

THE LEFT AND RIGHTS

A Conceptual Analysis of the
Idea of Socialist Rights

Tom Campbell

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By

TOM CAMPBELL

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idea of socialist rights

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To Magnus and Flora

Contents

Preface	ix
1 Reformists and revolutionaries	1
The dispute within socialism	
Liberal concepts and socialist ideals	
Summary	
2 The moralism of rights	13
The 'moralism' objection	
The critique of 'moral rights'	
Rights and rules	
3 The legalism of rights	35
Formal justice	
Social control	
Organisational rules	
Distributive patterns	
Conclusion	
4 The coerciveness of rights	58
Obligations and sanctions	
Kelsen's pure theory	
H.L.A. Hart's concept of law	
Non-coercive jural agencies	
5 The individualism of rights	83
Contract and power theories of rights	
The interest theory of rights	
6 Socialism and human rights	103
Pre-social and ahistorical rights	
General and fundamental rights	
Absolute rights	
Conclusion	
7 Justificatory principles	123
Meritorian justice	
Human need	
Utility	
Socialist principles and socialist rights	

8	Political rights: freedom of expression	149
	Liberalism and freedom of expression	
	Socialism and freedom of expression	
9	Economic rights: the right to work	171
	The positive right to work	
	The obligation to work	
10	Welfare rights	193
	The socialist critique of welfare rights	
	Counter-productive welfare law	
	Conclusion	
	Notes	216
	Index	250

Preface

The dogmatic type of linguistic philosopher who insists upon a particular set of meanings and concepts as the correct or only proper explication of a given area of discourse is less common than a decade or two ago, but the intellectual constraints imposed by inherited conceptual outlooks still present major hindrances to progressive social theorising. This is particularly evident in those central contested concepts of practical philosophy which are used to express competing ideological viewpoints. In this book an extended analysis of the idea of rights is undertaken in order to undermine some common prejudices against the concept of socialist rights in the hope that this will promote linguistic tolerance and perhaps help to establish a shared conceptual base for fruitful dialogue between theorists of the political Left and Right.

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Glasgow

If we value and defend our rights is this an expression of human dignity or an indication of our selfish and alienated condition? Is the notion of individual rights tied to the competitive individualism of liberal capitalism or would rights have a central place even in a socialist utopia? Is socialism the fulfilment or the negation of human rights? These abstract and largely conceptual questions seem unrelated to immediate political concerns, and yet the answers to them overflow with fundamental practical implications that can alter our whole approach to the central ideological disputes of the twentieth century. A clear grasp of the nature of rights is vital to our understanding of the disagreements which recur between the Soviet bloc and the Western powers over human rights and can radically affect the way in which we think about social policy issues in the modern democratic welfare state.

If the ideals of socialism can be expressed in terms of individual rights then, however different socialist rights may be from those most highly prized by the classical liberals, there is at least a continuity and similarity of thought forms and basic concepts in which major political disagreements can be clarified and debated. But if the ideological basis of socialism is so far removed from that of liberal democracy that it has no use for the language of rights, then there can be little room either for compromise or for significant dialogue between socialists and liberal democrats. In so far as the peaceful solution of political disputes depends on sustaining communication between those in serious disagreements, the conceptual compatibility of 'rights' and 'socialism' has a bearing on the prospects of reducing the political uses of violence both within and between nations.

The compatibility of socialism and rights can be

approached either as a factual and empirical matter, requiring study of the actual practices of socialist societies (assuming that there are some at least partially socialist societies in existence), or as a doctrinal or philosophical question involving the careful analysis of the meanings and background assumptions of our ideas of 'rights' and 'socialism'. In this book I adopt the second approach and investigate whether or not there is a philosophically acceptable theory of rights which holds for socialist as well as non-socialist systems of thought. But the two approaches - empirical and conceptual - are not altogether unrelated. The failures of many so-called socialist societies to respect what, in the West, are regarded as fundamental rights naturally gives rise to the presumption that, despite the references to individual rights in the constitutions of many of these countries,(1) there is something inherently antithetical between socialist theory and respect for individual rights. It may be no accident that governments espousing 'collectivist' doctrines appear to place less weight on freedom of speech, freedom of movement and the right to take part in the selection of political authorities than those nations which regard themselves as liberal democracies. (2) And the explanation for the alleged failures of ostensibly socialist societies to match standards of protection for the individual normally attained in Western democracies could be due in part to fundamental incompatibilities between socialist doctrine and the concept of rights as well as to wider and less intellectual determinants of political and legal practice.

