

MARX, JUSTICE, FREEDOM: THE LIBERTARIAN PROPHET

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The discussion of Marx's concept of justice will proceed here in two consecutive steps. First I will analyse the problem of distributive justice, and then turn to that of justice in general. The discussion of both problems raises two central questions. The first question is whether a "just society" is a rational image or simply a chimera? The second question is whether one can rationally conceive a society being "beyond justice"?

As the notion of "justice" itself is subject to various interpretations, it seems necessary to begin with a summary of my own interpretation. I distinguish three concepts of justice: the formal, the ethical and the political. In daily usage, these are mostly, though not always, interwoven. Theoretically, however, they must be kept apart. The formal concept of justice (which is not to be confused with the concept of formal justice) is indeed very simple: if several norms-and-rules apply to the same social cluster, each and every norm and rule should apply equally to each and every member of the cluster in question.¹ Justice is normative since it enjoins to observe the norm of consistency. If we fail to be consistent, if we apply the norms-and-rules to some members of the social cluster but not to others, even where the exception is made in only one single case, we are being unjust. The ethical concept of justice is to be understood as the "sum total" of virtues applied to other persons. Finally, the political concept of justice is a combination of the formal and ethical concepts of justice. It appeals to certain values, from which then the norms-and-rules themselves are constituted and from which the virtues are developed. A society can be called politically just if the values, from which the formal concept of justice is drawn, are accepted in it. If there is a disagreement regarding the criteria of justice, those in disagreement will reject the socio-political structure as unjust. If everyone within a body politic agrees with the criteria of justice, the prevalence of political justice can be asserted.

However, the prevalence of political justice is no guarantee against injustice, since norms-and-rules can still be inconsistently (unjustly) applied.

Action, judgment and distribution are three aspects of justice, each of which is related to all three kinds of justice. A separate analysis of the distributive aspect of justice, the so-called "distributive justice", is an unrewarding enterprise, even an impracticable one. Yet, it would be wrong to ignore, at least at the outset, a long tradition which has sought to come to terms with the notion of "distributive justice" as an allegedly separate instance of justice. This tradition stretches back to a traditional misunderstanding of Aristotle and a correct understanding of Hume's position.

It is well-known that references by Marx to justice are scanty, and more often than not, sarcastic. His most comprehensive, if brief, discussion of distributive justice is to be found in *The Critique of the Gotha Programme*.

Marx challenges the notion of "distributive justice" from three distinct, though interconnected, aspects. Firstly, he argues, the mode of distribution is embedded in, and dependent on the mode of production. Secondly, the notion of "just distribution" is little more than a figure of speech, a shorthand reference for a new criterion of distribution. Finally, genuine communist production and distribution will operate with a criterion beyond justice. I would like to examine each of these theoretical proposals before looking more generally at the question of justice.

1. Marx argues that, since all modes of production imply a specific mode of distribution, all socialist and democratic theories raising the issue of just distribution of consumer goods are misconceived. If we translate this criticism into modern language, it amounts to the following: any, even a relative, equalization of incomes, wages and salaries is illusory under the conditions of a capitalist mode of production. It is equally illusory to criticize capitalism for its "unjust" distribution: "Do not the bourgeois assert that the present-day distribution is 'just'? *And is it not, in fact, the only 'just' distribution on the basis of the present-day mode of production?*"² It is, then, not only the false consciousness of the bourgeoisie that describes the present distribution as just for Marx, it is *in fact* just within the present-day mode of production.

At this stage of his argument Marx operates with the formal and political concepts of justice but he completely disregards the ethical concept of justice.

Distribution is just if the rules of distribution operative in a social cluster are applied to each and every member of this cluster. In capitalist society, the rules of commodity production are operative throughout the whole society. If the rules of commodity production are applied to each and every member of this society, the distribution must also be just. Marx, it will be remembered, argued throughout his life, in all his major works, that, at least tendentially, the rules of the market apply factually to each and every member of society. In terms of the formal concept of justice, capitalism is then a just society. Of course, unjust applications of rules are not excluded and they never can be. Should workers get lower wages than the equivalent of the value of their labour force, or if capitalists make extraprofits, the rules of the market are violated and injustice arises. Challenging such instances of injustice is possible without challenging the capitalist mode of production as such because injustices of this kind infringe the rules of distribution themselves. This argument operates with the formal concept of justice. However, the axiomatic statement that distribution depends on production, and the further statement which derives from this, that just distribution is exclusively defined by production are both already within the orbit of the political concept of distributive justice. Here, production becomes the sole criterion for just distribution.

