

Lawyer's Socialism*

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1 Engels thought of writing this article in October 1886, when the book by the Austrian bourgeois sociologist and lawyer Anton Menger, **Das Recht auf den vollen Arbeitsertrag in geschichtlicher Darstellung**, was issued. Menger attempted to prove that Marx's economic theory was not original and that he had allegedly borrowed his conclusions from English Utopian socialists of the Ricardian school (Thompson et al.). Unable to ignore Menger's allegations and his falsification of the very essence of Marx's doctrine, Engels decided to reply in the press. However, fearing that a personal rebuttal may serve to give this third-rate scholar undeserved publicity, Engels considered it expedient to rebuke Menger through a *Neue Zeit* editorial or through a book review signed by the magazine's editor Karl Kautsky, and enlisted Kautsky's help in writing a piece against Menger. At first, he intended to write the main part of the text himself, but fell ill and had to interrupt his work, so the piece was completed by Kautsky under Engels' instructions. It appeared anonymously in the *Neue Zeit*, No. 2, 1887; later, in the index to the magazine published in 1905, Engels and Kautsky were named as its authors. In 1904, the work was translated into French and printed by the *Mouvement socialiste*, No. 132, with Engels named as the author. The manuscript is not extant. Since it is impossible to ascertain which part of the work was written by Engels, and which by Kautsky, in the present edition it is published in full in the Appendices.

The medieval world view was essentially theological. The unity of the European world, though actually non-existent on the inside, was established against outside forces, the common Saracen enemy, by Christianity. The unity of the West European world, which comprised a group of nations developing in constant interaction, was epitomised by Catholicism. This theological epitome was not merely an idea. It really existed, not only in the Pope, its monarchical focus, but above all in the Church. The Church was organised on feudal and hierarchical lines and, owning about a third of the land in each country, occupied a position of tremendous power within the feudal system. With its feudal landholdings, the Church was the actual link between the different countries, and the Church's feudal organisation gave a religious blessing to the secular feudal system of government. Besides, the clergy was the only educated class. It was therefore natural that Church dogma formed the starting-point and basis of all thought. Everything—jurisprudence, science, philosophy—was pursued in accordance with it, from the angle of whether or not the contents were in keeping with Church doctrine.

But in the bosom of the feudal system there developed the power of the bourgeoisie. A new class emerged to oppose the big landowners. Above all, the burghers were exclusively producers of, and traders in, commodities, while the feudal mode of production essentially rested on the direct consumption of products produced within a limited circle—consumption partly by the producers themselves, partly by the recipients of feudal tributes. The Catholic world view, tailored as it was to feudalism, was no longer adequate for this new class and its conditions of production and exchange. Nevertheless, it, too, continued for some time to be ensnared in the toils of the prevailing omnipotent theology. From the

thirteenth to the seventeenth century, all the reformations and the ensuing struggles waged in the name of religion were, theoretically speaking, no more than repeated attempts by the bourgeoisie, the urban plebeians and the peasantry that rose in rebellion together with them, to adapt the old, theological world view to the changed economic conditions and position of the new class. But this did not work. The religious banner was raised for the last time in England in the seventeenth century, and scarcely fifty years later the new world view that was to become the classical one of the bourgeoisie emerged undisguised in France: *the legal world view*.

It was a secularisation of the theological world view. Dogma, divine law, was supplanted by human law, the Church by the State. The economic and social relations, which people previously believed to have been created by the Church and its dogma—because sanctioned by the Church—were now seen as being founded on the law and created by the State. Because the exchange of commodities on the level of society and in its fully developed form, i.e. based on the granting of advances and credit, results in complex contractual relations and thus requires universally valid regulations, which can only be provided by the community—legal norms laid down by the State—people imagined that these legal norms did not arise from the economic facts of life but from their formal stipulation by the State. And because competition, the basic form of intercourse between free commodity producers, is the greatest equaliser, equality before the law became the bourgeoisie's main battle-cry. The fact that the struggle of this new rising class against the feudal lords and the absolute monarchy, which then protected them, had to be, like any class struggle, a political struggle, a struggle for control over the State, and had to be waged for the sake of *legal demands*,

helped to consolidate the legal world view.

