

Re-Hegelianizing Marx on Rights

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Abstract

While much has been written in recent years about the significance of Hegel's *Logic* for Marx's method in *Capital*, less attention has been given to the relevance of Hegel's method for understanding Marx's outlook on rights. The dominant view among political theorists across the Anglo-American, Marxist and critical theory traditions is that the revolutionary transformation of capitalism would pave the way for the disappearance of rights in communist society. The aim of this article is to question the orthodoxy concerning the fate of rights in communist society by bringing into relief the relevance of *Aufhebung*. When applied to Marx's social theory, this Hegelian concept sheds valuable light on the transformation of rights in communist society and points to an alternative conclusion than the one proposed by leading commentators. A re-Hegelianized reading of Marx's cumulative reflections on rights shows the possibility of a reconstituted notion of rights in communist society.

I. Introduction

Scholarly debates in political theory have generated the unshaken view that Karl Marx was opposed to right and rights, and that he envisioned the 'withering away' of both in communist society.¹ The prevailing interpretation has been bolstered by a rare convergence of views among three disparate theoretical traditions: Anglo-American political theory, Marxism and contemporary critical theory. Notwithstanding nuanced differences in interpretation, leading scholars have neglected the dialectical method that informs Marx's understanding of the material foundation and transformation of rights. This article questions the prevailing orthodoxy concerning Marx's treatment of rights by bringing into relief the conceptual relevance of *Aufhebung*. This Hegelian concept is critical for grasping Marx's distinctive outlook, and, if taken seriously, points to an alternative conclusion than the one offered by prevailing orthodoxy. After outlining Marx's treatment of formal 'bourgeois' rights, from 'On the Jewish Question' through the political trials of 1849, I situate Marx's reflections in the broader context of his social theory. Marx takes bourgeois rights as the starting

point for his assessment of modern freedom, and while he brings to bear the deficiencies of rights in capitalist society, he regards the attainment of bourgeois rights as a precondition for the communist society of the future. A reconstituted notion of rights is presupposed in Marx's vision of communism, and only a re-Hegelianized reading can explain why bourgeois rights must be realized before they can be superseded in communist society.

II. The prevailing orthodoxy concerning the fate of rights in communist society

The dominant interpretation among political theorists is that Marx's vision of developed communist society is one in which rights are rendered superfluous with the advent of material abundance and spontaneous relations of solidarity amongst socialized individuals. Following in the footsteps of David Hume, John Rawls has argued that the circumstances of justice arise whenever a society is characterized by material scarcity and the presence of interpersonal conflict (Rawls 1999: 110–11). Judged from this interpretative angle, Marx's anticipation of material abundance and generalized solidarity among socialized individuals is taken as conclusive evidence that developed communist society would transcend the social need for rights (Rawls 2001: 177). Other notable commentators, including Robert Tucker and Allen Wood, arrive at similar conclusions, although for slightly different reasons—the elimination of the state apparatus in the case of Wood (1972: 271) and the abolition of individual antagonisms on Tucker's view (1969: 53).

The thesis that rights would 'wither away' has not been confined to Anglo-American political theorists. Evgeny Pashukanis—the notable Soviet legal theorist and self-proclaimed Marxist—anticipated the Anglo-American interpretation in 1924, when he traced the origin of the juridical form to exchange relations between rival commodity owners in the market (Pashukanis 1978: 61). Pashukanis arrived at the bold conclusion that the abolition of commodity exchange relations in communist society would pave the way for the disappearance of juridical relations, resulting in a purely technical form of regulation (1978: 63). Leading critical theorists, such as Jürgen Habermas (1996: xli) and Axel Honneth (2001: 1), have echoed Pashukanis's conclusions insofar as both maintain that Marx's materialist inversion of Hegel's philosophy of history contributed to a one-sided fixation on the development of productive forces and the rejection of right as such. Notwithstanding theoretical differences, each of these leading interpretations converges around the prognosis that rights will ultimately disappear in communist society.

III. Conceptualizing *Recht* in Marx's social theory

A conceptual breakdown of right (*Recht*) is in order before challenging the prevailing orthodoxy concerning the fate of rights in communist society. Otto Gierke, the German jurist and historian, defined *Recht* as follows: '(a) a system of law existing objectively as an external norm for persons, and (b) a system of rights enjoyed by those persons, as "Subjects" or owners of rights, under and by virtue of that norm' (Gierke 1957: 39). Focusing on the first part of Gierke's formulation, the closest English rendition of *Recht* would be objective right or justice, understood in the broadest sense rather than referring to a particular body of legislation. While objective right is defined by a standard of rightness that informs legal relations between individuals, subjective right refers to the claims possessed by individuals in virtue of the prevailing standard of right. Subjective right captures the second part of Gierke's formulation of *Recht*, which focuses on the structure of rights and duties possessed by individuals within a system of right. Subjective right is therefore synonymous with the idea of individual rights, which confers correlative duties (positive or negative) upon the state and other individuals.