Marx's conception draws our attention to a highly important issue which can be summed up as follows: the notion "distributive justice" cannot be analyzed as a separate instance of justice as distribution is always embedded in the sociopolitical reproduction of society as a whole. But Marx undercut his argument by the one-sided statement that it is the so-called "mode of production" *alone* that serves as a criterion of just distribution. He completely disregarded the important fact that the dominant *values* of a society can provide us with further norms and criteria which we might apply to each and every member of society. And that these norms can provide a criterion of justice very different from the rules of production, especially of commodity production. It was the absence of an ethical concept of justice which obfuscated Marx's argument, a deficiency discovered by the 'Kantian' Marxists at the end of the 19th century. It goes without saying that certain values which were applied to each and every member of society in Marx's time, and which were subsequently institutionalized by democracy, increasingly placed certain constraints on commodity production itself. Due to these constraints, the state commenced to *redistribute*, via public spending,

a part of the budget on welfare. With this I do not mean to say that the rules of commodity production no longer define distribution, only that it is not them exclusively which define it. In this sense, the "naive" workers, socialists and democrats were, at least partially, correct against Marx the scholar in that it was they who raised value standards and ethical standards of justice beyond the level defined by production.

2. When Marx criticised the authors of the Gotha Programme for their obscure reference to "equal rights" and demonstrated that they were in fact offering a new *criterion* of justice, he was perfectly right: "But, 'all members of society' and 'equal rights' are obviously mere phrases. The kernel consists in this that in this communist society every worker must receive the "undiminished' ... 'proceeds of labour'."³ Marx, justly, rejects this criterion as unreasonable and illusory, and substitutes another criterion for it. At least in the first phase of communism, he argues, the criterion of distribution will be the quantity of labour "given" by the members of society. The worker will "receive back" what s/he gives, after deductions. What a worker "gives" is measured in labour time. Without doubt, this is a criterion of distributive justice, and while realistic is no less vague than the one suggested by the authors of the Gotha Programme. As is well-known, Marx did ponder the problem that an "equal right" simply equalizes unequals and this is why "equal right" is only a right to inequality. Thus, in applying this principle, the first phase of communism still wears the birthmark of the offspring of capitalism. But in this train of thought Marx disregards, and I will return to this, a highly important aspect of his own proposal on which his real controversy with the authors of the Gotha Programme rests. Workers cannot "receive back" what they have "given" because something has to be deducted from their contribution. This, and nothing more, was Marx's objection to the formulation of the programme. But in his philosophical discussion of "equal rights" he disregarded a controversial issue: if something has to be deducted, *who* will deduct it, *who* will decide how it should be deducted? And further, should an equal amount of the yield of work be deducted from everyone? For example, should three hours labour be deducted from all workers? If this were the case, and we can only guess, then the question one has to face is not simply that of an "equal right for unequals", but also that of an "equal *obligation* for unequals." "Equal obligation for unequals" is a moral norm, in that all moral norms enjoin all persons to do something, or to be something,

despite the fact that persons are individually, as far as their character or need structure is concerned, "unequal". Thus in social practice moral normatives cannot be circumvented, unless, of course, "equal deduction" is superimposed in workers by coercive means.

But again, my major objection to the model of the "first phase of communism" is that Marx reduced the problem of a form of life to the question of relations of production. Everything that people would *share* in a communist society is placed under the rubric of "deduction". One gains the distinct impression that the formal concept of justice ("the same norms and rules apply to each and every member of a social cluster") remains relevant only in the field of private consumption, and not in the field of shared goods or activities. Only the minor addition that in the first phase of communism "everyone has a say in what should be deducted and from whom", or, alternatively, that "everyone has a say in the disposition of commonly shared wealth", would constitute norms and rules for justice different from the merely distributive ones. Marx's opposition to the article of the Gotha Programme thus represents a relapse into a truncated concept of justice. However, there were good reasons for Marx to suggest such a truncated formulation. In his view, the first phase of communism was only an introduction to the second phase of communism: to a society beyond justice.

