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## Contents

Revolutionaries Seldom Harvest the Fruit: The 17 <sup>th</sup> Bouazizi 2010 Sabah Alnasseri.....	5
Eliminate Capitalism and Distrust Socialism: What Remains of Marxism?.... Alberto Martínez Delgado.....	33
Eliminate Marxism and Distrust Socialism: a Reply to Martínez Delgado..... Joe Femia.....	53
The Spectral Proletariat: The Politics of Hauntology in <i>The Communist Manifesto</i> Tim Fisk.....	59
<i>A Vygotskian Foundation for a Republican Approach to Deliberative Democracy</i> Martyn Griffin.....	81
Beyond Dominion, Beyond Possibility of Justice Leonard Mazzone.....	103
Communism without self-emancipation: a critique of Slavoj Žižek's concept of 'divine violence' Alan Johnson.....	151
Towards a Critical Future of Technology? 'Futurism from below', <i>Wall-E</i> , and the emergence of hyper-consumerism as subjectivity Mark Edwards.....	173
Reviews.....	199
<i>Kevin B. Anderson</i> <i>Marx at the Margins: On Nationalism, Ethnicity, and Non-Western Societies</i> Reviewed by Matthew Johnson.....	199
<i>Sean Sayers</i> Reviewed by Mark Cowling.....	209
<i>Marcello Musto (ed.)</i> <i>Marx for Today</i> Reviewed by Jordy Cummings.....	213
<i>Mahamdallie, H (ed.)</i> <i>Defending Multiculturalism: A Guide for the Movement</i> Reviewed by Paul Wetherly.....	216
<i>V. I. Lenin</i>	

<i>Revolution, Democracy, Socialism: Selected Writings. Edited by Paul Le Blanc</i>	
<i>Reviewed by Renzo Llorente.....</i>	<i>221</i>
<i>Kieran Allen</i>	
<i>Marx and the Alternative to Capitalism</i>	
<i>The Legacy of Marxism: Contemporary Challenges, Conflicts and Developments</i>	
<i>Garry Browning.....</i>	<i>229</i>
<i>Global Theory from Kant to Hardt and Negri</i>	
<i>Andy Merrifield.....</i>	<i>232</i>
<i>Magical Marxism, Subversive Politics and the Imagination</i>	
<i>Sebastian Dullien, Hansjörg Herr and Christian Kellerman.....</i>	<i>235</i>
<i>Decent Capitalism: A Blueprint for Reforming our Economies</i>	

## **Beyond Dominion, Beyond Possibility of Justice**

By

**Leonard Mazzone**

In the foreword of his course concerning the theory of the forms of government in the history of political thought, Norberto Bobbio noticed that – differently from the history of political doctrines and political science – the study and the analysis of the so-called recurrent ideas identify the disciplinary status of political philosophy.<sup>1</sup> Among these recurrent ideas, justice deserves particular attention: besides having assumed a primary role within the whole of the ideas discussed in the course of the history of political thought, this idea represents the main concern that political philosophy – intended as the doctrine of the “best republic” – is requested to solve.<sup>2</sup> Justice is one of the central topics of political philosophy because it calls to mind its normative status, through which social institutions and, more generally, social relations can be made a subject of critique.

Not coincidentally, the most influential works in political philosophy can be conceived as attempts to propose solutions to achieve a good society through an ideal model of State, grounded on some ultimate ethical postulates, regardless of its actual fulfilment. Among these works, political philosophy cannot but compete with *A Theory of Justice*.<sup>3</sup> Besides contributing to the rebirth of the international interest in political philosophy as such, Rawls' great work has influenced not only the debate within this discipline, but also the rest of social sciences. Without any exaggeration, one of the strictest critics of *A Theory of Justice* argued that, after its publication, all political philosophers should either work within the Rawlsian conception of “justice as fairness” or they have to explain why they choose not to do so.<sup>4</sup>

Although “the characterization of perfectly just institutions has become the central exercise in the modern theories of justice”,<sup>5</sup> in the first part of this article I will provide some reasons not to keep working within its most important example, the Rawlsian conception of “justice as fairness”. After all, together with the ideal theory of justice advanced by the majority of political philosophers, there is another way to mean this concept. In this regard, Marxian criticism of justice can be very useful to directly face the sense of injustice – as suggested by Judith Shklar<sup>6</sup> – rather than continuing

not to keep it into account simply because it is not justified by already institutionalised norms.

### *Overlapping Consent: About Justice or Injustices?*

The Rawlsian conception of “justice as fairness” is one of the most systematic philosophical attempts to determine the conditions under which it is possible to obtain a fair social cooperation, in a way that gains the consent of the members of a community, regardless of their social classes or status. *A Theory of Justice* presents two principles of justice<sup>7</sup> obtained through a contractual procedure which is disinterested in natural and social factors without any moral relevance and, therefore, morally arbitrary. In this respect, the proposal advanced in *A Theory of Justice* consists in providing a *concept* of justice, different from any other *conception*<sup>8</sup> of the same topic, as required by a complex society shot through by identity and conflicts of interests among its members because of their reciprocal advantage derived from social cooperation.

Despite of the complex and rigorous structure<sup>9</sup> of Rawls' work, some critics have underlined some ambiguities linked with the lexical priority of the first principle<sup>2380</sup> and the set of basic goods.<sup>2391</sup> Apart from these objections,<sup>12</sup> one of the most significant problems met by the Rawlsian conception of justice as fairness concerned the neutrality of the original position:<sup>13</sup> according to Rawls' critics, the individualism of the Rawlsian conception of “justice as fairness” would fail to recognise the attachments people have to their social, cultural or ethnic groups and would therefore *disrespect* them. In this regard, the individualistic perspective adopted by Rawls in his description of the original position would not ensure *fairly* the initial *fairness* of the contracting people.

In *Political Liberalism*, Rawls admitted the comprehensive nature of his previous Kantian constructivism and elaborated a political – not moral – conception of liberalism,<sup>14</sup> in order to achieve an overlapping consensus among irreducible but reasonable comprehensive doctrines within a certain society.<sup>15</sup> Indeed, the “fact of pluralism” requires a distinction between the reasonableness of an overlapping consensus and the rationality of a mere *modus vivendi*, so that modern democratic and constitutional states can be justified as “well-ordered societies”.<sup>16</sup> Not justifiable by any substantive conception of the “good” – which could not be shared by all the citizens –, the content of the overlapping consensus has to be neutral and impartial between such conceptions of the “good”,<sup>17</sup> in order to attract their common agreement, even if for different reasons: the political conception of the person implies people's double capacity of being rational and reasonable at

### Beyond Dominion, Beyond Possibility of Justice

the same time. In this way, political liberalism ensures that every reasonable doctrine proposes and accepts principles needed for social equal cooperation, without giving up its rationality, that is, its conception of the “good”: again, citizens should regard themselves as free – not only capable of holding conceptions of the “good”, but also as self-authenticating sources of valid norms – and equal, according to the capacity of citizens to reciprocally recognise their moral powers of rationality and reasonableness.