THE DISPUTE WITHIN SOCIALISM

To ask whether socialism is a friend or foe of individual rights may seem to draw the lines of conceptual battle between the allies and enemies of socialism, the former taking the position that socialism is the only effective protector of the essential rights of the individual, and the latter responding with the view that the corporate goals and methods of socialism grant no significance to and offer no protection for the most basic rights of free men. But this is far too simple a picture of this particular conceptual war. The dispute about rights and socialism is as much a debate within socialism as about it. True, there is a great deal of literature from what might be called a 'right-wing' liberal stance to the effect that the introduction of new social and economic rights, such as the right to free health-care, education and employment,

are in effect an undercover attack on the traditional civil liberties, and behind this there lies the more general charge that under socialism the individual counts for little against the requirements of society as a whole, or, more specifically, the working-class section of it. But a fiercer and in many ways more interesting and significant battle goes on within socialism itself between those who wish to reform and those who seek to jettison the liberal idea of individual rights. It is primarily to this family quarrel that I direct my attention.

Those socialists who reject the incorporation of the language of rights within socialism draw heavily upon certain non-socialist theories of rights, particularly those which propound an analytical connection between rights and law, and between law and coercion. This means that, in defending the view that socialism need not and indeed should not dispense with the idea of rights, I shall become deeply immersed in the criticism of those liberal theories of rights which are taken up into socialist critiques of rights. Thus, although my overall objective is to investigate a dispute within socialism, a great deal of the path to this objective will pass through the terrain of the central theories of rights in contemporary philosophical discussions.

The contending parties within socialism may be divided into revolutionaries and reformists. Those socialists who are revolutionaries on the issue of the place of rights within socialism argue that the whole notion of rights is incurably bourgeois. They concede that right-claims may have played an important role in the emergence of capitalism from the constraints of feudalism and have a minor role in the transition from capitalism to socialism, but argue that they will have no place in a socialist society. In a community of genuinely social beings, it is argued, people will be united by bonds deeper than those of individual rights and sanctioned obligations. Under socialism all will work together spontaneously in a willing spirit of co-operation unencumbered by restrictive regulations and the self-interested competitiveness in which the language of rights is rooted.

Reformists, on the other hand, while admitting the relative and inadequate nature of bourgeois rights, seek to salvage something of lasting value from the traditional concept of rights. By making a judicious selection from the list of liberal rights, dropping some, such as the right to own the means of production, introducing the economic and social rights associated with a full-employment, welfare-orientated society, and relating the idea of rights to human needs rather than to a priori conceptions of

individual liberty, they hope to develop a distinctively socialist scheme of rights. Such rights do not serve to regulate the 'free' competition of self-centred individuals in the pursuit of scarce resources, but govern the communal arrangements of socially motivated persons committed to the co-operative satisfaction of human needs. On the reformist view, therefore, rights will not wither away along with the antagonisms of class-dominated societies, rather they will be transformed to serve the true interests of humanity. In some cases this will involve the actual satisfaction of interests to which bourgeois societies have paid only lip-service, in other cases old rights will be superseded by new ones, and in general the whole approach to rights will change from a situation in which rights mark the boundaries of legitimate, self-regarding behaviour to one in which they are part of the rule-governed framework within which the individual can fulfil his potential as a social being. (3)