Before we look at this second phase, let us consider first the Marxian concept of justice as it is briefly formulated in conjunction with the discussion of the first phase of communism. Marx here simply made the following equation: equal rights = injustice. Since all persons are unique, and therefore different and unequal, applying the same norms-and-rules to each and every person of a cluster (which is the principle of formal justice) is unjust. In this assertion, there is one important claim. Marx rejects the widespread interpretation of Aristotle's dictum so often repeated even today, that justice treats equals equally and unequals unequally. Marx knew, just as Aristotle had known, that no person is, as a person equal with any other person. Only the application of the same standard (norm or rule) to a cluster of people *makes* people equal from the viewpoint of this particular standard. And given that normally different rules and norms apply to different clusters of people, the members of different social clusters are *made* unequal by the standards. As a result of this deep insight into the problem Marx rejected the value "equality". Equality as a value can shape the standard for justice in two different ways. On the one hand, we can assert that when and

if norms-and-rules apply to any action, mode of behaviour (distribution and judgment included), *the same* norms-and-rules should apply to all members of a society or a body politic. This is still a formal concept of justice founded on a political concept of justice. On the other hand, we can assert that the value of equality should constitute the norms-and-rules of justice. This is a political concept of justice which includes the formal. Marx rejected the two uses of the value of equality inherent in both concepts for a socialist society. He rejected the second because it is egalitarian. As he argued in the *Paris Manuscripts*, egalitarianism is nothing but generalized envy. The social model of egalitarianism is the negative abolition of private property, and not its positive abolition which is what communism is all about. So far I agree. However, Marx rejected the first use of the value of equality as well. According to the first use of the value "equality", capitalism is a just society for the same rules (the rules of the market) apply to each and every member of society. In this respect, Marx acknowledged the fact of a justice inherent in the rules of market but rejected the underlying principle of equality as a value. But his whole conception here is based on the false assumption that in modern society there are no values other than the rules of commodity production. In fact though, there are several other values, rules and norms which do not apply equally to each and every member of a capitalist society including certain interpretations of the value of freedom, equality and fraternity in their normative use. Thus one can conclude that applying *all* norms-and-rules to all members of a society or a body politic is still a regulative idea. However, Marx blurred the distinction between the two uses of the value "equality" in his discussion of the first stage of communism, even though he knew perfectly well how different they are. He was fully aware that the application of the same norms to all members of a society could not be based on the assumption that people *are equal or should be equalized*. Only the egalitarian interpretation of norms-and-rules, based as it was on this assumption, has as its aim the equalization of unequals. Thus, if I say: "everyone has the right to participate in decision-making processes",⁴ I do not mean that everyone does it equally well, not even that everyone is equal in the sense that everyone must do it. My assertion only means that the exclusion of anyone from the decision-making process is unjust. However, blurring the distinction between the two uses of the value "equality" was not a simple mistake, it fitted well in the broadest framework of the Marxian philosophy. I will return later to this problem. For now

let us note that even this blurring the senses of "equality" suffices to understand why Marx sought to solve the problem of distributive justice by accepting the only principle of distribution which is *beyond* justice: "to each according to his needs".

3. The principle "To each according to his needs" is, in fact, beyond justice. It should be read in the following sense: "To each according to his or her uniqueness". It is indeed a principle, at least formally, as it guides action, and could be paraphrased in the following way: "No one has the right to interfere with the need satisfaction of any other person." However, it is not a principle of justice for at least two reasons. Firstly, no norms-and-rules apply to individual need satisfaction as is the case with the formal conception of justice. Secondly, and this follows from the first, no judgement can be passed, no comparison and ranking can be performed on the basis of this principle. One could argue that at least a negative concept of justice prevails here ("no one has the right to interfere with the need satisfaction of any other person"). But if everyone satisfies his or her needs completely, no one *will* interfere with the need satisfaction of the other anyway, thus it is a mere redundancy to attribute normative power to the negative paraphrasing of the principle. Within the orbit of this principle there is no place for justice.

In what follows I am going to argue that the principle "to each according to his needs", as the *sole* principle of societal life for distribution is completely inadequate. In order to avoid any misunderstanding, I would like to emphasize that I am not challenging the view that there are principles beyond justice, nor the view that there should be such principles. Neither do I challenge the principle itself ("to each according to his needs"). What I would like to challenge is the assumption that this principle alone, and without further qualification, makes sense as *the* principle of distribution in any society, communist or non-communist.

The principle "to each according to his needs" must be qualified and interpreted, and this can be done in various ways.

a. "To each according to his needs" can mean that all needs of all individuals will be satisfied.

