

---

## Review

# Revisiting Marx's critique of liberalism: Rethinking justice, legality and rights

Igor Shoikhedbrod

Cham: Palgrave Macmillan, 2019, x + 249 pp.,

ISBN: 978-3-030-30197-2

*Contemporary Political Theory* (2023) **22**, S161–S164. <https://doi.org/10.1057/s41296-022-00567-4>; published online 8 July 2022

With few exceptions, both sympathetic readers as well as critics of Karl Marx have long agreed that the communist future he envisioned would be characterized by the absence—to borrow a phrase from Gabriel Garcia Marquez—of both ‘god and law’. Since Marx supposedly assumed that, along with the private ownership of the means of production, legality and rights would be abandoned in the revolutionary transition, the principle of legality has never been fully integrated into the Marxist tradition. Despite diverging on many other issues, conventional interpretations of Marx agree for the most part that his critique of liberal capitalism led him to abandon—and thus to make no room in normative Marxist thought for—the supposedly bourgeois concepts and institutions of ‘justice’, ‘legality’, and ‘right’. Igor Shoikhedbrod’s *Revisiting Marx’s Critique of Liberalism* sets itself the ambitious task of revisiting this widely ‘settled’ interpretive question.

Shoikhedbrod’s book disputes this account in two main ways. First, it details the complex ways in which Marx conceived of legality and rights (chapter 2). It shows that while Marx applied the evaluative standards of Hegelian rational law in his early legal critiques, the mature Marx adopted a ‘new materialist conception of right’ (p. 37) consistent with his broader theory of historical materialism. Shoikhedbrod’s careful tracing of the development of Marx’s thought with respect to legality and right thus dispels the one-sided notion that Marx was hostile to the principle of legality simply as a matter of course. On the contrary, the book shows that, even as he was sharply critical of the bifurcation under capitalism of ‘the rights of man’ from ‘the rights of the citizen’, Marx always affirmed the historically progressive character of the catalogue of liberal rights. Shoikhedbrod suggests that Marx’s evaluation of bourgeois rights presupposed a standard of judgement against which historically variable ‘forms’ of right could be assessed as more or less progressive. Marx’s implicit standard, the book claims, ‘is based on the degree to which human freedom is realized or hindered across various modes of production’ (p. 45, emphasis in original). To evince this interpretive claim, Shoikhedbrod



shows that, whenever the reactionary forces of absolutism threatened a reversal to the feudal juridical order of arbitrary, status-bound privileges, Marx never hesitated to defend the achievements of liberal rights, often exposing himself to political risk in doing so.

The textual evidence and argumentative force on which the book rests its case are difficult to resist. The difficulties lie in the book's second key contribution. Shoikhedbrod offers a reading of Marx in which the necessity of legality in the communist society of the future is required both for normative reasons—having to do with the mutual adjustment of competing life *teloi* in communist society—and by the method and inner logic of Marx's broader historical-materialist approach. Shoikhedbrod 're-Hegelianizes' Marx by stressing the methodological importance of the concept of *Aufhebung* for Marx's approach to legality. Here, the book contends that the transition to a communist mode of production would divest liberal rights of their class-specific character while preserving their freedom-enabling qualities—what Kojève, in his discussion of Hegel's dialectic, calls 'overcoming while preserving what is overcome' (Kojève, 1969, p. 15).

As a logical extrapolation of Marx's argument—in particular, his claim that every mode of production gives rise to historically specific social relations that transcend those of the previous mode of production—the book makes a plausible case. But as an argument about the way in which the historical process unfolds, about the way things are, the resort to Hegel is less convincing. It effectively commits Shoikhedbrod to the problematic category of progress: to the position that the transition to communism would raise legality beyond the deficiencies of bourgeois right. But as critics and proponents of the dialectical method alike—Althusser and Adorno come to mind—have argued, there is no guarantee that this will be the case. Adorno's negative dialectics, for example, is partly an effort to elucidate the essentially indeterminate character of dialectical movements—the 'thesis', as he put it in a lecture, 'that the negation of the negation does *not* result in a positive, or not automatically' (Adorno, 2008, p. 17). To be sure, the defense and justification of the concept of *Aufhebung* would have made Shoikhedbrod's a very different book—but the problem is worth noting nonetheless.

