Chapter 5
Individual Rights

For however hard we may try to awaken feelings of love in ourselves, we cannot avoid hating that which is and always will be evil, especially if it involves deliberate and general violation of the most sacred rights of man.—Immanuel Kant

By every civilized and peaceful method we must strive for the rights which the world accords to men, clinging unwaveringly to those great words which the sons of the Fathers would fain forget: “We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness.”—W. E. B. DuBois

... A right is something a man can stand on, something that can be demanded or insisted upon without embarrassment or shame. When that to which one has a right is not forthcoming, the appropriate reaction is indignation; when it is duly given there is no reason for gratitude, since it is simply one’s own or one’s due that one received. A world with claim-rights is one in which all persons, as actual or potential claimants, are dignified objects of respect, both in their own eyes and in the view of others. No amount of love and compassion, or obedience to higher authority, or noblesse oblige, can substitute for those values.—Joel Feinberg

The rights of each of us in a democracy can be no stronger than the rights of our weakest minority.—Felix S. Cohen

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Imbedded in the content of law is a cluster of claims and interests the most powerful of which amount to rights (valid claims or interests). Part I examined theories of legal interpretation as the importance of a viable theory of legal interpretation determines which claims or interests are valid ones. Hence the connection between legal interpretation and the rights found within the content of the law.

One of the most significant and controversial cluster of topics in moral, social, political, and legal philosophy during the past few decades has been the nature, grounding, and value of rights. Among other things, rights are fundamental to a liberal political order. Indeed, they are among the foundational principles of our moral lives. And it is often assumed or argued that political liberalism respects rights, while Marxism does not. In fact, many believe that it is the putative omission of rights in communism that counts decisively against the viability of Karl Marx’s moral, social, and political philosophy. But what exactly did Marx argue about rights, and what did he not argue about them? Does Marx respect rights, or does he condemn them as many believe? What are rights? Why are they important? Is there room for rights in Marx’s philosophy? Answers to these and related questions serve as an important way by which to decipher some of the differences between liberal and nonliberal political philosophies.

This chapter examines the traditional interpretation of Marx’s critique of rights. Contrary to this view, I shall argue that Marx’s critique of rights is limited rather than comprehensive in scope. I shall also set forth part of a foundation of a Marxian theory of rights. The result is that what many philosophers believe separates liberal from nonliberal political philosophies is not, contrary to popular belief, that the former respect rights, while the latter reject them. For both Marxism and liberalism respect certain rights. This means that political philosophies such as these must be further analyzed in order to figure out precisely which rights are respected by each philosophy, and why. By engaging in this kind of analysis, philosophers will be in a better position to properly distinguish these political philosophies from one another.

Prior to describing and assessing the plausibility of the traditional interpretation of Marx and rights, it is important to come to terms with the nature and value of rights in general. If Joel Feinberg is correct about the nature of rights, then to have a right is to have a valid claim against another called for

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5 These claims are found in Allen Buchanan, Marx and Justice (Totowa: Rowman & Littlefield Publishers, 1982).

6 The following explication of the nature and value of rights is a Feinbergian one, borrowed from Joel Feinberg, Rights, Justice, and the Bounds of Liberty (Princeton:
by some set of governing rules (in the case of legal rights) or moral principles (in the case of moral rights). To have a claim is to have a case meriting consideration. And the act of claiming makes for self-respect and respect for others. It provides a rights-respecting society with a partial, though crucial, foundation for human dignity.

A right is a valid claim to something that in most cases implies a duty of others to refrain from interfering in the exercise or enjoyment of one’s right. If I have a right to life, for instance, then others have a duty to not threaten or otherwise take away my life. The valid claim in question is institutional in nature if it is a legal right, and noninstitutional if it is a moral right. Generally speaking, legal rights fall under one of either two broad categories. Primary rights (what Wesley Hohfeld called “substantive rights”) are those that control human behavior, as the ones just exemplified. But remedial rights are procedural and arise only subsequent to infringement of a valid claim or interest. In any case, “If people have a right to something, then someone does wrong who denies it to them.”

Moral rights are noninstitutional. Moral rights discourse clearly makes sense, and “any theory of the nature of rights that cannot account for it is radically defective.” Feinberg argues that human rights are a subset of moral rights and are “generically moral rights of a fundamentally important kind held equally by all human beings, unconditionally and unalterably.” But are there any human rights? Or, is this category a null set? The first thing to notice about Feinberg’s definition of “human rights” is that it evades the charge of speciesism, as it does not say that only humans can possess them, “so that a human right held by an animal is not excluded by definition.”

Princeton University Press, 1980). A careful study of Feinberg’s theory of rights suggests that, for him, rights are valid claims or valid interests.


This point is apparently not heeded by the likes of some who define “human rights” in speciesist terms, and with not even a slight recognition that their definition is controversial.\(^{14}\)

A second issue here is whether or not, if there are any human rights, they are absolute in the sense that “no conflicts with other human rights, either of the same or another type, would be possible.”\(^{15}\) Although there is, Feinberg argues, no principled objection to construing the nature of human rights as absolutely exceptionless, it is quite another question as to whether or not there are any such rights. And it is at this point that a search for the philosophical grounding for such rights must be conducted. For if there are no such rights, then the discourse of human rights becomes nonsense, a rather counter-intuitive result for most working in the fields of international law and justice, such as cosmopolitan liberals as discussed in the previous chapter. To attempt to ground equal human rights on the notion of human worth is dubious, unless it can be explained plausibly how it is that the worth of humans is equal. Nor is it unproblematic to try to ground equal human rights on some other intrinsic moral property:

\begin{quote}
The intrinsic moral qualities invoked to explain equal human worth must rest, as moral qualities, on some common nonvalue characteristics which are their bases or determinants; the question about the nature of the common characteristic arises all over again about them. If human beings have human worth because of their “intrinsic pricelessness” or “infinite value,” asks the skeptic, where do those extravagantly dimensioned endowments come from?\(^{16}\)
\end{quote}

Rationality cannot serve as the grounding for equal human rights, as not all humans are rational. To be sure, sometimes it seems as though few are. The qualities of personhood and sacredness fall prey to the problem of why those qualities are sufficient bases for equal human rights. Moreover, not all humans, it might be argued, are sacred, at least not the evil ones. And similarly for their personhood, assuming that there are non-question-begging grounds for personhood. And as Feinberg continues: “... it will not do, for similar reasons, to rest the case for equal and universal human worth on ‘our common humanity,’ for we wish to know precisely what it is about our common humanity that makes it so worthy of our respect.”\(^{17}\) “It may be that

\(^{14}\) Consider, for instance: “... human rights must (at the risk of banality) be \textit{humanistic}—they must focus on human interests, upon what contributes to human well-being and freedom” [Allen Buchanan, \textit{Justice, Legitimacy, and Self-Determination} (Oxford: Oxford University Press, 2005), p. 130].

