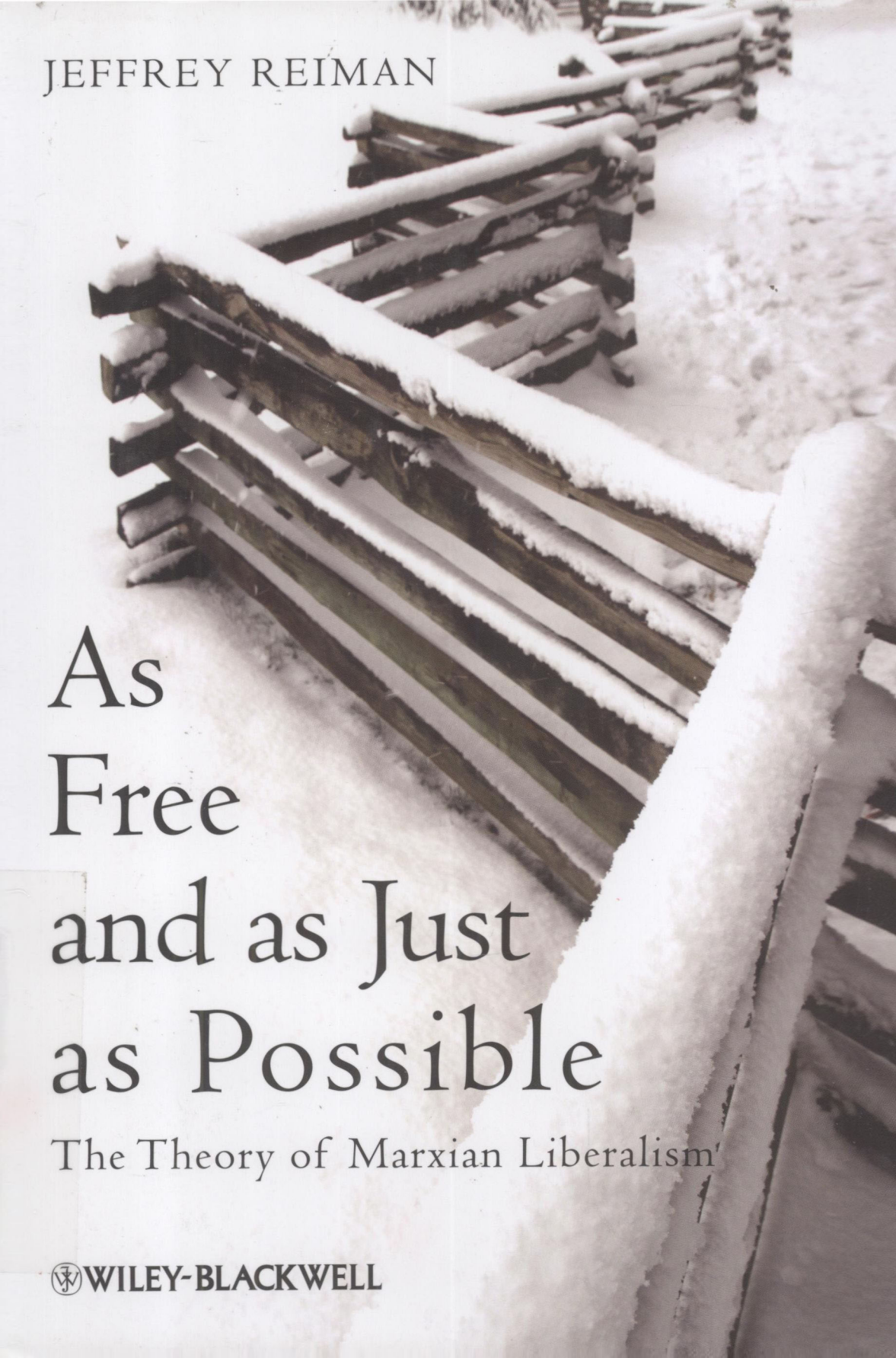
JEFFREY REIMAN



As Free and as Just as Possible

The Theory of Marxian Liberalism

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Jeffrey Reiman

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As Free and as Just as Possible

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For Sue

List of Abbreviations

ASU Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974)

C Karl Marx, *Capital* (New York: International Publishers, 1967; originally published: volume 1, 1867, volume 2, 1893, volume 3, 1894)

Essay John Locke, *An Essay Concerning Human Understanding* (New York: Oxford University Press, 1975; originally published 1690)

JF John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA: Harvard University Press, 2001)

Letter John Locke, *A Letter Concerning Toleration* (Indianapolis: Hackett, 1983; originally published 1689)

LHPP John Rawls, *Lectures on the History of Political Philosophy* (Cambridge, MA: Harvard University Press, 2007).