Shoikhedbrod's text has the additional merit of offering illuminating solutions to some longstanding puzzles. Consider the following two: why did Marx devote an entire chapter in *Capital* to the issue of the struggle over the length of the working day? On the conventional, class-instrumentalist reading of Marx, legality is reducible to, and is nothing but, the formal-coercive arm of economic interests. If this is correct, the attention Marx paid to the legislative struggles of the working class was misplaced; Marx, on this reading, failed to adhere to his own supposedly class-instrumentalist interpretation of legality. Shoikhedbrod's interpretation resolves the puzzle: Marx paid close attention to the struggle over the length of the working-day precisely because he conceived of legality as a relatively



autonomous and fundamentally political domain in which ‘asymmetrically position groups can resist domination’ (pp. 181–182).

The second puzzle Shoikhedbrod sheds light on concerns Marx’s support for the juridical dimensions of the Paris Commune of 1871. The book shows that Marx fully supported the constitutional and legal framework that the Commune established to govern itself—i.e. the election of revocable magistrates and judges who were to administer justice in a manner consistent with the ‘Communal Constitution’ (pp. 79, 124). If the thesis is correct that Marx envisioned the revolutionary supersession of the principles of right, his endorsement was misplaced: again, on the class-instrumentalist account, Marx misunderstands the implications of his own perspective. In contrast, Shoikhedbrod’s account neatly explains Marx’s position: there is a definite place and function for the principles of legality and justice in his vision of the revolutionary transition.

Curiously, Shoikhedbrod’s book does not mention the Marxist philosopher Ernst Bloch. This is a striking omission considering that Bloch’s *Natural Law and Human Dignity* is perhaps the most sustained attempt to narrow ‘the Marxist distance to right’ (Bloch, 1961, p. 181). Bloch’s basic conclusion, that Marxism must inherit some of the ‘wealth of natural law’ to fulfill its aim of overturning all relations in ‘which man is a degraded, enslaved, abandoned, or despised being’, (1961, p. 197) is not unlike Shoikhedbrod’s. But Bloch and Shoikhedbrod approach the issue in decisively different ways. Bloch’s effort presupposes that there is indeed some ‘distance’, a gap that needs filling, between ‘right’ and Marxist theory. *Natural Law and Human Dignity* thus sets out to combine the normative principle of human dignity—which Bloch suggests is the ‘invariant intention’ of the natural law tradition (1961, p. 185)—with the similarly invariant impulse of all social-utopian thought: happiness (1961, p. 208). The result is an embrace of human rights as essential for the Marxist cause.

In contrast, Shoikhedbrod’s approach involves an immanent analysis of Marx’s texts and of the logic of his arguments. For Shoikhedbrod, that is, there is no ‘distance’ between ‘right’ and Marxism: the principle of legality is consistent with, indeed required by, the postulates of Marx’s theory. It is consistent with, for example, the point often repeated across Marx’s texts that ‘the praxis of labor...gives rise to historically specific but dynamic legal relations’ (p. 35). Shoikhedbrod’s account does not, in sum, resort to textual sources beyond Marx to secure a place for legality within Marxist theory; both the interpretive and normative resources with which the argument is constructed are already available in Marx. But fidelity to Marx isn’t always a virtue: Shoikhedbrod hesitates to speculate about the substantive content of communist legality—an argumentative position consistent with ‘Marx’s epistemological and democratic reservations about “writing recipes for the cook-shops of the future” ’ (p. 76). For his part, Bloch does not refrain from sketching the orienting principles of the ‘laws and rights of the classless...society’, among which he lists ‘solidarity, struggle, dignity, the end of



exploitation, equality that does not equalize, fraternity that goes beyond fraternization’ (Bloch, 1961, p. xxi). Readers hoping for even a speculative discussion of communist legality will no doubt be left unsatisfied by this deliberate omission in Shoikhedbrod’s text.

Yet there is no question that Shoikhedbrod’s book succeeds—more than any previous attempt—to close the ‘distance’ between right and Marxism, and to challenge the monopoly over normative theorization about legality that both political liberalism and liberal theory have long held. And, since radical movements—if not Marxist theorists—have long understood the importance of political struggles over rights and right, it also succeeds in closing a glaring gap between radical ‘theory’ and ‘practice’.

## References

- Adorno, Theodor W. 2008. *Lectures on Negative Dialectics*, ed. R. Tiedemann, trans. R. Livingstone. Cambridge, UK: Polity Press.
- Kojève, Alexandre. 1969. *Introduction to the Reading of Hegel: Lectures on the Phenomenology of Spirit*, ed. A. Bloom, trans. J. H. Nichols, JR. Ithaca: Cornell University Press.

**Publisher’s Note** Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.

Omar Garcia  
University of Toronto, Toronto, ON M5S 3G3, Canada  
omar.garciadiaz@mail.utoronto.ca