Marx's understanding of *right* is distinguished in important ways from traditional natural law theories, which usually derive the basis of right from God, nature, or human consciousness. Marx sees right as originating instead in the interchange between human beings and nature, and as undergoing historical change across different modes of production. Marx regards *rights* as part and parcel of a system of right that corresponds to a particular mode of production. The inability to distinguish between the form that rights take in different modes of production provided the impetus for the critique by Marx and Engels of Max Stirner in *The German Ideology*:

Our Sancho [Max Stirner] first of all transforms the struggle over privilege and equal right into a struggle over the mere "*concepts*" privileged and equal. In this way he saves himself the trouble of having to know anything about the medieval mode of production, the political expression of which was privilege, and the modern [capitalist] mode of production, of which *right* as such, *equal right*, is the expression, or about the relation of these two modes of production to the legal relations which correspond to them. (Marx and Engels 1975: 327)

When discussing formal 'bourgeois' rights, Marx is concerned with the claims possessed by individuals in the context of capitalist society. Marx saw bourgeois rights as the historical achievements of the eighteenth-century

bourgeois revolutions, and he took the American and French revolutions as historical exemplars. Such bourgeois rights included the right to life, liberty, and security of the person, the right to own property, equality before the law, suffrage (limited as it was), freedom of conscience, expression, movement, as well as rights against seizure of property and goods. It is worth noting that feudalism also had a system of right and a corresponding structure of rights and duties, although these rights and duties could hardly be called equal because feudalism was defined by privilege and direct domination. The decisive difference between feudalism and capitalism, for Marx, is that whereas the former was based on a hierarchy of privilege and on direct domination, the latter is characterized by legal equality and formal freedom. Marx's formative essay, 'On the Jewish Question', was written in a context where a historically marginalized group—the Jewish community in Prussia—was petitioning for equal civil and political rights. It is to this formative and frequently cited essay that I now turn in order to assess its implications for Marx's attitude towards bourgeois rights.

IV. 'On the Jewish Question': Marx's selective critique of bourgeois rights

'On the Jewish Question' was written in 1843, at a time when Marx was not yet acquainted with political economy and the decisive role that class struggle played in revolutionary transformation. Marx would recount in a letter to Arnold Ruge, co-editor of the *Deutsch-Französische Jahrbücher*, that he was approached by members of the Jewish community with a request to endorse a petition in favour of granting equal civil and political rights for Jews in Prussia. Marx makes clear in this letter that despite his distaste for Judaism, 'the point is to punch as many holes as possible in the Christian state and smuggle in rational views as much we can. That must at least be our aim—and the bitterness grows with each rejected petition' (Marx cited in McLellan 2006: 79). Marx's personal aversion towards Judaism did not prevent him from interpreting the demand for equal rights by the Jewish community as a rational demand, meaning that he viewed the demand for equal civil and political rights as a freedom-enabling project.

In 'On the Jewish Question', Marx takes issue with Bruno Bauer, his former mentor and fellow left Hegelian, who argued that Jews could not be granted equal civil and political rights unless they were willing to renounce their religious commitments to Judaism. Marx would demonstrate the underlying flaws in Bauer's argument while also bringing to light the limitations of 'political' emancipation. Political emancipation, for Marx, refers to a liberal constitutional state that has emancipated itself from formally inscribed privileges in favour of religion and private property at the level of politics. As far as the constitution of the liberal state is concerned, no privileged status is afforded to any single

religion, while birth and property qualifications, which characterized the legal basis of feudal society, no longer factor as formal obstacles to political participation. Political emancipation also involves the state's recognition that individuals possess equal rights, and that these rights can be exercised against the state just as much as they can be exercised against other individuals. The equal rights bearer is presented as the justificatory basis of the modern liberal state, which simultaneously abstracts from empirical inequalities between individuals in civil society (Marx 1978: 34).

Marx distinguishes between two categories of rights early in his essay, both of which fall ambiguously under the title of the rights of man. These rights include political rights, which can only be exercised in association with others, and the 'so-called rights of man', which Marx views disparagingly as boundary markers that separate atomistic individuals in an egoistic market society. Marx writes:

These rights of man are, in part, *political rights*, which can only be exercised if one is a member of a community. Their content is *participation* in the *political* life, in the political life of the community, the life of the state. They fall in the category of *political liberty*, of *civil rights*, which as we have seen do not at all presuppose the consistent and positive abolition of religion; nor, consequently, of Judaism. (Marx 1978: 41)

Marx views political rights as the decisive achievement of the bourgeois revolutions against feudal absolutism. His formative essay advances from an internal critique of Bauer's assertions against the political emancipation of Jews to a sustained critique of the 'so-called rights of man' as they operate in civil society, leaving the category of political rights unscathed throughout.

