

Justice as Fetish

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Abstract:

In this paper I challenge those who have argued that Marx's critical project ought to be combined or supplemented with normative theories of distributive justice, particularly along the model of liberal theorists such as John Rawls. These arguments tend to suggest that Marx was either incorrect or inconsistent in rejecting the language of rights, justice and distribution.

The weakness of such accounts lies in their use of an ideal theory method for deriving principles of justice combined with a particular model of the individual subject. Drawing an analogy with the work of Evgeny Pashukanis, I argue that the model of the liberal subject implied by such theories shares features with the commodity form in the same way as, according to Pashukanis, the legal subject. The liberal subject can thus be understood as a kind of fetish. Furthermore, the presumption in favour of ideal theory can tend to systematically mask this fact, presenting the liberal subject as the product of distanced reflection, rather than a specific social form.

These features of liberal theories of justice suggest that such theories are going to be limited in their scope for radical criticism, and in particular that they do not fit easily into a Marxist critique. Marx had good reason to be suspicious of such theories.

1. The question of Marx's attitude towards questions of distributive justice is a much debated one. On the one hand, Marx frequently explicitly rejects the language of rights and justice, suggesting that it is either meaningless, or that it can only reflect the existing structure of society. On the other, many interpreters of Marx have suggested either that he relies on an implicit theory of justice, which can occasionally be seen to rise to the surface, or that he ought to have had such an explicit theory, and that his project suffers as a result. In this paper I want to suggest some reasons to think that Marx had good reasons to reject certain aspects of liberal theories of justice, and that it would be a mistake to think that his project would be complemented by one.

In particular, I want to argue that Marx had good reasons to reject any project that involves criticising a social system according to its coherence to principles which are derived from a (more or less) complete vision of an ideal society, something I take

to be characteristic of contemporary theories of justice. A paradigmatic example of this approach can be seen in the following passage from John Rawls' *A Theory of Justice*:

A complete conception defining principles for all the virtues of the basic structure, together with their respective weights when they conflict, is more than a conception of justice; it is a social ideal. The principles of justice are but a part, although perhaps the most important part of such a conception. A social ideal in turn is connected with a conception of society, a vision of the way in which the aims and purposes of social cooperation are to be understood... Fully to understand a conception of justice we must make explicit the conception of social cooperation from which it derives.¹

There are two key features of this model of criticism, (1) the ideal vision, and (2) the principles that are associated with it. The sorts of principles which are derived are generally distributive ones, concerned with the allocation of resources and rights (including rights to those resources). These principles are more or less universal, and are conceived of as generally ordering society in a 'just' manner. They are, in this sense, complete, ranging across all of society.

It is important to emphasise these methodological questions in order to make clear that something genuinely significant is at stake. Frustratingly, in debates about Marx's attitude to justice this is sometimes lost sight of. For example, Nielsen suggests that this disagreement might merely be a "trivial verbal one".² Anyone who condemns capitalism as exploitative or unequal, he argues, "must agree... that capitalism is indeed, in the plain untechnical sense of the term, an unjust social system".³ Perhaps it is a

1 Rawls, 1999, p. 9. It is important to note that I use Rawls here only as an example, albeit a paradigmatic one. A notable difference between Rawls theory and some of those Marx rejects is Rawls' restriction of (social) justice to being a property of political institutions. The sense of justice I take Marx to be rejecting is one broader than this, that can apply to direct relationships between individuals, e.g. in the wage relation. However, this, it seems to me, does not alter significantly the methodological questions at stake.

2 Nielsen, 1989, p. 173.

3 Ibid, p. 170.

symptom of too much political philosophy, but it is entirely unclear to me what the “plain, untechnical sense” of justice is. If it is meant that 'unjust' is a simple term of condemnation, with no attendant theoretical baggage, then I can only agree. Yet that is not what Marx or most Marxists are worried about when criticising the term 'justice'. Rather, what is at stake is the philosophical method by which such judgements are reached, and the resultant form they take. There is a real distinction here, one which, I will argue, Marx saw clearly enough.

Nevertheless, my argument might be seen as rather esoteric, too closely connected to a particular picture of justice. Why should the term justice, with all its rich history and emotive force, be annexed to this particular model? The most straightforward response to this question is: 'Because this has already happened'. The methodology that I suggest Marx rejects is one which has become dominant in Anglo-American liberal political philosophy, largely through the work of Rawls. There exists a certain methodology with which the term 'justice' is strongly associated. If the baby is thrown out with the bathwater, I am tempted to say that Rawlsians have only themselves to blame.