\(^{15}\) Feinberg, \textit{Social Philosophy}, p. 86.

\(^{16}\) Feinberg, \textit{Social Philosophy}, p. 91.

\(^{17}\) Feinberg, \textit{Social Philosophy}, p. 92.
universal ‘respect’ for human beings is, in a sense, ‘groundless’—a kind of ultimate attitude not itself justifiable in more ultimate terms.”\textsuperscript{18} This implies that in ascribing human worth to everyone, we may well in effect be showing them respect. And if this is true, then we can say of human rights, insofar as they are based on human worth, that:

It can be argued further against skeptics that a world with equal human rights is a more just world, a way of organizing society for which we would all opt if we were designing our institutions afresh in ignorance of the roles we might one day have to play in them. It is also a less dangerous world generally, and one with a more elevated and civilized tone. If none of this convinces the skeptic, we should turn our backs on him to examine more important matters.\textsuperscript{19}

So much for a plausible grounding of moral and human rights in equal human worth. But exactly which such rights are there, if any?

In recognizing that the United Nations Declaration of Human Rights endorses numerous basic positive rights to receive benefits and to provide with the means to satisfy basic human needs, Feinberg notes that these cannot be absolute rights, strictly speaking because they are not necessarily correlated with the duties of any particular individuals. The reason for this, argues Feinberg, is because natural disasters can make it such that no person or group of them could possibly have had a moral duty to prevent such harms, a similar point to the one I raised against cosmopolitan liberalism in the previous chapter. Such “manifesto rights,” as he calls them, actually boil down to claims that compete, all things considered, with other claims. So it is implausible to think that there are absolute human rights that are positive in content. However, Feinberg continues, “The most plausible candidates for absoluteness are (some) negative rights; since they require no positive actions or contributions from others.”\textsuperscript{20} Examples of absolute and nonconflictible human rights seem to be positive rights to “goods” that cannot ever be in scarce supply, a right to a fair trial, the right to equal protection under the law, and the right to equal consideration.\textsuperscript{21} Added to these might be the negative right not to be treated inhumanely, and the right to not to be exploited: “That is a right to a higher kind of respect, an inviolate dignity, which as a broad category includes the negative rights not to be brainwashed, not to be made into a docile instrument for the purposes of others, and not to be converted into a domestic animal.” “Rights in this category,” states Feinberg, “are probably the only ones that are human rights in the strongest sense:

\textsuperscript{18} Feinberg, \textit{Social Philosophy}, p. 93.
\textsuperscript{19} Feinberg, \textit{Social Philosophy}, p. 94.
\textsuperscript{20} Feinberg, \textit{Social Philosophy}, p. 95.
\textsuperscript{21} Feinberg, \textit{Social Philosophy}, p. 96.
unalterable, ‘absolute,’ (exceptionless and nonconflicttable), and universally and *peculiarly* human.\textsuperscript{22} It is an interesting fact about the philosophy of human rights that while few if any of the contemporary writers seems to acknowledge Feinberg’s analysis, neither have they done anything to reach its eloquence nor improve upon it in any significant way.\textsuperscript{23}

But why are rights generally important? Rights have been violated by governments and individuals since the beginning of human social life, it seems. Even in the U.S., the self-proclaimed bastion of democracy and rights, various constitutionally guaranteed rights have been suspended (i.e., violated) by the government on account of various scenarios of “clear and present danger” or for reasons of “national security” or in times of war. Within a couple of decades or so, the “founding fathers” of the U.S. rescinded nearly every right that they had declared as inalienable: from freedom of the press and of expression more generally, to the enforcement of the Alien and Sedition Acts against political opponents of John Adams, to the holding of American Indian and black slaves even though Jefferson and many others declared all humans were created by God as “equals.” Those U.S. citizens who give pride of place to the special rights they have, such as freedom of expression, might find it difficult to know that particularly (though inexclusively) from 1870 to 1920 the U.S. Supreme Court continually placed tremendous restrictions on freedom of expression, using various judicial former Justice Oliver Wendall Holmes’ “clear and present danger” standard, among others. There simply is no unbroken chain of respect for the First Amendment of the U.S. Constitution by either of the three branches of government. And this demonstrated itself in the various “free speech fights” involving the government and the Free Speech League during the period noted, wherein the government via the Comstock Act sought to restrict what Anthony Comstock deemed obscene and where both the Free Speech League led by Theodore Schroeder and the ACLU established by Roger Baldwin challenged such violations of freedom of expression.\textsuperscript{24} One would have thought that the words so carefully articulated in the Constitution would have been taken more seriously by those who swore to uphold it.

Furthermore, legal scholars note that in times of war or other national crisis, various rights have been suspended or violated in the name of the greater good. Indeed, the current U.S. president G. W. Bush suspends some

\textsuperscript{22} Feinberg, *Social Philosophy*, p. 97.

\textsuperscript{23} For discussions of John Rawls’ and James W. Nickel’s respective conceptions of human rights and whether or not reparations as a compensatory right can qualify as a human right, see J. Angelo Corlett, *Heirs of Oppression*, forthcoming.

\textsuperscript{24} David M. Rabban, *Free Speech in Its Forgotten Years* (Cambridge: Cambridge University Press, 1997).
rights to due process, rights guaranteed by the Fifth Amendment to the U.S. Constitution—ironically in the name of national security in the “war against terrorism and extremism.” And while the previous presidential administrations’ suspension of certain rights lasted for relatively brief periods of time, there seems to be no end in sight for the current abuses of civil liberties by the U.S. government. Or so it seems, as a war against terrorism can last forever as it is highly unlikely that the perceived enemies will surrender, and equally unlikely that the U.S. government will give up its pursuit of what it construes—and has persuaded most of its citizens to believe—a just war against the terrorists. So if national security threatened by terrorism is what, according to the U.S. government, justifies suspensions of various constitutional rights, those rights stand to be suspended for the indefinite future. But “national security will be better assured,” argued William O. Douglas, “through political freedom, than through repression. Once we start restraining that political freedom, we evince a lack of faith in the boldest political principle the world has known.” After all, the “acceptance by government of a dissident press is a measure of the maturity of a nation.” The same is true of the acceptance of dissidence more broadly.

So what is the value of rights if they can and are so frequently violated—even by those who have sworn to protect them? The basic value of rights is that they accord to parties certain legal or moral claims that in turn provide a degree of dignity and respect to the rightholder that would not be true if the parties had no rights at all. Moreover, if you have a right to something, then the fact that social utility would be maximized if your right is violated or disrespected is no good reason to do so. For the possession of a right as a valid claim means precisely that your right trumps social utility when the two are in conflict. This was part of the basis of my criticism in the previous chapter of cosmopolitan liberalism’s claims about rights to compensation. Of course, it is not simply the possession of rights that is important, but knowing when it is good to claim and exercise rights. And it goes without saying that a government that continually violates the basic rights of its citizens serves as the grounds for its own replacement by any means necessary, according to the Declaration of Independence: “whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, . . . it is their right, it is their duty, to throw off such government, and to provide new guards for their future security.”

