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# CLASS CONFLICT AND LAW

*Karl Marx*

. . . The history of all hitherto existing society is the history of class struggles. Freeman and slave, patrician and plebeian, lord and serf, guild-master and journeyman, in a word, oppressor and oppressed, stood in constant opposition to one another, carried on an uninterrupted, now hidden, now open fight, a fight that each time ended either in a revolutionary reconstitution of society at large, or in the common ruin of the contending classes.

In the earlier epochs of history, we find almost everywhere a complicated arrangement of society into various orders, a manifold gradation of social rank. In ancient Rome we have patricians, knights, plebeians, slaves; in the Middle Ages, feudal lords, vassals, guild-masters, journeymen, apprentices, serfs; in almost all of these classes, again, subordinate gradations.

The modern bourgeois society that has sprouted from the ruins of feudal society has not done away with class antagonisms. It has but established new classes, new conditions of oppression, new forms of struggle in place of the old ones.

Our epoch, the epoch of the bourgeoisie, possesses, however, this distinctive feature; it has simplified the class antagonisms. Society as a whole is more and more splitting up into two great hostile camps, into two great classes directly facing each other—bourgeoisie and proletariat. . . .

Can the *State* act in any other way? The *State* will never look for the cause of *social imperfections "in the State and social institutions themselves,"* as "A Prussian" demands of his king. Where there are political parties, each party finds the source of *such* evils in the fact that the opposing party, instead of itself, is at the *helm of State*. Even the radical and revolutionary politicians look for the source of the evil, not in the *nature* of the State, but in a particular *form of the State*, which they want to replace by *another* form.

The *State* and the *structure of society* are not, from the standpoint of *politics, two* different things. The State is the structure of society. In so far as the State admits the existence of *social* evils, it attributes them to *natural laws* against which no human power can prevail, or to *private life* which is independent of the State, or to the *inadequacies of the administration* which is subordinate to it. Thus in England poverty is explained by the *natural law* according to which population always increases beyond

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the means of subsistence. From another aspect, England explains *pauperism* as the consequence of the *evil dispositions of the poor*, just as the king of Prussia explains it by the *unchristian disposition of the rich*, and as the Convention explains it by the *sceptical, counter-revolutionary outlook of the property owners*. Accordingly, England inflicts penalties on the poor, the king of Prussia admonishes the rich, and the Convention beheads property owners.

In the last resort, *every* State seeks the cause in *adventitious or intentional defects in the administration*, and therefore looks to a *reform* of the administration for a redress of these evils. Why? Simply because the *administration* is the *organizing* activity of the State itself.

The *contradiction* between the aims and good intentions of the administration on the one hand, and its means and resources on the other, cannot be removed by the State without abolishing itself, for it rests upon this contradiction. The State is founded upon the contradiction between *public* and *private life*, between *general* and *particular interests*. The *administration* must, therefore, limit itself to a *formal and negative* sphere of activity, because its power ceases at the point where civil life and its work begin. In face of the consequences which spring from the unsocial character of the life of civil society, of private property, trade, industry, of the mutual plundering by the different groups in civil society, *impotence* is the *natural law* of the administration. These divisions, this debasement and *slavery of civil society*, are the natural foundations upon which the *modern* State rests, just as *civil society* was the natural foundation of *slavery* upon which the State of *antiquity* rested. The existence of the State and the existence of slavery are inseparable. The State and slavery in antiquity—frank *classical* antithesis—were not more intimately *linked* than are the modern State and the modern world of commerce—sanctimonious *Christian* antithesis. If the modern State wished to end the *impotence* of its administration it would be obliged to abolish the present conditions of *private life*. And if the State wished to abolish these conditions of private life it would have also to put an end to its own existence, for it exists *only* in relation to them. . . .

The more powerful the State, and therefore the more *political* a country is, the less likely it is to seek the basis of *social* evils and to grasp the *general* explanation of them, in the *principle of the State* itself, that is in the *structure of society*, of which the State is the active, conscious and official expression. *Political* thought is really *political* thought in the sense that the thinking takes place within the framework of politics. The clearer and more vigorous political thought is, the *less* it is able to grasp the nature of social evils. The *classical* period of political thought is the *French Revolution*. Far from recognizing the source of social defects in the principle of the State, the heroes of the French Revolution looked for the sources of political evils in the defective social organization. Thus, for example, Robespierre saw in the coexistence of great poverty and great wealth only an obstacle to *genuine democracy*. He wished, therefore, to establish a universal *Spartan* austerity. The principle of politics is the will. The more partial, and the more perfected, *political* thought becomes, the more it believes in the *omnipotence* of the will, the less able it is to see the *natural* and mental *limitations* on the will, the less capable it is of discovering the source of social evils. . . .