The split between revolutionaries and reformists may be seen in the different positions they take up regarding human rights, in particular in the debate over the updating of the traditional concept of natural rights into the modern idea of human rights. (4) This issue has tended to divert attention from the more general question of whether rights of any sort are compatible with socialism, and the particular difficulties which some socialists see in the alleged universality and inalienability of human rights has helped to bias them against the whole notion of rights. Nearly all socialists agree with John Lewis that 'the conception of absolute, inherent and imprescriptible rights based on man's origin and nature antecedent to society' is a myth and that the alleged natural right to property, for instance, is an historically conditioned expression of bourgeois interests. (5) Some, like Lewis himself, have contended that by excising those liberal rights which are used by sectional interests to block government action for the common good, by ceasing to regard any rights as literally absolute or indefeasible, and by drawing up a new list of 'human' rights 'based upon human needs and possibilities and the recognition by members of a society of the conditions necessary in order that they may fulfil their common ends', it is possible to establish a set of socialist human rights, including the right to various forms of economic and welfare benefits as well as the traditional rights to free speech, freedom of the person, freedom of association and political activity. These rights, in a socialist society, could only be 'set aside temporarily ... in the gravest emergency and after the most critical scrutiny of the reasons'. (6) But others - like, most recently, Ruth Anna

Putnam - deny that the goals of socialism can be captured by the conceptual apparatus of rights. Putnam insists that all rights are 'context-dependent' in that the interpretation of what counts, for instance, as 'liberty' will vary with circumstances, and the relevance of any list of rights will depend on the particular forms of oppression in a given society. She argues that 'recognition of this double context-dependency involves a denial of an essential element of the original doctrine ... independence of social context', (7) hence the inherent theoretical weakness of the idea of the rights of persons. Putnam goes on to assert, in a manner reminiscent of liberal critics of the new social and economic rights, that elaborations of the sort suggested by Lewis have serious limitations since multiplying rights reduces liberty and therefore inevitably dilutes the force of existing rights. She would presumably agree with Maurice Cranston (8) that to add the new economic rights to the old civil liberties results in a weakening of the effectiveness of the latter. Thus there appears to be something like an unholy alliance between Left and Right on the practical and conceptual difficulties inherent in the reformist position.

Without denying that much of interest and importance has emerged from the debate about the incorporation of social and economic rights into the conception of human rights, it is unfortunate from some points of view that so much of the theoretical discussion about socialism and rights has centred on the notion of human rights, for there are logically more fundamental issues at stake concerning socialism and rights in general. Tangled up in the objections laid by socialists against the universality of human rights are reservations about rights as such. Many of Putnam's points are not directed solely at the fallacies of the natural rights tradition but are relevant to all attempts to express the socialist ideal in terms of rights of any sort. Appeals to rights, she notes, involve the demand that these rights be embedded in legal codes, but laws involve a state and 'the socialist regards the state as an instrument of class oppression'. In a socialist society there would be no state, hence no laws and no role for the language of rights. A socialist society is a co-operative society and where there are no conflicts of self-interest between competitively minded beings there is no need for the regulation provided by a system of rights and duties. 'Rights' we are told 'are the prized possessions of alienated persons'. (9)

LIBERAL CONCEPTS AND SOCIALIST IDEALS

The revolutionary's view that there is a conceptual tie between the notion of rights and the model of a society composed of self-interested competitive individuals of the sort who are said to exist in a capitalist society, but not in a communist one, finds some support in a recent attempt by Richard Flathman to provide a systematic analysis of the concept or - in the author's terminology - 'practice' of rights, which has, on the surface, no ideological axe to grind. Flathman argues that: (10)

a right provides the agent who holds it with a warrant for taking or refusing to take an action or range of actions that he conceives to be in his interest or otherwise to advantage him.... The actions or warrants are commonly viewed by other persons as contrary to their interests, or limiting their freedom, or as in other ways disadvantaging them personally or as members of the society in which the right is held.