2. Marx's rejection of the language of justice goes hand in hand with a rejection of what in contemporary philosophy is called ideal theory, but he tended to call utopian. In 1847, having gained an influential position within the League of the Just, one of Marx and Engels' first acts was to effect a name change. It was henceforth to be known as the Communist League. The reasons given for this were as follows:

This name is therefore no longer suited to the time and does not in the least express what we want. How many there are who want justice, that is, what they call justice, without necessarily being Communists! We are not

distinguished by wanting justice in general — anyone can claim that for himself — but by our attack on the existing social order and on private property, by wanting community of property, by being Communists.⁴

This is part of a systematic break with what they considered to be utopian modes of thought, a way of thinking that Engels would later famously characterise as follows:

The solution of the social problems... the Utopians attempted to evolve out of the human brain. Society presented nothing but wrongs; to remove these was the task of reason. It was necessary, then, to discover a new and more perfect system of social order and to impose this upon society from without by propaganda, and, wherever possible, by the example of model experiments.⁵

For both Marx and Engels it was an essential political task to reject this mode of thought, and to avoid the sorts of vague phrases and visions on which it relies.

Part of the motivation for this rejection is a growing understanding of socialism as requiring the self-emancipation of the proletariat. Much of Marx's polemic with others in this period involves a rejection of various elitist models, in which an alternative vision of society is handed down from on high, either by enlightened despots or radical intellectuals.

If theory is to aid the cause of self-emancipation, it must be capable of being taken up by those who must emancipate themselves. This must be in a deeper sense than merely inspiring them to action, rather they must be capable of seeing it as *their own*, not as imposed by an outside authority. However, if this is to be the case then such ideas should be of the sort in which they can actively *recognise* themselves. This means they must be ideas which at best *emerge from* the struggles of the proletariat, or at least can

4 Marx, 1847.

5 Engels, 1880, p. 382.

be *related to* those struggles. This is precisely what the arguments of both the Utopians and the ideal theorists lack. In fact, they consciously avoid reference to these things. As such they deny the possibility of their theories playing this role in self-emancipation. Whilst this is, in part, a pragmatic concern – if the self-emancipation of the proletariat is a prerequisite for socialism then thwarting it is unwise – it is also an ethical one – thwarting self-emancipation is itself problematic.

Underlying this is an understanding of the relationship between political theory and practice. In the second *Thesis on Feuerbach* Marx offers reflections on account of the limits of purely theoretical knowledge:

The question whether objective truth can be attributed to human thinking is not a question of theory but is a *practical* question. Man must prove the truth, i.e. the reality and power, the this sidedness of his thinking in practice.

The dispute over the reality or non-reality of thinking that is isolated from practice is a purely *scholastic* question.⁶

Yet ideal, utopian, theory does not merely fail to establish its 'truth' in practice, it eschews any attempt to do so. It does not want to be established in practice. It is therefore engaged in asking the wrong sort of questions. 'Truth', in these passages, is fundamentally connected to the existence of certain human powers, and of coming to recognise certain ideas in the exercise of those powers. This, I think, is unavoidably connected to the question of self-emancipation. To recognise and endorse certain theoretical values requires their (at least possible) confirmation in practice, and this is required to make such ideas 'ones own' in the way that self-emancipation demands.

It might be suggested, however, that the question of whether such ideas can be endorsed by the proletariat in this way misunderstands their role. The intention of ideal models and visions of society is to offer a tool, a technique for clarifying and guiding

⁶ Marx, 1845, p. 422.

ideas. Of course these cannot be proved in practice, but they were never intended to be. Thus Steven Lukes charges Marx with underestimating the potential of such thinking, arguing that “[Marxism] has failed to exploit the practical strength of utopian thinking, bringing liberating, non-routine perspectives to bear upon intractable problems in the here and now”.⁷ More recently, Alex Callinicos has argued that: “It is its very remoteness from what counts as feasible in the debased currency of contemporary liberal-democratic politics that makes [Rawls'] difference principle... a standing reproach to a world where inequalities are plainly arranged to benefit the best off.”⁸ According to this line of thought, utopian thinking can play some sort of practical role, whether or not its recommendations are actually implemented, or even achievable.

However, for Marx, such thinking was more than useless; it was actively pernicious. In a letter of 1877 Marx harks back to debates with utopian socialism, referring to it as “silly, stale and *basically reactionary*”.⁹ Thinking of this sort was not just silly, it *in fact* functioned to reinforce the existing state of things. Far from offering a vision free of the limitations of mundane, everyday concerns, such thinking is necessarily constrained by those concerns, and often reproduces them in uncritical ways. Ideal visions of the future society are but a sanitised reflection of the existing society.