In his attempt to refute Bauer's claim that the liberal constitutional state presupposes the renunciation of religion, Marx points to the United States as the only country in which the state had been formally emancipated from the influence of religion. However, religion was not abolished in the United States; instead, it was relegated to the private sphere—the sphere of civil society—where it continued to prevail (Marx 1978: 31). Accordingly, the internal logic of political emancipation requires that Jews be granted these rights as free and equal citizens of the liberal state.² Any liberal state that fails to secure equal civil and political rights for its citizens would be in violation of bourgeois right. Marx rehearses the same argument when he returns to the 'Jewish Question' in the *Holy Family*, where he submits that 'states which cannot yet politically emancipate the Jews must be rated by comparison with the perfected political state and shown to be under-developed states' (Marx and Engels 1975: 110). The perfected state is the liberal constitutional state and its juridical standard is that of bourgeois right.

After disputing Bauer's assertion that Jews must renounce their religious convictions before they can be granted equal rights, Marx makes the important observation that religious influence is relegated to civil society by the liberal state, along with the influence of private property and such arbitrary distinctions as inheritance, social status, education and occupation. Marx notes that some states in America went so far as to abolish the property qualification for democratic participation and representation, which he recognizes as a victory for the demos against propertied wealth (Marx 1978: 33). However, while the liberal state formally emancipates itself from the influences of religion and private property, it does not follow that individuals have been emancipated from the power of religion and private property in their everyday lives. There remains a deep-seated contradiction between the free and equal status of citizens in the liberal state and their empirical existence as warring egoists in civil society, where individuals are unequal and unfree inasmuch as they remain dependent on private property and the imperatives of the market. Marx infers that 'the limits of political emancipation appear at once in the fact that the *state* can liberate itself from a constraint without man himself being *really* liberated; that a state may be a *free state* without man himself being a *free man*' (Marx 1978: 32). Marx's chief complaint is that the scope of democratic citizenship and political rights becomes subservient to the 'rights of man', that is say, to the interests of private property and wealth accumulation. Marx writes that 'the political liberators reduce citizenship, the *political community*, to a *mere* means for preserving these so-called rights of man; and consequently ... the citizen is declared to be the servant of egoistic "man"' (Marx 1978: 43). Subsequent sections will demonstrate the extent to which Marx took bourgeois rights for granted in modern societies that had surpassed the vestiges of arbitrary privilege and domination. It is the content of bourgeois rights that is bound to change in communist society.

Marx goes on to show that the 'inalienable' rights to liberty, equality, property and security cannot rise above the contradictions and limitations of civil society. The right to liberty, for example, amounts to little more than protection of the atomistic individual from physical harms done by other competing individuals in the market (Marx 1978: 42). Liberty is therefore conceived as the negative right to erect fences between competing individuals, such that each views the other as a potential obstacle and threat. The right to equality is depoliticized because it does not extend beyond the formal protection of the atomistic individual from external impediments and constraints imposed by law (Marx 1978: 43). Liberal constitutionalism regards rich and poor alike as equals insofar as it abstracts from the empirical inequalities that prevail in civil society. The right to property authorizes individuals to amass and exchange private property without concern for the welfare of others. Security is also framed in terms of the legal protection of private property and the enforcement of

egotistical claims between rival property owners (Marx 1978: 43). Given the serious limitations that he identifies with this category of rights, Marx concludes that ‘none of the supposed rights of man, therefore, *go beyond* [my emphasis] 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’ (Marx 1978: 43). By this time, most commentators jump to the conclusion that these remarks prove, beyond reasonable doubt, that Marx saw no positive value in bourgeois rights. To cite one prominent example, Allen Buchanan infers from the aforementioned passage that ‘the implication is that in communism, where the concept of the egoistic, isolated individual is no longer applicable, the correlative concept of man as citizen along with the notion of rights of the citizen will also no longer apply’ (Buchanan 1982: 65).

While it is highly doubtful that Marx had a theoretically developed account of communist society when he wrote ‘On the Jewish Question’, the main issue with Buchanan’s interpretation is that it collapses Marx’s nuanced distinction between political rights and the ‘so-called rights of man’, while also overlooking Marx’s declaration that political emancipation (the granting of equal rights) constitutes a progressive step in the struggle for human emancipation. Marx writes: ‘*Political* emancipation certainly represents a great progress. It is not, indeed, the final form of human emancipation, but it is the final form of human emancipation *within* the framework of the prevailing social order’ (Marx 1978: 35). The obstacle to human emancipation consists not in the granting of equal rights by the liberal state, which Marx regards as great progress, but in the continued influence of private property and religion within civil society. Why would Marx praise political emancipation as a progressive achievement if he saw no value in rights? Alternatively, one could rephrase the question by asking what reasons Marx could have for supporting a petition in favour of equal rights for the Jewish community if he saw rights only as obstacles to a fuller version of human emancipation? ‘On the Jewish Question’ was written with the intention of supporting the political emancipation of Jews against the likes of Bruno Bauer, who argued that Jews could not be granted equal civil and political rights unless they were willing to renounce their faith.