Nevertheless, this restatement of “justice as fairness” as a political conception presupposes firstly the same principles of justice listed by Rawls in a *Theory of Justice*, and, therefore, the same problems linked with its moral constructivism: indeed, in order to define some conceptions of the good as reasonable – other than rational – it is necessary to determine the political principles which these conceptions should share.<sup>18</sup> Despite its complex structure, the Rawlsian conception of “justice as fairness” seems not to be able to demonstrate what it initially promised to do: the neutralist account of justice provided by Rawls does not justify the convergence of different conceptions of justice on the two principles of justice. Indeed, in *Justice as Fairness. A Restatement* Rawls admitted that the original position does not ensure a unique emergence of a given set of principles of justice that together identify the institutions needed for the basic structure of society:<sup>19</sup> Rawls does not provide convincing arguments which would eliminate all other alternatives which might compete each other in the original position. The comparison between the two principles of justice in *A Theory of Justice* could not be valued as complete, since that some variants of utilitarianism could be chosen in the original position as well as the two principles of justice.<sup>20</sup> The impossibility to gain a unique set of principles of justice through the original position does not seem only to hit at the roots of the moral constructivism of *A Theory of Justice*, but also *Political Liberalism's* ones.<sup>21</sup>

I believe that the institutionalist approach of the Rawlsian conception of justice as fairness undermines his political liberalism too: I also believe that that these problems concerning the theoretical development of the conception of justice as fairness are due to the idealistic approach adopted by Rawls.<sup>22</sup> Indeed, he divided his theory of “justice as fairness” in two parts: the first, called “ideal theory”, had to provide the principles of justice in light of which it could be possible to face the other, the “not ideal” part, of the same theory. Not differently from the traditional reflection of political philosophy on the idea of justice,<sup>23</sup> also its Rawlsian account reduced the injustice to a mere contradiction of the social behaviour requested by the ideal principles of the correspondent theory: this way of conceiving injustice

### Leonard Mazzone

as a simple opposite-notion of some “normal” or ideal conception of justice did not allow philosophy to take seriously the victims – often silent – of material and symbolic violence.<sup>24</sup>

As Amartya Sen recently argues in his last book, *The Idea of Justice*, justice attracts our interest when it is conceived as the practical negation of injustice, rather than as the description of the best society: “we can have a strong sense of injustice on many different grounds, and yet not agree on one particular ground as being the dominant reason for the diagnosis of injustice”.<sup>25</sup> In this sense, injustice is not reducible to a mere contradiction of the institutionalised norms: social claims for ending it have to be read as demands for *more just* – not for perfect – societies. According to Sen, it is possible to make an example in this regard, with reference to the history of the abolitions of slavery: “it was the diagnosis of an intolerable injustice in slavery that made abolition an overwhelming priority, and this did not require the search for a consensus on what a perfectly just society would look like”.<sup>26</sup> Just as the positive concept of justice defended by Rawls and by a great part of the philosophical tradition, this negative approach to the same topic also tries to obtain an overlapping consent: nevertheless, the subject of this overlapping consent does not concern any positive principle of justice – be it derived from procedural or substantial conceptions of the item at issue – but it is related with those social conditions within which human sufferance is justified and, therefore, maintained alive by institutionalised norms which do not keep their promises of justice.

After all, Bobbio himself noticed another way to face the problem of justice, called ‘overturned utopia’: it describes the worst republic which every society is requested to avoid, in order to achieve the justice of its structure. I would like to argue that Marx's critique of capitalism suggests we localise the worst conditions to be avoided not in an hypothetical world,<sup>27</sup> but in the present one, characterised by the constant exploitation of workers and its correlated private property of means of production. The reference to Marx is not accidental, since he can be included at full title among those thinkers who tried to focus on unbearable and unjustifiable conditions, rather than on some sort of model of perfect society, in order to really end them. Anyway, it is necessary to admit that Marxian criticism of capitalism is not separable from his aversion towards the concept of justice: what I call “negative conception of justice” shares with Marx the priority to avoid the conditions which are responsible for avoidable human sufferance; nevertheless, the use of the word “justice” itself shows a relevant difference with Marxian remarks to socialist habit to appeal to this concept as an ideal



### Beyond Dominion, Beyond Possibility of Justice

to be achieved, rather than as an ideological tool, useful to mask and to justify capitalism.

In the next passages of my article, I will argue that Marx's account of capitalism's contradictions could become very fruitful for the construction of a negative theory of justice: indeed, my feeling is that in order to criticise social phenomena or conditions as unjust we are not bound to construct and to share the same principles of justice. Rather, we have to question the promises of justice implied by institutionalised norms: this internal criticism would allow us not to wait for a general and universal agreement about any principle of justice to face actual injustices.

After all, the topicality of ideal models of justice along the history of philosophy is probably explicable in this terms: taking no interest in the more or less feasibility of their principles of justice, these theories authorise themselves to ignore social conditions in light of which contemporary demands of justice continue to claim meaning. As Norman Geras writes in *Literature of Revolution*,

The contemporary discussion of precisely justice provides ample illustrative material, in the several conceptions of just social arrangements proffered in conjunction with more or less nothing, sometimes actually nothing, on how these might conceivably be achieved. The [...] paradox here is that Marx, despite everything, displayed a greater commitment to the creation of a just society than many more overtly interested in analysis of what justice is.<sup>28</sup>

#### *Justice as Ideology: Marxian Remarks to Socialism*

The combination between Marx's works and the notion of justice can seem – at least at a first look – totally misleading. The probable surprise generated by the combination at issue is due to Marx's deep criticism of the very possibility to speak about this concept without ideological compromises. After all, the distance between Marxists and normative suggestions coming from contemporary political philosophy is found in the criticism of the concept of justice built by Marx himself. In order to face this critical point, in this part of the article I will focus on the unique text within which the words “justice” and “law” frequently appear, even though only in critical terms. I will further argue that, even without constructing any principle of justice, Marx's criticism of capitalism can be intended as a denouncement of its injustice: this opinion can be grounded only in a negative theory of justice, which is disposed to conceive injustices independently from any positive principle of justice. Indeed, instead of starting from some abstract principles of justice – derived from procedural or substantial variants of the

### Leonard Mazzone

ideal conception of justice – Marx focused on the conditions of exploitation and, because of their ideological grounds, on their overcoming.