As we know from Marx himself, needs are not "natural", but are shaped by society. Marx stated that production creates needs. It can be added that values, as symbolic structures, shape need structures. The principle "to each according to his needs" is empty if we do not know *which* or *what kind of* needs or need structures we

are talking about. One can imagine a monastery in which all individual needs are satisfied because of the particular value system that shapes them. Should values shape needs to the extent that they merely encompass the need for a piece of bread, a glass of water and pious prayers daily, then needs are defined by the value system itself as satiable. Of course, this was not what Marx had in mind. His communist society was conceived to facilitate the shaping of needs according to the value of freedom. Freedom as the sole value would shape humans "rich in needs", as Marx so often emphasized, but it would also shape them as subjects of *unlimited* needs. If freedom is not "freedom for something" or "freedom in something", but unqualified and therefore absolute freedom, the value "freedom" shapes needs to be insatiable. But how can the insatiable be satiated? To put the problem bluntly, life is a limited enterprise, and no "society of associated producers" will change this natural limit to satisfaction. Persons have unlimited needs but they have a limited life. If we satisfy one particular need, we cannot satisfy another. As Weber noted perceptively, in modernity, we die in dissatisfaction. The more our needs are shaped by the value of freedom, the more we die in dissatisfaction. We do not even have to touch on the problem of material scarcity or abundance to be aware of the unique kind of scarcity which is the human condition.

b. Thus, the principle "To each according to his needs" cannot be interpreted as the principle of satisfaction of all individual human needs. It can, however, be interpreted in a different way. There are indications, for instance, in the texts of Marx of the following interpretation: the satisfaction of one need prevents another need from being satisfied. But it is the individual alone who expresses a preference. There is no external regulation of need satisfaction, only an internal one which would vary from individual to individual.

This idea is far more relevant and far less absurd than "the satisfaction of *all* needs". However, several questions remain unresolved even in this formulation.

Firstly, on what grounds will an individual select one need as against other needs (in order to be satisfied)? Seemingly, one can answer: simply on individual grounds. Tastes, after all, are different. However, needs are also social, for they are shaped by values (symbolically) as well as by production. Where there is no science, we cannot "need" scientific activity. Where there is a vibrant public life, the need for participating in it will have more urgency for individuals than in a social milieu in which public life is non-existent. Individual

need priorities are made on the basis of, although not necessarily according to, such preferences. Without socially valid values there can be no individual preferences. However, social preferences do not float in a limbo. They are embedded in world-views and institutions. Values, world-views, institutions delimit the scope of individual need preferences but they also, perhaps even primarily, enhance certain preferences, and channel them if not in one, at least in certain directions. To put it succinctly, ways of life, always limited in number, shape individual need selection and hierarchy, and individual choices are variable within the horizon of a way of life. If we hypothetically design a future (socialist) society with a variety of ways of life, we generally do not start from the premise of individual atoms who prefer one certain distinct need satisfaction to another on the grounds of a purely personal and unique taste. Rather, we would commence with different communities, each of them presenting evaluated models of the good life, and thus for a particular structure of needs which leaves plenty of scope (but certainly a limited scope) for individual variations in need preferences. Individuals may freely quit one form of life and choose another, but no form of life can be completely individual. Castoriadis is therefore correct to observe,⁵ that the Marxian principle "to each according to his needs" implies the same kind of *Robinsonade* Marx so vehemently rejected in the case of Ricardo.

If, however, all need structures (and ways of life) are shaped by a system of values and norms, the latter should be applied to each and every member of society. As a consequence, if we do not believe that all needs can be satisfied, if we are aware that individuals rich in needs must make preferences in the satisfaction of needs and if we do not believe in a *Robinsonade* (a society of unrelated atoms), then the principle "to each according to their needs" cannot be a principle beyond justice.

c. The principle "to each according to his needs" has an additional flaw. It implies that communist society *guarantees* the satisfaction of needs (either of all needs or the preferred, self-limited needs). Apart from the obvious difficulty that in a *Robinsonade*-model we do not know *who* is society, *who* satisfies all needs of *whom* (the interrelationship between atoms is still a relation of atoms), the question arises whether need satisfaction could serve as a principle for distribution at all. Any society can, at best, provide the *means* for need satisfaction. It can provide nothing else. Thus, the theoretical conflation of providing means for satisfaction and

a satisfaction of needs has to be avoided. A conflation of this kind would be guilty of the opposite fallacy to that of the *Robinsonade* model. Need satisfaction, as contrasted to need preferences, has an indissolubly personal and contingent character. If A. has a need for X. kind of knowledge, society can provide him/her with the means for the satisfaction of this particular need but cannot satisfy the need. Providing the means for the satisfaction of needs is a procedure subject to justice whereas need satisfaction is not. The statement "each and every member of society should be provided with means for need satisfaction" is, again, the formulation of a principle of justice, because here the same norm-and-rule is applied to each and every member of a given social cluster, independently of the *uniqueness* of their particular need structures.

