

## RIGHTS

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[Note: This short paper, published in the *Edinburgh Review's* 'Encyclopaedia' section, was written at a time when rights discourse was on the eve of establishing its hegemony in political theory. Seen in retrospect, the paper tests the air and senses the links between rights-based thinking and emergent neoliberalism. Because the piece is in this way linked to a specific “historical” situation, the 1987 text has been changed as little as possible – although the website version makes some mainly verbal alterations. The footnotes, which draw upon an originally-given short list of “further readings”, are a new (2013) addition.

A reader of the piece is reminded that – despite all too frequent present-day rhetoric – an attack on the view that *moral and ethical judgements may usefully be seen in terms of rights* is not the same thing as an attack on moral and ethical judgements *per se*.]

RIGHTS, as in 'the rights of man', human rights', etc. A mystical form of property and, as such, the basis of all property: whoever wants to abolish property (whether in a Marxian or an anarchistic fashion) must abolish rights as well.

We speak of rights as we speak of property: 'I have a right to...'; 'Give us our rights'; 'We declare these rights to be inalienable' (but it is property to which the categories alienable/inalienable apply). Whatever we *have* is what we own, and whatever is *ours* is that in which we have, not rights merely, but rights of a proprietorial kind. Does it make sense to speak of a 'right to rights'? If so, the terminology in which rights are asserted declares that this master-right can only be a right to property.

These terminological permutations would seem merely incidental were it not for the circumstance that they do real theoretical and political work. The early Marx makes it clear what this work is when he indicates that the *right to property* is not merely one right among others but, rather, the paradigmatic right.<sup>1</sup> If *at the level of their form* rights are property, it merely fills this form's empty space to declare that property should [if it is to be consistent]<sup>2</sup> enter the the picture of rights-theory *at the level of its content* as well. In the concept of rights, it follows, the institution of (private) property legitimates itself.

That rights are not merely property, but mystical property, becomes clear when we notice that 'Give us our rights' asserts that we still have the rights in question even when we have been deprived of them. The expropriation of our rights, unlike any other form of property, still leaves us in possession (in legitimate possession) of the propriatorial field. In other words, the concept of rights instantiates itself and does so necessarily: the conceptual specification of rights entails, whatever the practical circumstances, that these rights are actually possessed. In the history of philosophy, the notion of entities which are thus self-instantiating is by no means new. The most familiar example of such an entity is the God of St Anselm's 'ontological proof': because being which lacks reality is imperfect, argues Anselm, the concept of God (who is perfect) entails his existence.<sup>3</sup> The theory of rights is the self-instantiating and self-legitimizing 'ontological proof' of bourgeois-liberal political theory – as the early Marx once again points out, the ontological proof *in fact works* when applied not to God but to money in the bourgeois world – in the sense that the bourgeois-liberal world necessarily instantiates itself, at least ideologically, as a world of proprietors wherever rights-theory is entertained. Further, the ontological proof of God's existence is not merely (contrary to what modern commentators on it assert) a proof of God from the concept of God but, rather, a proof of God from God himself: Anselm reports that it comes to him in answer to a prayer. And *if indeed it is valid* it can come from nowhere else since it depicts God as as, sheerly, the cyclical process of his self-instantiation. In the same way, rights-theory is not merely the proof of bourgeois society's legitimacy from the concept of bourgeois society (as a society of proprietors) but rather a proof from bourgeois society as such: in this society, ideologies of 'freedom, equality, property and Bentham' (Marx) are always-already inscribed. The cycle of rights-theory's self-instantiation is the cycle of bourgeois society's own reproduction, in which cycle rights-theory forms a needful moment or phase.

Today, the most fearful sophistry is needed to give the ontological proof even an appearance of plausibility: the decisive nails in its coffin were hammered home long ago by Kant. Rights-theory, the ontological proof's patched-up revenant, survives

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1 See Marx 'On the Jewish Question' in D. McLellan (ed.) *Karl Marx: Selected Writings*, Second Edition (Oxford: Oxford University Press 2000) p. 60.