The *Critique of Gotha Programme*<sup>29</sup> was written by Marx in 1875, shortly before the Gotha Unity Congress. None of the Marxian criticisms addressed to the terminology of the draft at issue has a mere nominal value: instead of setting down general phrases about “labour” and “society”, Marx's aim consisted in proving concretely how in capitalist society the material conditions have been created and how they enable and compel the workers to lift their social curse.

According to Marx, the programme is shot through by democratic demands (universal suffrage, direct legislation, popular rights, etc.) whose contradictory character is due to the fact that they have already been carried out, even if not yet in the German Empire. The demand of the German Workers' Party for a single progressive income tax as the economic basis of the state presupposes “the economic basis of the government machinery and nothing else”,<sup>30</sup> besides “various sources of income of the various social classes, and hence capitalist society”.<sup>31</sup> Instead of conceiving the abolition of class distinctions as the end of all possible social and political inequality arising from them, the draft claimed the simple abolition of all social and political inequalities. Besides, the request for the establishment of producers' cooperative societies with state aid under the democratic control of the toiling people represented another meaningless expression in Marx's opinion:

That the workers desire to establish the conditions for cooperative production on a social scale, and first of all on a national scale, in their own country, only means that they are working to revolutionise the present conditions of production, and it has nothing in common with the foundation of cooperative societies with state aid. But as far as the present cooperative societies are concerned, they are of value only in so far as they are the independent creations of the workers and not protégés either of the governments or of the bourgeois.<sup>32</sup>

If freedom consists in converting the State from an organ superimposed upon society into one completely subordinate to it and if forms of the state are more or less free to the extent that they restrict the “freedom” of the state, it makes no sense to strive for the free state and, at the same time, for the free society: this aim does nothing less than invert the relation between social structure and its superstructure.

In this regard, recognizing that labour is the source of all wealth and all culture is not enough: there is a substantial difference between human labour power, which is a force of nature, and the instruments and subjects which

### Beyond Dominion, Beyond Possibility of Justice

make possible labour itself. By taking no interest in the material conditions through which labour is the source of all wealth and all culture, Marx says, a socialist programme would pass over in silence also the *conditions* that alone give meaning to the words which introduce the first article of the Gotha Programme. Labour becomes the source of use values just because from the beginning man has always behaved like an owner towards nature and all instruments and subjects of labour provided by it: treating nature as belonging to him, his labour becomes the source of use values and, therefore, also of wealth. By omitting this substantial point, there is the risk of ascribing supernatural creative power to labour and, then, to disregard that precisely from the fact that the man who possesses no other property than his labour power must, in all conditions of society and culture, be the slave of other men who have made themselves the owners of their material conditions of labour. He can work with only their permission, hence live only with their permission.<sup>33</sup>

Linked to the first article of the Gotha Programme, the third one conceives the emancipation of labour as the result of the promotion of the instruments of labour to the common property of society and it asks for the cooperative regulation of total labour with a fair distribution of the proceeds of labour. Such a correction of the Rules of the International was a clear example of the Lassallean influence on the Gotha draft:

Do not the bourgeois assert that the present-day distribution is “fair”? And is it not, in fact, the only “fair” distribution on the basis of the present-day mode of production? Are economic relations regulated by legal conceptions or do not, on the contrary, legal relations arise from economic ones? Have not also the socialist sectarians the most varied notions about “fair” distributions?<sup>34</sup>

Marx cannot accept the distortion of what he calls “the realistic outlook” by means of ideological non-sense about right: any distribution of the means of consumption is only a consequence of the distribution of the conditions of production themselves, which is – in turn – a feature of the mode of production itself. In the capitalist mode of production the material conditions of production are in the hands of non-workers in the form of property in capital and land,<sup>35</sup> whereas the masses are only owners of labour power. Since the elements of production are so distributed, the present-day distribution of the means of consumption follows automatically: if the material conditions of production are the co-operative property of the workers themselves, then there likewise results a distribution of the means of consumption different from the present one.

### Leonard Mazzone

Vulgar socialism (and from it in turn a section of the democracy) has taken over from the bourgeois economists the consideration and treatment of distribution as independent of mode of production and hence the presentation of socialism as turning principally on distribution. After the real relation has long been clear, why retrogress again?<sup>36</sup>

According to the development's stage of the communist society, the producer receives back from society – after the deductions have been made – exactly what it gives to it in another form: in a such society, a given amount of labour in one form is exchanged for an equal amount of labour in another form, so that '[...] equal right here is still in principle – bourgeois right, although principle and practise are no longer at loggerheads, while the exchange of equivalents in commodity exchange only exists on the average and not in the individual case'.<sup>37</sup> In other words, the equality consists in the fact that measurement is made with an equal standard provided by individual labour: in brief,

this equal right is an unequal right for unequal labour. It recognises no class differences, because everyone is only a worker like everyone else; but it tacitly recognises unequal individual endowment and thus productive capacity as natural privileges. It is therefore, a right of inequality, in its content, like every right.<sup>38</sup>

The concept of right itself implies the application of an equal standard which cannot recognise individual peculiarities:

unequal individuals (and they would not be different individuals if they were not unequal) are measurable only by an equal standard in so far as they are brought under an equal point of view, are taken from one definite side only, for instance, in the present case, are regarded only as workers and nothing more is seen in them, everything else being ignored. Further, one worker is married, another not; one has more children than another, and so on. To avoid all these defects, right instead of being equal would have to be unequal.<sup>39</sup>

After all, Marx admits that similar defeats are inevitable in the first phase of communist society as it has just emerged after prolonged birth pangs from capitalist society, since that right and cultural development depend on the economic structure of society. Only after the end of the enslaving subordination of the individual to the division of labour – and, then, the conflict between mental<sup>40</sup> and physical labour can 'society inscribe on its banners: from each according to his ability, to each according to his needs'.<sup>41</sup>

## **Beyond Dominion, Beyond Possibility of Justice**

### *Beyond Dominion: Beyond or Before Justice?*

A negative account of justice has to start from what I call “asymmetrical relations of power”: by this expression I mean to refer to those social conditions which legitimate unequal redistributions of symbolic and material resources in light of values or principles, which – although they are the prerogative of social groups which already benefit of them –, claim to equally guarantee every social member's rights of a certain community. In this regard, Marx's critique of capitalism provides a typical example of what these kinds of social relations are.