d. Let us for a moment consider the context of the Marxian theoretical proposal. Marx remarked that under the condition of *abundance* society can "inscribe on its banners: from each according to his ability, to each according to his needs."⁶ The fairly bombastic expression of "inscribing a slogan on our banners" stands, in a simple translation, for the concept "principle". However, we know from Kant that principles (or ideas) can be observed in two different ways: they can either constitute or regulate human action. If the principle "to each according to his needs" is constitutive, the needs of each member of society have to be factually satisfied. If, however, it is a regulative principle, then the needs of all have to be recognized as legitimate and, further, the claims for the means of need satisfaction have to be recognized as just claims. The regulative use of the principle does not presuppose or involve the factual satisfaction of the needs of all, only the factual and consensual acceptance of the norm that these needs should be satisfied. If we interpret the principle "to each according to his needs" as regulative, and not as a constitutive principle, it not only makes sense, but can even be accepted as the principle of "distributive justice" in a society without domination and exploitation which we may call socialism. Moreover, it can be accepted as the regulative idea of justice only in a society without domination and exploitation since the recognition of all needs is only possible if the need for using other humans as mere means is *not* recognized as legitimate.

However, the use of the concept "justice" is highly questionable here. It stands to reason that the recognition of all human needs has little to do with justice: no norm or rule applies here, no ranking and comparing is possible. It is therefore, beyond justice. But if all

needs are equally recognized, and society cannot (and it indeed cannot) provide the means for the simultaneous satisfaction of all needs, it is the members of society who have to make decisions about *priorities*. It is the citizens' task to establish rules and norms on the basis of which they can decide upon priorities. This is a matter of justice: for to establish norms and rules is a matter of political justice, to apply them consistently is a matter of formal justice.

It is at this point that I wish to return to the famous Marxian precondition of the so-called "second stage of communism", to the problem of abundance. Abundance and scarcity are relative categories. Since need structures are symbolic, and they are shaped by values inherent in ways of life, socialist communities, all offering different ways of life, can differ substantially from one another in their level of relative abundance and relative scarcity. Without entering into extreme speculations about a distant future, one could fairly assume that abundance cannot be absolute, only relative in each. However, without the recognition of all human needs there is no recognition of human personality; no recognition of human dignity; in short, no radical democracy. This is why I believe, that — should we wish to inscribe something on the banner of socialism — the principle "to each according to his needs", if understood as a regulative principle, can indeed be inscribed on that banner.

e. Up to this point I have discussed the principle "to each according to his needs" as a constitutive principle only in order to demonstrate that it does not make sense in any of its interpretations. I proceeded from here to show that it does make sense when understood as a regulative principle: one which can constitute principles of justice. From here I would like to proceed to a third interpretation. One can interpret "to each according to his needs" as a corrective principle, as a principle of *equity*. The principle of equity is corrective in that it is meaningful only in relation to justice.

At this point, a recourse to the Marxian discussion of the first stage of communism is necessary. Marx remarked that the principle "to each according to his work" is *unjust* because one worker is more skilful than another, one has a family, the other has not, and so and so forth. Whatever my opinion concerning the principle "to each according to his work" might be, it remains true that Marx failed to prove that the principle is unjust because of the diversity of individual needs. He only proved that it is inequitable. (And here, indeed, it is *equity*, *not justice*, that we are discussing.) However, correcting justice through equity is neither an unheard-of procedure

