievement of the juridical equality of freedoms at the same time as it is the real basis for producing this ideal of legal equality.

“The exchange of exchange values is the productive, real basis of all *equality* and *freedom*. As pure ideas they are merely the idealized expressions of this basis; as developed in juridical, political, social relations, they are merely this basis to a higher power.”⁴

Consequently, it was “foolish” to think, as did the French socialists, that socialism would be the veritable “realization” of the “ideas of the French Revolution”. These ideals were those of bourgeois “civil society” and are *truly* realized in the market relation that is the capitalist mode of exploitation. Opposing human rights to this relation is opposing “the real and the ideal forms of civil society” and wanting to restore “the ideal expression again, which is in fact only the inverted projection of this reality”. Capitalist exploitation and the domination of money do not “deform” the “system of equality and freedom” for all:

“[...] that exchange value or, more precisely, the money system is in fact the system of equality and freedom, and that the disturbances which they encounter in the further development of the system are disturbances inherent in it, are merely the realization of *equality* and *freedom*, which prove to be inequality and unfreedom.”

1. K. Marx, *Grundrisse*, I, 21-3, and 93-9.

2. K. Marx, *Théories sur la plus-value*, 126.

3. K. Marx, *Misère de la philosophie*, I, 3, 109; and *Grundrisse I*, II, 18, 205.

4. K. Marx, *Grundrisse I*, II, 8-12, 180-90.

Market relations are described in *Capital* as the implementation of “the despotism of capital” and the “concealed enslavement of workers”.¹ Between capitalist proprietors, who are themselves no more than the submissive agents of their capital, and workers who only possess the strength of their labor power and have only their time to sell, the production relations of capitalist competition enforce a division of labor: the laborer is in the position of “someone who has brought his own hide to market and has nothing to expect but a tanning”, while the capitalist inevitably assumes the role of the “vampire” who “steals the [worker’s] time”.² And yet this relation of exploitation, which enacts its violence via the inequality of social positions and the destruction of individual freedom, develops into “a very Eden of the innate rights of man”.

“There alone rule Freedom, Equality, Property and Bentham. Freedom, because both buyer and seller of a commodity, say of labor-power, are constrained only by their own free will. They contract as free agents, and the agreement they come to, is but the form in which they give legal expression to their common will. Equality, because each enters into relation with the other, as with a simple owner of commodities, and they exchange equivalent for equivalent. Property, because each disposes only of what is his own. And Bentham, because each looks only to himself. The only force that brings them together and puts them in relation with each other, is the selfishness, the gain and the private interests of each. Each looks to himself only, and no one troubles himself about the rest, and just because they do so, do they all, in accordance with the pre-established harmony of things, or under the auspices of an all-shrewd providence, work together to their mutual advantage, for the common weal and in the interest of all.”³

Marx’s essential argument against human rights is that if we limit ourselves to the notion of the equality of freedoms, which defines the rights of man, we cannot then express *any objection to the market relation* as a free contract between free and equal property-owners before the law. However, this contractual relation is perfectly compatible with exploitation: “apart from extremely elastic bounds, the nature of the exchange of commodities itself imposes no limit to the working-day, no limit to surplus-labor”.⁴ Competition can thus constrain the individual who only freely owns his self to consent to his exploitation. Since the buyer and the seller have equal rights, it is not a legal principle, but the reality of competition and power relations that sets the limits of working time and exploitation.

“Between equal rights force decides. Hence is it that in the history of capitalist production, the determination of what is a working-day, presents itself as the result of a struggle, a struggle between collective capital, *i.e.*, the class of capitalists, and collective labor, *i.e.*, the working-class.”⁵

Exploitation can thus not be abolished nor even restricted by calling upon the rights of man, which, on the contrary, provide it with a formal justification, thanks to the principle of the free use of property and the legal equality of the free contracting parties. What can counter exploitation, including within the context of the capitalist mode of production, where it can only be somewhat *contained*, is the existence of a communal and deliberate decision that

1. K. Marx, *Le Capital*, Book I, ch. XIII, 3, XXIV, 6, 452, 853.

2. K. Marx, *Le Capital*, Book I, ch. VIII, 5 and 7, 296, 337.

3. K. Marx, *Le Capital*, Book I, ch. IV, 3, 198. There is the hint of a difficulty or “disturbance” which runs through all of Marx’s œuvre, in the association made here between the rights of man and Bentham, even though the latter effected an unwavering critique of human rights in the name of utilitarianism.

