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978-0-521-88255-2 - International Law on the Left: Re-examining Marxist Legacies

Edited by Susan Marks

Excerpt

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INTRODUCTION

This book is concerned with the contemporary relevance of Marxism for the study of international law. As a general theme of theoretical investigation, this question of the ‘contemporary relevance of Marxism’ has become in recent years a staple of the social sciences and humanities. Against expectations that the turn away from state socialism would likewise initiate a turn away from Marxist thought, the trend has been rather the reverse. From one perspective, this is a strange paradox of our era of unrivalled capitalism. From another, it is a perfectly logical state of affairs, inasmuch as Karl Marx and his interpreters have produced some of the most sustained and penetrating analysis we have of capitalism as an economic system with globalising tendencies. Either way, the collapse of Eastern bloc communism clearly released the grip of orthodox Marxism as an unchallengeable body of doctrine, and created an opening for fresh consideration of Marxist texts by a new generation of readers. At the same time, the emergence in the succeeding decade of an oppositional politics that goes under the banner of ‘anti-capitalism’ added renewed impetus to the familiar Marxist enquiry into the character, limits and transformation of the capitalist mode of production.

Any effort to take stock of what Marxism has to offer today must reckon with a tradition that ranges across an immense array of disciplines, preoccupations and debates, and is at once distinctive and persistently plural. This plurality is not just a matter of multiple and contending positions within the tradition, but also of complex connections with other bodies of thinking. For all its important departures, Marxism remains connected to the ideas against which it developed. Marx’s own reference points came mainly from classical German philosophy (especially Hegel and his followers) and classical economics (Adam Smith, David Ricardo, Thomas Malthus and others). Working in the shadow of the Industrial Revolution, his outlook on capitalist modernity was also informed by the political struggles and cultural orientations of Victorian England. Together with his writings, the various alternative currents of twentieth-century

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Marxism (and perhaps especially the Western Marxism of Lukács, Gramsci, Benjamin, Adorno and Horkheimer) have left a rich legacy of concepts, insights and analytical practices. As a route into the discussion of how Marxism can contribute, and has contributed, to the specific field of international legal scholarship, let us begin by recalling something of this inheritance.

1. Some Marxist legacies

1.1. *Materialism*

To engage with Marxism is, above all, to engage with the idea that history is to be understood in materialist terms. In the text known as *Preface to a Critique of Political Economy* Marx gives an often-quoted account of what this entails.

[L]egal relations as well as forms of the state are to be grasped neither from themselves nor from the so-called general development of the human mind, but rather have their roots in the material conditions of life.¹

In his account, the material conditions of life are in turn to be grasped with reference to an historically specific mode of production, and to the relations of production associated with that mode:

The sum total of these relations of production constitutes the economic structure of society, the real foundation, on which rises a legal and political superstructure and to which correspond definite forms of social consciousness.²

In consequence, '[i]t is not the consciousness of men that determines their being, but, on the contrary, their social being that determines their consciousness'.³

That these passages have inspired some very reductive forms of analysis is well known, but most contemporary theorists hold to a far more subtle reading, in which the relation between the determining base and the determined superstructure is posed as a question, rather than an explanatory theory. Thus, Fredric Jameson writes of 'base-and-superstructure not as a fully-fledged theory in its own right, but as the name for a problem, whose solution is always a unique, ad hoc invention'.⁴ From this perspective,

¹ Reprinted in D. McLellan (ed.), *Karl Marx: Selected Writings*, 2nd edn (Oxford: Oxford University Press, 2000), p. 424, at p. 425.

² *Ibid.* ³ *Ibid.*

⁴ F. Jameson, *Late Marxism* (London and New York: Verso, 1990), p. 46.

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the materialist vision of history does not imply any particular relation between economic structure on the one hand and prevailing ideas and institutions on the other, but it does imply that, whatever the relation may be in a specific context, it is key to an understanding of social realities and possibilities, and hence needs to be investigated. At the centre of discussions about the analytical priority of material conditions is the complex idea of ‘determination’. As Raymond Williams explains, the root sense of the verb ‘to determine’ is ‘to set limits’.⁵ Keeping this sense in mind, Williams proposes that determination involves the ‘setting of limits’ – which in practice also includes the positive ‘exertion of pressures’.⁶ What crucially distinguishes this understanding from an understanding of determination as the operation of predictable laws is that here the limits and pressures – the conditions set by the material base – are not seen as ‘external’ to human will and action, such that our only option is to accommodate to them and ‘guide [our] actions accordingly’. Rather, they are seen as historical inheritances that are the ‘result of human actions in the material world’ and hence ‘accessible’ and revisable.⁷