It has been shown that the *recognition of the rights of man* by the *modern State*, has only the same significance as the *recognition of slavery* by the *State in antiquity*. The basis of the State in antiquity was slavery; the basis of the *modern* State is civil society and the *individual* of civil society, that is, the independent individual, whose

only link with other individuals is private interest and *unconscious*, natural necessity, the *slave* of wage labour, of the *selfish* needs of himself and others. The modern State has recognized this, its natural foundation, in the universal rights of man. But it did not create it. As the product of civil society which was impelled by its own development beyond the old political shackles, it only recognized its own origins and basis in *proclaiming the rights of man*. . . .

The basis of present-day "*public affairs*," that is, of the developed modern State, is not, as the "Critical School" thinks, the society of feudal privileges, but a society in which *privileges* have been *abolished* and *dissolved*, a developed *civil society*, where the elements of existence which were politically fettered by privilege have been freed. "*No privileged exclusiveness*" is not levelled against anyone, nor against public affairs. Just as free industry and free trade abolish privileged enclaves, and replace them with the individual freed from all privileges (which separate the individual from the community as a whole, but also involve him in a smaller exclusive community), the individual who is no longer related to other men by even the *appearance* of a general bond, and create a general conflict between man and man, individual and individual, so the whole of *civil society* is only this mutual conflict of all individuals who are no longer distinguished by anything but their *individuality*. It is only the universal movement of the individual life forces freed from the shackles of privilege. The opposition between the *democratic, representative State* and *civil society* is the perfection of the classical opposition between *public social life* and *slavery*. In the modern world, every individual participates *at the same time* in slavery and in social life. But the *slavery of civil society* is, *in appearance*, the greatest *liberty*, because it appears to be the realized *independence* of the individual for whom the frantic movement, released from general shackles and from the limitations imposed by man, of the vital elements of which he has been stripped, for example property, industry and religion, is a manifestation of his *own* liberty, when in reality it is nothing but the expression of his absolute enslavement and of the loss of his human nature. Here, *privilege* has been replaced by *right*. . . .

To speak precisely and in ordinary language, the members of civil society are not *atoms*. The *characteristic quality* of an atom is to have *no* qualities, and consequently no relations determined by its own *nature* with other beings outside itself. The atom has *no needs* and is *self-sufficient*; the external world is a complete *void*, has neither content, nor sense, nor meaning, precisely because the atom possesses *everything* in itself. The egoistic individual of civil society may in abstract and lifeless conceptions, inflate himself into an *atom*, that is, into a being without relations, self-sufficient, without needs, *absolutely perfect* and contented. But profane, *sensuous reality* has no concern for his imagination. The individual finds himself forced by everyone of his senses to believe in the existence of the world and of other individuals; and everything, down to his *profane* stomach reminds him daily that the *external* world is not a void, that it is, on the contrary, that which *fills* (his stomach). Every one of his activities and qualities, every one of his aspirations, becomes a *need*, a *want*, which transforms his *egoism* into a desire for things and human beings outside himself. But since the need of one individual is not self-evident to another egoistic individual who possesses the means of satisfying it, every individual finds himself obliged to create this relation in making himself so to speak the middleman between the needs of others and the objects of these needs. It is, therefore, *natural necessity*, it is the *essential qualities of man*, however alienated the form in which they appear, it is *interest*, which hold together the members of

civil society, whose *real* bond is constituted by *civil* and not by *political* life. Thus it is not the *State* which holds together the *atoms* of civil society; it is the fact that these *atoms* are only *atoms* in *idea*, in the *heaven* of the imagination, and that *in reality* they are beings very different from atoms. They are not *god-like egoists* but *egoistic men*. Only *political superstition* believes at the present time that civil life must be held together by the State, when in reality the State is upheld by civil life. . . .

Just because individuals seek *only* their particular interest, which for them does not coincide with their common interest (for the "general good" is an illusory form of community life), the common interest is imposed as an interest "alien" to them, and "independent" of them, as itself in turn a particular "general" interest; or else the individuals must encounter each other in this discord, as in democracy. On the other hand, the *practical* struggle of these particular interests, which are always *really* in conflict with the community and illusory community interests, makes *practical* intervention and control necessary through the illusory "general" interest in the form of the State. The social power, i.e. the multiplied productive force, which results from the co-operation of different individuals as it is determined by the division of labour, appears to these individuals, since their co-operation is not voluntary but natural, not as their own united power but as an alien force existing outside them, of whose origin and purpose they are ignorant, and which they therefore cannot control, but which, on the contrary, passes through its own proper series of phases and stages, independent of the will and the action of man, even appearing to govern this will and action. . . .