4. K. Marx, *Le Capital*, Book I, ch. VIII, 1, 261.

5. K. Marx, *Le Capital*, Book I, ch. VIII, 1, 262.

can only use itself as justification; it is the assertion of a *collective* will and force which impose, through the form of a legal limitation, a “*social barrier*” to the principle of the contract.

“For ‘protection’ against ‘the serpent of their agonies’, the laborers must put their heads together, and, as a class, compel the passing of a law, an all-powerful social barrier that shall prevent the very workers from selling, by voluntary contract with capital, themselves and their families into slavery and death. In place of the pompous catalogue of the ‘inalienable rights of man’ comes the modest Magna Charta of a legally limited working-day, which shall make clear ‘when the time which the worker sells is ended, and when his own begins’.”¹

The contrast between the English Magna Carta – which established limited, but real freedoms – and the human rights touted by the French and American revolutions (which instituted unlimited but illusory freedoms), could seem to be a strange echo, in Marx’s revolutionary thought, of the counter-revolutionary Burke’s opposition between the concrete “rights of the English” and the imaginary “rights of man”. And yet Marx considered Burke to be only a “sycophant” employed by the “English oligarchy”.² Marx’s critique of the rights of man was diametrically opposed to the Burkean defense of privileges and heritage. Marx always believed that the destruction of inequality as established by birth or tradition was one of the great merits of the development of the capitalist market and of its corresponding legal system; in this light, he was able to flaunt “the commodity” as a “great cynical equalizer” and “capital” as “a born leveler”.³ In the *Grundrisse*, Marx denounces the way in which the equality of the market relation “tricks democracy”.⁴ But this expression suggests that the “system of equality and freedom” represented by human rights is criticized in the name of a democracy that does not let itself be fooled – in other words, in the name of *another* “system of equality and freedom”, one that is in fact expressed by the democratic equality which imposes a limit to the working-day to counter the laws of the market.

Justice, individual freedoms and the rights of man

For some critics,⁵ the correlation thus established between the problematic egoism of capitalist society and individual rights would render the latter superfluous in a communist society. The argument is posed thusly: individual rights – defined in terms of the legal guarantee of rights established by the Declaration of the Rights of Man and of the Citizen – are only necessary in a situation where these rights risk being infringed. Since these attacks are the product of egoism as engendered by class struggle, the accession of a truly communist society will render pointless all legal guarantees protecting these rights. Bourgeois law would no longer exist in such a scenario, of course, but neither would any law at all or any legal or moral rules. Refuting this interpretation, other scholars have in fact asserted

1. K. Marx, *Le Capital*, Book I, ch. VIII, 7, 337-338.

2. K. Marx, *Le Capital*, Book I, ch. XXIV, 6, 853.

3. K. Marx, *Le Capital*, Book I, ch. II and XIII, 3, 97 and 446. It is worth citing the second text: “But since capital is by nature a leveler, since it exacts in every sphere of production equality in the conditions of the exploitation of labor, the limitation by law of children’s labor, in one branch of industry, becomes the cause of its limitation in others”. Here, Marx recognizes, without realizing it, a truly emancipatory dimension of legal equality that he denounces as purely formal: the very formal logic of legal equality implies the extension of the limitation of the workday.

4. K. Marx, *Grundrisse I*, I, 24, 100.

5. In particular, see Allen E. Buchanan, *Marx and Justice. The Radical Critique of Liberalism* (London: Rowman & Littlefield, 1982), and S. Lukes, *Marxism and Morality*, 57.

that no good reason allows for the argument to be made that, according to Marx, the elimination of class conflicts would lead to the disappearance of all forms of conflict and oppression.¹ As Will Kymlicka summarized it:

“The belief that the circumstances of justice must find their resolution in a ‘harmony of ends’ is more a multicultural ideal than a Marxist one.”²

But most of all, we follow Allen Wood when he demonstrates that this hypothesis of an evaporation of rights in a communist society is fostered by a misunderstanding of what “justice” means for Marx.³ When Marx slays the mottos of distributive justice – calling them “obsolete verbal rubbish”⁴ – his critique is not primarily aimed at the liberal idea of the impartial distribution of rights as John Stuart Mill might have conceived of it.⁵ His target is rather the early socialists’ unshakeable faith in “just remuneration” for work and the “just distribution” or “fair exchange” of goods. Marx’s thesis is that there is no transaction justice in the name of which one could criticize the injustice of real exchanges: the justice of any exchange stems from its related mode of production, and the justice of distribution depends on its relation to the system of production. The capitalist wage system is “just”, since capitalists purchase labor within the context of a free contract, without dishonesty, and at the price that it is *actually* worth on the market.⁶ However, this justice does not prevent the exploitation of workers thanks to excessive workloads and working hours. As difficult as it may be for a reader of Rawls to comprehend, Marx does not see exploitation as an injustice and he does not perceive communism as instituting “justice”, but rather as abolishing the enslaving effects of capitalist production, thanks to the collective organization of labor.

