

ical concepts—as well as moral concepts generally—on these grounds. But, as noted elsewhere, to assert that people have certain rights or that certain principles of justice ought to be implemented and upheld is not necessarily to commit oneself to the thesis that the promulgation of such principles can or will be effective instruments of social change. (On the other hand, if one seriously held this view, one would certainly not fight for including them in a political program—on grounds of efficient use of political resources, if no other.)

Having argued that Marx's *general* objections to moral principles as applied to justice and rights are not decisive, let us inquire into his second type of criticism: that certain unique features of the concepts of justice and rights make them especially objectionable. As noted above, a criticism Marx has of *both justice and rights* is that they will be otiose with the evolution of socialism into communism. A criticism he has of *justice* is that standards of justice are internal to societies, which therefore can be judged only by their own internal standards of justice, not by any other. A criticism he has of *rights* is that they embody or presuppose the model of man as the egoistic individual of civil society. Let us take up the last criticism first.

#### *Marx on Rights as Part of the Egoistic Image of Man*

Although sometimes Marx seems to be objecting to only *bourgeois rights* rather than all rights or the concept of rights in general, there is—at least in his early works—a more radical critique in which all rights are to be rejected. In his 1843 polemical essay against Bruno Bauer ("On the Jewish Question"), he writes:

None of the supposed rights of man . . . go beyond the egoistic man, man as he is, as a member of civil society; that is, an individual separated from the community, withdrawn into himself, wholly preoccupied with his private interest and acting in accordance with his private caprice. Man is far from being considered, in the rights of man, as a species-being; on the contrary, species-life itself—society—appears as a system which is external to the individual and as a limitation of his original independence. The only bond between men is natural necessity, need and private interest, the preservation of their property and their egoistic persons.<sup>6</sup>

<sup>6</sup> Marx, "On the Jewish Question," p. 27.

## CRITIQUES OF JUSTICE AND RIGHTS

Since rights are integrally related to the conception of man as the egoistic individual, according to Marx, even their complete realization (i.e., *political emancipation*) will not result in genuine *human emancipation*. Human emancipation is release *from* the condition of being an egoistic individual, not emancipation of some sort *within* this condition. This critique of rights is, of course, intimately related to another of his specific criticisms of juridical concepts listed above, namely, the claim that such concepts will become otiose with the evolution of communist society. The reason, on Marx's view, is, in part, precisely because the egoistic individual of capitalism will have become transformed into the autonomous but communal individual of communism. (The other reason is that Hume's second condition of justice—moderate scarcity—will also be eliminated.)

There are two problems with this general indictment of rights. The first is its relevance. It may be doubted that full-fledged communism and the communist individual as Marx conceives them will ever evolve. Even if it is thought that they will, or might, evolve, there is the problem that Marx seems to leave no room for the concept of rights in the societies in which human beings will exist until the advent of such an ideal society. The problem here is that since the first stage of communism (i.e., socialism) will bear the birthmarks of the old society for quite some time—as Marx admits—there is a need for rights principles during this period.

Second, by tying the concept of rights so closely to that of the egoistic individual, Marx may have misinterpreted the concept, or at least not have allowed for the possibility of a more attractive conception of rights. As Allen E. Buchanan notes:

Put most simply, the main defect of Marx's attack on rights is that he fails to see that there can be a vital need for a concept [of rights] . . . even where egoism and class divisions are not the only or even the main sources of conflict.<sup>7</sup>

According to the radical interpretation, Marx thought of rights exclusively as boundary markers which separate competing egoists in circumstances of avoidably severe scarcity, which absolve them of responsibility for each other's good, and which, through the coercive guarantees of the state, keep class conflict from erupting into outright war, while at the same time helping to preserve the dominant class's control

<sup>7</sup> Buchanan, *Marx and Justice*, p. 165.

over the means of production. Marx apparently thought that these are the defining functions of rights and hence that a conception of rights is needed only to cope with such egoistic conflict in class-divided societies. . . . he failed to consider the need for a different—and more attractive—conception of rights, grounded in a broader understanding of the sorts of conflicts which are to be dealt with by the invocation of rights and which admits the possibility that there are different rights in different socio-historical circumstances.<sup>8</sup>

A more attractive conception of rights, from a Marxist point of view, might be one that would countenance all of the rights—or at least all of the *kinds* of rights—found in the United Nations' Universal Declaration of Human Rights. Although Classical Liberals and right-libertarians are sure to object to the "positive" rights contained in this document, since they maintain that only "negative" rights (i.e., rights not to be interfered with) are *genuine rights*, it is surely arguable that J. S. Mill is correct in his analysis:

When we call anything a person's right, we mean that he has a valid claim on society to protect him in the possession of it, either by the force of law, or by that of education and opinion. If he has what we consider a sufficient claim, on whatever account, to have something guaranteed to him by society, we say that he has a right to it. . . . To have a right, then, is . . . to have something which society ought to defend me in the possession of.<sup>9</sup>

There is certainly nothing in this analysis of *rights as valid claims resulting in entitlements* that necessarily limits them to "negative" as opposed to "positive" rights. The question, in this analysis, is not what "rights" someone or other intuitively as "natural," but which moral principles are to be used in the validation of claims. If modern humanists—liberals as well as socialists—are correct in asserting that justice demands more than simple protection from force, theft, and fraud, then it can be plausibly argued that we have positive as well as negative rights. It can be argued that we have rights to well-being (e.g., the right to a minimum standard of well-being even if we are incapable of earning a living) and procedural rights (e.g., the right to legal counsel during a trial even if

<sup>8</sup> *Ibid.*, p. 163.