The idea that history is to be understood in materialist terms has many implications. Where the study of international law is concerned, one implication that merits particular emphasis is that it points up the inadequacy of ‘idealist’ forms of analysis. The term ‘idealist’ has a special meaning in this context, quite different from its everyday sense: it refers to the tendency to contemplate the world in a manner that implicitly overstates the autonomous power of ideas. In *The German Ideology*, Marx and Engels criticise their philosophical contemporaries for challenging received tenets of German philosophy, yet failing to ‘inquire into the connection between German philosophy and German reality, into the connection between their criticism and their own material surroundings’.⁸ Without investigation of those connections, there could be no understanding of what accounted for the problems, and hence no understanding of what would be required to bring about change. The temptations of idealism remain strong, and no less in international legal scholarship than in other fields of academic endeavour. However, Marxism delivers here a reminder of the need not to take international legal ideas and interpretations at face value, but instead to delve deeper and ask about the material conditions of their emergence and deployment. What was it that

⁵ R. Williams, *Marxism and Literature* (Oxford: Oxford University Press, 1977), p. 85.

⁶ *Ibid.*, pp. 85, 87. ⁷ *Ibid.*, p. 85.

⁸ K. Marx, *Early Political Writings*, J. O’Malley, ed. and trans. (Cambridge: Cambridge University Press, 1994), p. 123.

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made it possible for those particular ideas and interpretations to develop and become useful? In Williams's terms, what limits and pressures were in play?

1.2. *Capitalism*

I have highlighted the Marxist insight that the material conditions of life have a determining role in relation to forms of consciousness and social arrangements, including those associated with international law. I have also indicated that, in this account, the material conditions of life are seen as referable to an historically specific mode of production and to the relations of production concomitant with that mode. Marx, of course, was particularly interested in the capitalist mode of production and in its distinctive productive relations, characterised by a division between the capitalist class and the working class, according to ownership or non-ownership of the means of production. For all the very considerable changes affecting capitalism since Marx's time, and for all its diversity within the contemporary world, the consolidation of capitalism as a global system means that, today, any investigation of the material conditions of life must likewise concern itself with capitalism and with class. In the context of international legal scholarship, this is significant because 'capitalism' is a word rarely pronounced in writing about international law. Marxism puts onto the agenda questions that, under the influence of liberal traditions, have generally been set aside. These include questions about the limits set, and pressures exerted, by forces within the world economy in a given context. They also include questions about particular features of capitalist production, exchange and accumulation. Thus, for example, Marxism calls for a deeper and more wide-ranging investigation than hitherto of such phenomena as exploitation, immiseration, alienation and commodification, and of the ways in which these phenomena shape and are themselves shaped by international law.

What then of class? The relation between class and other axes of social division, such as gender, race and sexuality, is a familiar debate of recent decades. Most analysts agree that the relative neglect of social divisions other than class in classical Marxism is a major (if symptomatic) omission. In the study of international law this awareness is exemplified in an influential and growing body of scholarship in the mode of feminist analysis. Where positions differ is with regard to the place of class. Some

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analysts doubt its pertinence in a world where relationship to the means of production appears less telling than wealth, prestige and more generally ‘cultural capital’; many more doubt the structural pre-eminence of class in the analysis of social life. Marx was famously terse about class as a category, and it remains the case that, at the level of social ‘existence’ or ontology, the category eludes specification. On one view, however, ‘the “truth” of the concept of class . . . lies rather in the operations to which it gives rise’: class analysis ‘is able to absorb and refract’ the various other hierarchies which history has thrown up.⁹ By this is not meant that class subordination is more serious or more troubling than subordination on other grounds. Rather, the claim is that class realises itself and becomes embodied through gender, race, sexuality, etc., so that asymmetries indexed to those categories take on a distinctively capitalist slant.