However, if we concede that the critique of the illusions of distributive justice (understood as the “fair sharing” of the fruits of labor, for which criteria are incidentally lacking) is not the same thing as denying the equal distribution of rights, we may ask ourselves, as Wood explicitly suggests, if “Marx might very well see a significant place for what liberal theorists choose to call ‘individual rights’, though of course Marx himself scorned that name”.⁷ Unfortunately for us, Wood does not expand upon this intuition, which is mentioned in passing in a book review and not contained within his magnum opus on Marx, and that it would seem to contradict his earlier writings.⁸ This is precisely the avenue we would like to explore here. For in examining the two most important moments where Marx critiques the rights of man – namely, by refuting the historicity of rights and the concept of an abstract legal form likely to contain an unequal social relation – we note that these two positions are not irreducibly in opposition to human rights.

1. Allen W. Wood, “Review of Marx and justice. The radical critique of liberalism by A. E. Buchanan”, *Law and Philosophy*, 3(1), 1984, 147-52 (151), and Jeremy Waldron, *Nonsense Upon Stilts*, 134.

2. Will Kymlicka, *Les théories de la justice* (Paris: La Découverte, 1999), 183.

3. A. W. Wood, “Review of Marx and justice”, 150 ff.

4. K. Marx, *Critique du programme de Gotha*, 60.

5. John Stuart Mill, *L'utilitarisme* [1861] (Paris: Flammarion, 1988).

6. Karl Marx, “Notes sur Wagner”, in *Le Capital*, Book II (Paris: Éditions sociales, 1977), 463.

7. A. W. Wood, “Review of Marx and justice”, 151.

8. In an article published twelve years earlier than the review of Buchanan's book, Wood had written: “And in the long run, of course, Marx believes that the end of class society will mean the end of the social need for the state mechanism and the juridical institutions within which concepts like ‘rights’ and ‘justice’ have their place” (Allen W. Wood, “The Marxian critique of justice”, *Philosophy and Public Affairs*, 1(3), 1972, 244-82).

Political and social emancipation

The argument against the historicity of rights constitutes an objection to a belief in their eternal truth, but not to the legitimacy of their demands. Marx never made historicism into a sort of nihilist relativism: according to his analyses, historicity possesses its own necessity and rationality. The fact that a political project is historically conditioned, as is the communist project, does not make it false. The fact that human rights presuppose the historical circumstances stemming from the emancipation of individuals due to technological development does not invalidate the entire politics of human rights. Marx repeatedly described communism as the possibility, offered to each individual, for the “integral development” of his or her individuality. Why should it be impossible to see therein the implementation of a “right of man”, which would be the right of the individual to his or her own free, personal development? Here, Marx’s opposition to human rights seems more rhetorical than genuine: much like Althusser’s condemnation of the “humanist” concept of alienation, when he counters it with the idea of “the new form of *individual development* for a new period of history [...] in which from now on each man will *objectively* have the choice, that is, *the difficult task of becoming by himself what he is*”.¹ What is alienation then, if not being prevented from “becoming what one is”, or to put it in less “idealist” terms, being separated from one’s own possibilities?

Marx’s critique of the abstraction of human rights brings us to the conclusion that “political emancipation” must lead to “social emancipation”.² But this social emancipation which extends political emancipation cannot also eliminate it. The social insufficiency of the rights of man does not amount to their *political* nullity. Consequently, in his political practice Marx always believed that the acquisition of a certain number of rights pertaining to the rights of man was a necessary prerequisite for any progress towards socialism. From his 1847 articles right up to his *Critique of the Gotha Program*, the same political watchwords are constantly repeated: universal suffrage, the right to peaceful assembly and association, freedom of the press and public education uncensored by the state are all championed by Marx as rights which must be acquired in order for the communist project to have any practical meaning. “As long as democracy has not been achieved”, wrote Engels in 1847, “thus long do communists and democrats fight side by side, thus long are the interests of the democrats at the same time those of the communists”.³ Marx’s ironic attitude towards parliamentary illusions and the naive belief that universal suffrage would be enough to transform all social relations should not blind us to the fact that democratic rights are still a necessary, if insufficient, condition for all social transformation, according to Marx.