MER Robert C. Tucker, ed., *The Marx–Engels Reader*, 2nd edition (New York: Norton, 1978)

MM Immanuel Kant, *The Metaphysics of Morals* (Cambridge: Cambridge University Press, 1996; the two parts of *The Metaphysics of Morals*, "The Doctrine of Right" and "The

	Doctrine of Virtue," were originally published separately in 1797)
PL	John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996)
RJE	G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008)
ST	John Locke, *The Second Treatise of Government*, in John Locke, *Two Treatises of Government* (London: Dent & Sons, 1975; this is a reprint of the first state of the first edition of Locke's *Two Treatises of Government* originally published in 1690)
TJ	John Rawls, *A Theory of Justice*, rev. edn. (Cambridge, MA: Harvard University Press, 1999)

Preface

It was from Karl Marx that I learned to admire capitalism and to fear socialism. In both the *Communist Manifesto* and in *Capital*, Marx wrote about the enormous productivity unleashed by capitalism, as well as of capitalism's power to liberate people from older more repressive social systems. For Marx, capitalism's productivity would provide the means for freeing human beings from unwanted toil, which he thought would be achieved in communism. Capitalism's dissolution of the bonds of feudalism, and its promotion of individual liberty, paved the way for freeing human beings from domination by other human beings, which Marx believed communism would also bring. At the same time, Marx thought that capitalism was an unfair and brutal system. For Marx, capitalists' ownership of the means of production (factories, machines, natural resources) gave them power over the rest of society, because it gave them control over the opportunities for earning a living. And this power was exercised for profit rather than for satisfying human needs. No one who has seen the news recently will find this hard to believe.

Marx thought that the remedy for capitalism was socialism: replacing private ownership of means of production with public ownership. But, as I said, I also learned from Marx to fear socialism. States are already dangerously powerful, with their police forces and armies. If ownership of the means of production is as potent a mechanism of power over people as Marx thought, then it is simply

too great – too easy to misuse, too tempting to abuse, too likely to corrupt the powerful – to place it in the control of the state. And in Russia, Eastern Europe and China, history has shown that the danger is real. Whatever good they have done, socialist states have not been hospitable to freedom.

But, not only does Marx's belief that ownership of means of production is a mechanism of power over people suggest that socialism will be dangerous to freedom, it suggests as well that capitalism's relatively decentralized ownership of means of production supports the individual freedom that has generally characterized capitalist societies. This might work in the way that James Madison thought that the large number of independent religious sects in America worked to protect religious freedom.

What, then, is to be done? I think that the time is ripe for a philosophical theory of justice that combines Marx's insights – about capitalism, and about the conditions of freedom and the mechanisms of coercion – with the liberalism that socialist states have lacked. Marxian Liberalism is such a theory of justice. It aims to satisfy the lovers of individual freedom, and the fans of free enterprise, while realizing some of the egalitarian values dear to socialists – but in a form less likely to lead to tyranny. The liberal ideas that Marxian Liberalism combines with Marx's insights are drawn from the classic work of John Locke, and the recent work of John Rawls, said by some to be the John Stuart Mill of the twentieth century. Marxian Liberalism starts by bringing together the Lockean idea that people have a natural right not to be coerced, with the Marxian idea that private ownership is coercive. From there, it develops a theory of justice that calls for a highly egalitarian form of capitalism combined with a strictly liberal state, and holds that this combination makes for a society that is as free and as just as possible.

Because *As Free and as Just as Possible: The Theory of Marxian Liberalism* is published in a series on public philosophy, I have written it for the educated layperson, though I hope that professional philosophers find it interesting as well. I have tried to put forth my ideas and arguments in widely accessible non-technical language. Where technical terms are necessary, I define them in plain English.

Though some background in philosophy will help in reading this book, I have tried to write it so that such a background is not necessary.