According to Marx, in a capitalist society workers are constrained to produce more than they would do to support themselves and their families through their surplus labour, which is nothing but unpaid labour: the consequence of this super-labour is that one class of persons is able to appropriate the social surplus of others, simply in virtue of their position in the social system. Classes are the chief category of Marx's analysis because the mode of production moulds the whole social system in which they play an economic role and occupy a well-defined position. The proletariat does not only represent the subject of exploitative working conditions involved in capitalism: it is the historical actor of its substitution with communist society, anticipated by a period of revolutionary transformation within which the State will be nothing but the revolutionary dictatorship of the proletariat.

Like any previous social system, capitalism produces the social forces of its own overcoming by itself; nevertheless, capitalism differs from any previous historical period because it is also the last one characterised by class' antagonism between dominant and dominated people. In Agnes Heller's words, “the most alienated stage of history is also the last”.<sup>42</sup> In fact, if Marx had prospected communism in a different way, he would have been constrained to admit that not all valid norms in a capitalist society are an ideological tool in the hands of the dominant class. In this sense, the emancipation of the proletariat would coincide with the emancipation of humankind: in a Rawlsian vocabulary, communist revolution would actualise a human community within which there would not be any need to refer again to the difference principle.<sup>43</sup>

According to some authors, Marxian criticism of capitalism would be grounded on certain normative (and non-confessed) values. According to this perspective, Marx's account of justice would connect his condemnation of capitalism with values different from justice itself: according to Wood,

Marx bases his critique of capitalism on the claim that it frustrates many important non-moral goods: self-actualization, security, physical health, comfort, community, freedom. Of course the distinction between moral and

### Leonard Mazzone

non-moral goods is never explicitly drawn by Marx, but it is a familiar one (both in philosophy and in everyday life) and it is not implausible to think that Marx might be tacitly aware of it and even make significant use of it without consciously attending to it.<sup>44</sup>

On the other hand, other writers hold that Marx thinks that capitalism is unjust, even if only implicitly and according to a non-capitalistic conception of justice:<sup>45</sup> according to this interpretation, the contribution principle

serves as a criterion of justice that condemns capitalist exploitation as unjust. Looked at from the vantage point of fully developed communism, it is itself condemned as inadequate by the higher standard expressed in the needs principle. An able-bodied capitalist who receives an income without working represents an unjustified violation of the contribution principle – a violation, that is, which is not justified by the needs principle. By contrast, an invalid who receives welfare aid without contributing anything in return represents a violation of the contribution principle that is justified by the needs principle. Hence Marx had a hierarchical theory of justice, by which the contribution principle provides a second-best criterion when the needs principle is not yet historically ripe for application. Capitalist exploitation is doubly unjust, since it obeys neither principle. The “equal right” of the first stage of communism, is also unjust, but less so, since only the needs principle is violated.<sup>46</sup>

Both previous interpretations of Marx's account of justice push themselves beyond Marx's words and, more noteworthy, his critical approach towards any prescription related to non-moral goods or non-capitalistic conceptions of justice: it is my belief that it is possible to explain either Marx's criticism of capitalism and his refusal of any concept of justice without referring these two positions to what he did not make explicit in his work. Marx's distance from any notion of justice and his condemnation of capitalism can be properly understood only if they are put in connection with each other. According to this perspective, exactly because capitalism justifies its own mode of production by referring to values like freedom and equality<sup>47</sup> – the freedom ascribed to contracts of labour by the modern law is only an example<sup>48</sup> – it can be made a subject of criticism: indeed, none of the values proclaimed by capitalism to defend itself is not self-contradictory.<sup>49</sup>

In this regard, the Marxian interpretation of ideology<sup>50</sup> gives back to critical theory of today's societies the possibility to criticise its arrangements in light of contradictions met by its principles of justice and rights themselves: since no asymmetrical relation of power can do without some norm which justifies it,<sup>51</sup> by comparing the existing asymmetrical relationship of power with their immanent criteria, a negative theory of justice can start from the self-contradictions between social norms and the

### Beyond Dominion, Beyond Possibility of Justice

social reality to which they apply. In this way, a negative theory of justice draws its attention on the – not only unsatisfied, but – *unsatisfiable* promises of justice embodied in those social norms which legitimise asymmetrical relations of power, even without guaranteeing the material conditions of what they state in favour of ruled people.<sup>52</sup> Since these principles and rights do not ensure the just conditions they demand to protect or gain (otherwise asymmetrical relations of power would persist no longer), the source of social criticism can be found in an internal point of view, without referring to any sort of universal principle of justice, which every citizen is requested to accept in order to live in a “well-ordered society”.

one of Marx's internal criticisms of capitalism is that, in the wage-relation, it violates its own principle that exchanges are to be free exchanges between equals. But we have not yet captured the radical character of Marx's criticism until we add the charge that this principle of free and equal exchange between the buyer and the seller of labour power is not only unsatisfied, but unsatisfiable.<sup>53</sup>

After all, if this relation were not unsatisfiable, it could be possible to talk about justice (in a positive sense) in a capitalist society. The Marxian distinction between economic structure and (ideological) superstructure inverts the dependence relationship between capitalism and justice: it is not possible to conceive justice as a remedy to capitalism, since capitalism requires the notion of justice in order to justify its mode of production. Internal criticism of capitalism plays just a secondary role: it serves to destruct the arguments by which bourgeois ideology attempts to ground capitalism as a just social order:

Further, Marx assigns no positive, constructive role to conceptions of justice or rights in his account of how the proletariat becomes motivated to effect the revolutionary transformation of society. His attacks on the confused exhortations of the moralizing socialists have only the destructive aim of clearing the way for an appeal to proletarian self-interest.<sup>54</sup>

Not coincidentally, despite in the *Critique of the Gotha Programme* Marx attacks any notion of equal right because equality always treats people one-sidedly – and people are unequal –,<sup>55</sup> no passage of Marx's text seems to ground capitalism's criticism in light of the communist principle according to which it is requested “From each according to his ability, to each according to his needs”. Indeed, this kind of principle seems to describe the working way of a communist society, rather than an ideal criterion in light of which it is possible to criticise capitalistic societies.