But the bourgeoisie produced its negative complement, the proletariat, and with it a new class struggle, which broke out even before the bourgeoisie had completely won political power. Just as the bourgeoisie, in its day, in the struggle against the nobility, continued for a time to labour under the burden of the theological world view, which had been handed down to it, so the proletariat initially adopted the legal outlook from its adversary and sought weapons therein to use against the bourgeoisie. Like their theoretical champions, the first proletarian parties remained firmly on the juridical “legal foundation”—only they constructed a legal foundation different from that of the bourgeoisie. On the one hand, the demand for equality was extended to include social as well as legal equality; on the other hand, from Adam Smith's propositions that labour is the source of all wealth, but that the product of labour must be shared by the worker with the landowner and the capitalist, the conclusion was drawn that this division was unjust and should either be abolished altogether or at least modified in favour of the workers. But the feeling that leaving the matter on the purely juridical “legal foundation” would not at all make it possible to eliminate the evils created by the bourgeois capitalist mode of production, notably that based on modern, large-scale industry, led the greatest thinkers among even the early socialists—Saint-Simon, Fourier and Owen—to abandon the juridical and political domain altogether and declare all political struggle fruitless.

The two views were equally incapable of precisely and fully expressing the striving of the working class for emancipation, a striving stemming from the obtaining economic situation. The demand for equality, just like that for the full fruits of one's labour, became entangled in insoluble contradictions as soon as

they were to be legally formulated in detail, leaving the heart of the matter, the transformation of the mode of production, more or less untouched. The rejection of political struggle by the great Utopians was simultaneously a rejection of class struggle, i.e. of the only course of action open to the class whose interests they championed. Both views overlooked the historical background to which they owed their existence; both appealed to the emotions—one to the sense of justice, and the other to the sense of humanity. Both clothed their demands in pious wishes that left unanswered the question as to why they had to be implemented at this precise moment, and not a thousand years earlier or later.

Stripped of all property in the means of production as a result of the transformation of the feudal into the capitalist mode of production and constantly reproduced by the mechanism of the capitalist mode of production in this hereditary state of propertylessness, the working class cannot adequately express its condition in terms of the legal illusion of the bourgeoisie. It can only fully perceive this condition itself if it views things as they really are, without legally tinted spectacles. And it was enabled to do this by Marx with his materialist conception of history, with the proof that all of people's legal, political, philosophical, religious, etc., ideas ultimately derive from their economic conditions, from the way in which they produce and exchange products. This set out the world view corresponding to the conditions of proletarian life and struggle; the workers' lack of property could only be matched by a corresponding lack of illusions. And this proletarian world view is now spreading throughout the world.

Understandably, the struggle between the two world views continues; not only between proletariat and bourgeoisie, but also between free-thinking

workers and those still dominated by the old tradition. On the whole, ordinary politicians here use the customary arguments to defend the old view. But there are also so-called scholarly lawyers, who have made legal sophistry a profession of their own.*

Until now these gentlemen have considered themselves too refined to deal with the theoretical aspect of the labour movement. We should therefore be extremely grateful that a real professor of law, Dr. Anton Menger, at last deigns to give a "closer dogmatic elucidation" of the history of socialism from the viewpoint of the "philosophy of law."** In fact the socialists have hitherto been barking up the wrong tree. They have neglected the very thing that mattered most. "Not until socialist ideas are detached from the interminable economic and philanthropic discussions ... and transformed into down-to-earth legal terms" (p. III), not until all the "politico-economic frippery" (p. 37) is done away with, can the "legal treatment of socialism ... the most important task of the contemporary philosophy of law" [p. III] be taken in hand.

Now, "socialist ideas" are concerned precisely with economic relations, above all the relation between wage labour and capital, and, this being so, these

* See the article by Fr. Engels on "**Ludwig Feuerbach**" in the *Neue Zeit* IV, p. 206 [see this volume, p. 393]: "It is among professional politicians, theorists of public law and jurists of private law that the connection with economic facts gets well and truly lost. Since in each particular case the economic facts must assume the form of juristic motives in order to receive legal sanction; and since, in so doing, consideration has, of course, to be given to the whole legal system already in operation, the juristic form is, in consequence, made everything and the economic content nothing. Public law and private law are treated as separate spheres, each having its own independent historical development, each being capable of, and needing, a systematic presentation by the consistent elimination of all innate contradictions."