<sup>9</sup> J. S. Mill, "Utilitarianism," p. 238.

we cannot afford it), as well as rights to noninterference (e.g., the right to free speech).<sup>10</sup>

Be that as it may, in his later works many of Marx's criticisms of rights can be taken as criticisms not of rights in general but of *bourgeois* conceptions of rights. In *The Eighteenth Brumaire of Louis Bonaparte*, for example, Marx is *not* critical of "the . . . general staff of the liberties of 1848, personal liberty, liberty of the press, of speech, of association, of assembly, of education and of religion, etc."<sup>11</sup> In fact, he expresses regret that later in the course of the Revolution of 1848 "the right of association—one of the most essential of the political victories of the February days—was abolished."<sup>12</sup> Rather, he is critical of the fact that in reality "all those liberties [are] regulated in such a way that the bourgeoisie in its enjoyment of them does not come into collision with the equal rights of the other classes."<sup>13</sup>

Engels also attacks bourgeois conceptions of rights on the grounds that they are not realized:

Nowadays . . . equality of rights is recognized—recognized in words, since the bourgeoisie, in its fight against feudalism and in the development of capitalist production, was compelled to abolish all privileges of estate, i.e., personal privileges, and to introduce the equality of all individuals before the law, first in the sphere of private law, then gradually also in the sphere of state law. But the urge toward happiness thrives only to a trivial extent on ideal rights. To the greatest extent of all it thrives on material means; and capitalist production takes care to insure that the great majority of those with equal rights shall get only what is essential for bare existence. Capitalist production has therefore little more respect if indeed any more, for the equal "right to the pursuit of happiness" of the majority than had slavery or serfdom.<sup>14</sup>

Some Marx scholars, in fact, have interpreted Marx's critique of rights as consisting *only* of this criticism. John Plamenatz, for example, claims:

<sup>10</sup> This is not to say that there are no problems with developing such a conception of rights. But for an initial defense of such a conception, see my "A Defense of Rights to Well-Being."

<sup>11</sup> Marx, *The Eighteenth Brumaire of Louis Bonaparte*, p. 447.

<sup>12</sup> *Ibid.*, p. 468.

<sup>13</sup> *Ibid.*, p. 447.

<sup>14</sup> Engels, *Ludwig Feuerbach*, p. 39.

As a matter of fact, Marx himself believed in the rights of man. If he had been asked whether men ought to enjoy these rights, or whether they would eventually come to enjoy them, he would have said that they ought and would.

He merely thought that, society being what it was in the eighteenth and nineteenth centuries, only the property-owning classes could in fact enjoy the rights. These classes, though often willing to concede that all men should enjoy the rights, were determined to preserve a system of property which, in Marx's opinion, made it impossible for most men to enjoy them. As he saw it, they falsely believed that these rights could be enjoyed by all classes in a class society, whereas the truth was that they could be enjoyed by all men only in a classless society.<sup>15</sup>

If these are Marx's only criticism of rights, it might be argued—at least in his later works—that he is not really opposed to rights per se but only to certain rights (e.g., the bourgeois right to property), and to what, paraphrasing Rawls, we might call the divergence between *equality of rights* and *equality in the worth of rights* (i.e., equality in the ability to utilize or enjoy rights). But one could easily agree with both theses without objecting to rights per se. One need only claim that certain purported moral rights (e.g., the right to own and control productive as well as personal property) are not moral rights at all and that though a conceptual distinction can be made between rights and the ability to enjoy rights, justice requires not only equality of rights but *at least approximate equality* in the opportunity of persons to enjoy the rights they have (more on this in chapter 9).

These alterations in the standard liberal conception and theory of rights would go a long way, it seems, toward embodying the Marxist's more radically egalitarian moral intuitions. They would also go a long way toward allowing one legitimately to reinterpret Marx's moral theory as being based on the right to a maximum system of equal freedoms (both positive and negative) and to ground the right to equal participation in social decision-making processes and the right to equal access to the means of self-realization.

<sup>15</sup> Plamenatz, *Man and Society*, vol. 2, p. 333. See also Betty A. Sichel, "Karl Marx and the Rights of Man," *Philosophy and Phenomenological Research*, vol. 32, no. 3 (March 1972).