27 Douglas, An Almanac of Liberty, p. 163.
There seems to be little doubt that rights, especially publicly recognized ones, serve as precedents and trumps against those who would seek to violate them. Indeed, it has been noted that rights are shorthand expressions, clues to predictions of what the courts are likely to respect in the future. Rights are assertions of what courts have done and are predictive of what they will uphold under relevantly similar circumstances. They are “present aids for the guidance of future action.”

And of the 1948 Universal Declaration of Human Rights, Douglas states, “This Declaration may in legal effect have no binding consequences in any land; it may be only a reaching for the stars. But it lifts the hearts of men the world around. For it states in solemn and dignified terms the aspirations of men and women of good will of every race.” And those who violate basic rights continually may have the most powerful military in the world to ensure the continuation of such rights violations. Even so, rights provide the grounds for the bringing down of tyrants and others who would disrespect the rights and lives of citizens, both domestic and foreign.

Kimberle Crenshaw, a critical race theorist, cautions leftists in their critiques of rights talk that discounting the value of rights may “have the unintended consequence of disempowering the radically oppressed while leaving white supremacy basically untouched” in the U.S. For example, Derrick Bell states, “Slaves did not have rising expectations, and no one told them they had rights.” And Patricia Williams reminds us, after the U.S. Civil War, newly freed Africans were not only unowned but disowned, “outside the marketplace of rights” and “placed beyond the bounds of valuation.” Also, “Although rights may not be ends in themselves, rights rhetoric has been and continues to be an effective form of discourse for blacks. . . . The subtlety of rights’ real instability thus does not render unusable their persona of stability.” Thus Williams and Crenshaw each disapprove of some critical legal studies scholars’ abandonment of the discourse of rights. Williams argues:

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29 Douglas, *An Almanac of Liberty*, p. 120.
For blacks, then, the battle is not deconstructing rights, in a world of no rights; nor of constructing statements of need, in a world of abundantly apparent need. Rather the goal is to find a political mechanism that can confront the denial of need. The argument that rights are disutile, even harmful, trivializes this aspect of black experience specifically, as well as that of any person or group whose vulnerability has been truly protected by rights.\textsuperscript{34}

Perhaps critical legal studies scholars by and large enjoy a position of white privilege such that they can afford to jettison rights talk in favor of some abstract notion of deconstructing rights. But for those of us persons “of color” who enjoy little or nothing of white privilege, Williams’ words speak loudly to the fact that rights discourse is valuable, and one reason it is valuable is because it signals failures of those who disrespect or violate rights.

I concur with these points by Crenshaw and Williams, and I believe that this is part and parcel of the Feinbergian account of rights from which I draw my account of rights. As I shall demonstrate below in refuting a fundamental and widespread misunderstanding of Marx’s view of rights, it is not rights \textit{per se} that serve the aims of oppression and hegemonic racism, for example, it is the misuse of rights for those kinds of wrongful and harmful purposes. The solution to this rights abuse is not the discarding of rights, but rather the very strong assertion of them in the face of their procurement for wrongful and harmful ends. This is precisely what happened in the case of Martin Luther King, Jr., and others in their constant assertion and reassertion of the basic rights guaranteed to all by the U.S. Constitution. And I submit that it is that sort of rights claiming—even in the face of some of the harshest forms of racist oppression—that won great victories against racist hegemony in the U.S. And Crenshaw insightfully adds, lest some not realize that racism is still a major part of U.S. society, that

When segregation was eradicated from the American lexicon, its omission led many to actually believe that racism therefore no longer existed. Race-neutrality in law was the presumed antidote for race bias in real life. With the entrenchment of the notion of race, neutrality came attacks on the concept of affirmative action and the rise of reverse discrimination suits. Blacks, for so many generations deprived of jobs based on the color of our skin, are now told that we ought to find it demeaning to be \textit{hired} based on the color of our skin.

\ldots It is demeaning not to be promoted because we’re judged “too weak,” then putting in a lot of energy the next time and getting fired because we’re too strong.\textsuperscript{35}

Some of Crenshaw’s words are reminiscent of those of Williams as she describes her feeling of being demarcated racially by the dominant racial

\textsuperscript{34} Williams, \textit{The Alchemy of Race and Rights}, p. 152.

\textsuperscript{35} Crenshaw, “Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law;” p. 636.
out-group in U.S. society, which very much lies at the underbelly of the issue of affirmative action in the U.S.: “I felt myself slip in and out of shadow, as I became nonblack for purposes of inclusion and black for purposes of exclusion; I felt the boundaries of my very body manipulated, causally inscribed by definitional demarcations that did not refer to me.”36

The nature and value of rights have an epistemic dimension. Rights possession is not contingent on knowing that one has a right, though exercising rights implies such knowledge.37 This is a fact about rights that is often overlooked in discussions of them, leading to confusion.

Consider the case of privacy. In addition to Feinberg’s analysis of the nature and value of rights, I submit that persons must, for purposes of their having human dignity and having it respected normally, know that they can claim privacy rights and know how to do so effectively. For even if one knows that one has a moral right to privacy, one might not know that the legal system permits one to claim it. Furthermore, even if one knows that the system permits, or even encourages, one to claim a certain right under a given circumstance, one might not know how to claim the right effectively, that is, so that one’s right stands a good chance of being respected. But even this is insufficient for human dignity in a full sense. For one must also have the ability to claim one’s right over those who are setting back one’s interest, or against those who are about to do so.

Feinberg is correct, then, in arguing that the value of rights in general is that they provide a context for self-respect, respect for others, and human dignity. And this general value that rights possess seems to be true of the putative right to privacy also. But whereas Feinberg’s imagined society of those who possess no rights (“Nowheresville”) shows us of what a society without rights deprives its citizens, a society whose citizens possess no right to privacy lacks something even more significant.

Consider a society, not unlike Feinberg’s Nowheresville, call it “Publicsville.” In Publicsville, every citizen has an array of rights to possess property, raise a family, to certain medical benefits, etc. But what Publicsvillians lack is a right to privacy. Thus whatever one does, there is no safeguard against the public’s intrusion into one’s life at any level. This implies that to whatever one has a claim (say, to property, medical benefits, etc.), one has no claim against another for their disrespecting any information or act that one desires to keep private. In fact, Publicsville is so privacy-rejecting that it demands of its citizens to, say, reveal information about themselves upon either the request of other citizens or the government itself! A rather intrusive society, Publicsville frowns on attempts of citizens even to seek to keep private anything about themselves.