While working on the book, I encountered the late G. A. Cohen's *Rescuing Justice and Equality*, a profound full-scale critique of Rawls's theory of justice. Since Cohen is a philosopher with Marxist sympathies who objects to some of the very features of Rawls's theory that are crucial to Marxian Liberalism, I had to respond to his objections. Consequently, I engage with Cohen's views at many points throughout *As Free and as Just as Possible*. I think that I am able to defend the features of Rawls's theory that play a role in Marxian Liberalism against Cohen's objections. And I think that Marxian Liberalism is a better theory as a result. I am grateful to Cohen for this, and feel all the more deeply the great loss his untimely death is for philosophy.

I believed some combination of liberal and Marxian beliefs long before I thought of them as a doctrine with a name of its own. For this reason, I have occasionally been able to make use of previous articles of mine here. Parts of Section 2.1 are from my "The Marxian Critique of Criminal Justice," *Criminal Justice Ethics* 6, no. 1 (Winter/Spring 1987), pp. 30–50 (copyrighted material reprinted by permission of The Institute for Criminal Justice Ethics). Section 2.2 draws on my "Is Racial Profiling Just? Making Criminal Justice Policy in the Original Position," *The Journal of Ethics* 15, no. 1–2 (Winter 2011), pp. 3–19. Section 4.3 uses material from my "Exploitation, Force, and the Moral Assessment of Capitalism: Thoughts on Roemer and Cohen," *Philosophy & Public Affairs* 16, no. 1 (Winter 1987), pp. 3–41. Material from my "The Labor Theory of the Difference Principle," *Philosophy & Public Affairs* 12, no. 2 (Spring 1983), pp. 133–159, turns up in Sections 5.1 through 5.4, and Section 6.5. Finally, some of what I say in Sections 2.4, 2.5, and 7.4 is derived from my entry "Marx, Karl," in Hugh Lafollette, ed., *The International Encyclopedia of Ethics* (Boston, MA: Wiley-Blackwell, forthcoming). I thank these publications for supporting my work, and for permitting the use of these writings in the present book.

Other thanks are due as well. Though he will surely disagree with Marxian Liberalism, Jan Narveson (whose work is dealt with

at a number of points in this book) deserves thanks for being a perfect philosophical pen pal: always ready to argue about the issues and always in a friendly manner. I am grateful to my old friend, Arthur Lothstein, for inviting me to speak at C.W. Post University and give the core ideas in this book their first public airing. I thank Joe Rees, an excellent former undergraduate philosophy student of mine (now pursuing his doctorate at Georgetown University), who read a draft of this book and gave me lots of helpful and challenging comments. Joe also tried to convey to me the questions that his generation of young philosophers might have about my project, and I have tried to respond to those questions in my text. I am grateful to two graduate students: John Fantuzzo, who did most of the historical and legal research reported in Section 6.2; and Brian Brinker, who filled in some of the rest.

I thank Michael Boylan, Marymount University philosopher, and editor of the Blackwell Public Philosophy Series, for inviting me to contribute to that series, for warmly encouraging me along the way, and for reading and commenting extensively on an early draft of the book. I thank Jeff Dean, my editor at Wiley-Blackwell, for his candid advice and friendly support of my project. I am grateful to Jack Messenger for ably copyediting the manuscript, and to Joanna Pyke for skillfully guiding my project from manuscript to book. I thank both of them for accommodating my unpredictable work schedule. And I thank (once again) American University, where I have taught for more than forty years, for providing me with a tolerant and welcoming intellectual environment in which I have been free to follow my philosophical impulses where they led. I am especially grateful to my colleagues in the Department of Philosophy and Religion at American for their warmth and interest and their deep commitment to philosophical inquiry.

Finally, I have had the great good fortune to spend my life with a wonderful, brainy, funny, passionate woman, a professor and an author in her own right, with three books to her name. She stimulates my mind and brightens my days. She is part of everything I do. For this reason, this book is dedicated to her, the other Marxian Liberal, my wife and partner, Sue Headlee.

Contents

I

Overview of the Argument for Marxian Liberalism

Marxian Liberalism is a theory of social justice that results from combining certain liberal beliefs, most importantly, that people have a natural right to liberty understood as a right to be free from unwanted coercion, with some Marxian beliefs, most importantly, that private property is coercive. Because Marxian Liberalism aims to protect people from both the normal forms of coercion and the subtler structural coercion of private property, it calls for a society that is *as free as possible*. Because it defines justice historically, as what can be required of people in light of their changing human nature, it calls for a society that is *as just as possible*.