I mentioned above the phenomenon of commodification. Discussion of this takes inspiration from Marx’s concept of the ‘fetishism of commodities’, elaborated in *Capital*.¹⁰ Starting from the observation that the ‘wealth of societies in which the capitalist mode of production prevails appears as an “immense collection of commodities”’, Marx proposes that the commodity is capitalism’s ‘elementary form’.¹¹ What is distinctive about a commodity is that it exists not for its own sake, but for the sake of being exchanged. Though a product of human labour, an outcome of a social relation (between the buyer of the labour (the capitalist) and the seller of it (the worker)), and an element in a productive process, the commodity assumes the character of an autonomous, objective thing. For Marx this is an aspect of the ‘alienation’ associated with capitalism – workers are alienated from the products of their own labour, and hence from themselves, and indeed from authentic humanity. The fetishism of commodities inheres in the transmutation whereby ‘the definite social relation between men . . . assumes . . . for them, the fantastic form of a relation between things’.¹² Drawing on ideas of his time about ‘primitive’ religious practice and the use of fetishes, he proposes that commodities are ‘fetishised’ insofar as ‘products of the human brain [come to] appear as autonomous figures endowed with a life of their own, which enter into relations with each other and with the human race’.¹³ At a general level,

⁹ E. Jameson, ‘Actually Existing Marxism’, in S. Makdisi, C. Casarino and R. E. Karl (eds.), *Marxism Beyond Marxism* (New York and London: Routledge, 1996), p. 14 at pp. 40, 42.

¹⁰ See K. Marx, *Capital*, Vol. 1 (London: Penguin, 1976), pp. 163 ff.

¹¹ *Ibid.*, p. 125. (Marx is quoting himself here.) ¹² *Ibid.*, p. 165. ¹³ *Ibid.*

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Marx is showing here that, as further explained by later theorists, ‘capitalism is secretly possessed by a series of pre-modern forms’ – and not just as residues of what came before, but as ‘effects’ of modernity itself.¹⁴ More specifically, he is signalling the way in which, in capitalist society, the market comes to dominate life. Social artefacts begin to escape human control, and appear as extra-social facts.

In the 1920s Georg Lukács returned to this idea, giving it a label only occasionally used by Marx: reification.¹⁵ Through reification the world comes to seem a collection of discrete things, disconnected from one another and alien to us. Ceasing to recognise our social environment as the outcome of human endeavour, we begin to see it as fixed and unchangeable, an object of contemplation rather than a domain of action. Marx observes that, while the ‘fetish character [of the commodity-form] is still relatively easy to penetrate’, not all of the reified categories of economic theory are so readily accessible; defetishisation may take considerable imaginative effort.¹⁶ At the same time, as he implies, and as Lukács makes explicit, ‘the problem of commodities’ is not only a problem relating to economic categories; it is ‘the central structural problem of capitalist society in all its aspects’.¹⁷ In Lukács’s memorable phrase, capitalism creates a ‘second nature’,¹⁸ scarcely less self-evident, solid and enveloping than the first one. It follows that the critique of reification must be equally pervasive. For those interested in international law, this critique begins with the category ‘international law’ itself, and with the tendency to speak of it as a set of rules, a thing, rather than a social (and especially interpretative) process. Such a critique then also takes in the various concepts and categories in which international law trades: among very many others, ‘sovereignty’, ‘states’, ‘treaty bodies’, ‘barriers to trade’, ‘the environment’, ‘the United Kingdom’, ‘the Universal Declaration of Human Rights’ – all of them artefacts that come to appear as facts, and social relations that are apt to assume the ‘fantastic’ form of autonomous objects. What is fascinating about the concept of reification is that, of course, reification too is an objectified category. Thus, Timothy Bewes remarks that this is

¹⁴ P. Osborne, *How To Read Marx* (London: Granta, 2005), pp. 16–17. (Of the many available introductions to Marx’s writings, this book is, in my view, the best.) For one important later elaboration of this idea, see M. Horkheimer and T. Adorno, *Dialectic of Enlightenment* (New York: Continuum, 1994).

¹⁵ G. Lukács, *History and Class Consciousness* (London: Merlin Press, 1974), p. 83 ff.

¹⁶ *Capital*, Vol. 1 (London: Penguin, 1976), p. 176.

¹⁷ Lukács, *History and Class Consciousness*, p. 83.

¹⁸ *Ibid.*, p. 86.

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a peculiarly ‘self-reflective’ form of critique;¹⁹ it constantly curves back on itself. But if we cannot *overcome* reified consciousness, the point here is that we can and must prise it open to demystify the transmutations involved.