Flathman goes on to argue that there cannot be a right to an X unless having or doing X is in general, and in A's (the right-holder's) judgment, advantageous for A and in some way disadvantageous for B (the person with the correlative obligation), so that B will typically wish to avoid fulfilling his obligation to A, for to say that X is a right is to say that some A is warranted in doing X despite the fact that doing it will be thought to have adverse effects on the interests of some B. (11) Thus Flathman sees it as an analytic truth that the practice of rights involves a conflict between the interests of the right-holder and the interests of other members of the society, particularly those who may have obligations to act or refrain from acting in certain ways which are to their disadvantage but for the benefit of the right-holder.

Flathman's analysis of rights as warrants for the assertion of the legitimate self-interest of the right-holder against and in conflict with the interests of others is typical of those liberal theories on which socialists draw to point to the alleged unsocialist nature of all rights. As Flathman himself admits, his analysis, presupposing as it does a conflict of individual interests, is at variance with the ideal of community, for 'rights involve a certain holding back, a reserve ... a competitive as well as a co-operative attitude ... limits to sharing', and he notes that there is 'a whole range of concepts at odds with the practice: gratitude, generosity, charitableness'. Hence 'asserting and respecting rights against one another is surely not, as such, a feature of relationships among or

between friends', (12) and thus, it may be inferred, between members of a completely socialist society. If there is anything at all in the image of a socialist society as a society of abundance in which individuals will willingly contribute what they can to the productive processes and everyone will be provided with what they require to fulfil their human potentialities, all without the intervention of laws backed by sanctions, then the conflict of interests which Flathman argues is presupposed in the practice of rights could not arise and socialism, in the end, must involve not the revision but the abandonment of the notion of rights, along with the institution of the state and its laws. Thus a patently old-style liberal analysis of rights fits neatly into the socialist critique.

Although there is this degree of theoretical accord between some liberal and some socialist interpretations of rights, the actual inspiration for the revolutionary socialist's rejection of rights can be traced to Marx and Engels, and in particular to their attacks on the ineffectualness of 'Utopian' socialists such as Proudhon, Saint-Simon, Fourier, Owen and Lassalle, who criticised capitalism for not giving the workers their full rights to what they produce and called for the establishment of a new society based on an ideal of social justice. (13) Marx himself is said not to have condemned capitalism as unjust. (14) Following this line, many Marxian socialists reject the language of rights, except perhaps for short-term tactical purposes in the organisation of political parties around legislative programmes, on the grounds that such moral stances are basically futile since social change does not come about through exhortation and moralising, but by timely political action in line with changes taking place in the economic base of society. They therefore reject appeals to rights as an irrelevant and ineffective strategy which exhibits a misunderstanding of political realities, a characteristic failure of Utopian socialists.

We shall have frequent recourse to the writings of Marx and Engels in the course of this book, for although they are but two amongst thousands of contributors to socialist ideas, their influence has been of such magnitude as to set them above all the rest as authoritative socialist writers. But part, at least, of the explanation for the absence of a socialist orthodoxy on the matter of rights lies in the paucity of material on this topic to be found in the writings of Marx and Engels and the difficulty of interpreting such as there is. An important passage in the 'Critique of the Gotha Programme' appears to disown in

their entirety the ideas of justice, rights and law (15) and there are many other passages of which the obvious, but perhaps superficial, reading counts against the reformist position. (16) But the primary and overriding concern of Marx and Engels was the exposure of the ideological, and hence deceiving, nature of bourgeois ideas and institutions. This, coupled with their general reluctance to enter into speculation about the nature of the future socialist or communist society, renders almost everything they say on these issues radically ambiguous, much depending on essentially terminological points such as whether we may use the term 'law' for non-imposed and non-coercive right-conferring rules, and whether there is a valid sense of 'state' in which it is not identified as an instrument for the exploitation of one class by another, but refers to those general administrative arrangements of a society which Engels, and almost certainly Marx, assumed would in communist society replace the use of physical coercion. (17) Marx and Engels can be viewed as being so involved in the criticism of capitalism that they were simply not concerned with developing a conceptual scheme to describe socialism. In this case to raise the prospect of socialist rights is to go beyond rather than to repudiate their work. (18) Thus although Marx and Engels do provide - particularly in their rejection of the juridical concepts of capitalist legal systems - most of the ammunition for those who would abandon rather than reform the concept of rights, their views, even if they can be definitively ascertained, cannot be regarded as conclusive on this issue, even for socialists. And it is to be regretted that their no doubt tactically justified refusal to anatomise the form of the socialism that was to come has done so much to inhibit open-minded discussion amongst socialists over what it is, or could be, to have a right.