A crucial result of combining the right to liberty with the belief that private property is coercive is that *on liberal grounds*, to be justified, a right to private property must be consented to by all affected by it, which means by all present and future humans. Consequently, consent must be *theoretical*, not a matter of asking actual people to sign on the dotted line, and I shall explain why theoretical consent is satisfactory in this context (see Section 3.3). To seek theoretical

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consent is to appeal to what, in the philosophical tradition, is called a *social contract*. To determine what sort of right to private property would receive this theoretical consent, I deploy an imaginary contracting situation modeled on John Rawls's original position and veil of ignorance, but with a special difference: The knowledge that the parties in this original position possess includes certain liberal and certain Marxian beliefs. I contend that the parties in this Marxian-Liberal original position will agree to a right to property limited by a strongly egalitarian requirement, namely, Rawls's *difference principle*. (I lay out Rawls's theory of justice in Section 2.2.)

Marxian Liberalism should not be confused with Left-Libertarianism. (I reserve the term "libertarian" *tout court* for the generally rightist view that the natural right to liberty entails a right to property limited only by other people's like rights to liberty and property, and thus which justifies a virtually unlimited free market capitalist economic system.) Left-Libertarians start from two independent moral principles, first, that individual human beings own themselves and, second, that all humans own the world.[1] Marxian Liberalism makes neither claim, though possession of the right to liberty effectively amounts to individual self-ownership.[2] For reasons that will emerge in what follows, I believe that ownership and its rights should be derivative in a theory of justice rather than foundational. The authors of a recent defense of Left-Libertarianism hold that "Left-libertarianism seems promising because it recognizes both strong individual rights of liberty . . . and also grounds a strong demand for some kind of material equality."[3] Marxian

[1]Peter Vallentyne, Hillel Steiner, and Michael Otsuka, "Why Left-Libertarianism Is Not Incoherent, Indeterminate, or Irrelevant: A Reply to Fried," *Philosophy & Public Affairs* 33, no. 2 (2005): 201; on the independence of the two basic principles, see pp. 208–210.

[2]Locke appears to infer self-ownership from the right to liberty, and uses it as part of his argument for the right to own property for consumption (*ST*, v:27). Kant rejects self-ownership, holding that only things, and not persons, can be owned. He argues directly from the right to liberty to the right to property (*MM*, 41, 56). See Sections 4.1 and 4.2, below.

[3]Vallentyne et al., "Why Left-Libertarianism Is Not Incoherent," 201.

Liberalism seems promising for the same reasons, plus it has the virtue of being simpler, since it starts with one moral principle – the right to liberty – rather than two.

Marxian Liberalism takes justice to be a historical notion, one whose requirements change over history. This is not a form of historical relativism. Justice has a timeless meaning: *It calls for the maximum provision for the interests of others that can reasonably be morally required of people given human nature*. However, since Marxism sees human nature as changing in history, the content of justice changes historically. For the most part, I shall consider what justice requires now and for the foreseeable future. Along the way, I will speculate about what, given Marx's view of where history (and thus human nature) is headed, justice will require in the future.

Readers familiar with G. A. Cohen's important book, *Rescuing Justice and Equality* (*RJE*), will be struck by the fact that the definition given of justice in the previous paragraph includes reference to historically changeable facts about human nature; whereas Cohen, in his attempt to rescue justice from John Rawls, argues that fundamental moral principles are independent of facts. Cohen may be right about fundamental moral principles in general (though I shall press an alternative view in Section 3.2), but he is missing something important about justice in particular.

Rawls appeals to facts (about human nature, among other things) in identifying the principles of justice with what people would choose in the original position, knowing facts about human psychology (*TJ*, 399). But Cohen argues that Rawls has misidentified "the question 'What is justice?' with the question 'What principles should we adopt to regulate our affairs?'" (*RJE*, 269, see also 267, 350–351). Cohen recognizes that rules to regulate our affairs are rules that we can require actual people to live up to, and he grants such rules do properly take account of facts about human nature (*RJE*, 308–309, 342–343, *et alia*). But he thinks that such rules follow from justice; they are not equivalent to justice. This is a mistake.

Justice is a special kind of value that spells out what can be required of people. Thus, by Cohen's own argument, it must take