1.3. *Ideology*

Marx’s concept of commodity fetishism was elaborated in connection with his readings in classical economics, and his critique of the failure of even that discipline’s ‘best representatives, Adam Smith and Ricardo’ to escape what he saw as the bourgeois tendency to treat historically specific forms as ‘self-evident and nature-imposed’ essences.²⁰ However, this was by no means Marx’s first consideration of the ‘necessary illusions’ of capitalism.²¹ In earlier work, when engaged in debates about Left Hegelian philosophy, he had also explored the mystificatory processes whereby social reality reproduces itself. Then, though, the key concept was ideology. The term ‘ideology’ is today used in many different senses. We use it as a synonym for dogma. We use it to refer to the world-view or framework of beliefs and values of a particular social group or historical epoch. We use it in discussions of political traditions – the ‘ideologies’ of liberalism, socialism, fascism, and so on. Marx also used the term in more than one sense, but mostly what he had in mind was the role of ideas and rhetorical processes in the legitimization of ruling power. In *The German Ideology*, Marx and Engels explain how the ruling class:

is obliged, even if only to achieve its aims, to represent its interests as the common interests of all members of society; that is to say, in terms of ideas, to give its thoughts the form of universality, to present them as the only reasonable ones, the only ones universally valid.²²

Elsewhere in the same text, the authors refer, in a similar vein, to the way historically contingent doctrine relating to the organisation of public power is ‘pronounced to be an “eternal law”’.²³ These processes whereby

¹⁹ T. Bewes, *Reification, or The Anxiety of Late Capitalism* (London and New York: Verso, 2002), p. 96. The ‘anxiety of late capitalism’ in Bewes’s title refers to his idea that the critique of reification is ‘always troubled by a vein of anxiety concerning the susceptibility of the concept itself to the reifying process.’ See p. 93.

²⁰ *Capital*, Vol. 1, p. 174, n. 34 and p. 175 respectively.

²¹ The concept is Lukács’s. See Lukács, *History and Class Consciousness*, p. 92.

²² Marx, *Early Political Writings*, p. 146. ²³ *Ibid.*, p. 145.

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particular interests are made instead to appear universal, historically contingent arrangements take on the aspect of eternal laws, and political outcomes come to seem the only reasonable possibilities, exemplify for Marx operations of ideology.

Theorists of ideology draw two distinctions which are useful in grasping the specificity of this Marxian account.²⁴ One is a distinction between neutral and critical conceptions of ideology. The notions of ideology as world-view and political tradition are examples of neutral conceptions. By contrast, the Marxian conception of ideology is critical; to point to ideology in Marx's sense is to imply the need for criticism and change. The second distinction is between conceptions of ideology that have epistemological concerns – concerns about truth and falsity – and conceptions that have political or ethical concerns. After Marx's death, Engels developed a notion of ideology as 'false consciousness'. In his words:

[i]deology is a process accomplished by the so-called thinker consciously, it is true, but with a false consciousness. The real motive forces impelling him remain unknown to him . . . Hence he imagines false or seeming motive forces.²⁵

This identification of ideology with false consciousness has, of course, been extremely influential, and it is an obvious instance of a conception of ideology with epistemological concerns. However, the Marxian conception is different. Where the focus is on legitimisation processes of the kind described above (universalisation, eternalisation, rationalisation), the problem with ideology is not that it involves error, but that it sustains privilege. To be sure, mystification is in play, but the ideas nurtured are not simple mistakes or inaccuracies; they are as much part of the prevailing reality as is the privilege they serve to sustain. Informing this conception of ideology, then, is a political concern about the function of ideas in social life.²⁶

²⁴ See esp. R. Geuss, *The Idea of a Critical Theory* (Cambridge: Cambridge University Press, 1981); J. Thompson, *Ideology and Modern Culture* (Oxford: Blackwell, 1990); and T. Eagleton, *Ideology* (London and New York: Verso, 1991).

²⁵ Letter from Engels to Mehring (1893), quoted in D. McLellan, *Ideology*, 2nd edn (Buckingham: Open University Press, 1995), p. 16.

²⁶ Among many later reconceptualisations of this 'political' account of ideology, the work of Louis Althusser has been especially prominent. For Althusser, the study of ideology is concerned with the practices, rituals and institutions through which social subjectivity is produced and social cohesion ensured. See, e.g., L. Althusser, 'Ideology and Ideological State Apparatuses (Notes Towards an Investigation)', in S. Žižek (ed.), *Mapping Ideology* (London and New York: Verso, 1994), p. 100.