### Leonard Mazzone

In this sense, communist society can be conceived as a human community which is *beyond justice* itself: since that justice is an ideological concept, useful to legitimise the presence and the subsistence of material conditions of exploitation in the bourgeois society, it would become absolutely meaningless in a communist society, whose advent would sanction the overcoming of every exploitation as such.<sup>56</sup> In this sense, the dissolution of the possibility itself to being exploited eliminates the possibility of justice itself:

A society “beyond justice” is one where no concept of justice applies. [...] Only where there is justice is there injustice. If there were no injustice, there would be no justice either. If we opt for a society where there is no injustice at all, and where there cannot be, we opt for a society without justice, for the notion “justice” would no longer make sense. Thus we would opt for a society beyond justice.<sup>57</sup>

Therefore, a communist society would lack circumstances of justice which do not cease to render topical this term within the capitalist mode of production.<sup>58</sup> Once showed the analogies between his idea of property-owning democracy and some legitimate objections of the socialist tradition towards liberalism, in the *Lectures on the History of Political Philosophy*<sup>59</sup> Rawls himself cannot but admit the substantial difference between his idea of justice as fairness and Marx's idea of a full communist society:

this society seems to be one beyond justice in the sense that the circumstances that give rise to the problem of distributive justice are surpassed, and citizens need not, and are not, concerned with it in everyday life. Whereas justice as fairness assumes that, given the general facts of the political sociology of democratic regimes (e.g. the fact of reasonable pluralism), the principles and political virtues falling under justice of various kind will always play a role in public political life. The evanescence of justice, even of distributive justice, is not possible, nor, it seems, is it desirable.<sup>60</sup>

According to Rawls and in my opinion, Marx's purpose of a society beyond justice has to be refused because it is impossible to bring back every expression of physical and symbolic violence to modes of production: a negative conception of justice cannot avail itself – above all in the contemporary, complex, world – of the identification of only one source of every possible injustice, as capitalism was in Marx's standpoint. This crucial point requires the avoidance or the prevention of humiliating phenomena or conditions without disposing of an omni-lateral explanation of the sources of injustice: not being able to ensure that any human community can be forever



### Beyond Dominion, Beyond Possibility of Justice

immunised from any new self-contradictory and unsatisfiable asymmetrical relation of power within its borders, the society wished by a negative conception of justice cannot be conceived beyond, but rather before the realization of justice itself.

At the same time, this negative conception of justice shares with Marx the proposal to overcome any phenomenon of dominion: instead of pursuing an ideal theory of “perfect justice”, my proposal consists in focusing the attention on present conditions of humiliation and exploitation, since that their overcoming describes a constitutive part of the meaning ascribed by a negative conception of justice to this notion. On one hand, the attempt to fully recognise the sense of injustice experienced by people in contemporary societies cannot but share the Rawlsian insight about the undesirability of a society beyond justice. Nevertheless, differently from the Rawlsian conception of “justice as fairness”, asymmetrical relations of power deserve prior attention to any principle of justice in light of which social life would be made subject of criticism: following this critical perspective, injustice does not mean the contrary of the concept of justice embodied in institutionalised norms; rather, justice means the practical overcoming of those asymmetrical relations of power which *cannot* maintain their promises of more just social relations.

According to this negative approach to the concept of justice, Marx's analysis of capitalism can be conceived as *beyond injustices*: this is possible only by accepting that the meaning of injustice does not depend from the legal definition of justice, but from unjustifiable asymmetrical relations of power since they *cannot* be satisfied. Capitalist exploitation indicates an injustice which deserves to be overcome in light of its contradictory justification, even though it is not possible to associate the word “injustice” to exploitative phenomena in light of the capitalist notion of justice itself. According to this interpretation, the judgement of capitalism as unjust because of its exploitative mode of production does not require any positive principle of justice, since that it is criticise-able in light of ideological justifications provided by it in order to legitimise the subsistence of exploitation itself. As pointed out by Allen Buchanan,

to criticise the slave-holder by attacking his false beliefs about the natural differences between slaves and free men is to employ what I have called an internal critique. For such a critique does not depend upon any juridical conceptions other than those already dominant in slave-holding society. The abolitionist need not appeal to a new concept of justice. He or she need only point out that the old concept of justice is being grossly misapplied as a result of socially reinforced false empirical beliefs about the range of individuals to which

**Leonard Mazzone**

the concept of a human being, or a full-fledged juridical person, applies. This internal criticism is only one obvious application of one of Marx's most distinctive and fruitful contributions to social theory: the insight that distorted beliefs about what belongs to the nature of various individuals play an important role in the ideological justification of repressive social institutions.<sup>61</sup>

According to Buchanan's interpretation, those authors who have concluded that Marx did not primarily criticise capitalism for its distributive injustices were correct in their conclusion, but for the wrong reasons: Marx did not think that capitalism was just according to its own standard of justice, even if he thought that it was the only standard of justice appropriate to it.

*Notes*

Vygotsky extended upon this and Engels' idea of the tool to explain how individuals collectively change the world around them and, in doing so, change and develop themselves over time.

223 Vygotsky, *Thought and Language*, p. 205

224 Vygotsky, *Mind in Society*, p. 86.

225 Vygotsky, *Thought and Language*, pp. 19-20.

226 Arendt, *The Human Condition*, pp. 198-199.

227 Jurgen Habermas, *The Theory of Communicative Action: Volume 2* (Boston: Beacon Press, 1987), pp. 355; Rawls, *Political Liberalism*, p. 14.

228 J. Donald Moon, *Constructing Community: Moral Pluralism and Tragic Conflicts* (Princeton, New Jersey: Princeton University Press, 1993); Joan Landes, *Feminism, the Public and Private* (Oxford: Oxford University Press, 1998).

229 Maynor, *Republicanism in the Modern World*.

230 David Miller, 'Citizenship and Pluralism', *Political Studies*, Vol.43, 1995, pp. 432-450; Brian Ackerman, *We the People* (Cambridge Massachusetts: Belknap Press, 1991).

231 Maria Victoria Costa, 'Neo-republicanism, Freedom as Non-domination, and Citizen Virtue', p. 17.

232 Andrew Peterson, 'Civic Republicanism and Contestatory Deliberation: Framing Pupil Discourse within Citizenship Education', *British Journal of Educational Studies*, Vol.57, 2009, pp. 55-69, here: p. 58.

233 Thaler and Sunstein, *Nudge*.

234 Ibid, p. 5.

235 Ibid.

236 Ibid.

237 I would like to thank Derek Bell and Peter Jones for discussing issues within this paper on numerous occasions and for making very helpful comments on previous (and quite different) drafts. I am also grateful to Ian O' Flynn, Graham Long, Albert Weale, Paul Reynolds, Mark Edward Matthew Johnson and Norman Geras for their insightful comments.

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<sup>1</sup> N. Bobbio, *La teoria delle forme di governo nella storia del pensiero politico* (Torino: Giappichelli, 1976), p. I. Every (potential) positive point of this article is debtor to the people who encouraged me to develop and clarify my own ideas: I want to thank Professor Mark Cowling, for his confidence and his extraordinary ability to stimulate young researchers like me. I cannot forget the help and the precious suggestions given me by the participants of the Marxism section of the Seventh Annual Workshop in Political Theory Conference, within which the article has been presented in a first form: in particular, my thought and my acknowledgements go to Alan Johnson and Michael Neu. Obviously, any unclear aspect of this article is exclusively due to my own responsibility.