Although the bourgeois ideals of liberty and equality are undermined by the persistence of inequality and dependence in civil society, the recognition of legal personhood and equality before the law constitute major historical victories over the arbitrary will of the feudal lord and the direct relations of domination that preceded bourgeois society and its standard of right (Marx 1978: 44). Political emancipation is limited insofar as the liberal state emancipates itself from formally inscribed privileges in favour of religion and private property without resolving any of these contradictions in civil society. Marx argues that ‘the *political revolution* dissolves civil

society into its elements without *revolutionizing* these elements themselves or subjecting them to criticism' (Marx 1978: 46). The historic achievement of political emancipation consists in the recognition that all individuals residing in a liberal constitutional state are entitled to equal rights, while the decisive lesson of 'On the Jewish Question' is that political emancipation represents a necessary but insufficient condition for human emancipation. What is clear from Marx's early reflections on rights is that liberalism reaches its apex in bourgeois or capitalist society. However, the contradictions of capitalist society cannot be resolved within its narrow horizon. One of the shortcomings of these early reflections on rights is that Marx is unable to specify how human emancipation can be realized and what it would entail at an institutional level. This lacuna can be explained in part by the absence of a historically-grounded theory of revolutionary change in Marx's writings between 1843 and 1845. Human emancipation, which Marx associates with the free development of individuals in later writings, will require a revolutionary change in the material conditions of life. If Marx is right, then a revolutionary transformation of this sort would lead to the development of a new standard of right and a corresponding structure of rights for individuals in communist society.

V. The revolutionary transformation of right and rights

Although it is impossible to specify the precise content of communist rights given Marx's epistemological and democratic reservations about 'writing receipts (Comtist ones?) for the cook-shops of the future' (Marx 1978: 299), there is considerable textual evidence that confirms a place for rights in Marx's account of communist society. One way of approaching the fate of rights in communist society is by examining the significance of bourgeois rights before and after the 1848 revolutions that swept through much of the European continent. Marx viewed the revolutions of 1848 as a conflict between feudalism and capitalism, which took the form of a political struggle between absolute monarchy and liberal constitutionalism. In the Prussian context, the short-lived achievements of the 1848 revolution included the introduction of a new constitution, as well as the protection of newly acquired bourgeois rights. Marx welcomed the demand for such political rights as freedom of the press, association, equality before the law, trial by jury, and 'true' representation before the outbreak of revolution, and he did so against sceptics who were all too willing to dismiss these demands as a ruse by the liberal bourgeoisie. Marx responded as follows to the authors of the *Rheinischer Beobachter* in 1847:

The proletariat was certainly incapable of showing any interest in the *Privileges of the Estates*. But a Diet demanding trial by jury,

equality before the law, the abolition of the *corvée* system, freedom of the press, freedom of association and true representation, a Diet having once and for all broken with the past and *formulating its demands according to the needs of the present instead of according to the old laws* [my emphasis]—such a Diet could count on the strongest support from the proletariat. (Marx 1976: 228)

It is worth noting that Marx did not call for the repudiation of these political rights after the 1848 revolution. On the country, Marx's position is re-articulated in speeches that he gave before a Cologne jury court, when he and collaborators from the *Neue Rheinische Zeitung* were arraigned on trumped up charges after the defeat of the revolution by the forces of restoration. In the first trial, Marx and company were charged with insulting the chief public prosecutor based on articles they had published in the *Neue Rheinische Zeitung*. Marx uses the first trial as an occasion to explain why the authors were justified in condemning the actions of public officials who sought the abolition of newly-acquired political rights, all of which were won as a result of the March revolution. Marx argues that charging journalists for condemning the lawless actions of state officials amounts to nullifying the freedom of the press:

In general, gentlemen of the jury, if you want to apply to the press Article 367 on calumny as interpreted by the public prosecution, then you abolish freedom of the press by means of the Penal Code, whereas you have recognised this freedom by a Constitution and won it by a revolution ... If existing laws enter into open contradiction to a newly achieved stage of social development, then it is up to you, gentlemen of the jury, to come between the dead behests of the law and the living demands of society. It is up to you then to anticipate legislation until it knows how to comply with social needs ... In the present case, gentlemen, this task is facilitated for you by the letter of the law itself. You have only to interpret it in the sense of our time, our political rights, and our social needs. (Marx 1977: 313–14)

Marx's broader theoretical point is that the March revolution was the product of changing material conditions of life, such that feudal relations of production were beginning to be replaced with capitalist relations of production. More specifically, the 1848 revolution introduced a new catalogue of political rights, while overturning the privileges that had been enjoyed by the landed aristocracy. While Marx welcomed these limited developments, he was being charged as if these revolutionary changes had not taken place.

