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The Natural Individual: A Fantasy of the Political Economy?

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ABSTRACT

Human rights, and International law in general, have been criticised by different schools of thought but one of the most important critiques has been from the Marxist school. Marx saw human rights as an individualistic effort of the elite capitalists to preserve the resources they have piled up by exploiting others and then garner some more. But are the premises used by Marx to arrive at his conclusion on human rights legitimate, or have they been another strand of a utopian socialist thought. The focus of this essay is going to be on outlining and questioning the Marxist critique of Human Rights and particularly on the right to property as a part of the broader rights regime. The essay, while recognizing the importance of Marx's arguments, contends that even though the assurances sounded by these rights are not so user-friendly in actuality, they still provide the footing for a legitimate human rights regime to be established.

Keywords: Marx, Marxist Critique, Human Rights, Right to Housing.

I. THE CONCEPT

Karl Marx's critique of human rights emerged in reaction to the French Declaration of the Rights of Man and the Citizen, in 'On the Jewish Question'.² He rejected the rights of man by describing them as 'nothing but the rights of the member of civil society i.e., egoistic man, man separated from other men and the community'.³ This means that the concerns articulated by these rights are a reflection of the concerns of the member of capitalist civil society, the bourgeois elite. In their content, the alleged rights of man are said to reflect the wish of the capitalist entrepreneur to be free from social restriction and responsibility, and free of any concern for the welfare of those whom he exploits.⁴ Hence they are not "universal" or even "natural".

Such a political economy fosters an illusion of self-sufficient atomism – of individuals free and

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² Daniel Moeckli et al., in INTERNATIONAL HUMAN RIGHTS LAW 48 (2017).

³ Karl Marx, 'On the Jewish Question', reproduced in McLellan, Karl Marx: Selected Writings, OUP, 46,60 (2000).

⁴ JEREMY WALDRON, NONSENSE UPON STILTS: BENTHAM, BURKE AND MARX ON THE RIGHTS OF MAN P.126 (2019).

independent of each other. But their needs and real basis of their life makes the illusion of individualism transparent.⁵

According to Marx, the right to private property is the ‘right to enjoy and dispose of one’s possessions arbitrarily, without regard for other men, independently from the society, the right of selfishness’.⁶ Marx views these rights as making the individual selfish, egoistic and not connected with the community, man not as a “species-being”. This is further shown when he describes the right to liberty is the right to do anything which does not harm others making him an ‘isolated monad ... withdrawn into himself’.⁷ This cannot be emancipation as man “is not only a social animal, but an animal which can only develop into an individual only in society”.⁸

The language of human rights sustains the inequalities of social life and the oppressive characteristic of the capitalist society. The abstraction of right-principles deceives us into neglecting the differences that matter in the real world, between those who have and those who do not have control over the means of production.⁹

While Marx recognizes that political emancipation may have been achieved with these rights, they do not achieve human emancipation, as they split the ‘public citizen’ from the ‘private bourgeois’ in the individual.¹⁰ Marx does not discard this political emancipation through human rights altogether and recognizes its importance, it is not the final form of emancipation for him. Real emancipation is achieved through communism where the institutions of property and state have withered away.¹¹

Marx’s critique, therefore, is threefold: - 1. Human rights create a fantasy or illusion that makes false grand promises of equality and value to everyone, especially to the proletariat, they are not inherent; 2. Human rights represent the concerns of the bourgeois; 3. Human rights are individualistic i.e. alienate the individual and disassociates him from the society.

II. RIGHT TO HOUSING IN A CASE STUDY

The right to housing or property comes under the broader head of the right to an adequate standard of living which includes the right to food and health as well. This right is contained in the Article 25(1) of the Universal Declaration of Human Rights and also represented in

⁵ Ibid p.128

⁶ Karl Marx ‘On the Jewish Question’ (2000), 46, 60.

⁷ ibid

⁸ Karl Marx, *Grundrisse*, in *Karl Marx: Selected Writings*, OUP p. 346 (1977).

⁹ JEREMY WALDRON, *NONSENSE UPON STILTS: BENTHAM, BURKE AND MARX ON THE RIGHTS OF MAN* P.126 (2019).

¹⁰ Daniel Moeckli et al., *in INTERNATIONAL HUMAN RIGHTS LAW* 49 (2017).

¹¹ Karl Marx, ‘On the Jewish Question’ 54 (2000).

Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights, among other instruments. Article 21(1) of the UDHR states that “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing ...”¹²

The language used here like “everyone”, “himself” would support Marx’s claim that rights are individual in nature and not putting community first. Generally, the most important aspect of the right to an adequate standard of living requires the state to act as a protector of individual choices and not as a provider of resources.¹³ When the state is mostly acting as a protector of individual use of resources, it is only protecting those who have that resource, or in Marxist critique, the bourgeois. But when necessary, there is also an obligation on the state to fulfil this right and become the provider for those who cannot fulfil it themselves.