To cast doubts on the usefulness of Marx and Engels as final authorities in this internal socialist debate is philosophically liberating, but presents us with the immediate problem of saying what is to count as socialist for the purpose of our argument. The prospect of becoming involved in the misconceived enterprise of determining what is 'genuine' socialism is a daunting one and yet it is necessary to have some working definition of socialism if we are to make progress with the conceptual tasks before us, for to say whether rights are compatible with socialism depends in large part on what counts as socialism. (19) Fortunately, this problem can be circumvented to some extent by adopting the permissive line of granting the socialist critics of rights almost all that they desire by accepting, for the sake of argument, their particular

versions of what a socialist society would be like. This means, in the main, accepting a relatively extreme and idealistic form of socialism according to which it involves the belief in the possibility and desirability of the successful pursuit of a society characterised by the self-conscious deployment of all human and natural resources, including the communally owned means of production, to satisfy the needs of 'social' man, whose behaviour will be marked by unsullied sociability, developed social responsibility, willing co-operation and the virtual absence of aggression, hostility, competitiveness and the desire to dominate others. If it can be established that even in such an ideal society there would still be occasion to maintain and protect individual rights, then the revolutionary critique of the significance of rights will have been adequately answered. We can then work out the conceptual implications of any retreat we may feel it necessary to make from this ideal type of socialism, and it is clear that massive retreat will be in order if the conceptual relations worked out for the ideal model of socialism are to be applied to existing societies.

There must, however, be some limits to the indulgence offered to socialist visionaries and I shall endeavour to keep in touch with reality by confining my attention to those models of socialism which are based on extrapolations of behavioural phenomena with which we are already familiar in less than fully socialist societies. We may be prepared to grant the possibility of extensive altruism because we have experience of limited altruism and we might accept the idea of non-competitiveness in all spheres because we have come across it at least to a degree in some. But it is another matter to grant the prospect of men's intellectual and physical capacities, as distinct from those of the machines they might invent, becoming of a different order from their highest existing manifestations and I shall reject as lacking in all plausibility projections which incorporate wholly new elements into human behaviour, and in particular the possibility that in some future society precise instinctual patterns of behaviour adapted to a complex variety of situations would emerge, thus rendering entirely unnecessary the processes of socialisation, education and organisation which are in some shape or form part of all known human societies. For some socialists this may vitiate the entire enterprise for they believe that we can put no restrictions on our expectations concerning the unknown future in which total socialism will emerge. But clearly such an agnostic attitude to the content of the socialist goal renders it totally irrelevant to the questions of

constructive political theorising to which it is hoped to contribute and makes all conceptions of how we might progress to socialism, either before or after the revolutionary overthrow of capitalism, vacuous. As it is, we will have problems enough in attempting to envisage a society lacking in many of the characteristic features of all known societies and we will have accomplished enough if we show that the more plausible of the radical socialist visions can be analysed in terms of a notion of rights which is continuous with at least some existing theories of rights.