Marx offers an even more expansive defence of political rights in the ‘The Trial of the Rhenish District Committee of Democrats’, also known as the ‘Tax-Refusal Trial,’ in which he outlines the changing material basis for right and rights. Marx submits:

The [March] revolution was consequently directed as much against the *absolute monarchy*, the supreme political expression of the old society, as against the *representation by estates*, which represented a social system that had been long ago destroyed by modern industry ...How then was the idea conceived to allow the United Diet, the representative of the old society, to dictate laws to the new society which asserted its rights through the revolution? (Marx 1977: 327)

Elsewhere in his trial speech, Marx submits that ‘[s]ociety is not founded upon the law; this is a legal fiction. On the contrary, the law must be founded upon society, it must express the common interests and needs of society—as distinct from the caprice of the individuals—which arise from the material mode of production prevailing at the given time’ (Marx 1977: 327). The upshot of Marx’s argument is that a revolutionary transformation in the material conditions of life results, or at least ought to result, in a transformed standard of right. Central to Marx’s materialistic outlook is the insight that every mode of production gives rise to its own legal relations, including a structure of rights that corresponds to changed social needs, and communist society, as we will see, is no exception.

VI. The supersession of bourgeois rights and the conceptual significance of *Aufhebung*

Having shown that Marx consistently defended political rights before and after the revolution of 1848, there remains the fate of ‘the so-called rights of man’—liberty, equality, property and security—the category of bourgeois rights that Marx associated with the egotism of market society in ‘On the Jewish Question’. The only way of determining the fate of these rights in communist society is by examining what Marx had to say about liberty, equality, property and security after the revolution. The *Communist Manifesto*, Marx’s reflections on *The Civil War in France* and the *Critique of the Gotha Program* provide three occasions for consideration.

While Marx calls for the abolition of private property in the *Communist Manifesto*, he refers specifically to the abolition of ‘bourgeois private property’, by which he means private ownership of the means of production (ownership

of factories and capital assets). Marx writes: ‘The distinguishing feature of Communism is not the abolition of property generally, but the abolition of bourgeois property ... the system of producing and appropriating products, that is based on class antagonisms, on the exploitation of the many by the few’ (Marx 1978: 484). Marx reiterates in the same context that the abolition of bourgeois private property should not be confused with the abolition of individual or personal property: ‘When, therefore, capital is converted into common property, into the property of all members of society, personal property is not thereby transformed into social property’ (Marx 1978: 485). When he revisits the matter in *Capital*, Marx explains that capitalist production negated the individual property of immediate producers and artisans, while socialization of the means of production under communism would negate capitalist private property and raise individual property to a higher level. Using Hegelian language, Marx refers to this transformation in property relations as ‘the negation of the negation’:

The capitalist mode of appropriation, the result of the capitalist mode of production, produces capitalist private property. This is the first negation of individual private property, as founded on the labor of the proprietor. But capitalist production begets, with the inexorability of a law of Nature, its own negation. It is the negation of negation. *This does not re-establish private property for the producer, but gives him individual property based on the acquisition of the capitalist era* [my emphasis]: *i.e.*, on co-operation and the possession in common of the land and of the means of production. (Marx 1978: 438)

When Marx claims that communist production ‘gives [the producer] individual property based on the acquisition of the capitalist era’, he is referring to one of two property rights that will be conferred on individuals in the earliest stage of communist society. While productive property and land would be owned communally by the associated producers, articles of consumption would remain the personal or individual property of socialized individuals. Marx’s nuanced distinction between individual and productive property is based on the idea that the free development of individuals requires an exclusive right to individual property (conceived as a share of the social product), along with the right *not to be excluded* from productive property.³

Marx’s argument in favour of individual property is reaffirmed in his reflections on *The Civil War in France*, this time in the historical aftermath of the Paris Commune—a short-lived worker’s state. Despite the Commune’s shortcomings and bloody defeat at the hands of the National Army, Marx and Engels saw the Paris Commune as a prospective model of post-capitalist society.⁴

Marx commends the Commune's call for the abolition of 'class property' and its attempt at realizing 'individual property' on a higher level:

Yes, gentlemen, the Commune intended to abolish that class property which makes the labor of the many the wealth of the few. It aimed at the expropriation of the expropriators. *It wanted to make individual property a truth* [my emphasis] by transforming the means of production, land, and capital, now chiefly the means of enslaving and exploiting labor, into mere instruments of free and associated labor. (Marx 1871 1978: 635)

It follows that property rights would undergo a dialectical transformation in communist society so that, while the content of property changes, its form would be preserved and elevated to a higher level.⁵

As regards the right to equality, it is necessary to distinguish here between two such rights. First, there is legal equality, which is associated with impartial treatment before the law and procedural justice. Marx criticizes the formality of bourgeois right and the extent to which it remains blind to class domination and exploitation in the sphere of production, but he never repudiates legal equality and procedural justice. The Paris Commune serves again as a case in point. Marx refers favourably to the 'Communal Constitution' of the Paris Commune in which magistrates and judges were to be 'elective, responsible, and revocable' (Marx 1978: 632). Rather than calling for the dispensation of procedural justice and legal equality, Marx supports the Commune's decision to leave the task of rendering justice to judges. The most that can be said in this respect is that Marx preferred a system of justice in which judges, like other responsible civil servants, would remain democratically accountable and revocable.