It would seem that what the citizens of Publicsville lack is a certain degree of control over their own lives, actions, and how others perceive them. It is certainly true that as a general principle, “the more one knows about a person, the greater one’s power to damage him.” Moreover, it is arguable that the reason why such citizens cannot become true selves is that each is likely to exist under a fear of being “found out” for expressing or holding certain unpopular views, or for being intimate with others in ways that are deemed by others as being inappropriate, etc. In short, Publicsvillians lack a tremendous amount of personal freedom to determine their own destinies in terms of love, friendships, and the like. For it would appear that a certain level of privacy, and a right to it being respected, is necessary for one to even attempt to become an authentic (project-pursuing) self in society.

So if Feinberg is correct in arguing that rights are valuable for self-respect, respect for others, and human dignity, it also seems that a right to privacy is necessary for there to even be a self to respect! And if there is no self to respect, the concept of human dignity seems nonsensical. Thus if rights in general are necessary for self-respect, respect for others and human dignity, the right to privacy is needed to protect a citizen’s interest in becoming or maintaining a self to respect. And this in turn is necessary for human dignity. As Charles Fried argues, “a threat to privacy seems to threaten our very integrity as persons.”

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It would seem that the right to privacy, contrary to J. J. Thomson’s claim that it is derivative, is often part of a cluster of rights that is so fundamental that it might properly be termed a moral right, one to which each is entitled equally with others by virtue of one’s status as a person. For it is necessary both for self-respect and respect for others, and for a citizen’s attempt to become or maintain a self to respect. And if moral rights are those which seek to protect human dignity, then rights in general and the right to privacy in particular are crucial to the extent that they seek to protect from harm those who respect persons.

However, just as it was insufficient for human dignity that one possess rights, or for one to even know that one has them, it must also be true that in order for human dignity to obtain, one must know that one can claim one’s right to privacy, know how to do that effectively, and actually be able to claim one’s privacy right. For it is difficult to imagine a self that has no knowledge that the right to privacy can be claimed, or how it might be claimed effectively. Moreover, a self must be able to claim a right to privacy. Thus there may be laws about privacy, yet social circumstances (for instance, racism, sexism, etc.) might not permit such claims, even though they are morally valid.

With these basic ideas of rights in mind, we can now approach a longstanding problem in political philosophy concerning rights, political liberalism, and Marxism. It is a problem in how best to conceptualize the political marketplace of theories about how we ought to structure our legal and political institutions, and why. These are, by the way, fundamental questions that must be addressed in light of the ongoing attempts to construct a viable international legal system as substantial numbers of people in the world live under regimes that are, in one way or another, liberal or Marxist. If it can be shown that the traditional view of what separates liberal societies from Marxist ones is facile and problematic, then it can be replaced with a more plausible way to construe rights from these different perspectives, one that might guide international lawmakers in reaching consensus on the content of rules to govern the international order.

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41 This analysis of the moral value of privacy is not inconsistent with Rachels’ claim that privacy is important in that it enables persons to control or regulate their own relationships with others [See James Rachels, “Why Privacy is Important,” in Ferdinand Schoeman, Editor, *Philosophical Dimensions of Privacy* (Cambridge: Cambridge University Press, 1984), pp. 290–299. It is also congruent with the functional notion of the value of privacy found in Jeffrey L. Johnson, “A Theory of the Nature and Value of Privacy,” *Public Affairs Quarterly*, 6 (1992)].

The Traditional Interpretation of Karl Marx’s Critique of Rights

It has been argued by Allen Buchanan that in Marx’s essays “On the Jewish Question” and “Critique of the Gotha Program,” we find both an “internal” and an “external” critique of rights. By “internal critique,” Buchanan means a criticism that is provided from within the general framework of the belief system being appraised. An external critique, on the other hand, is one that is given from outside some or all of the fundamental beliefs of the targeted position.

The “Internal Critique”

Buchanan’s version of Marx’s internal critique of rights is as follows. According to Marx, the so-called “rights of man” are legal rights and are regarded as a species of human rights. Marx claims, “the rights of man


45 R. G. Peffer [Marxism, Morality, and Social Justice (Princeton: Princeton University Press, 1990), pp. 324–28] holds the view, considered and rejected by Buchanan, that Marx rejects rights as such in “On the Jewish Question” (1843), but condemns only “bourgeois” rights in “Critique of the Gotha Program” (1875). The implication here seems to be that Marx may have toned down his critique of rights over the years.

Note that Peffer’s interpretation of Marx on rights is similar to Buchanan’s in insisting that Marx criticizes rights as such in “On the Jewish Question.” However, their respective views differ when it comes to the matter of whether or not Marx criticizes only bourgeois rights. For Buchanan denies what Peffer affirms, namely, that Marx criticizes only bourgeois rights in his later work.

Others who agree that what Marx writes about rights is essentially negative and that he sets forth a general critique of rights include Feinberg, “In Defense of Moral Rights,” and John Tomasi, who attributes to Marx the claims that “Rights are conflict notions. . . rights are no more essential to healthy human groupings than band-aids are to healthy human bodies” [John Tomasi, “Individual Rights and Community Virtues,” Ethics, 101 (1991), p. 521]. Also see James W. Nickel, Making Sense of Human Rights (Berkeley: University of California Press, 1987), pp. 116–117 for a view of Marx and rights similar to Buchanan’s.

46 Buchanan, Marx and Justice, p. 60.

47 Buchanan, Marx and Justice, p. 61.
are valuable only for egoistic, isolated man.”\textsuperscript{48} Marx nowhere advocates the replacement of the defective capitalist right to private property with a superior communist right to property.\textsuperscript{49} Marx calls talk about rights “absolute rubbish” and “ideological nonsense.”\textsuperscript{50} In communism, Marx believes, the sources of conflict will be so diminished that there will be no need for a system of rights claims to guarantee the individual’s freedom to enjoy his share of the social product or to guarantee him a share of control over the means of production.\textsuperscript{51} The right to equality is not in fact egoistic, contrary to Marx.\textsuperscript{52} Marx assumes that any society where there is potential for interpersonal conflict warranting a system of rights, the purpose of which is to limit such conflict, is defective.\textsuperscript{53} Only this assumption is adequate to explain Marx’s “scorn for rights in general, his attack on all the rights of man, . . . and his deliberate refusal to characterize communism as a society in which an appropriate conception of rights is effectively implemented.”\textsuperscript{54}

There is, according to Buchanan, a degree to which Marx’s critique of the rights of man carries over to the “rights of the citizen.”\textsuperscript{55} Marx avers that the rights of the citizen give free reign in private life to differences in wealth, education,. . . \textsuperscript{56} Advocates of the rights of the citizen, Marx argues, help perpetuate the illusion that the state is above clashes of class interests in society.\textsuperscript{57} These last claims in Marx together imply that in communism the rights of the citizen will no longer be needed.\textsuperscript{58} For Marx, the rights of the citizen exist only in opposition to the rights of man, and the rights of the citizen are needed only where the rights of man are needed and valued.\textsuperscript{59}

\textsuperscript{48} Buchanan, Marx and Justice, p. 62. Nickel argues that Marx claims that the “rights of man” are egoistic in three ways. First, they perpetuate an egoistic mentality. Second, they encourage right holders to decide issues that affect others purely on the basis of their private interests. Third, they divide people so that the development of community is thwarted. See James W. Nickel, “Marxism and Human Rights,” 42nd Annual Northwest Conference on Philosophy, University of Oregon, Eugene, 1990.