<sup>2</sup> N. Bobbio 'Dei possibili rapporti tra filosofia politica e scienza politica' in M. Bovero, *Teoria generale della politica* (Torino: Einaudi, 1999), p. 5.

<sup>3</sup> John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971).

<sup>4</sup> Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1973), p. 183. Cfr. also Brian Barry, *The Liberal Theory of Justice* (Oxford: Oxford University Press, 1973) although the author criticises Rawls' conception of justice as fairness, he agrees with Nozick about the paradigmatic value assumed by *A Theory of Justice* inside the scientific community.

<sup>5</sup> Amartya K. Sen, *The Idea of Justice* (London: Penguin, 2010), p. 8.

<sup>6</sup> J. N. Shklar, *The Faces of Injustice* (New Haven: Yale University Press, 1992).

7 According to the first principle, all people should enjoy a fully adequate scheme of rights and basic liberties, whereas the second one guarantees that all should enjoy fair equality of opportunities and, through the so called “principle of difference”, it prohibits any inequality which does not benefit the worse off members of society. The lexical priority of the first principle of justice categorically forbids the sacrifice of the listed liberties in order to achieve bigger social and economical advantages.

8 The distinction between the notions of “concept” and “conception” of justice dates back to H. L. A. Hart, *The Concept of Law* (Oxford: The Clarendon Press, 1961), pp. 155-159.

9 Together with the so-called “veil of ignorance”, circumstances of justice, formal constraints of the concept of right and rationality of contracting parties describe the contractual conditions of the original position: these same conditions limit the range of admissible *conceptions* which compete with each other to clarify the *concept* of justice which better adapt itself to the contracting conditions: through the ‘reflective equilibrium’ contracting parties can obtain the coherence between their beliefs. According to Rawls, the coexistence of these conditions would determine the choice of contracting people in favour of two principle of justice, at first intuitively explained in the second chapter of *A Theory of Justice* and, subsequently, compared with the alternative conceptions.

238 <sup>0</sup> See H. L. A. Hart, ‘Rawls on Liberty and its Priority’, *University of Chicago Law Review*, Vol.40, 1973, pp. 534-555.

239 <sup>1</sup> In the second part of the second principle of justice (difference principle), Rawls judges the opportunities that people have through the means they possess, without taking seriously the variations they have in being able to convert primary goods into good living. A. K. Sen has focused his attention on this criticism in various works, among which are worthy to be seen in his *Equality of What?*, in Mc Murrin S. (ed.), *Tanner Lectures on Human Values*, vol. I (Cambridge: Cambridge University of Utah Press, 1980), *Inequality Re-examined* (Oxford: Oxford University Press, 1992) and, finally, his last book, *The Idea of Justice*, cit., p. 66: ‘The conversion of primary goods into the capability to do various things that a person may value doing can vary enormously with differing inborn characteristics (for example, propensities to suffer from some inherited diseases), as well as disparate acquired features or the divergent effects of varying environmental surroundings (for example, living in a neighbourhood with endemic presence, or frequent outbreaks, of infectious diseases). There is, thus, a strong case for moving from focusing on primary goods to actual assessment of freedoms and capabilities’.

1 <sup>2</sup> In order to avoid these ambiguities, the second edition of *A Theory of Justice* put the attention on the importance of the two moral powers linked to the contracting parties, the capacity to have a sense of justice – which makes them *reasonable* – and to have a certain conception of the ‘good’, which makes them *rational* in choosing the best means to pursue their ends. Cfr. John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1999).

1 <sup>3</sup> Thomas Nagel, ‘Rawls on Justice’, *Philosophical Review*, Vol.83, 1973, pp. 226-229; Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982); Charles Taylor, *Sources of the Self: The Making of Modern Identity* (Cambridge: Harvard University Press, 1992).

1 <sup>4</sup> See John Rawls (1987), ‘Justice as Fairness: Political not Metaphysical’, *Philosophy and Public Affairs*, Vol.14, 1987, pp. 223-251 and ‘Kantian Constructivism in Moral Theory’, *The Journal of Philosophy*, Vol.88, 1980, pp. 515-572.

1 <sup>5</sup> See Ingrid Salvatore ‘Giustizia e liberalismo politico in John Rawls’, *Rivista di Filosofia*, Vol.XCIV, 2003, pp. 415-438, which focuses the attention on the original character of *Political Liberalism*.

- <sup>1</sup> <sup>6</sup> Rawls closely connects the category of ‘reasonable’ to Scanlon's principle of moral motivation: cfr. Thomas M. Scanlon ‘Contractualism and Utilitarianism’ in Amartya K. Sen and Bernard Williams, *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1982), pp. 103-128. The principle of moral motivation says that ‘we have a basic desire to be able to justify our actions to others on grounds they could not reasonably reject – reasonably, that is, given the desire to find principles that others similarly motivated could not reasonably reject’, in John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 49.
- <sup>1</sup> <sup>7</sup> About the neutrality of the ‘overlapping consensus’, see Corrado Del Bo, ‘La neutralità politica in John Rawls’, *Materiali per una storia della cultura giuridica*, Vol.XXXIX, 2009, pp. 241-254.
- <sup>1</sup> <sup>8</sup> Although the question of what principles of justice are desirable is of subordinate importance in *Political Liberalism*, this does not mean that Rawls has abandoned all interest in the question of the principles of justice required for a well-ordered society. On this point, see Chandran Kukathas and Philip Pettit ‘An Interpretation of the New Rawls’ in Chandran Kukathas and Philip Pettit, *A Theory of Justice and its Critics* (Cambridge: Polity Press, 1992), pp. 142-150.
- <sup>1</sup> <sup>9</sup> John Rawls, *Justice as Fairness: A Restatement* (Cambridge: Harvard University Press, 2001), pp. 132-134. Rawls writes: ‘there are indefinitely many considerations that may be appealed to in the original position and each alternative conception of justice is favoured by some consideration and disfavoured by others. [...] The balance of reasons itself rests on judgement, though judgement informed and guided by reasoning’, *ivi*, pp.133-134.
- <sup>2</sup> <sup>0</sup> See also John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999), pp. 137: ‘The content of public reason is given by a family of political conceptions of justice, and not by a single one. There are many liberalisms and related views, and therefore many forms of public reason specified by a family of reasonable political conceptions. Of these, justice as fairness, whatever its merits, is but one’.
- <sup>2</sup> <sup>1</sup> See Jürgen Habermas, ‘Reconciliation through the Public Use of the Reason: Remarks on John Rawls’ *Political Liberalism*’, *The Journal of Philosophy*, Vol.XCII, 1995, pp. 109-131.
- <sup>2</sup> <sup>2</sup> See S. Rodeschini, ‘La nozione di conflitto nella “Theory of Justice” di John Rawls. I sintomi di un universalismo acritico’, *Filosofia Politica*, Vol.XXI, 2007, pp. 229-255.
- <sup>2</sup> <sup>3</sup> S. Maffettone and S. Veca, *L'idea di giustizia da Platone a Rawls* (Roma-Bari: Laterza, 2004).
- <sup>2</sup> <sup>4</sup> See Shklar, *The Faces of Injustice*.
- <sup>2</sup> <sup>5</sup> Sen, *The Idea of Justice*, p. 2.
- <sup>2</sup> <sup>6</sup> *Ivi*, p. 21.
- <sup>2</sup> <sup>7</sup> Examples of hypothetical worst republics can be found in literature: Orwell's *Animal Farm* is an example.
- <sup>2</sup> <sup>8</sup> Norman Geras, *Literature of Revolution: Essays on Marxism* (London: Verso, 1986), p. 57.
- <sup>2</sup> <sup>9</sup> Karl Marx, *Critique of the Gotha Programme* (Moscow: Progress Publishers, 1978). The foreword was written by Engels in occasion of the publication of Marx's *Critique of the Gotha Programme* in the journal *Die Neue Zeit*, Vol.1, No. 18, 1890-1891: in preparing the text for the press, Engels met the opposition on the part of the German Social-Democratic leaders and had to agree to certain changes and omissions in the text. This edition translates the complete original text written by Marx.
- <sup>3</sup> <sup>0</sup> *Ibid*, p. 27.
- <sup>3</sup> <sup>1</sup> *Ibid*.
- <sup>3</sup> <sup>2</sup> *Ibid*, p. 24.
- <sup>3</sup> <sup>3</sup> *Ibid*, p. 11.
- <sup>3</sup> <sup>4</sup> *Ibid*, p. 14.
- <sup>3</sup> <sup>5</sup> Equally unacceptable is the phrase of the draft which points out the capitalist class as the only one owner of the instruments of production: indeed, instruments of labour are the monopoly of the