The right to equality can also be understood in strictly *distributive* terms, as an equal distributive right to the full and undiminished proceeds of labour, which is how Marx confronts the issue of distributive equality in his *Critique of the Gotha Program*. Although Marx calls for the abolition of classes, he was not an economic egalitarian in the sense of prescribing an equal distribution of goods among individuals. Marx notes that the socialist programme's insistence on a full and undiminished distribution is misleading, because even in the early stages of communist society deductions would have to be made from the social fund to pay for the replacement of machinery and the common satisfaction of needs, such as education and healthcare services, as well as support payments for those who are unable to work (Marx 1978: 528–29). Universal access to education, health care, employment and housing are examples of positive social rights that Marx sees as being conferred on individuals in the early stages of communist society. With respect to distribution of goods more generally, Marx suggests that the early stage of communist society would follow through with the bourgeois

principle of 'equivalent exchange', except that the form of exchange would no longer contradict its content in the absence of exploitative relations of production. Justice in distribution would entail the individual producers receiving back from society a return proportional to what they supply in labour. Marx writes:

But, as far the distribution of the latter [articles of consumption] among the individual producers is concerned, the same principle prevails as in the exchange of commodity equivalents: a given amount of labour in one form is exchanged for an equal amount of labour in another form Hence, *equal right* here is still in principle—*bourgeois right*, although principle and practice are no longer at loggerheads, while the exchange of equivalents in commodity exchange only exists *on the average* and not in the individual case. (Marx 1875 1978: 530)

Although this transformed standard of distributive right constitutes an advance on capitalist society, it remains defective in Marx's view because individuals would still be treated as equals in an abstract and one-sided manner. The application of an equal standard for different individuals would inevitably result in distributive inequalities. As a way of remedying these defects, Marx suggests that justice in distribution would have to be conceived as an *unequal* right in the early stages of communist society:

Right by its very nature can consist only in the application of an equal standard; but unequal individuals (and they would not be different individuals if they were not unequal) are measurable only by an equal standard in so far as they are brought under an equal point of view, are taken from one *definite* side only, for instance, in the present case, are regarded *only as workers* and nothing more is seen in them, everything else being ignored ... Thus, with an equal performance of labour, and hence an equal share in the social consumption fund, one will in fact receive more than another, one will be richer than another, and so on. To avoid all these defects, right instead of being equal would have to be unequal. (Marx 1978: 530–31)

Marx theorizes that the standard of distributive right would change in developed communist society with concomitant changes in production (Marx 1978: 531). Marx assumes that co-operative production would generate conditions of relative abundance and therewith a new standard of distributive right. Marx argues that 'if the material conditions of production are the co-operative property of the workers themselves, then there likewise results a distribution of the means of

consumption different from the present [capitalist] one' (Marx 1978: 531–32). The latter is further evidence that a different distributive standard would prevail in communist society, not that distributive right would become obsolete.⁶ Marx maintains that developments in production would make it possible for 'the narrow horizon of bourgeois right [to be] crossed in its entirety and [for] society [to] inscribe upon its banner: From each according to his ability, to each according to his needs!' (Marx 1978: 531). The inscription of this new 'banner' is conceived by Marx as a transformed standard of distributive right.

However, insofar as neither abilities nor needs can be equalized, the standard of distributive right corresponding to developed communist society would be one where individuals voluntarily contribute according to their abilities and consume according to their needs. Allen Wood has acknowledged that different standards of distributive right would correspond to different stages of communist society, but he contends that the end of class society would mean the disappearance of the state apparatus and therewith such concepts as right and justice (Wood 1972: 271). The problem with Wood's interpretation is that it contradicts Marx's repeated claim that *every* mode of production creates its own legal relations, including a corresponding structure of rights.⁷ While Marx eschews transhistorical accounts of right, it does not follow that developed communist society would be devoid of rights once classes are abolished along with the external or repressive state apparatus.

Among the 'so-called rights of man', the fate of security figures as the most uncertain because it evokes the spectre of the external and repressive state apparatus that Marx sees as being abolished with the end of class domination. Marx views the state's coercive functions as being superimposed upon and external to society, serving historically as the expression of class domination. If classes are abolished together with the external state apparatus, does this mean that the rights of socialized individuals would not be secured in communist society? The answer to this question is far from obvious. Marx provides the following response in the *Communist Manifesto*: 'When, in the course of development, class distinctions have disappeared, and all production has been concentrated in the hands of a vast association of the whole nation, the public power will lose its political character' (Marx 1978: 490). Political power is defined by Marx in terms of class domination, while public power is associated with the self-determination of the vast association or community. Although the repressive and class character of the state will be abolished in communist society, the rights of socialized individuals will be protected by the public power. It is conceivable that individuals in communist society would find fewer occasions for pressing their rights against each other, but this does mean that rights would become superfluous.