These arguments echo those of the *German Ideology*, including the famous assertion that “Communism is for us not a state of affairs which is to be established, an ideal to which reality [will] have to adjust itself. We call communism the real movement which abolishes the present state of things.”¹⁰ The *German Ideology* contains an all out assault on a certain kind of philosophical abstraction. Stirner, Bauer, and many others

7 Lukes, 1987, p. 46.

8 Callinicos, 2006, p. 222.

9 Marx, 1887.

10 Marx and Engels, 1845, p. 57.

are pilloried in the most savage terms for their attempt to reduce the movement of history to abstract philosophical categories. In place of these abstractions Marx and Engels assert the necessary connection between ideas and the lived material reality of people. This is intended as a rejection of the idea that it is possible to simply think in a way that is unconstrained by the material conditions of our own existence. Rather, “the phantoms formed in the brains of men are also, necessarily, sublimates of their material life-process, which is empirically verifiable and bound to material premises”.¹¹

The argument against this kind of ideal theorising therefore goes like this: Such thinking is only ever the phantom-like, sublimated, reflection of our life-processes. Therefore it is of limited use in any critical project which seeks to radically transform those processes. In particular it is a problem if this fact is *ignored*, if it is presumed that such thinking can ever be more than this. This thinking purports to be liberating, but is in fact profoundly limiting. At the core of this is not so much the making of abstractions, something which is an unavoidable feature of human thought, but the *privileging* of those abstractions over the material things they are abstracted from.

3. Marx offers a paradigmatic example of this kind of privileging of abstractions over material reality in his discussion of commodity fetishism. Fetishism is the process by which features which are a consequence of social arrangements between people take on the appearance of objective reality. Fetishism arises from the nature of commodity production and exchange, and simultaneously conceals the true nature of that production. Crucially, fetishism itself takes on a sort of objective reality. It is not mere illusion. Marx corrects the Italian economist Galiani by pointing out that when he said “Value is a relation between persons’ he ought to have added: a relation concealed

¹¹ Ibid, p. 42.

beneath a material shell”.¹²

Since fetishism takes on this objective reality, it cannot be dispelled merely through *demonstrating* the social nature of value. Marx insists that the analysis of value undertaken by himself and other political economists “marks an epoch in the history of mankind's development, but by no means banishes the semblance of objectivity possessed by the social characteristics of labour”.¹³ In this respect, at least, this represents a strong continuity with the arguments in the *German Ideology*. Marx is arguing 1. That certain ideas are formed as reflections of the material conditions of human life. 2. That treating these ideas as if they were not such reflections leads to mystification and uncritical reproduction of those conditions of life. 3. That merely *explaining* this is insufficient to remove these ideas. It follows from this that ideas ought to be examined in their connection to material life and never assumed to have objectivity independent of it. But it also follows that such ideas will persist until there is a change in the material conditions of human life.

Marx talks about the relationship between justice and social life often in exactly these terms. On almost all of the occasions where he rejects the language of justice it is because they are seen as merely reflecting the existing structure of society, So famously he argues that “right can never be higher than the economic structure of society and its cultural development which this determines.” In the Preface to the *Contribution to the Critique of Political Economy* he writes “that neither legal relations nor political forms could be comprehended whether by themselves or on the basis of a so-called general development of the human mind, but on the contrary they originate in the material conditions of life”.¹⁴ In the *Poverty of Philosophy*: “Legislation, whether political or

12 Marx, 1867, p. 167n.

13 Ibid, p. 167.

14 Marx, 1859, p. 173.

civil, never does more than proclaim, express in words, the will of economic relations.”¹⁵

Marx writes in *Capital* Volume 3 that:

To speak here of natural justice... is nonsense. The justice of transactions which go on between agents of production rests on the fact that these transactions arise as natural consequences from the relations of production. The juristic forms in which these economic transactions appear as voluntary actions of the participants, as expressions of their common will and as contracts that may be enforced by the state against a single party cannot, being mere forms, determine this content. They merely express it. This content is just whenever it corresponds to the mode of production, is adequate to it. It is unjust whenever it contradicts that mode.¹⁶

It's worth noting from this that it is possible to declare that some things in capitalism are unjust. Not paying wages at the agreed rate, withholding holiday time, enforcing unpaid overtime, these are all unjust in this sense. On this basis capitalist society is (*de facto*) riddled with injustices, but it is not unjust simply by virtue of being capitalist.

It is thus impossible to assert that capitalism is unjust, because the very meaning of 'justice' is determined by the capitalist economic structure. To claim that the wage relation is unjust is to make a radical error. However, the obvious response to this argument is to point out that most of those who employ theories of justice do not employ the dominant notion of justice under capitalism. Rather, they are arguing for *different* principles of justice to the ones instantiated by capitalist relations of production. Norman Geras, for example, endorses a theory of justice which expands its scope to “cover the generality of social advantages, especially the relative availability of

¹⁵ Marx, 1847, p. 76.