The Grootboom case¹⁴ looks at the right to an adequate living standard under the South African Constitution as well as the international instruments. The respondent was living in intolerable conditions with her family and was forced to leave that place and make a shed on a different private property. The owner of that private property exercised his property right to get the respondent and others living there evicted. With no place to go, the respondent came to the court to exercise her right to an adequate standard of living.

The court in the Grootboom case highlighted that human dignity, freedom and equality, the foundational values of our society, are denied to those who have no food, clothing or shelter.¹⁵ The court also held that the state is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing.¹⁶ A programme that excludes a significant segment of society cannot be said to be reasonable under the state obligation. Those whose needs are the most urgent and whose ability to enjoy rights therefore is most in peril, must not be ignored by the measures aimed at achieving realisation of the rights.¹⁷

The Grootboom case shows that the protection afforded by rights in does not only reflect the concerns of the bourgeois, but also of those who need the protection most i.e. the most vulnerable. The court when using the right to an adequate standard of living, does not assume

¹² Universal Declaration of Human Rights, UNITED NATIONS, <https://www.un.org/en/universal-declaration-human-rights/index.html>.

¹³ Daniel Moeckli et al., *in* INTERNATIONAL HUMAN RIGHTS LAW 189 (2017).

¹⁴ Government of the Republic of South Africa. & Ors v Grootboom & Ors ZACC 19, 2001 (1) SA 46 (CC), 2000 (11) BCLR 1169 (CC)

¹⁵ *ibid*

¹⁶ *ibid*

¹⁷ *ibid*

or create a false consciousness that everyone is equal and has property to exercise property rights. Rather it acknowledges the inequalities, and the right is exercised by and for the concerns of the most vulnerable and desperate.

One Marxist argument could be that this happens rarely and even when it happens, like in the Grootboom case, the bare minimum obligation is done. They do not achieve equality as is promised by the rights, but are only given the minutest relief, that too to protect the interests of the bourgeois (like land invasion in this case).

III. VIEWS

Generally, the replies to Marx's criticism of human rights have been aimed at lack of his sufficient solution, they however, do not take aim at the gaps and problems Marx points out in the human rights regime.

Marx's belief in establishing his communist society as the solution to achieve human emancipation has been described as naïve and utopian by Moeckli.¹⁸ Rights, as per Marx, encourage egoism and selfishness in individuals. But that this not necessarily always true. As Waldron points out, that the right to property can be exercised while including and consulting the society. A proprietor can consult social interest if he wishes, by doing philanthropy or giving property to charity in interest of others, or he can use it for his own use.¹⁹ Particular rights do not require or encourage people to be egoist, rather they give people choices.

The critique that human rights represent the concerns of bourgeois was taken up through the Grootboom case and even though there is still some credibility in the argument that mostly the concerns of bourgeois are represented through rights, it is not at all what Marx projects it to be. The most vulnerable place their last hopes on the enforcement of these rights and often exercise them and protection is provided to them.

Marx's critique of rights as being individualistic and disassociated from the society is somewhat more difficult to reject outright. However, certain other rights such as the right to form associations, the right to vote, the right to freedom of speech, and other democratic rights in general are not isolated individual rights. These rights are exercised **with regards** to other men and Marx also recognizes that. As Marx said, in political community, man 'counts as a species-being' and 'is valued as a communal being'.²⁰ Even then, Marx would argue, these democratic rights still protect individual interests albeit in relation to communal tasks. But

¹⁸ Daniel Moeckli et al., *in* INTERNATIONAL HUMAN RIGHTS LAW 49 (2017).

¹⁹ JEREMY WALDRON, NONSENSE UPON STILTS: bentham, burke and marx on the rights of man p.192 (2019).

²⁰ IBID P.130.

when we accept Marx's point that by their very nature, rights are individualistic, we can come to terms with this criticism. Individual violations deserve rights that are individual in nature. The modest function of a theory of rights is not to claim completeness but to draw attention to these important individual interests that need protection.²¹ Marx's utopian communism has not yet achieved reality and the communist societies that did, were either fragile or draconian. In any case, if the individual falls out of the society, human rights can come to the aide of that individual and afford him protection and security. Further, since these rights represent important individual decisions like their choice of religion, sexual orientation, speech, etc the community interests might interfere with individual development.

Marx's criticism does pose reasons for doubting whether a commitment to human rights can sit happily with socialist conceptions of the relations between man and the community.²²

These rights are inherent and hence the one's laying them down on paper are engaged to protect them and not the other way round. Although the promise given by human rights has not yet been successfully achieved, it has also not been illusionary. It has been a step in the right direction. The natural individual is rather a **reality** of the political economy.

²¹ Ibid 187

²² Ibid 135