Here we may cite the sarcastic remarks found in *The Critique of the Gotha Program* regarding “freedom of conscience”. Marx laments that, by repeating this “old catchword” of liberalism, one “chooses not to transgress the ‘bourgeois’ level” of “the toleration of all possible kinds of religious freedom of conscience”, whereas the Workers’ party “endeavors rather to liberate the conscience from the witchery of religion”. But the right to a free conscience is not challenged here, since Marx also adds that “everyone should be able to attend his religious as well as his bodily needs without the police sticking their noses in”.⁴ One may find these

1. Louis Althusser, *Pour Marx* [1965] (Paris: Maspero, 1980), 245.

2. Karl Marx, *Les luttes de classes en France, 1848-1850* (Paris: Éditions sociales, 1984), 123-4.

3. Cited by Jacques Texier, *Révolution et démocratie chez Marx et Engels* (Paris: PUF, 1998), 38. As Texier remarks, Engels’ signature on the article does not prevent it from expressing Marx’s position as well.

4. K. Marx, *Critique du programme de Gotha*, 78.

remarks overly aggressive,¹ but the heart of the matter is that Marx seeks to distance the police from free, intellectual activity. This implies a virulent critique of statism, critique according to which the state “has need [...] of a very stern education by the people”: “Even vulgar democracy, which sees the millennium in the democratic republic, and has no suspicion that it is precisely in this last form of state of bourgeois society that the class struggle has to be fought out to a conclusion” – “even it towers mountains above” the bureaucratic state.²

However, if this is the case, why does Marx obstinately refuse to grant any positive value to human rights? The answer to this question no doubt lies with the inclusion, among these rights, of the right to property, that “terrible and perhaps unnecessary right”, as Beccaria called it, and against which the *Communist Manifesto* called for “despotic inroads”.³ The rights of man as understood by Marx have the right to property at their very structural core. Their “formalism” does not mean that they are indifferent to content, but rather that their abstraction is the abstraction of a determinate content – that of the capitalist ownership of the means of production – which remains present, like a palimpsest, in the shape taken by the abstraction. In this sense, there is an intimate solidarity between the rights of man and commercial law: “the ground on which the law grows” is that of “bourgeois property”.⁴

It is thus impossible to fight “bourgeois property” in the name of human rights or of the very system of justice that confirms and validates it: one may only counter it with the democratic self-organization of society, or “free exchange among individuals who are associated on the basis of common appropriation and control of the means of production”.⁵ Moreover, it is not a matter of eliminating “all social and political inequality” in general, but solely those inequalities which stem from “class distinctions”.⁶ As André Tosel argues, the terms “freedom and slavery are more relevant” to Marx’s critique of exploitation “than justice or injustice”.⁷ The famous passage from *Capital* which describes the communist transition from “the kingdom of necessity to the kingdom of freedom” should be read in this light. Marx does not believe that this transition, which defines “the reduction of the working-day” as a “fundamental condition”, represents the implementation of an indeterminate theory of justice, but rather the rise to power of a collective force. This collective power would first manifest itself by the socialization of labor which rationally structures it, so that associated individuals would expend a minimum of energy “under conditions most favorable to, and worthy of, their human nature”. It would then unfold as the “development of human energy [...] as an end in itself”.⁸ Justice is here neither end nor means: the most important thing is the *maximization of individual and collective freedom* through the democratic organization of production designed to liberate the time and labor power of all.

1. In the 1857 introduction (*Grundrisse I*, 36), Marx described in perhaps less virulent terms the “artistic, religious, practical and mental appropriation of this world”.

2. K. Marx, *Critique du programme de Gotha*, 75-7.

3. K. Marx, F. Engels, *Manifeste communiste*, 48.

4. K. Marx, *Les luttes de classes en France*, 201.

5. K. Marx, *Grundrisse I*, I, 21, 95.

6. K. Marx, *Critique du programme de Gotha*, 69.

7. André Tosel, “Marx, la justice et sa production”, in *Études sur Marx (et Engels). Vers un communisme de la finitude* (Paris: Kimé, 1996), 95-7.