Marx theorizes that in the higher phase of communist society, public power (public authority) will lose its repressive character and take the form of an

association. Although he predicts that there would be greater solidarity between individuals and that labour will become life's prime activity, there is no evidence that coercion would be eliminated entirely, and there are good reasons for thinking that the association will take the place of the external state as the objective guarantor of communist right and rights. When discussing the Paris Commune, for example, Marx notes that 'while the merely repressive organs of the old governmental power were to be amputated, its legitimate functions were to be wrested from an authority usurping pre-eminence over society itself, and restored to the responsible agents of society' (Marx 1978: 633). The tenor of these reflections is repeated in the *Critique of the Gotha Program*, where Marx insists that 'freedom consists in converting the state from an organ superimposed upon society into one completely subordinate to it' (Marx 1978: 537). Finally, in his response to the anarchist Mikhail Bakunin, Marx explains that 'when class domination ends there will be no state in the present political sense of the word' (Marx 1978: 545). In all such instances, Marx points out that the external and repressive character of the state will be abolished, while the public power of the association will retain a legitimate function in communist society, and presumably this would involve the administration of justice and upholding the right of each individual to develop freely and without hindrance, which is the subject matter of liberty.

Marx's chief complaint against the 'bourgeois' right to liberty is that it remains limited to free exchange, which gives rise to mutual indifference and class domination in the sphere of production. Capitalism is a system of production in which labour is structurally dominated by capital, while both labour and capital remain subservient to the imperatives of the capitalist market. It is for this reason that Marx and Engels maintain that 'this right to the undisturbed enjoyment, within certain conditions, of fortuity and chance has up till now been called personal freedom' (Marx and Engels 1975: 80–81). Marx acknowledges that capitalist production did away with the relations of personal dependence that subjugated individuals in pre-capitalist modes of production. However, despite this advance in freedom, capitalism does not emancipate individuals from their objective dependence on alien market forces. Marx affirms that 'in the developed system of exchange (and this semblance seduces the democrats), the ties of *personal dependence* [my emphasis], of distinctions of blood, education, etc, are in fact exploded, ripped up ... and individuals *seem* independent' (Marx 1973: 163). Individuals seem independent because they are no longer personally bound by the arbitrary will of this or that individual. Nevertheless, individuals in capitalist society remain structurally dependent on external market forces that lie beyond their control. As with property, equality and security, the right to liberty would assume a richer content under communism, such that the free development of each individual would become

the condition for the free development of all. Free development presupposes a negative right from external domination, as well as a positive right to realize one's capacities in accordance with self-chosen plans—not a choice between the two (Gould 1980: 110). With respect to the latter, individuals in communist society would be in a position consciously to regulate production in accordance with self-chosen plans. Consider Marx's account of freedom in *Capital*:

Freedom in this field can only consist in socialized man, the associated producers, rationally regulating their interchange with Nature, bringing it under their common control, instead of being ruled by it as by the blind forces of Nature; and achieving this with the least expenditure of energy and under conditions most favourable to, and worthy of, their human nature. (Marx 1978: 441)

Every mode of production gives rise to its own standard of right and a corresponding structure of rights. Viewed from this imperative angle, Marx's claim that 'right can never be higher than the economic structure of society and its cultural development conditioned thereby' (Marx 1978: 531) is not a prelude to the disappearance of right in developed communist society. Instead, right would assume a richer content in communism than under the 'narrow horizon' of bourgeois right and the capitalist mode of production that gave rise to it. Marx's criterion for distinguishing between higher and lower standards of right is based on the degree to which human freedom is realized across different modes of production. The historical development of human freedom provides Marx with an evaluative standard for judging between different modes of production and the standards of right corresponding to them.

The transformation of bourgeois rights under communism makes better sense when viewed through the prism of the dialectical method that Marx inherited from Hegel. The concept of *Aufhebung* is of particular significance in this context. *Aufhebung* has been variously translated as 'sublation', 'supersession' and 'abolition'. Hegel refers to *Aufhebung* to describe a simultaneous process of negation, preservation and supersession:

'To *sublate*' has a twofold meaning in the [German] language: on the one hand it means to preserve, to maintain, and equally it also means to cause to cease, to put an end to. Even 'to preserve' includes a negative element, namely, that something is removed from its immediacy and so from an existence which is open to external influences, in order to preserve it. Thus what is sublated is at the same time preserved; it has only lost its immediacy but is not on that account annihilated. (Hegel 1969: 107)

Insofar as *Aufhebung* is a dialectical concept, it captures the movement beyond Abstract Being through Becoming: Being is not eliminated through Becoming. Hegel demonstrates how a similar process unfolds in the *Philosophy of Right* from abstract right to morality, and from morality to ethical life, in which right is objectively institutionalised in the modern state (Hegel: 2008).