SUMMARY

In this study I shall first examine the grounds on which some socialists have rejected the whole idea of individual rights as irrelevant to socialist or communist societies, pointing out how their arguments often fit neatly into many ostensibly ideologically neutral analyses of the language of rights developed by philosophers and jurists in non-socialist societies, in particular the thesis that rights are analytically tied to conflict, coercion and self-interest. I shall reject some of the easier ways round this critique of rights which involve diluting the language of rights so that it becomes little more than an expression of general moral and political ideals, and then go on to criticise many of the standard assumptions about rights made in analytical jurisprudence and political philosophy on the grounds that, by incorporating contingent features of existing social and political systems into the very concept of rights, they put artificial conceptual barriers in the way of developing a notion of rights which is adapted to clarifying current ideological disagreements. Much of this discussion will involve demonstrating the weaknesses of some of these theories of rights even within their own terms, that is in relation to non-socialist societies. In part the method of argument will be to show that many rights theories are inadequate even as attempts to capture the full range of rights within existing societies. This part of the book (chapters 1-5) is of relevance to the general understanding of what it is to have a right quite apart from its significance for the discussion of socialist rights. Indeed, the conceptual issues discussed throughout have intellectual and practical import even for those who share the author's doubts as to the feasibility of the emergence of a socialist society of the ideal type assumed for our purpose of conceptual clarification.

Those whose special interest is in the content and justification of specific socialist rights may find that the discussions in chapters 6 to 9 help to give content to the general conceptual theses developed earlier in the book. In chapter 9 I focus on the idea of the right to work as a characteristic socialist right, the analysis of which will cast light on socialist rights in general; in chapter 8 I examine the extent of and rationale for the retention under socialism of certain of the rights which are particularly associated with liberal democracy, such as the right to free speech. These discussions feed upon and back into the analysis of chapter 7 on the general justificatory principles of socialist philosophy and the attempt to free the discussion of socialist rights from the often unilluminating but nevertheless important controversies over what is and what is not a 'human' right, which is the subject of chapter 6. Finally, in chapter 10, I discuss the nature of welfare rights in connection with issues of social policy arising in non-socialist welfare state societies. This chapter illustrates the relevance of the conceptual issues raised in the rest of the book to the formulation of political disagreements in existing states.

The fundamental conclusion to which the argument of the book moves is that the reformist is correct when he maintains that there is no inherent contradiction in speaking of 'socialist rights', but that the differences between socialist and existing liberal systems of rights are not simply a matter of differences in the content of rights or even of differences in the justifications given for the rights which feature in both systems, but involve some shift in standard theoretical assumptions about what it is to have a right. In other words, speaking of socialist rights involves some change of form as well as of content. To this extent, there is substance to the revolutionary's critique of rights as such. But the changes in our understanding of what it is to have a right which are required to give credence to the idea of socialist rights do not represent a radical departure from a version of one theory of rights which has many non-socialist advocates, namely the 'interest' theory, according to which the essential function of rights is to defend the interests of the right-holders. It is one of the subordinate aims of this book to make certain developments in the interest theory of rights which render it more acceptable in itself, as well as more suited to the analysis of the concept of socialist rights. Overall it is hoped that the specific solution offered to this unresolved problem within socialism will contribute to the formation of a set of common

concepts and vocabulary which will help to clarify and even partially to resolve ideological conflicts concerning social and economic policy. (20)

The main objections lodged against the idea of socialist rights by the conceptual revolutionaries amongst socialist theorists are directed at the juridical and coercive associations of rights discourse, the political and intellectual ineffectiveness of the moral rhetoric of rights, and their association with bourgeois individualism. For these theorists, rights have to do with law and law is a coercive institution, destructive of community relations and personal autonomy, which is required only in those societies marked by economic competition between self-interested individuals with vested property interests. Once the causes of economic, and hence social, antagonisms have been eliminated and the classless society has emerged - things which will not come about by moral exhortation - the state and its laws will cease to exist, making way for a co-operative and harmonious form of society in which there will be no room for clashes of individual wills that have to be settled by recourse to legal adjudication. Meanwhile appeals to individual rights can do nothing to resolve social conflict in pre-socialist societies. These theorists are revolutionaries with respect to rights because for them socialism is not just the replacement of one type of government by another or the abolition of one set of rights in favour of a new, more socialist, set; rather it involves the creation of a wholly novel form of social order which dispenses altogether with such legalistic institutions, an order which cannot be presented or recommended in the moralising terminology of the system which is to be superseded by socialism.