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In the 1930s and 1940s, Max Horkheimer, Theodor Adorno and other members of the Frankfurt School placed the critique of ideology at the centre of the project they called critical theory. By ‘critique’ they meant a distinctive form of criticism, premised on the idea that meanings are never fully stable, but always in some sense strain at their own limitations, and point beyond themselves. As Adorno explains, it is in the nature of concepts that ‘[d]issatisfaction with their own conceptuality is part of their meaning’.²⁷ In the work of Adorno and his colleagues, ideology is criticised for the sake of drawing out these dissatisfactions. That is to say, it is not criticised in order to dismiss or negate it, but rather (to speak again with Adorno) to make it ‘mean beyond itself’.²⁸ What does this entail? On the one hand, the critique of ideology is a matter of calling upon actuality to live up to its claims. Terry Eagleton expresses this engagingly:

Marxism takes with the utmost seriousness bourgeois society’s talk of freedom, justice and equality, and enquires with *faux* naivety why it is that these grandiloquent ideals can somehow never enter upon material existence.²⁹

On the other hand, the critique of ideology is also a matter of exposing how actuality works to block the realisation of its claims. (Eagleton’s enquiry may involve *faux* naivety insofar as systemic obstacles are part of materialist analysis, but it necessarily involves some element of genuine naivety as well, insofar as ideological obstacles are, by definition, never fully transparent.)

In the case of international law, this sets an agenda that includes the themes on which Marx and Engels touch in *The German Ideology*. How does that which appears universal conceal particular interests? How does that which seems eternal entrench historical inequities? And how does that which purports to be rational function as an argument against redistributive claims? At the same time, the critique of ideology also sets an agenda that goes further, and invites consideration of *all* the rhetorical and other symbolic manoeuvres through which ruling power mobilises meaning to legitimate itself. For this, it is important to remain open and alert to the shifting and often very subtle and surprising articulations of meaning with power. Particularly inspiring in that regard is the work of Slavoj Žižek. Žižek has made it his business to track the cunning of late-capitalist reason, and to follow the twists and turns through which ideology keeps ahead of its critics today. From him we can take the important

²⁷ T. Adorno, *Negative Dialectics* (London: Routledge, 1973), p. 12.

²⁸ *Ibid.* (quoting Emil Lask). ²⁹ Eagleton, *Ideology*, p. 172.

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insight that ‘[w]hen some procedure is denounced as “ideological *par excellence*”, one can be sure that its inversion is no less ideological.’³⁰ If ideology critique directs attention to the processes by which historically specific conditions may be made to seem universal, eternal and rational, sometimes too, then, its task is the reverse. Sometimes what is needed is precisely to bring out the universal resonance of what passes for local preference, the ‘hidden necessity in what appears as mere contingency’,³¹ and the rational explanation for what is depicted as the tragic eruption of unfathomable political passions.

1.4. *Imperialism*

According to Frantz Fanon, ideology found its limits in European colonial government. ‘In the capitalist countries’, he remarks, ‘a multitude of moral teachers, counsellors and “bewilderers” separate the exploited from those in power’. In the colonial countries, by contrast, ‘the policeman and the soldier, by their immediate presence and their frequent and direct action, maintain contact with the native and advise him by means of rifle-butts and napalm not to budge.’³² Marx’s writings about colonialism are relatively few, and mostly take the form of popular publications.³³ The ‘language of pure force’³⁴ of which Fanon writes is not very prominent in these texts. Marx was certainly aware of the ‘blood and dirt, . . . misery and degradation’ of colonial subjugation, but he thought it was just the same blood and dirt, misery and degradation as that inflicted by the bourgeoisie on the proletariat in Europe.³⁵ He also thought its purpose in this context was ‘progress’, and spoke of the ‘Asiatic mode of production’ in terms of its stagnancy, deficiency and need for ‘regeneration.’³⁶ By contrast, the distinctive violence of capitalist imperialism is central to the later work of Rosa Luxemburg.

In *The Accumulation of Capital*, Luxemburg discusses the expansionist logics of capitalism and the dynamics of its worldwide spread.

³⁰ S. Žižek, ‘Introduction’, in Žižek (ed.), *Mapping Ideology*, p. 1, at p. 4.

³¹ *Ibid.* On this point, see further below.

³² F. Fanon, *The Wretched of the Earth*, C. Farrington, trans. (London: Penguin, 1967), p. 29.

³³ See esp. Marx’s journalism on India for the New York Daily Tribune, available at: www.marxists.org/archive/marx/works/subject/newspapers/new-york-tribune.htm.

³⁴ Fanon, *The Wretched*, p. 29.

³⁵ ‘The Future Result of British Rule in India’, *New York Daily Tribune*, 8 August 1853. (The dispatch itself is dated 22 July 1853.) Available at: www.marxists.org/archive/marx/works/1853/07/22.htm.

³⁶ *Ibid.*