\textsuperscript{49} Buchanan, Marx and Justice, p. 63.
\textsuperscript{50} Buchanan, Marx and Justice, p. 64.
\textsuperscript{51} Buchanan, Marx and Justice, p. 64.
\textsuperscript{52} Buchanan, Marx and Justice, p. 64.
\textsuperscript{53} Buchanan, Marx and Justice, p. 64.
\textsuperscript{54} Buchanan, Marx and Justice, p. 64.
\textsuperscript{55} Buchanan, Marx and Justice, pp. 64–65.
\textsuperscript{56} Buchanan, Marx and Justice, p. 64.
\textsuperscript{57} Buchanan, Marx and Justice, pp. 64–65.
\textsuperscript{58} Buchanan, Marx and Justice, p. 65.
\textsuperscript{59} Buchanan, Marx and Justice, p. 65.
According to Buchanan, then, Marx holds that the rights of man are valuable only for egoistic persons in a capitalistic society. I shall refer to this as Marx’s (alleged) “Rights Egoism Thesis.” Marx also holds, according to Buchanan, that both the rights of man and the rights of the citizen have no value and place in communism.\(^6\) I shall refer to this as Marx’s (alleged) “Rights Nihilism Thesis.” Marx’s supposed argument for these two theses about rights, as presented by Buchanan, may be summarized as follows:

1. Rights are legal guarantees for such freedoms as those specified by the rights of the citizen and the rights of man, and they are needed only where there is a potential for serious infringements of freedoms.
2. Such infringements of freedoms can arise only from clashes of class interests and the egoism to which class conflict gives rise.
3. There will be no classes in communism, hence no clashes of class interests, and no egoism as a result.
4. Thus, there will be no need in communism for the rights of man (or those of the citizen) as legal guarantees.\(^6\)

**The “External Critique”**

Marx’s *external critique* of rights, argues Buchanan, takes the form of a series of replies to the question, “Does Marx reject only certain bourgeois rights, but not rights *per se*?” Buchanan’s answer to this query is negative.

First, says Buchanan, Marx nowhere says bourgeois rights will be replaced by other rights in communism.\(^6\) Second, Marx heaps scorn on equal rights and other rights as well.\(^6\) Finally, in his “Critique of the Gotha Program,” Marx says the *very concept of a right* implies equality, but when an equal standard is applied to individuals, they are treated unsatisfactorily. This, argues Buchanan, is Marx’s critique of rights *as such*.\(^6\) Buchanan cites as his textual support for this claim the following passage from Marx:

But one man is superior to another physically and mentally and so supplied more labour in the same time, or can labour for a longer time; and labour, to serve as a measure, must be defined by its duration or intensity, otherwise it ceases to be a standard of measurement. This equal right is an unequal right for unequal labour. It recognizes no class differences, because everyone is only a worker like everyone

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\(^6\) Buchanan, *Marx and Justice*, p. 65.
\(^6\) Buchanan, *Marx and Justice*, p. 68.
\(^6\) Buchanan, *Marx and Justice*, p. 68.
\(^6\) Buchanan, *Marx and Justice*, p. 68.
else; but it tacitly recognizes unequal individual endowment and thus productive capacity as natural privileges. It is, therefore, a right of inequality, in its content, like every right. Right by its very nature can consist only in the application of an equal standard insofar 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 and so forth. Thus, with an equal performance of labour, and hence an equal share in the social consumption fund, one will in fact receive more than another, one will be richer than another, and so on. To avoid these defects, right instead of being equal would have to be unequal.65

**Foundations of an Alternative Interpretation of Marx on Rights**

Prior to assessing Buchanan’s arguments, it is important to be mindful of some crucial distinctions concerning Marx and rights possession. First, one might contend that Marx failed to acknowledge that persons have rights. Second, one might hold that Marx held a position one of whose unacknowledged (and possibly unrecognized) implications is that persons have no rights. Third, one might aver that Marx acknowledged that none of the rights of persons should be enforced by institutional structures of law. Fourth, one might argue that Marx held a position one of whose unacknowledged (and possibly unrecognized) implications is that none of the rights of persons should be enforced by institutional structures of law. And with each of these views, one must ask whether or not Marx is thinking about rights per se, rights in capitalism, or rights in communism. This complicates matters considerably beyond the rather simplistic analysis set forth by Buchanan that asks in general and, it turns out, bifurcated terms whether or not Marx condemns rights per se or whether or not there is room for rights in a genuinely Marxist regime.

Now Buchanan does not clarify precisely what he himself means when he claims that Marx rejects rights per se. Yet it is clear that he interprets Marx as rejecting rights per se, i.e., both in capitalism, communism, and in any other social order. In contrast to Buchanan, I argue that Marx rejects only some rights-claims in capitalism, and that Marx holds a position one of whose unacknowledged (and perhaps unrecognized) implications is that persons do have some rights. I shall further argue that it is not inconsistent with Marx’s

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philosophy to add that at least some such rights ought to be protected by legal rules. Later on it will become clear why I attribute this view of rights to Marx.

**Difficulties with Attributing the “Internal Critique” to Marx**

Let us consider the plausibility of Marx’s alleged internal critique of rights. Are the Rights Egoism Thesis and the Rights Nihilism Thesis plausible? The best way to decide this is to consider the soundness of (1)–(4) above, an argument which is supposed to support them.

Even if (1) is true, (2) is false. Marx does believe that infringements of freedoms do arise out of clashes of class interests (and the egoism to which such clashes give rise), but it is tenuous to ascribe to Marx the unfounded belief that clashes of class interests are the *sole* source of such infringements. Why must Marx believe that clashes of class interests are the “only” source of egoism? Cannot clashes of individual interests also give rise to egoism? Cannot infringement of freedoms result from a weakness of the will, quite apart from egoism? Cannot such infringements result from a miscalculation of the consequences of one’s own actions, without such actions being egoistic in any meaningful sense? How can Marx be saddled with (2) in light of these obvious possibilities? Buchanan gives no citation from Marx to support his attribution of (2) to Marx. Taking all these considerations together, Buchanan’s attributing (2) to Marx is a violation of the principle of interpretive charity. Thus (1)–(4) fail as a plausible ascription to Marx.