8. K. Marx, *Le Capital*, Book III, ch. XLVIII, 742 (our emphasis). It is striking that Marx’s refusal to believe in an eternal human nature does not prevent him from recognizing that some conditions are unworthy of “human nature”, in the sense of the nature of humanity. It is difficult here not to arrive at a definition of humanity as the freedom which is at the root of human rights.

And this is why we have argued that Wood is correct in emphasizing the fact that Marx does not see exploitation as a form of injustice, but rather as a form of oppression or enslavement, to which he opposes the historical possibility of a “higher form of life”, that is to say, a freer form of life.¹ However, this implies a conclusion which is ultimately refused by Wood²: namely, that at the heart of Marx’s vision, one finds individual freedom: “the development of individuals into complete individuals”.³ In this perspective, Marx is indeed “an individualist in this normative sense”.⁴

Rights theory and the fight for equal freedom

We may thus ask ourselves whether Marx’s (strong and coherent) refusal to accept a theory of social justice necessarily implies the refusal of a theory of rights, in particular human rights. Can the equal opportunity for individual development sought by Marx make any logical sense outside of the framework of a right to freedom? For the rights of man do not constitute a theory of distributive justice; they are rather an assertion of freedom, if only thanks to the form of their declaration. By definition, freedom cannot be “granted” like a pardon – it can only assert its dignity by claiming its right. The law is precisely the form in which freedom asserts and declares itself.

It is difficult to understand why this form should be considered “ideological” or illusory, as Marx puts it. If the forms taken by the law are the *element* or the environment *in* which social conflicts must be “fought out”,⁵ they are less an ideology than the scene of confrontation between opposing ideologies which do not have the same value; and if these forms are the “expression” of socio-economic relations, then they are likely to be accurate and appropriate for the relations they express. When Engels recognized that legal rules can express “well or ill” the “economic conditions of existence of society”,⁶ he unwittingly admitted that the law does not simply stem from ideology, but can also be the *adequate* expression of an *objective* content of which it is the *necessary* form. And since, according to Engels still, the socialist movement “must formulate its demands as legalistic demands”,⁷ the legal demand for rights in fact becomes the only form possible to assert the freedom that is communism’s objective, according to Marx.

Article 2 of the Declaration of 1789 lists four “natural and imprescriptible rights of man”: “liberty, property, security and resistance to oppression”. Here, could we not argue that “resistance to oppression” expresses the meaning of liberty and justifies “property” as one of its bases, a form of property which nonetheless is not defined as that of the means of production? Marx was able to write that, in communism, “individual property” would finally become a “truth” for all.⁸ Is the struggle to limit the working day, which is according to

1. Karl Marx, *La guerre civile en France* (Paris: Éditions sociales, 1968), 68.

2. Wood writes the following, which we do not agree with: “It still seems to me almost as mistaken to say that Marx’s critique of capitalism is founded on a ‘principle of freedom’ as it is to say that it is founded on a ‘principle of justice’” (A. W. Wood, “The Marxian critique of justice”, 281). This is forgetting that Marx explicitly believes the free development of the individual to be “an end in itself”.

3. K. Marx, F. Engels, *L’idéologie allemande*, 72.

4. J. Elster, *An Introduction to Karl Marx*, 25.

5. Marx’s preface to the *Contribution à la critique de l’économie politique* [1859] (Paris: Éditions sociales, 1972), 4-5.

6. Friedrich Engels, *Ludwig Feuerbach* [1888] (Paris: Éditions sociales, 1975), 109-11.

7. Friedrich Engels, Karl Kautsky, “Socialisme de juristes”, *Neue Zeit*, 2, 1887, 49-51.

8. K. Marx, *La guerre civile en France*, 68.

Marx the incompressible core of the fight against exploitation, anything other than a resistance to oppression, which in turn asserts the rights of men to freedom? Here we are tempted to extrapolate a conclusion of Elster's to these fundamental rights: Ester argues that in refusing to adopt a concept of justice, Marx "went out of his way to refute the correct description of what he was doing".¹

The survival of the Marxian project of emancipation could hence demand its reformulation in terms of a theory of rights which would seriously examine the question of the legal conditions for the spread of democracy. In fact, Marx's reasonable hopes – the recognition of collective democratic property, under the guise of public assets, or the establishment of policies seeking to attenuate class differences – can only be realized through the implementation of rights. If it is true that these rights do not in and of themselves mark the end of domination and exploitation, they nevertheless propose a limit to these ills. If it is true that these rights call for a social practice of democracy that they do not single-handedly produce, they are nonetheless the conditions of the authentically democratic character of this practice which gives meaning to their establishment.