nor one which annuls the validity of justice. The "injustice" Marx referred to has now, to some extent at least, been corrected in the welfare state by the principle of equity. For instance, workers with big families receive family allowances, to counterbalance wage inequities. Thus the principle "to each according to his needs" is accepted as a corrective principle. Similarly, whether or not someone is guilty, is a matter of justice alone, and no reference to needs is relevant in establishing guilt or innocence. But while meting out punishment, the judge may also take into consideration individual or social needs and apply equity as a corrective principle. Equity as a corrective principle can co-regulate distribution not only under the condition of relative abundance and relative scarcity, but under the condition of absolute scarcity as well. Let us imagine a starving group of twelve, men, women and children in a concentration camp; let us imagine in addition that they somehow obtain one loaf of bread and three cigarettes. How would they distribute these? They could establish quite different rules and norms for justice among themselves (e.g. children get a bit more bread because they are the weakest or men get a bit more bread because they must work.) One thing is however obvious: cigarettes will be distributed among smokers (that is, among those with the need for smoking). Seemingly bread too is distributed simply "according to needs", but this is in fact not quite the case, for the simple reason that needs themselves here are *evaluated*, and principles are established to this evaluation.

The discussion to date has been completely abstracted from the other inscription on the banner of socialism: "from each according to his abilities". It is the precondition of the satisfaction of the needs of all that each member of society contributes to social wealth "according to his or her abilities". The statement that someone works according to his or her abilities has at least three possible connotations. It can mean that someone works as much as one can, that someone works as well as one can, or that someone performs the type of work one is best able to. There is one overriding reason for not being compelled to enter into a specific discussion of these three possible meanings: Marx offers two, partially contradictory, solutions to the problems involved. One is found in the *Grundrisse*, the other, in the third volume of the *Capital*. For this reason I shall confine my discussion to a general level.

If we are all supposed to work as much or as well as possible in order to provide the means for the satisfaction of the needs of all, then it is the claims for need satisfaction that determine both the

quantity and quality of the work we are supposed to perform. This is precisely what Marx had in mind. In a communist society, he believed, human needs will not appear as "demands" mediated by the market but as direct claims. Society will "size up" these claims and will produce according to them. But in this case it is not "ability" which defines the quality and quantity of human work, rather the number of needs awaiting satisfaction. How do we know, indeed how can we know, if the sum total of work to be performed is defined by the number and the quality of needs, that each and every member of society can work "according to his or her abilities"? People must be "distributed" to perform the socially necessary labour, and the ability to perform the allocated task, be it manual or mental, has to be presupposed. Of course, "ability" is no more and no less a merely *natural* propensity than needs are. Our abilities develop through the performance of tasks, and are dependent on the quality and quantity of objectivations to which action can be related. Indeed, there are inborn predispositions for the performance of particular tasks which vary from individual to individual. However, dispositions only become explicit if they are developed by the task performed.

All this is evident; it was evident for Marx as well. Despite this, however, Marx undercut this conclusion by attempting to solve the problem in question through his famous dictum: work itself will be the primary basic need (*Lebensbedürfnis*) for the members of communist society. But this answer is circular. If the need for work is seen to be the primary basic need, the "inscription on the banner" would read as follows: "from each according to his or her needs — to each according to his or her needs." This is an empty principle. However, the real problem lies elsewhere. The statement that work becomes the primary basic need does not imply the other statement that the kind of work people are allocated in order to satisfy, together with others, the needs of all, coincides with the kind of work each of them wants to perform. What Marx described as a "primary basic need" is indeed a primary basic need, not only in communist, but in all societies; work, and Marx knew this better than perhaps anyone else, is one of the basic constituents of our humanness. There is no human being, and there never has been any, who could have survived without some kind of activity directed towards goals, without mobilizing some of his or her dispositions towards the performance of a particular task. But only in exceptional circumstances has it been possible for people to develop (in principle) all

these dispositions at any particular time in the context of the socially necessary labour demanded by a division of labour. The point in question then, is not the "need for work", rather the satisfaction derived from the performance of the *kind* of work people were allocated. Here again, as in the case of needs, the Marxian principle calls for a rational explanation via specification. One can specify the principle "from each according to his or her abilities" in the following way: the need for performing a task for the satisfaction of the needs of others can itself become a primary basic human need. This is a rational specification, not even excessively utopian, since it is a human need, seen though in a limited sense. even under present conditions (for example, the need to work in order to satisfy the needs of our family members.) In this specification it is not the concrete work itself that is to become a human need, but "working for others". A further rational specification of the principle "from each according to his or her abilities" can be the following. Everyone is free to choose tasks to perform (from among the available ones) which best suit his or her interests and propensities but this does not imply that everyone performs exclusively these tasks. Even we, social theorists, who indeed live in communism in so far as we do what we like doing best, are sometimes obliged to do something not because they are attracted by the activity itself, but because it is our social duty. To perform a duty can become a need, even if the activity itself is less satisfying than another, or not satisfying at all. But if this is true, then the principle "from each according to his or her abilities" is not completely beyond justice. If there is such a thing as "social duty", the same norms apply to each and every member of society: everyone should fulfil his or her duty. It is just to require from everyone the fulfilment of his or her duty. And even if this fulfilment of duty might become a vital need, this activity cannot be the vital need of all to the same extent and at the same level. Equal obligations are allotted to different humans and "equalize" them from this point of view. But since duties have to be different in different communities, within the framework of different forms of life, individuals will be similarly free to choose their set of duties just as they choose their particular need structure. Both duties and needs are embedded in a way of life, and they can only be artificially disconnected from one another.