This sweeping critique of rights can be broken down into four distinct elements concerning, in turn, the legalism, the coerciveness, the individualism and the moralism of rights.

The revolutionary holds, first, that rights are analytically tied to rule-governed human relationships in which the propriety of interactions is determined by the conformity or lack of it between actual behaviour and authoritative norms of conduct. He sees no value in rule-conformity as such, believing it to be an unnecessary and destructive intrusion into the spontaneous, uncalculating and unreserved mutual service and care between self-directed human beings which is attained in a genuine community. Hence rights are to be rejected as a manifestation of the inhuman and stultifying constraints of 'legalism', that is the process of subjecting human behaviour to the governance of rules. The revolutionary goes beyond the more common position that rule-conformity is an inadequate social ideal because it is compatible with social inequality to the stronger thesis that rule-conformity is in itself objectionable. (1) In a community there is no right to be loved, no duty to love, no rules directing the members to care for each other. Love has no need of law and law destroys wholesome relationships between autonomous human beings. This thesis is taken over from those liberal theorists who seek to exclude law from the domestic spheres of family and friendship (2) and extrapolated to apply to society as a whole.

Second, as a juridical concept, rights are a matter of law and law is the *modus operandi* of the state which is at best a transient means for establishing socialism and at worst an instrument of class oppression in which 'rights' serve only to mask the fact that the law is a coercive device for protecting the interests of economically powerful minorities. (3) Hence rights are to be rejected because they are tainted by the stain of coerciveness and are incompatible with the liberty to be enjoyed only by those who have emerged from the constraints of capitalism into the genuine freedom which comes when the means of production are taken into the control of the proletariat.

Third, the idea of rights focuses attention on the individual as the possessor of rights, rights being a type of possession which give the owner certain powers over the actions of others, thus protecting his self-interests and enabling him to ignore the moral claims of the common good in the pursuit of his own self-centred objectives. Rights are said to go with an 'atomistic' model of society in which the constant clash of individual interests necessitates measures to protect one individual against the predations of his fellows by using the force of the community to establish the priority of some of these interests over others. Interests so protected are called rights and rights are regarded as the intrinsic possessions of

individuals in abstraction from their social relationships: men bring rights with them into society and society is designed to protect them in that to which they have a pre-social right, hence the theory of social contract which is totally at variance with the socialist concept of man as originally and essentially a social being who brings nothing distinctively human into society and whose nature is inseparable from his social relationships. The idea of rights is part and parcel of this asocial and 'selfish' view of man. (4) This is the nub of the objection to rights as an expression of individualism.

Fourth, in the revolutionary's view, when so-called socialists resort to appeals to 'rights' in order to condemn existing societies and urge action to create new post-capitalist systems, they are adopting intellectually muddled moral rhetoric which has no objective basis and which can have no significant impact on the course of events. In Marxian terms, rights are a part of the superstructure of a society, that is they are the products not the causes of those economic changes on which all else in a society depends. Rights are therefore of no strategic importance in the struggle for socialism, and those socialists who concentrate their attention on demanding rights for the workers ignore the real issues and the real determinants of social change and indulge in empty, because groundless and ineffective, moralising. 'Rights' are thus said to have essentially moral connotations, and the use of the language of rights either to describe or to bring about socialism is seen as a manifestation of unreal and futile Utopian moralising. (5) Thus the fourth type of objection is directed against the moralism of rights.

In this chapter I examine the alleged moralism of rights and introduce the core of the legalism objection, commenting on the lack of coherence between these two elements in the socialist critique, and introducing some of the analytic issues concerning the nature of rights to which these criticisms give rise. In the next chapter I explore further the functions of law and its connection with rights. Subsequent chapters deal with the alleged coerciveness and individualism of rights.