Since the State is the form in which the individuals of a ruling class assert their common interests, and in which the whole civil society of an epoch is epitomized, it follows that the State acts as an intermediary for all community institutions, and that these institutions receive a political form. Hence the illusion that law is based on will, and indeed on will divorced from its real basis—on *free* will. Similarly, law is in its turn reduced to the actual laws.

Civil law develops concurrently with private property out of the disintegration of the natural community. Among the Romans the development of private property and civil law had no further industrial and commercial consequences because their whole mode of production remained unchanged. Among modern peoples, where the feudal community was disintegrated by industry and trade, a new phase began with the rise of private property and civil law, which was capable of further development. The first town which carried on an extensive trade in the Middle Ages, Amalfi, also developed at the same time maritime law. As soon as industry and trade developed private property further, first in Italy and later in other countries, the perfected Roman civil law was at once taken up again and raised to authority. When, subsequently, the bourgeoisie had acquired so much power that the princes took up their interests in order to overthrow the feudal nobility by means of the bourgeoisie, there began in all countries—in France in the sixteenth century—the real development of law, which in all countries except England proceeded on the basis of the Roman Code. Even in England, Roman legal principles had to be introduced for the further development of civil law (especially in the case of personal movable property). It should not be forgotten that law has not, any more than religion, an independent history. . . .

Nothing could be more comical than Hegel's analysis of private property in land. According to him, man as an individual must give reality to his will as the soul of external Nature, and must therefore take possession of Nature as his private

property. If this were the destiny of "the individual," of man as an individual, it would follow that every human being must be a landowner in order to realize himself as an individual. Free private property in land, a very recent product, is not, according to Hegel, a definite social relation, but a relation of man as an individual to Nature, "the absolute right of appropriation which man has over all things" (Hegel, *Philosophy of Right*, Berlin, 1840). So much is at once evident, that the individual cannot maintain himself as a landowner by his mere "will" against the will of another individual who likewise wants to incarnate himself in the same piece of land. It requires many other things besides the good will. Furthermore it is quite impossible to understand where "the individual" sets the limits for the realization of his will, whether his will should realize itself in a whole country, or whether it requires a whole collection of countries by whose appropriation I might "manifest the supremacy of my will over the thing." Here Hegel breaks down completely: "The appropriation is of a very individual kind; I do not take possession of more than I touch with my body, but the second point is at the same time that external things have a greater extension than I can grasp. While I thus have possession of a thing, something else is likewise in touch with it. I exercise my appropriation by my hand but its scope may be extended" (*ibid.*). But this other thing is again in contact with still another, and so the boundary disappears, within which my will as soul can flow into the soil. "If I own anything, my reason at once passes on to the idea that not only this property, but also the thing it touches, is mine. Here positive right must fix its boundaries, for nothing more can be deduced from the concept" (*ibid.*). This is an extraordinarily naïve confession of "the concept," and it proves that this conception, which from the outset makes the blunder of regarding as absolute a particular legal conception of landed property which belongs to bourgeois society, does not understand anything of the real forms of this property. This implies at the same time an avowal that "positive law" can and must, change its affirmations in accordance with the needs of social, i.e. economic, development. . . .

In historical fact the theorists who considered *force* as the basis of law were directly opposed to those who saw *will* as the basis of law. . . . If force is taken to be the basis of law, as by Hobbes, law and legislative enactments are only a symptom or expression of *other* conditions upon which the State power rests. The material life of individuals, which certainly does not depend on their mere "will," their mode of production and their form of intercourse, which reciprocally influence each other, are the real basis of the State. This material life is, at every stage in which the division of labour and private property are still necessary, quite independent of the *will* of individuals. These real conditions are not created by the State power; they are rather the power which creates it. The individuals who rule under these conditions, quite apart from the fact that their power has to constitute itself as a State, must give their will, as it is determined by these definite circumstances, a general expression as the will of the State, as law. The content of this expression is always determined by the situation of this class, as is most clearly revealed in the civil and criminal law. Just as the bodily weight of individuals does not depend upon their ideal will or caprice, so it does not depend on them whether they embody their own will in law, and at the same time, in accordance with individual caprice give everyone beneath them his independence. Their individual domination must at the same time form a general domination. Their individual power rests upon conditions of existence which develop as social conditions and whose continuance they must show to involve their own supremacy and yet be valid for all. Law is