capitalist and the landowners, since that the monopoly of property in land is even the basis of the monopoly of capital. Although in England the capitalist was not usually the owner of the land on which his factory stood, such omission was due to Lassalle's attack only against the capitalistic class and not against the landowners. Not casually, this correction is directly linked to another: instead of indicating – like in the *Communist Manifesto* – the bourgeoisie as a revolutionary class relatively to the feudal lords and the lower middle class who would like to preserve social positions and their correspondent obsolete modes of production, the fourth article of the Gotha's draft conceives it as one reactionary mass together with them. On one hand, the proletariat is revolutionary relatively to the bourgeoisie because it grows up on the basis of large scale-industry and tries to transform the capitalistic structure of production against bourgeoisie claims. On the other hand, the Manifesto was very clear in adding to this that the lower middle class is becoming revolutionary because of its close transfer into the proletariat.

<sup>3</sup> <sup>6</sup> Ibid, p. 18. To this question, Michael Walzer has answered that the mode of production itself is a consequence of distributive assets, which depend on the definition of the status of certain social goods subjected to redistribution by a political community. According to this common definition of a certain social good, the last one will belong to its proper distributive sphere: in this perspective, redistributive policies are prior to production structure, since that the latter depends on the first ones. Cfr. Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983).

<sup>3</sup> <sup>7</sup> Marx, Critique of the Gotha Programme, p. 17.

<sup>3</sup> <sup>8</sup> Ibid.

<sup>3</sup> <sup>9</sup> Ibid.

<sup>4</sup> <sup>0</sup> Ibid, p. 16: ‘What we have to deal with here is a communist society, not as it has developed on its own foundations, but, on the contrary, just as it emerges from capitalist society; which is thus in every respect, economically, morally and intellectually, still stamped with the birth marks of the old society from whose womb it emerges’.

<sup>4</sup> <sup>1</sup> Ibid, p. 18.

<sup>4</sup> <sup>2</sup> Agnes Heller, *Beyond Justice* (Oxford: Basil Blackwell, 1987), p. 106.

<sup>4</sup> <sup>3</sup> I want mention an important criticism against this part of the second principle of justice: by maximizing the standard expectations of worse off members of society, a fair society – in a Rawlsian sense – would not ensure the effective reduction of inequalities between the most favoured people and the least ones of a certain political community. Otherwise said, the difference principle could shrink the absolute inequality within a certain society without reducing the relative inequality among its members.

<sup>4</sup> <sup>4</sup> Allan Wood, *Karl Marx* (London: Routledge, 2004), p. 129.

<sup>4</sup> <sup>5</sup> See Gerald A. Cohen, ‘Review of Allen Wood's Karl Marx’, *Mind*, Vol.92, 1983, pp. 440-445.

<sup>4</sup> <sup>6</sup> John Elster, *Making Sense of Marx* (Cambridge: Cambridge University Press, 1985), p. 228.

<sup>4</sup> <sup>7</sup> ‘The sphere of circulation or commodity exchange, within whose boundaries the sale and purchase of labour-power goes on, is in fact a very Eden of the innate rights of man. It is the exclusive realm of Freedom, Equality, Property, and Bentham’, Karl Marx, *Capital*, Vol.I. (New York: Penguin Press, [1867] 1976), p. 280. The waged labour renders the unpaid labour as it was paid labour: all the juridical ideas supported by capitalist mode of production and all the ideological meanings attributed to the concept of liberty count on this phenomenal form, which renders not visible the true relation of labour and shows only its contrary.

<sup>4</sup> <sup>8</sup> Marx described the realm of bourgeois freedom in these following terms: ‘Freedom, because both buyer and seller of a commodity, say of labour-power, are constrained only by their own free will. They contract as free agents, and the agreement they come to, is but the form in which they give legal expression to their common will. Equality, because each enters into relation with the other, as with a simple owner of commodities, and they exchange equivalent for equivalent.

Property, because each disposes only of what is his own. And Bentham, because each looks only to himself. The only force that brings them together and puts them in relation with each other, is the selfishness, the gain and the private interests of each. Each looks to himself only, and no one troubles himself about the rest, and just because they do so, do they all, in accordance with the pre-established harmony of things, or under the auspices of an all-shrewd providence, work together to their mutual advantage, for the common weal and in the interest of all', Ibid.

<sup>4</sup> <sup>9</sup> In this regard, see E. Renault, *Marx et l'idée de critique* (Paris: Presses Universitaires de France, 1995).

<sup>5</sup> <sup>0</sup> See R. Jaeggi, 'Per una critica dell'ideologia', *Iride*, XXI, Vol.55, 2008, p. 609.