¹⁶ Marx, 1894, p. 337-8.

free time, time, that is, for autonomous individual development”¹⁷. This is undoubtedly something more radical than the dominant ideas of justice under capitalism. However, it is important that Marx refers to the *form* of justice which expresses the *content* determined by the mode of production. This suggests a significantly more radical claim: It is not just a matter of particular principles of justice being limited to capitalism, but of the particular form that those principles take.

There are a number of formal features which it is possible to draw out of theories of justice. They are concerned with distribution (of goods, entitlements, etc.). They rely on a notion of the recipients of that distribution: the subject. Consequently, they rely on a notion of the relation between the subject and that which is being distributed (a notion of 'right'). Finally, they rely (sometimes explicitly, usually implicitly), on *something to do the distributing*: the state.

What would it mean to say that this form is intimately connected to the capitalist mode of production? We can find a degree of analogy with the insights of the Soviet jurist Evgeny Pashukanis. Pashukanis' aim was to do for legal theory what Marx does for economics, “to analyse the basic definitions of the legal form in the way that political economy analyses the basic and most general definitions of the form of a commodity or of value”¹⁸. This analogy with the legal structure and the commodity form is key. Just as Marx saw the commodity form as having a fetish character, of taking on a life of its own in the minds of people under capitalism, Pashukanis saw the legal form as developing in exactly the same way. Central to Pashukanis' argument is that there is a *homology* between the commodity form and the legal form of capitalist society, i.e. they share a structure determined by the material relations from which they emerge.

17 Geras, 1985, p. 74.

18 Pashukanis, 1980, p. 41.

What are the characteristic forms of law under capitalism? The most basic unit of law under capitalism is the legal subject.¹⁹ The legal system presupposes a “person endowed with a right and actively asserting it”.²⁰ To maintain a system based on commodity production and exchange, it is necessary to develop an understanding of people as individuals with the entitlement to possess and dispose of property.

The subject as the bearer and addressee of all possible demands, and the chain of subjects bound by demands addressed to one another, is the basic juridic fabric corresponding to the economic fabric, i.e. to the social relations of production which depend on the division of labour and exchange.²¹

Furthermore, just as capitalism requires a way of understanding all labour as abstract, impersonal, non-specific labour, it has to understand the labourers themselves as abstracted, undifferentiated bearers of properties and rights: “In the same way that the natural multiplicity of the useful qualities of a product is in a commodity a simple mask of its value, while the concrete species of human labour are dissolved into abstract human labour as the creator of value so the concrete multiplicity of man's relationship to an object appears as the abstract will of the owner, while all the concrete peculiarities, which distinguish one representative of the species *Homo sapiens* from another, are dissolved into the abstraction of man in general as a legal subject.”²²

If Pashukanis is correct then the legal subject is inextricably linked to capitalist social relations. I think this critique of the legal subject can be extended, at least partially, to the moral subject, understood as an independent, autonomous possessor and disposer of rights, which is characteristic of theories of justice. Whilst this subject is,

19 “Every legal relation is a relationship between subjects. A subject is the atom of legal theory, the simplest and irreducible element. And with It we begin our analysis.” Ibid, p. 74.

20 Ibid, p. 72.

21 Ibid, p. 71.

22 Ibid, p. 76.

typically, wrenched from its legal context, it retains exactly this form. It remains a juridical model of the subject, and one which bears all the scars of the social relations which gave rise to it.

4. It is possible to draw out some conclusions from the arguments offered above concerning theories of justice:

1. Theories of justice which are dependent on ideal models of society are inadequate because they fail to connect with the lived experience of those who must actually transform society. They cannot therefore be adequately incorporated into a project of self-emancipation
2. Theories of justice are inadequate because they take a form which is necessarily conditioned by the capitalist mode of production, and therefore inadequate to a revolutionary critique of it.
3. The ideal theory characteristic of (1) reinforces and contributes to the formal limitations described in (2). The methodology involved in ideal theories disguises the extent to which principles of justice are merely ideological reflections of the existing state of affairs.

In this sense theories of justice are both too close and too far from the material base of society. They are too far, because they fail to engage with people's lived experience; they are too close, because they reproduce unconsciously and uncritically capitalist productive relations.

In closing, it is worth noting that if it is correct to understand aspects of the liberal subject as fetishes, then this has some consequences. Recall that Marx does not say that recognising something as a fetish is sufficient to free us from its grip. Doing that requires transforming the social relations on which the fetish relies. The problem in

that sense is not so much the fact that the subject is a fetish, but that the fetish character is masked by a universalising tendency. Acknowledging that theories of justice are a form particular to our present society does not necessarily mean we should never engage with them, merely that we shouldn't elevate them to a universal status they do not deserve. In fact, such an acknowledgement might help us know how and when to use them as part of a struggle for a better world.

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