the expression of this will conditioned by their common interests. It is just the striving of independent individuals and their wills, which on this basis are necessarily egoistic in their behavior to each other, which makes self denial through law and regulation essential, or rather self denial in exceptional cases and maintenance of their interest in general. . . . The same holds good for the subject classes, on whose will the existence of law and the State is equally little dependent. For instance, as long as the productive forces are insufficiently developed to make competition superfluous, with the consequence that competition is always reappearing, the subject classes would be willing the impossible if they "willed" to abolish competition and with it the State and law. Moreover, until conditions have developed to a point where they can produce this "will" it exists only in the imagination of the ideologists. Once conditions are sufficiently developed to produce it, the ideologist can imagine it as purely capricious and therefore conceivable at any period and under any circumstances. Crime, i.e. the struggle of the single individual against the dominant conditions, is as little the product of simple caprice as law itself. It is rather conditioned in the same way as the latter. The same visionaries who see in law the rule of an independent and general will see in crime a simple breaking of the law. The State does not rest on a dominating will, but the State which arises out of the material mode of life of individuals has also the form of a dominating will. If this will loses its domination this means not only that the will has changed but also that the material existence and life of individuals has changed despite their will. It is possible that law and legislation have an autonomous evolution but in that case they are purely formal and no longer dominating, as many striking examples in Roman and English legal history show. We have already seen how, through the activity of philosophers, a history of pure thought could arise by the separation of thought from the individuals and their actual relations which are its basis. In the present case, also, law can be separated from its real basis, and thereby we can arrive at a "ruling will" which in different periods has a different expression and which, in its creations, the laws, has its own independent history. By this means political and civil history is ideologically transformed into a history of the dominance of self-developing laws. . . .

. . . it would be very difficult, if not altogether impossible, to establish any principle upon which the justice or expediency of capital punishment could be founded, in a Society, glorying in its civilization. Punishment in general had been defended as a means either of ameliorating or of intimidating. Now what right have you to punish me for the amelioration or intimidation of others? And besides, there is history—there is such a thing as statistics—which prove with the most complete evidence that since Cain the world has neither been intimidated nor ameliorated by punishment. Quite the contrary. From the point of view of abstract right, there is only one theory of punishment which recognizes human dignity in the abstract, and that is the theory of Kant, especially in the more rigid formula given to it by Hegel. Hegel says: "Punishment is the *right* of the criminal. It is an act of his own will. The violation of right has been proclaimed by the criminal as his own right. His crime is the negation of right. Punishment is the negation of this negation, and consequently an affirmation of right, solicited and forced upon the criminal by himself."

There is no doubt something specious in this formula, inasmuch as Hegel, instead of looking upon the criminal as the mere object, the slave of justice, elevates him to the position of a free and self-determined being. Looking, however, more closely into the matter, we discover that German idealism here, as in most other

instances, has but given a transcendental sanction to the rules of existing society. Is it not a delusion to substitute for the individual with his real motives, with multifarious social circumstances pressing upon him, the abstraction of "free-will"—one among the many qualities of man for man himself? This theory, considering punishment as the result of the criminal's own will, is only a metaphysical expression for the old "jus talionis," eye against eye, tooth against tooth, blood against blood. Plainly speaking, and dispensing with all paraphrases, punishment is nothing but a means of society to defend itself against the infraction of its vital conditions, whatever may be their character. Now, what a state of society is that which knows of no better instrument for its own defence than the hangman, and which proclaims through the "leading journal of the world" its own brutality as eternal law?

Mr. A. Quételet, in his excellent and learned work, *l'Homme et ses Facultés*, says: "There is a budget which we pay with frightful regularity—it is that of prisons, dungeons and scaffolds. . . . We might even predict how many individuals will stain their hands with the blood of their fellow-men, how many will be forgers, how many will deal in poison, pretty nearly the same way as we may foretell the annual births and deaths."

And Mr. Quételet, in a calculation of the probabilities of crime published in 1829, actually predicted with astonishing certainty, not only the amount but all the different kinds of crimes committed in France in 1830. That it is not so much the particular political institutions of a country as the fundamental conditions of modern *bourgeois* society in general, which produce an average amount of crime in a given national fraction of society, may be seen from the following tables, communicated by Quételet, for the years 1822–24. We find in a number of one hundred condemned criminals in America and France:

| *Age* | *Philadelphia* | *France* |
|---|---|---|
| Under twenty-one years | 19 | 19 |
| Twenty-one to thirty | 44 | 35 |
| Thirty to forty | 23 | 23 |
| Above forty | 14 | 23 |
| | 100 | 100 |

Now, if crimes observed on a great scale thus show, in their amount and their classification, the regularity of physical phenomena—if, as Mr. Quételet remarks, "it would be difficult to decide in respect to which of the two (the physical world and the social system) the acting causes produce their effect with the utmost regularity"—is there not a necessity for deeply reflecting upon an alteration of the system that breeds these crimes, instead of glorifying the hangman who executes a lot of criminals to make room only for the supply of new ones?