But (1)–(4) are also not properly attributable to Marx because from the supposition that there will be no classes in communism, and hence no clashes of class interests, it fails to follow that egoism will be eliminated. Again, egoism might result from the illegitimate pursuit of individual interests in communism. To assert that Marx holds (3) is uncharitable in that it is an invalid inference, not to mention the fact that Buchanan fails to inform readers as to the basis of this attribution to Marx.

Buchanan might reply that Marx does state that there are different individual interests in communism, but that there will be such harmony of interests that rights conceptions are not needed to maximize the common good. However, there are problems with this reply. First, it assumes that Marx is a utilitarian (or somewhat of one) in that the purpose of communism is to “maximize the common good.” But Marx does not give us a sufficiently de-

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66 Unless, of course, it can be *shown* that Marx holds such a position.

tailed picture of a communist regime such that this utilitarian description of it is justified. Moreover, it is unclear that a communist society, in Marx’s sense, would undermine the separateness of persons and self-respect in the way that utilitarianism does. Second, Buchanan’s use of “such harmony of interests” implies a utopian view of communist society, something Marx goes to great lengths to denounce in the *Communist Manifesto*. Third, Buchanan wrongly assumes that Marx thinks there is “no need” for rights where there is no clash of (class) interests and egoism. But this confuses the need to exercise a right with the need to respect rights. One can do more than exercise a right. One may simply enjoy having one’s right respected, something which does not require a clash of interests or egoism. In fact, even if (contrary to fact) Marx did claim that communism will be a utopian society, the claim that a communist society needs no rights is false. For such a society, just is one in which the rights of everyone are perfectly respected. Furthermore, rights have significance even when no claim is asserted. Voluntary decisions not to assert claims to rights can provide meaning to certain virtues.

Thus Buchanan does not succeed in showing that Marx holds (3) [or that Marx has to hold (3) to avoid contradiction]. Moreover, (3) is not an unproblematic claim quite apart from whether or not Marx holds it. This makes the argument consisting of (1)–(4) unsound. It follows that, for all Buchanan claims, neither the Rights Egoism Thesis nor the Rights Nihilism Thesis have been shown to be held by Marx.

It also follows that each is unsupported, since while (1)–(4) serve as Buchanan’s reasons why Marx holds the Rights Egoism Thesis and the Rights Nihilism Thesis, respectively, Buchanan gives no citation from Marx to show Marx holds (1)–(4). Thus one has insufficient reason to think, based on the unsoundness of (1)–(4), that Marx believes either the Rights Egoism Thesis or the Rights Nihilism Thesis.

But consider some of the remaining claims of Marx’s alleged internal critique of rights. Buchanan’s claim that Marx nowhere advocates the replacement of defective capitalist rights to property with superior communist rights to the same is an ignorantio elenchi insofar as it is intended to support either Marx’s alleged Rights Egoism Thesis or the Rights Nihilism Thesis. From the supposition that Marx is silent on an issue, it hardly follows that Marx cannot have anything to say, affirmative or not, about that matter. Speaking

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70 It does not follow, however, that there may be no other reasons why Marx might hold either the Rights Egoism Thesis or the Rights Nihilism Thesis, or both!
about the right to liberty, for example, just because Marx does not say that such a right has a place in communist society does not mean that it cannot have a place there. For Marx did not provide a blueprint description of communism. Marx can be charged with incompleteness in describing the communist society, but he has not precluded the possibility and importance of some rights in communism.

Furthermore, simply because Marx had harsh words to say about some rights, this does not entail that Marx believes that no rights may have a place in a communist society, or that they are valuable only for egoistic persons in capitalism. For Marx is simply responding to certain claims about rights and manifestoes of capitalist societies, societies where there is, he would hold, an illusion of liberty, equality, etc. Recall that when Marx sits down to write “On the Jewish Question” and “Critique of the Gotha Program” he is not writing philosophical treatises on the nature, value, and function of rights as such. Rather, he is discussing certain problems that arise for a capitalist way of making sense of rights. The very style of Marx’s writings alerts the reader to at least this much, warning her to remain aware that Marx’s words are rarely aimed at systematic theory construction, though they are often the result of careful and insightful criticism of capitalist society. To interpret Marx’s negative words on rights as Buchanan does is to construe them as all Marx could have or would want to say about rights, which seems to be another violation of the principle of interpretive charity.

Moreover, even if it is true that in communism “the sources of conflict will be so diminished,” it does not follow, nor does Buchanan give us reason to think Marx believes, that “there will be no need for rights” as legal guarantees of individual freedom. A system of legal rights can exist in communism even if there is no conflict present there. The absence of conflict may be a sign that rights are consistently respected and enjoyed. There is more to the importance of rights than one’s claiming them.

Furthermore, Buchanan offers no textual support for his claim that Marx “assumes that any society in which the potential for interpersonal conflict is serious enough to warrant the establishment of rights to serve as limits on conflict is a deeply defective society,” yet this claim is so absurd that to ascribe it to Marx is yet another violation of the principle of interpretive charity. Even if it is true that Marx holds that any society where the potential for interpersonal conflict warrants a system of rights to limit such conflict is defective, it hardly follows from this that communism has no place for the enjoyment of moral or human rights, which are respected by all. Moreover, Buchanan argues that only such a belief is adequate to explain Marx’s “scorn

71 Buchanan, *Marx and Justice*, p. 64.
of rights in general, his attack on all the rights of man. . . .”\textsuperscript{72} Thus this latter claim of Buchanan’s too is inadequate as a support of his own argument in regards to Marx’s alleged internal critique of rights.

In short, Buchanan fails to provide adequate reasons in support of his claim that Marx’s internal critique says there is no place for rights in communism.

**Difficulties with Attributing the “External Critique” to Marx**

Now consider the putative Marxian external critique of rights as such. Does Buchanan’s threefold reply to the question, “Does Marx reject only certain bourgeois rights?” defeat the argument that Marx’s critique of rights concerns only certain “bourgeois” rights, rather than rights as such?

In reply to Buchanan’s first point, it does not follow from the fact that “Marx nowhere states that bourgeois rights will be replaced by other rights in communism” that either Marx criticizes rights \textit{per se} or that Marx does not criticize certain “bourgeois” rights only. Buchanan’s first point amounts to an \textit{ignoratio elenchi} and does nothing to defeat the more charitable interpretation that Marx criticizes only certain kinds of rights as those which protect the bourgeois class.