** Dr. Anton Menger, **Das Recht auf den vollen Arbeitsertrag in geschichtlicher Darstellung**, Stuttgart, Cotta, 1886, X, p. 171.

economic discussions would appear, after all, to amount to more than mere detachable “frippery.” Moreover, political economy is a science, so called, and a somewhat more scientific one than the philosophy of law at that, being concerned with facts and not with mere ideas, like the latter. But this is a matter of total indifference to the professional lawyer. For him, economic research stands on a par with philanthropic rhetoric. *Fiat justitia, pereat rnundus.*²

Furthermore, the “politico-economic frippery” in Marx—and this is what our lawyer finds hardest to swallow—is not simply economic research. It is essentially historical. It demonstrates the course of social development, from the feudal mode of production of the Middle Ages to the advanced capitalism of today, the demise of earlier classes and class antagonisms and the formation of new classes with new conflicts of interest manifesting themselves, *inter alia*, in new legal demands. Even our lawyer seems to have a faint glimmering of this, discovering on p. 37 that today’s “philosophy of law ... is essentially nothing more than a replica of the state of the law as handed down by history,” which could be “termed the *bourgeois philosophy of law*” and “alongside which a *philosophy of law of unpropertied classes of the people* has emerged in the shape of socialism.”

But if this is so, what is the cause? Where do the “bourgeois” and the “unpropertied classes of the people” come from, each possessing a specific philosophy of law corresponding to its class position? From the law, or from economic development? What else does Marx tell us but that the views of law held by each of the large social classes conform with their respective class positions? How did Menger get in among the Marxists?

2 Let justice be done, though the world perish (a dictum attributed to Emperor Ferdinand I of Austria (1556-64). See J. Manlius, **Locī Communes**, II, p. 290V—*Ed.*

Yet this is but an oversight, an inadvertent acknowledgement of the strength of the new theory which the stern lawyer let slip, and which we shall therefore simply record. On the contrary, when our man of law is on his home, legal ground, he scorns economic history. The declining Roman Empire is his favourite example.

“The means of production were never so centralised,” he tells us,

as when half the African province was in the possession of six people ... never were the sufferings of the working classes greater than when almost every productive worker was a slave. Neither was there at that time any lack of fierce criticism of the existing social order—particularly from the Church Fathers—which could rival the best socialist writings of the present; nevertheless, the fall of the Western Roman Empire was not followed by socialism, for instance, but—by the medieval legal system (p. 108).

And why did this happen?

Because “the nation did not have a clear picture of the future order, one free of all effusiveness.”

Mr. Menger is of the opinion that during the decline of the Roman Empire the *economic* preconditions for modern socialism were in existence; it was simply its legal formulation that was lacking. Because of this, it was feudalism, and not socialism, that took over, making a nonsense of the materialist conception of history!

What the lawyers of the declining Roman Empire had formed so neatly into a system was not *feudal* law but Roman law, the law of a society of commodity producers. Since Mr. Menger operates on the assumption that the legal idea is

the driving force of history, he now makes the quite preposterous demand on the Roman lawyers that, instead of the legal system of existing Roman society, they should have delivered the very opposite—"a clear picture, free of all effusiveness," of an imaginary social system. So that is Menger's philosophy of law, applied to *Roman* law! But Menger's claim that the economic conditions had never been so favourable to socialism as under the Roman Emperors is downright horrendous. The socialists that Menger seeks to disprove see the guarantee of socialism's success in the development of production itself. On the one hand, the development of large-scale machine-based enterprises in industry and agriculture makes production increasingly social, and the productivity of labour enormous; this necessitates the abolition of class distinctions and the transfer of commodity production in private enterprises into direct production for and by society. On the other hand, the modern mode of production gives rise to the class which increasingly gains the power for, and interest in, actually carrying through this development: a free, working proletariat.

Now compare the conditions in imperial Rome, where there was no question of large-scale machine-based production, either in industry or in agriculture. True, we find a concentration of land *ownership*, but one would have to be a lawyer to equate this with the development of labour performed socially in large enterprises. For the sake of argument, let us present Mr. Menger with three examples of landownership. Firstly, an Irish landlord who owns 50,000 acres tilled by 5,000 tenants in smallholdings averaging 10 acres; secondly, a Scottish landlord who has turned 50,000 acres into hunting grounds; and thirdly, an immense American farm of 10,000 acres, growing wheat on a large industrial scale. No doubt he will declare that in the first two cases the concentration of the

means of production has advanced five times as far as in the last.

The development of Roman agriculture during the imperial age led, on the one hand, to the extension of pastoral farming over vast areas and the depopulation of the land; on the other, to the fragmentation of the estates into smallholdings which were handed over to *colons* and became miniature enterprises run by dependent small farmers, the forerunners of the serfs, thus establishing a mode of production that already contained the germ of the medieval one. And it was for this reason among others, esteemed Mr. Menger, that the Roman world was superseded by the “medieval legal system.” No doubt there were, at various times, large-scale agricultural enterprises in individual provinces, but there was no machine production with free workers—it was a *plantation* economy that used *slaves*, barbarians of widely differing nationalities, who often could not understand one another. Then there were the free proletarians: not *working* proletarians but the *Lumpen*-proletarians. Nowadays society increasingly depends on the labour of the proletarians, and they are becoming increasingly essential to its continued survival; the Roman Lumpen-proletarians were parasites who were not merely useless but even harmful to society, and hence lacked any effective power.