2 The clarifying phrase in square brackets is added in 2013.

3 See Anselm *Proslogion* (London: University of Notre Dame Press 1979) pp. 111, 117-21.

(ideological considerations apart) only because no-one has noticed that it was buried when the the ontological proof was destroyed.

The offence embodied in the the concept of rights is as much political as philosophical: freedom is excluded wherever rights appear. Who is it who has rights? The bearer of rights carries his or her entitlement to just treatment in the same way as a commodity in a supermarket carries a label noting its price. The fetishism of commodities welds this price to the displayed object as, seemingly, one among its physical properties; in the same way, the notion of rights as inalienable welds the *persona* (in Latin, *persona* originally meant a dramatic mask) to the face of the individual by whom that personality and these rights are borne. It is in our essence that we bear rights, and as bearers of inalienable rights our *essence* is inscribed as prior to our *existence*. In other words, our essence is inscribed as prior to the actions upon which we engage. But where essence is thus made prior to existence – where we *are something* (for example, a proprietor) before ever we act – then precisely self-determining action becomes impossible: freedom in the sense of self-determination requires that existence be prior to essence (that *what we are* is the outcome of our actions).<sup>4</sup> My suggestion is that, for this to be possible, the entirety of rights-theory must be set at naught. As for Anselm's God, in other words, so for individuals seen as bearers of rights. Anselm's God must *be something* (something prior to his actions) before his existence can be deduced from the the concept of what he is. And we too must *be something* [or must *be seen as being something*],<sup>5</sup> and not merely the nothingness of what Hegel calls the 'absolute unrest of pure self movement',<sup>6</sup> before we can act as rights-bearers on the bourgeois stage. The one who has rights is, accordingly, the one to whom the capacity for self-determining freedom has been denied.

As rights-bearers, moreover, we are merely *universal* beings: rights are universal in the sense that they are borne, alike, by individuals who, as *particular* beings, are reciprocally distinct. Despite being distinct, however, each (in a telling philosophical phrase) 'falls beneath' the universals and thus the rights concerned. Rights exclude – marginalise, socially negate – and divide us (each of us) in and against ourselves. Only in a community which is mutually recognitive (Hegel), or where 'the free development of each is the condition of the free development of all' (Marx), do the universal and particular aspects of our being – those which *link us to* and, at the same time, *distinguish us from* others – flow together. Only in such a community does self-determining freedom come into its own. In such a community there are, and can be, no rights. The route to such a community lies through the raising to political significance of all those 'particular' aspects of our being – our contingent poverty or good fortune, the informal happenstance of our friendships and conversations, the perversity-versus-acceptability of our tastes – which rights-theory magisterially

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4 On 'essence' and 'existence', and their bearing on freedom, see J.-P. Sartre *Being and Nothingness* (London: Methuen 1957) p. 25; *Existentialism and Humanism* (London: Methuen 1965) p. 26.

5 Again, the phrase in square brackets is added (2013).

6 See G.W.F. Hegel *Phenomenology of Spirit* (Oxford: Oxford University Press 1977) p. 27.

denies. In just such an emphasis on particularity (on human material which is marginalised and wasted) does Marxian 'materialism' consist.<sup>7</sup> The final irony of rights-theory is that, all too frequently, Marxism has rested its argument about oppression not on freedom but on the concept of rights.

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7 On Marx's materialism as the liberation of 'all that overthrows, perverts, and ridicules [otherworldly] spirit', see G. Bataille *Visions of Excess: Selected Writings, 1927-1939* (Manchester: Manchester University Press 1985) pp. 32ff. (The words quoted are those of Bataille.) For a similar, but much earlier, instance of the same line of thought, see Abiezer Coppe's 'A Second Fiery Flying Roule' of 1649 in N. Smith, ed., *A Collection of Ranter Writings* (London: Junction Books 1983) p. 106: 'God hath chosen BASE things, and things that are despised, to confound – the things that are'.