<sup>5</sup> <sup>1</sup> As highlighted by Max Weber, any power tries to excite and to cultivate the confidence in its legitimacy. See Max Weber, *Wirtschaft und Gesellschaft* (Tübingen: Mohr, 1922) chap. I, §16 and chap. III, § 1. Weber does not conceive the power as the mere might, consisting in any possibility to exercise influence among other humans, but he defines it as the *possibility*, for certain commands, to find obedience on the side of a determined group of humans. Otherwise, it should always worry about its stability by showing the force and it would be condemned to the instability due to permanent social conflicts. In order to persist, the majority of asymmetrical relations of power need that the threat of the force is dissimulated through social norms. Their stability requires them to legitimate the asymmetry of these relations: as Honneth evidences, in modern societies no one relation of recognition – neither the past ones within which subjects looked themselves as unequal – can do without the prerequisite of a norm accepted by all (Axel Honneth, 'Anerkennung als Ideologie', *WestEnd. Neue Zeitschrift für Sozialforschung*, Vol.1, 2004, pp. 51-69).

<sup>5</sup> <sup>2</sup> Honneth, 'Anerkennung als Ideologie'.

<sup>5</sup> <sup>3</sup> Allen E. Buchanan, *Marx and Justice: The radical Critique of Liberalism* (London: Methuen, 1982), p. 71.

<sup>5</sup> <sup>4</sup> Ibid, p. 75.

<sup>5</sup> <sup>5</sup> This would happen not because the communism would realise the end of any inequality; rather, a communist society cannot but take seriously the unequal needs of people.

<sup>5</sup> <sup>6</sup> See Buchanan, *Marx and Justice*.

<sup>5</sup> <sup>7</sup> Heller, *Beyond Justice*, p. 223.

<sup>5</sup> <sup>8</sup> Marx thought that in a communist society the conflict between mental and physical labour would have been overcome; labour would have become not only a means of life but life's prime want and 'the productive forces would have also increased with the all round development of the individual, and all the springs of cooperative wealth flow more abundantly', Marx, *Critique of the Gotha Programme*, p. 18): according to these words, in a communist society there would lack objective circumstances of justice (like the moderate scarcity of resources). Besides, since that the satisfaction of any individual's need would not be incompatible with the satisfaction of another people's need, in a communist society there would be neither subjective circumstances of justice, like reciprocal envy: a communist society would not ask for a revolution of human nature, exclusively communally-interested, since that the pursuing of individual interests would be compatible with the pursuing of any other interested by other members. Trying a comparison between Rawlsian and Marxian versions' of circumstances of justice, it could possible to say that the first one localises at the beginning of its theory of justice – the circumstances of justice are fundamental components of the original position – what Marx's social theory put at the end of capitalist history and, in the meantime, at the beginning of human history (properly said), event though in the case of Rawls the moderate scarcity condition is not avoidable.

<sup>5</sup> <sup>9</sup> John Rawls, *Lectures on the History of Political Philosophy* (Cambridge (Mass.): Harvard University Press, 2007), pp. 320-321: the main meeting points between Rawlsian idea of property-

owning democracy and Marx's proposal of a communist society concern the protection of free and equal citizens' high-order interests by the basic rights and interests, the assurance of a fair opportunity to exert political influence to all citizens (whatever their social position), the protection of the so called positive liberties through fair equality of opportunity and the difference principle and, finally, the dissolution of the narrowing and demeaning features of the division of labour once the institutions of a property owning democracy have been realised.

<sup>6</sup> <sup>0</sup> Ibid, pp. 321-322.

<sup>6</sup> <sup>1</sup> Buchanan, *Marx and Justice*, p. 56.

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<sup>240</sup> Sourced online

([http://www.khamush.com/tales\\_from\\_masnavi.htm#The%20Elephant](http://www.khamush.com/tales_from_masnavi.htm#The%20Elephant));

tr. A. J. Arberry. Retrieved 30/01/2012.

<sup>241</sup> When referring to the title of Agamben's work, the term *Homo Sacer* will appear capitalised. In the instances of an uncapitalised reference to *homo sacer*, I will be alluding to the eponymous figure of the 'sacred man'.

<sup>242</sup> G. Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford; Stanford University Press, 1998), pp. 8 and 85.

<sup>243</sup> Ibid., p. 72.

<sup>244</sup> Ibid., pp. 1-2.

<sup>245</sup> Ibid., p. 2.

<sup>246</sup> The grounds for the Hellenistic dismissal of *zōe* as the appropriate location of civic-political rights is discussed in detail in the later section on Aristotle.

<sup>247</sup> Agamben, *Homo Sacer*, p. 2.

<sup>248</sup> Ibid., p. 9.

<sup>249</sup> C. Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, tr. G. Schwab (Cambridge, Mass.: Massachusetts Institute of Technology Press, 1985), p. 5.

<sup>250</sup> Schmitt, *Political Theology*, p. 7.

<sup>251</sup> Ibid., pp. 12-13. Agamben's appropriation of this schema is to be found in *Homo Sacer* Ch.1. 'The Paradox of Sovereignty', and pp. 15-19 in particular.

<sup>252</sup> Agamben, *Homo Sacer*, pp. 162-163.

<sup>253</sup> Ibid., pp. 160-161.

<sup>254</sup> Ibid., p. 164.

<sup>255</sup> Ibid.

<sup>256</sup> Agamben's most comprehensive review of the legal/historical phenomenon of emergency rule and its expansion into a Benjaminian generalised state of emergency is his *State of Exception*; Chicago; Chicago University Press, 2005.

<sup>257</sup> M. Foucault, *The History of Sexuality, Vol. I.* (London: Allen Lane, 1978), p. 143.

<sup>258</sup> M. Foucault, *Society Must Be Defended* (London Allen Lane The Penguin Press, 2003), p. 242.

<sup>259</sup> Ibid., pp. 242-244. See also, Foucault, *History of Sexuality*, pp. 140-141.

<sup>260</sup> Agamben, *Homo Sacer*, p. 3.

<sup>261</sup> See primarily, H. Arendt, *The Origins of Totalitarianism* (London: George Allen & Unwin, 1967), Ch. 5 'The Political Emancipation of the Bourgeoisie' in particular.

<sup>262</sup> Agamben, *Homo Sacer*, pp. 3-4.

<sup>263</sup> Ibid., pp. 144-145

<sup>264</sup> Reiter in Ibid., p. 145.

<sup>265</sup> Ibid., p. 143.

<sup>266</sup> Ibid., pp. 122 and 159. See also, Norris, 'Giorgio Agamben and the Politics of the Living Dead', p. 52.

<sup>267</sup> Foucault, *Society Must Be Defended*, p. 259.