In reply to Buchanan’s second point, the fact that Marx scorns various rights (even “equal rights”) is not enough to show that he successfully criticizes rights as such or that he criticizes rights other than those which protect the bourgeois class. As I argue below, there are certain rights that seem to be affirmed by implication in Marx’s critique of capitalism (though Marx himself does not seem to acknowledge this fact). Furthermore, it must be pointed out that Marx, in the passages Buchanan cites from “Critique of the Gotha Program,” does \textit{not} obviously scorn rights as such, not even “equal right” as such. Instead, it is arguable that Marx laments such “ideas which in a certain period had some meaning but have now become obsolete verbal rubbish, . . . ideological nonsense about right and other trash. . . .”\textsuperscript{73} These are not necessarily the words of someone who criticizes the notion of rights as such, or even of equal right as such, but are compatible with recognizing that there is a proliferation of rights talk which threatens the very meaningfulness of rights attributions and claims themselves. Marx argues that only in communist society “can the narrow horizon of bourgeois right be crossed

\textsuperscript{72} Buchanan, \textit{Marx and Justice}, p. 64.

in its entirety and society inscribe on its banner: From each according to his ability, to each according to his needs!” Thus Buchanan’s second argument, not unlike his first one, is problematic. Neither argument defeats the interpretation that Marx’s critique of rights is limited in scope, rather than being general.

Furthermore, even if there is, as Buchanan argues, a total absence in Marx’s writings of any indication that there will be a place for rights in communism, perhaps the reason for this is his general dissatisfaction with rights talk and rights theories that flourished during his time. That Marx does not specify the role of rights in communism (or even socialism) does not prove that Marx criticizes other than bourgeois rights. Marx refers to the rights of man or bourgeois rights in such pejorative terms because such rights-claims separate people from one another and serve to divide members of society.

In reply to Buchanan’s final point, it should be noted that Marx does not, in the passage from the “Critique of the Gotha Program” cited by Buchanan, criticize “the very concept of a right,” as Buchanan avers. Instead, the passage explains how the alleged right to equality does not accord to humans’ authentic equality, contrary to the claims often made in a capitalist regime. In the passage Marx is providing a criticism of rights in capitalism, of how the alleged right to equality is in certain crucial respects unequal in capitalism. This hardly amounts to a criticism of rights as such.

That Marx heaps scorn on certain rights, especially those respected under capitalism, that he has nothing positive to say about rights (in a direct fashion), and that he says nothing about the possible role of rights in communism, seem to be the features of Marx’s writings that drive Buchanan’s interpretation. But these are insufficient reasons to conclude that Marx thereby criticizes all rights. That Marx does not tell us the role of rights in communism does not entail that there can be no such role for rights in communism, according to Marx, nor that there can be no role, in fact, for rights in communism. Furthermore, Marx’s slogan “from each according to his ability, to each according to his needs” appears to imply a positive (welfare) right of each individual in a communist regime to the provision of certain basic needs. And there seems to be no reason why such needs could not include

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75 “Conceptions of rights will not play a major motivational role in the revolutionary transition from capitalism to communism” (Buchanan, Marx and Justice, p. 162).
76 However, not every right is respected by Marx. Implied in Marx’s condemnation of the private ownership of the means of production is that such a right is condemned by Marx. Further consideration might reveal other rights, which are implicitly condemned by Marx.
some property. Surely Marx would hold that persons in either capitalism or communism have a legitimate moral interest in securing the satisfaction of their basic needs. It is precisely this interest, Marx might argue, which grounds the moral (and perhaps legal) right to such needs.

**Foundations of a Marxian Theory of Rights**

Buchanan’s arguments aside, my own interpretation of Marx on rights is that Marx does not criticize rights *per se*. Instead, Marx holds a position on rights one of whose unacknowledged (and possibly unrecognized) implications is that persons do and should have some rights. Recall that Marx singles out only certain specified rights (“the rights of man” and, perhaps, the “rights of the citizen”) as targets for criticism: the rights to liberty, property, equality, security, and certain other political rights. *These* are the sorts of rights Marx criticizes as promoting egoism among persons in capitalist societies. But Marx does *not* criticize the right to resist oppression in Article 2 of the Declaration of the Rights of Man and of the Citizen (1789). That Marx does not criticize the right to resist oppression does not logically imply that he accepts it. However, it does mean that Marx does not criticize one of the rights of the Declaration, a right with which Marx is surely familiar. This fact alone casts some doubt on the view that Marx rejects rights *per se*.

What does Marx mean when he criticizes certain rights as being “egoistic”? Perhaps, like Bentham, Marx believes that the idea that the rights of man could be a starting point for political morality is “pernicious nonsense.” Perhaps Marx holds that certain rights are a celebration of the primacy of individualism, and he opposes individualism (over, say, the recognition and pursuit of collective goods) because it asserts an individual’s own interests against those of the collective good, which nurtures him or her and makes individual autonomy possible and worthwhile. Rights separate individuals from the communities their very membership in which is vital for human growth. Since the rights of man are essentially social, this criticism goes on to say, there cannot be moral rights of this type independent of any or all social institutions, as the political atomist or individualist would have it.77

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78 “Political atomism” is defined as the view that society is “in some sense constituted by individuals for the fulfillment of ends which were primarily individual,” and includes the notion that rights play a central part in the justification of political structures and action [See Charles Taylor, *Philosophical Papers*, Volume 2 (Cambridge: Cambridge University Press, 1985), p. 187].
Similarly, Marx seems to be criticizing the rights of man because he sees them as serving a foundational function in the justification of other moral, social, and political principles (in certain, if not all, capitalist regimes), while such rights themselves are alleged to be self-justified or not justified on the basis of any such principle(s). Why should rights be basic to any social or political morality?

Jeremy Waldron recognizes this as a plausible interpretation of the “socialist” critique of rights when he writes, “if rights had any relevance at all in society, it was not on account of their being the terms of its foundation.”

Perhaps Marx is also arguing that a rights-based society is problematic in that it does not recognize any intrinsic value in any collective good. If collective goods such as membership in society are intrinsically valuable, then it is to be expected that they provide the source both of personal goals and of obligations to others. Perhaps Marx is criticizing the rights of man as being an underdeveloped notion of rights that fails to correlate individual rights with collective goods and obligations to society.

Marx could argue that in communism, the working class would possess a (collective) right to ownership of the means of production, a notion that would certainly ring consistent with Marx’s general critique of capitalism. Moreover, he could argue that the working class both as a collective and as individuals possess rights against their exploitation and alienation.

Furthermore, that Marx calls capitalist exploitation “robbery” and an injustice seems to imply that Marx does not condemn rights per se, but rather affirms the moral right (based on the valid moral claim) of each person to be free from exploitation. More specifically, Marx’s concept of capitalist exploitation implies the right of individuals not to be exploited, a right which is correlated with the duty of others not to exploit the right.