However, the fact that Marx did not specify his famous slogan cannot be attributed to the circumstance that it was a shorthand formulation widely accepted in the socialist circles of his age. The

reasons for this lie deeper. They are rooted in the Marxian philosophy as a whole.

Let me return for a moment to the Marxian equation: justice=injustice. This equation can be interpreted as follows: only when there is justice is there injustice. This is an undeniably true assertion but not an argument against justice, nor was this meaning intended by Marx. The following interpretation of the equation is also possible: the justice of society X, is injustice from the viewpoint of a higher standard or criterion of justice, e.g. that of divine justice, that of equality, and the like. However, once again, this was not what Marx had in mind. Marx challenged the mere existence and relevance of any standards or norms for action, distribution and judgement, because all humans are unique and incommensurable. Basically his argument runs as follows: justice raises equal standards, we are incommensurable, thus justice is constraint, it is unfreedom. Marx, therefore, addressed the same problem as Tocqueville: the problem of factual or possible conflict between equality and freedom but he translated the conflict itself into the language of history in the future tense. Equality stands for the first stage of communism, freedom stands for the second stage: the more freedom develops in full, the more equality is left behind. Where there is absolute freedom, there is neither equality nor the application of the same standard to unequals, therefore, justice. Among other things, Marx's greatness lies in his uncompromising insistence on freedom as the supreme value of modernity. Up to a point I agree with him. Freedom is undoubtedly a higher value than justice and it can easily be shown why this is so. Justice is always related to values other than justice. (The debate whether deterrence, retribution or reform should be accepted as the guiding principle of justice, testifies to this.) Freedom can be the value justice should be related to but not vice versa. Justice cannot be the value freedom should be related to, as justice cannot provide criteria for freedom.

Having said all this in defence of Marx's philosophical emphasis, I cannot go along with him any further. To say that freedom can provide the value criteria for justice is not to say that justice can be eliminated. In societies without domination and social hierarchy members of society enjoy the positive freedom of coming into agreement in a rational discourse about the *kind* and *character* of norms-and-rules they ought to apply to each and everyone. Such discourses can be reopened and norms-and-rules changed in a new agreement but without such social norms-and-rules there is neither

social cooperation nor a body politic; indeed, there is no society at all. And once there are norms-and-rules operating which apply to each and every member of the community and society, there is always justice conjointly with the possibility of injustice. Further, in societies without domination and hierarchy the members of society enjoy negative freedom. In other words, the freedom of doing what they like doing best. From the aspect of negative freedom there should always be great terrains of life to which no rules and norms apply, and to which justice does not apply either. One might wish that there be vast terrains and many aspects of human life to which justice does not apply, and one might wish the contrary. But that which one should wish most is to have varieties of ways of life with different proportions between negative and positive freedom, ways of life that individuals could join or leave according to their abilities and needs. There is no society beyond justice, but we can imagine a society in which freedom provides criteria for justice. And more than one society of this kind can be hypothetically designed. Freedom without justice is a chimera but justice related to freedom is not.

I raised two questions at the outset: is a "just society" a rational image or rather a chimera? And further: can one rationally imagine a society to be "beyond justice"? I have already answered the second questions, and I have answered it in the negative. I will now address myself to the first.