While leading commentators have noted the significance of *Aufhebung* in Marx's social theory as a whole (Avineri 1968: 37), its relevance for his assessment of rights has not been examined in much depth. Whereas Hegel focuses on the logical progression from abstract right to objective spirit, Marx begins with the interchange between human beings and nature through productive activity. Every mode of production gives rise to a historically-specific standard of right, and this standard remains in effect until a period of social revolution ensues.⁸ A revolutionary transformation is characterized by a dialectical process in which elements of the preceding mode of production are simultaneously negated, preserved and raised to a higher level, as was noted in Marx's reflections on the March revolution of 1848 and the short-lived experience of the Paris Commune.

The movement beyond the narrow horizon of bourgeois right has been interpreted—from Pashukanis to Honneth—as a one-sided process of negation or annihilation. The inability to grasp the supersession of bourgeois rights in communist society stems from a general misapprehension of the meaning of *Aufhebung* in Marx's work. As a result of this misapprehension, the significance of bourgeois rights for communist society has been overlooked by most of Marx's interpreters, especially Anglo-American political theorists who work within the prism of the circumstances of justice or a fixed theory of natural right. Yet when he describes the revolutionary transition from capitalist to communist society, Marx reiterates that 'what we have to deal with here is a communist society, not as it has *developed* on its own foundations, but, on the contrary, just as it *emerges* from capitalist society; which is thus in every respect, economically, morally and intellectually, still stamped with the birth marks of the old society from whose womb it emerges' (Marx 1978: 529). Marx makes analogous remarks in *Capital* about the 'civilizing' aspects of capitalism which create the material foundation for 'a higher form of society' (Marx 1978: 440). It is thus a mistake to conclude that the historical achievements of capitalist society, including the granting of equal rights, would be annihilated under communism. Abolishing elementary formal rights would mean reverting to pre-capitalist social relations, in which the direct domination of the master, lord, or patriarchal community inhibits the free development of individuals. Marx did not wish to return to the ruins of the past; rather, he saw elements of the past preserved in a superseded form, as was evidenced by the transformation of property, equality, liberty and security in Marx's scattered remarks about post-capitalist society.

Communist right would negate the exploitative relations of production that characterize capitalist society while raising the rights of socialized individuals to a higher level. Pre-capitalist social–economic formations were characterized by direct forms of dependence and domination, while individuals were thoroughly embedded in the community. Capitalist society is defined by legal relations between formally free and equal individuals that are disaggregated from the community. Communist society would restore the community’s control over production while building upon the equal rights introduced by capitalism (Gould 1980: 21–22). Marx summarizes this process of *Aufhebung* in terms of the growing expansion of human freedom across history:

Relations of personal dependence (entirely spontaneous at the outset) are the first social forms, in which human productive capacity develops only to a slight extent and at isolated points. Personal independence founded on *objective* dependence is the second great form [capitalism], in which a system of general social metabolism, of universal relations, of all-round needs and universal capacities is formed for the first time. Free individuality, based on the universal development of individuals and on their subordination of their communal, social productivity as their social wealth, is the third stage [communism]. The second stage creates the conditions for the third. (Marx 1973: 158)

VII. Conclusion

Rather than forecasting the ‘withering away’ of rights in communist society, Marx’s social theory points to the possibility of superseding the narrow horizon of bourgeois right. Only a re-Hegelianized reading of Marx’s thought can account for why bourgeois rights must be realized before they can be superseded in communist society. The time is ripe for rethinking the established orthodoxy concerning the fate of rights in communist society. At stake is the question of human freedom and its place in Marx’s social theory. Rights can be superseded but they cannot be annihilated if one is to remain committed to the view that the free development of each is the condition for the free development of all.

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Notes

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² Shlomo Avineri (1964) provides a concise treatment of Marx’s attitude towards Jewish emancipation.

³ Macpherson (2013: 79) offers a helpful elaboration of these two integral forms of property which draws heavily on Marx’s account.

⁴ Engels refers to the Paris Commune as the ‘Dictatorship of the Proletariat’ in his introduction to *The Civil War in France* (Marx 1978: 629).

⁵ Similar interpretations concerning the transformation of property rights under communism have been proposed by Marx scholars in recent years. See Costas Douzinas (2010), Sean Sayers (2011) and Étienne Balibar (2014).

⁶ This line of reasoning follows the logic of Marx’s rhetorical question in the *Critique of the Gotha Program*, where he inquires whether ‘economic relations [are] regulated by legal conceptions or do not, on the contrary, legal relations arise from economic ones?’ (Marx 1978: 528). Marx thinks that different forms of production give rise to different legal relations rather than the reverse.

⁷ Marx is clearest on this point in the *Grundrisse*, where he affirms that ‘every form of production creates its own legal relations, forms of government, etc. In bringing things which are organically related into an accidental relation, into a merely reflective connection, they [bourgeois economists] display their crudity and lack of conceptual understanding’ (Marx 1973: 88).

⁸ A similar view is advanced by Sayers (2015: 156).

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