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82 Ziyad I. Husami, “Marx on Distributive Justice,” Philosophy and Public Affairs, 8 (1978), pp. 27–64. Husami argues that two principles of justice may plausibly be extracted from Marx’s writings. The first is a principle of equal treatment. The second is one of rewards according to labor. Since capitalism violates the labor exchange between capitalists and workers, it thereby violates the principle of rewards according to labor. Since capitalism violates a principle of justice, it is unjust. For a critique of Husami’s argument, see Allen W. Wood, “Marx on Right and Justice: A Reply to Husami,” Philosophy and Public Affairs, 8 (1979), pp. 267–295.
holder, not to use the right holder as a mere means to individual or collective socioeconomic or political advantage. Even if Marx’s moral condemnation of capitalist exploitation is itself an insufficient ground to derive the conclusion that workers’ rights are violated, it is an important evidence for such a conclusion. Also implied in Marx’s critique of capitalism seems to be an individual’s right not to be alienated from creative, self-conscious, and productive activity by robbing one of control over his or her actions. This right implies a duty of others not to cause one to be alienated in such a way. This implied right, in turn, seems to further imply that individuals should have a choice to do certain things in a socialist regime. Thus there is reason to think Marx implies that some individual rights ought to be respected in a socialist regime. That is, Marx appears to provide a critique of capitalism one of whose unacknowledged (and possibly unrecognized) implications is that persons have moral rights at least some of which ought to be protected by institutional structures of law. Or, at least, it is not inconsistent with anything Marx argues about rights to attribute to him such a position on rights.

Marx’s critique of capitalism also seems to imply that there are some individual and some collective (group) rights that are basic to a communist society. One such right is the collective and individual right to self-determination. This right is implied in Buchanan’s own characterization of Marx’s view of communist society: “Collectively they would freely choose to produce the bounty of communist society and individually they would freely choose which particular productive activity to engage in.” This, it might be plausibly argued, implies that Marx thinks that both collectives and individuals have what might be called a “right of self-determination,” based on a group’s legitimate interest (moral or legal) in collective freedom. Furthermore, Marx’s critique of capitalism also seems to imply an individual’s right to free productive activity in a communist regime. For in communism, Buchanan himself writes, “productive activity will be free, rather than compulsory, and mutually beneficial, rather than harmful, when and only when individuals choose to engage in particular activities on the basis of undistorted preferences and when the collective result of these choices is a social order in which all persons’ undistorted preferences can be fully satisfied.”

Thus, even though Marx writes critically about certain rights in capitalism, his critique of capitalism seems to imply that some rights should not

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83 This Marxian notion of exploitation is borrowed from Buchanan, Marx and Justice, p. 39.
84 I borrow this Marxian notion of alienation from Buchanan, Marx and Justice, p. 43.
85 Buchanan, Marx and Justice, p. 48.
86 Buchanan, Marx and Justice, p. 49.
be condemned either in a capitalist society or in a communist one. Even if it is true that Marx both fails to provide conceptual resources to serve as weapons against combating rights violations during and after a communist revolution, and actively discourages his readers from trying to revise old ways of thinking about rights along communist modes of thinking, it does not follow that Marx criticizes rights per se, as Buchanan’s alleged Marxian external critique of rights suggests.

But perhaps most telling of all is a fact that is not even alluded to by implication in Buchanan’s, nor any other philosopher’s treatment of Marx. The right to freedom of expression, thought by most in the Western world to gain its initial expression in the writings of John Stuart Mill, was in fact articulated in rather clear terms by none other than Marx himself. Historically and philosophically speaking, many philosophers and legal scholars believe that Mill, in *On Liberty* (1859), articulated an account of freedom of speech and expression that has served as the foundation of the predominant U.S. attitude toward the First Amendment and the right to freedom of expression. But in 1842, Karl Marx argued that “[a]s soon as one facet of freedom is repudiated, freedom itself is repudiated, and it can lead only a mere semblance of life, since afterwards it is pure chance which object unfreedom takes over as the dominant power. Unfreedom is the rule and freedom the exception of chance and caprice.” Of freedom of the press in particular, Marx writes, “The essence of a free press is the characterful, reasonable, ethical essence of freedom. The character of a censored press is the characterless ogre of unfreedom; it is a civilized monster, a perfumed abortion.” Not only, then, does Marx express his unambiguous support of freedom of expression in publication, he condemns any attempt of a government to suppress it or limit it in any way. And Marx’s words are not the rantings of an opinionist with merely emotive content. For as a philosopher, he wants to consider rationally the putative justifications for censorship: “we must above all examine whether censorship is in its essence a good means.”

His conclusion is that censorship of the press is but a police measure that

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does not even achieve what it wants to achieve: “The censorship is thus no law but a police measure, but it is itself a bad police measure, because it does not achieve what it wants and it does not want what it achieves.”

This is because “censorship is a constant attack on the rights of private persons and even more so on ideas.” Marx derives this inference from the premise that freedom in general is a good thing, and a good thing to protect: “If freedom in general is justified, it goes without saying that a facet of freedom is the more justified the greater the splendor and the development of essence that freedom has won in it.” Although Mill’s defense of freedom of expression differs from Marx’s in certain respects, it would be incorrect to suppose that it is Mill who first argued in favor of the right to freedom of expression. And most important of all, for our purposes, is Marx’s own use of “rights of private persons” in the content of his support of freedom of expression, perhaps a most neglected facet of his attack on capitalism.

Buchanan, then, has not given us sufficiently good reason to conclude that either the internal or external criticism of rights, which Buchanan identifies, is properly ascribable to Marx. Marx criticizes certain rights because they tend to separate individuals from each other and minimize the pursuit of collective goods. There is room for some rights in Marx’s position, ones that he discusses by implication in his overall critique of capitalism. The rights-respecting Marxist need not be embarrassed by Marx’s scathing indictment of certain rights. Instead, the Marxist should understand that some of the richest human rights appear to be respected or affirmed (by implication) in Marx’s writings.

It is no longer obvious that a distinguishing mark between liberalism and Marxism is that liberalism makes room for rights, while Marxism does not. A deeper taxonomy of political theories is needed in order to differentiate more plausibly the genuine differences between these two important kinds

91 Marx, On Freedom of the Press and Censorship, p. 31.
92 Marx, On Freedom of the Press and Censorship, p. 34.
94 There is room for a fuller treatment as to how certain rights have a place in Marxism. One might strive toward creating and developing a Marxian theory of rights, one that is not logically excluded from the core of Marx’s philosophy. A Marxian theory of rights would need to do at least the following: (i) explicate the nature and value of rights in communism (and explain how rights might differ in scope, content, etc. in a capitalist regime); (ii) provide a moral, social, and political grounding for rights of various sorts; (iii) set forth the conditions under which a right holder has a right in communism; (iv) give an account of the conditions under which rights “trump” others when rights conflict in communism.
of societies. In better understanding the differences between such political perspectives, those engaged in attempting to shape a system of international law might better appreciate what truly unifies and what genuinely distinguishes them in order to try to reach sufficient consensus on what each such political viewpoint can accept as binding on it in the Society of Peoples.