If the norms-and-rules of a society are taken for granted and if they are coherently applied, we are entitled to talk about an overall "just society". In principle, any society can be just if these criteria are met, even the society of Huxley's *The Brave New World*. Thus, if people take it for granted that different rules apply to alfa, beta, gamma, delta children, and if all alfa children are treated alike (i.e. the same rules are equally applied to all of them), and the same is true of all gamma children, etc. then society is just. I would even go further and state that if the rules-and-norms are taken for granted, but are not always coherently applied, society is still just, and it is only those people who fail to apply the norms-and-rules coherently are unjust. The gist of the matter is that in the first case, which is not completely imaginary, for certain "primitive societies" are like that, the notion of justice is not applied to society by the members of that society. In other words, a just society is one to which the notion of justice cannot be applied by the members of society for the simple reason that they cannot even *imagine* that things can be

different from what they are. In a just society no norms and rules are queried and tested, nor can they be. Marx was wrong in asserting that capitalism is a just society because in it the rules to be observed are far from taken for granted; Marx's own work would surely bear this out. But he was right as far as the underlying idea of his statement is concerned. The statement "Society X. is just" is not to be taken as complimentary: a just society is a pre-enlightened or a de-enlightened society. A just society is possible but not desirable.

Still, the wish for a "just society" is an ineradicable component of the modern human mind. Should one express the wish for a "just society", one would not mean a society to which the notion of justice no longer applies. Neither would one have in mind a society where norms- and-rules were taken for granted or a society which at any moment could not be conceived as "unjust" by the members of the same society.

Up to a certain point, I subscribe to the position taken by Rawls. Reformulated in my own theoretical language it maintains that the idea of a just society is not the idea of a *de facto* just society. It is the idea of a society in which freedom, as the supreme value, constitutes the principles of justice and where the norms-and-rules of a just procedure are consensually accepted by the society in question. But Rawls does not go far enough although it is possible to rid his formulation of a residual fundamentalism. As is well-known, he suggested that there is one optimal set of rules that everyone would accept as just in a so-called "original position". The "original position" is, however, a chimera, since it suggests that all human beings can arrive at exactly the same rules of justice "under the veil of ignorance". Rawls arrives at this "original position" by taking for granted the need structure and the aspirations of present-day Western man. In comparison to Rawls, the position of a Marxian radicalism still carries a relevant message: contemporary men cannot be substituted for men, contemporary needs for human needs, contemporary aspirations for human aspirations. Furthermore, as I have already argued, need structures, values, even abilities vary according to ways of life. How do we know, and what entitles us to assert, that free people of different communities with different ways of life, would choose for themselves exactly the same or similar norms and rules for justice? One ought to assume rather the contrary. Making recommendations about "the" just rules must then mean the curtailment of the freedom of future actors who may choose otherwise. In a free future,

there should be as many just norms and rules as ways of life.

In the last instance therefore Marx was right: one can dream about a free society, but not about a just society. However, he was wrong to believe that a free society is beyond justice. Free is a society in which every human being may live in any community, where there is agreement on the principle of justice, on the procedure of justice and on the norms and rules of justice. But these norms-and-rules cannot be taken for granted. They can be queried and tested. They are also open to reconsideration and further discussion where they are felt to be unjust. They can be opened for re-discussion under the guidance of the principle of justice and in a just procedure. Discourse itself would constitute this just procedure. This kind of justice is democratic justice proper. And there is no higher procedure for justice than the radically democratic one. A society more free than this cannot be imagined as a society, only as a perverted dream of a *Schlaraffenland* which is a dream about human bondage and tutelage.

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NOTES

¹Perelman, Chaim: *The Idea of Justice and the Problem of Argument*, London, Routledge and Kegan Paul, 1963:

²K. Marx: *Critique of the Gotha Programme*, Ed. by C.P. Dutt, New York, International Publishers, p. 6, 1938. Emphasis mine. This translation has been modified by the present author. The original translator incorrectly rendered the German adjective "gerecht" as "equitable", an adjective related to the noun "equity", not justice.

³*Critique of the Gothe Programme*, op. cit. p. 7.

⁴Allen E. Buchanan, in his book *Marx and Justice. The Radical Critique of Liberalism* (Rowman and Littlefield, New Jersey, 1982) makes a very strong case for the assertion that in Marx "The idea seems to be that democratic decisions about production will consist mainly of collective scientific judgments concerning the most efficient means for satisfying needs, not political or juridical judgements. And there is no suggestion... of... even the opportunity to participate

in the process of decision-making itself, in terms of rights". p. 60.

⁵ Cornelius Castoriadis: 'Valeur, égalité, justice, politique: De Marx à Aristote et d'Aristote à nous. 'In: *Les carrefours du labyrinthe*, Edition du Seuil, Paris, 1979.

⁶ K. Marx: *Critique of the Gotha Programme*. op. cit., p. 10.