THE 'MORALISM' OBJECTION

Although the revolutionary critique of rights is to some extent cumulative, there is one respect in which it is not internally coherent, for the objection to rights as a form

of coercive legalism depends on a rather different view of rights from that presupposed in the moralism objection. The legalism and coerciveness charges look at rights as part of a legal or quasi-legal structure, that is, in a positivistic manner, a person's rights being those of his interests which are protected and furthered by those actual laws or rules of his society which permit him to act or refrain from acting in certain ways or require others to do so with respect to him. Thus if it is argued that rights are bound to fade away as the state and its laws become redundant and are gradually dispensed with, then the notion of rights is clearly being given a purely juridical interpretation in terms of that to which a person is entitled or able to do or receive or have in law; and rule-following in general presupposes a set of existing rules. Legalism thus assumes a positivistic account of rights, that is, one which ties them to the actual laws or rules operative in a society, and on this basis it is often argued that where there is no positive law (e.g. in a socialist society) there cannot (logically) be any rights.

However, the fourth element in the revolutionary's onslaught, which arises from his rejection of morality and moralising, requires us to regard rights primarily as a moral concept, one which is used in the moral criticism of existing social relationships in terms of extra-legal values. Thus a legally constituted government may be said to be tyrannical because it denies its subjects certain rights, perhaps to freedom of movement or freedom of speech. Such uses of the language of rights feature in strong moral criticisms of existing practices, criticisms which do not depend on the prior existence of any positive laws but require only the recognition of certain moral standards or objectives to which positive laws ought to, but, in the cases criticised, do not conform. It would seem, if we are to defend the concept of rights against these objections, that we must first get clear what it is that we are seeking to rebut; more specifically, we have to know whether we are to take rights as legal or moral phenomena, as part of positive law or expressing some sort of normative moral standards which may be used in the evaluation of positive law.

It is tempting, if we wish to defend the reformist position, to take the moral option and say that in speaking of rights we are referring to a set of human interests and needs which have high moral priority and which any good society must be able to satisfy in an adequate manner. In this case a person's right to life would be a pre-legal moral possession or moral fact about him, in the

light of which we can evaluate actions and societies as morally good or bad according to how far they protect and enhance people's lives. To speak of a person's rights in this moral or ideal sense involves no immediate reference to laws or societal rules and points only to those morally significant aspects of his existence that laws and rules, as well as actions and inactions which fall under no laws or rules, ought to protect and promote. These rights may be to something as precise as life or as nebulous as happiness, but they represent the various respects in which individual existence is valuable and the ends to which individual and social action should be directed, or at the very least should not obstruct. On this view, legal rights are secondary phenomena in the hierarchy of rights discourse for they are simply one amongst many ways in which societies may seek to further the moral or ideal rights of their members. (6)

This approach to rights is tempting because it appears to be easier to see how we can use moral terminology in our description of a socialist society than it is to find a place for legalism within socialism. The moral use of rights language can and has frequently been used to denounce the evils of capitalism and fits in with standard analyses of rights in terms of demands (7) and claims. (8) Even the socialist who believes in economic determinism and accepts that moralising is an ineffectual method of bringing about reform can still retain a use for the conception of moral rights to express an evaluation of socialism as in some way superior to other systems without committing himself to the view that a socialist society could ever be the product of moral persuasion or demands. Capitalist 'democracies' may be graded low in the scale of desirable economic and political forms because they do little that is effective to protect the individual's moral rights, whereas socialism may be regarded as a system in which these aspects of human interests can flourish and be fulfilled. (9)

All this could be said without implying that the law is the instrument whereby socialism protects moral rights. Legal regulations might be phased out as the danger of rights-violations diminishes, and the desired socialist objectives may be approached directly without the intermediacy of rules. Thus there would be no need for a legal right to life once no one was motivated to kill another or failed to aid those needing help to preserve their lives. Removing the causes of violations of moral rights could thus have the effect of rendering legal rights redundant, but socialist societies could still be highly valued because they effectively protect the moral rights of their members.