It should thus be possible to reintegrate Marx's emancipatory intentions, despite Marx himself, within the tradition of the rights of man of which they were, at least partially, a dialectical development. As Lefort has shown already, Marx remained the prisoner of an ideological vision of human rights; he was unable to grasp that their lack of an essential foundation – their indeterminate and undecidable nature – could destabilize social life and contribute to cultivating the fight for emancipation. If the expressions of the Declaration immediately gained new lives outside of their original context, nurturing the demands made by women, workers and colonized populations, this is because a policy of human rights touches "the limits of democracy" and cannot, thus, be content with ensuring the legal safeguard of civic and political rights.² In addition to the rights of man as abstraction and the rights of the citizen, Marx did not envision the third possibility indicated by the example of Olympe de Gouges cited by Jacques Rancière: she declared that "women's and citizen's rights are the rights of those who have not the rights that they have and have the rights that they have not".³

In this light, Lukes' argument, according to which "Marxism inherited an overly narrow conception of rights and an overly narrow understanding of the circumstances which make them necessary", remains largely unfounded.⁴ But we may suppose that, at its core, Marx's theory offers the possibility of fighting against all the attacks made on human rights. What is played out today on the global stage through the numerous appeals for human rights – namely, the transnational defense of the freedom of real individuals – can draw on the Marxian theory of the means of social production. In turn, this theory calls for the principle of a real assertion of the right of men, as individuals, to develop their freedom as an absolute end.

In this respect, it is important to note that some of the fervent supporters of a "policy of human rights" can be found amongst the great thinkers influenced by a Marxian heritage. During this era of capitalist globalization, the appeal for human rights (which includes both

1. J. Elster, *An Introduction to Karl Marx*, 93.

2. É. Balibar, *Masses, Classes, Ideas*, 43, 224.

3. Jacques Rancière, *La haine de la démocratie* (Paris: La Fabrique, 2005), 68.

4. S. Lukes, *Marxism and Morality*, 66.

the struggle against social violence and a critique of national states) is thus presented, in the writings of authors such as Rancière and Balibar, as the preferred instrument of radical democracy. For authors such as these, declarations of rights are conceived of as radical discursive operations that deconstruct and reconstruct the political sphere by asserting “a universal right to political activity and recognition for every individual, in all the domains in which the problem of collectively organizing possession, power and knowledge exists”.¹ The politics of human rights then becomes inseparable from a conception of democracy that is by its very nature “unlimited”, such unlimitedness residing in the movement, authorized by rights, by which subjects constantly shift the borders between public and private, between social and political issues.²

These intuitions from political philosophy likewise find support in the studies conducted by sociologists researching the social conditions behind legal mobilization: these studies highlight the fact that “the political force of the law” is also “its possible reversal”.³ Likewise, in his work on the struggle to bridge the pay gap between men and women, Michael McCann has demonstrated that the law does not always need to be viewed in a Manichean perspective, operating on the side of social domination, but rather that it can also be “a source of disorder and egalitarian reordering”.

“All in all, the evidence suggests that taking legal rights seriously has opened up more than closed debates, exposed more than masked systemic injustices, stirred more than pacified discontents, and nurtured more than retarded the development of solidarity among women workers and their allies.”⁴

This may allow us to finally answer Lukes’ question: “can a Marxist believe in human rights?” If a “Marxist” is someone who reads Marx literally, the answer most certainly remains “no”. If a “Marxist” is someone who believes that the theory is “shot through with errors of detail, even [has] basic conceptual flaws, yet remain[s] immensely fertile in its overall conception”, as well as someone “who can trace the ancestry of his most important beliefs back to Marx”,⁵ the answer becomes: yes, this is possible. And in reality, this should be the case.

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1. Étienne Balibar, *Les frontières de la démocratie* (Paris: La Découverte, 1992), 239.

2. J. Rancière, *La haine de la démocratie*, 69-70.

3. Liora Israël, *L'arme du droit* (Paris: Presses de Sciences Po, 2009).

4. Michael W. McCann, *Rights at Work. Pay Equity Reform and the Politics of Legal Mobilization* (Chicago: The University of Chicago Press, 1994), 7-14.

5. J. Elster, *An Introduction to Karl Marx*, 3-4.

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