But to Mr. Menger's way of thinking, the mode of production and the people were apparently never so ripe for socialism as they were in the imperial age! The advantage of steering well clear of economic “fripperies” is obvious.

We shall allow him the Church Fathers, since he says nothing as to wherein their “criticism of the existing social order ... could rival the best socialist writings of the present.” We are indebted to the Church Fathers for not a little interesting

information about Roman society in decline, but as a rule they never engaged in *criticism*, being content simply to *condemn* it, and they often did it in such strong terms that the fiercest language of the modern socialists, and even the clamour of the anarchists, seem tame in comparison. Is this the “superiority” to which Mr. Menger refers?

With the same contempt for historical fact that we have just observed, Menger states on p. 2 that the privileged classes receive their income *without personal services to society* in return. So the fact that ruling classes in the ascendant phase of their development have very definite social functions to perform, and for this very reason become ruling classes, is quite unknown to him. While socialists recognise the temporary historical justification for these classes, Menger here declares their appropriation of surplus product to be theft. Therefore, it must come as a surprise to him to find on pp. 122 and 123 that these classes are daily losing more and more of the *power* to protect their right to this income. That this power consists in the performance of social functions and vanishes at a later stage of development with the demise of these functions is a complete enigma to this great thinker.

Enough. The worthy professor then proceeds to deal with socialism from the point of view of the philosophy of law, in other words, to reduce it to a few brief legal formulas, to socialist “basic rights,” a new edition of human rights for the nineteenth century. Such basic rights have, of course, “little practical effect,” but they are “not without their uses in the scientific sphere” as “*slogans*” (pp. 5, 6).

So we have already sunk to the point where we are only dealing with

slogans. First the historical context and content of this mighty movement are eliminated to make way for mere “philosophy of law,” and then this philosophy of law is reduced to slogans which, it is admitted, are not worth a rap in practice! It was certainly worth the trouble.

The worthy professor now discovers that the whole of socialism can be reduced, legally speaking, to three such slogans, three basic rights. These are:

1. the right to the full proceeds of one's labour,
2. the right to a livelihood,
3. the right to work.

The right to work is only a provisional demand, “the first clumsy formula wherein the revolutionary demands of the proletariat are summarised” (Marx),³ and thus does not belong here. Yet he overlooks the demand for *equality*, which dominated all of French revolutionary socialism, from Babeuf to Cabet and Proudhon, but which Mr. Menger will hardly be able to formulate legally, although (or perhaps because) it is the most legalistic of all the demands mentioned. We are thus left with a quintessence consisting of the meagre propositions 1 and 2, which, to cap it all, are mutually contradictory. Menger finally realises this on p. 27, but it in no way prevents every socialist system from having to live with them (p. 6). But it is quite evident that cramming widely differing socialist doctrines from widely differing countries and stages of development into these two “slogans” is bound to adulterate the entire exposé. The peculiarity of each individual doctrine—what actually constitutes its historical

³ K. Marx, **The Class Struggles in France, 1848 to 1850**, present edition, Vol. 10, pp. 77-78. — *Ed.*

importance—is not merely cast aside as a matter of secondary importance; it is actually rejected as quite wrong because it diverges from the slogan and contradicts it.

The work we discuss deals only with No. 1, the right to the full proceeds of one's labour.

The worker's right to the full proceeds of his labour, that is, each individual worker's right to *his* specific proceeds, is only found in this strict sense in the doctrine of Proudhon. To demand that the means of production and the products should belong to the workers as a whole is quite a different matter. This demand is communist and, as Menger discovers on p. 48, *goes beyond* demand No. 1, which causes him a good deal of embarrassment. Consequently, one moment he has to place the communists under No. 2, and the next he has to twist and turn basic right No. 1 until he can fit them in there. This occurs on p. 7. Here it is assumed that even after commodity production has been abolished it nevertheless continues to exist. It seems quite natural to Mr. Menger that even in a socialist society *exchange values*, i.e. commodities for sale, are produced and the *prices of labour* continue to exist—in other words, that labour power continues to be sold as a commodity. The only point which concerns him is whether the historically inherited prices of labour will be maintained in a socialist society with a surcharge, or whether there ought to be “a completely new method of determining the prices of labour.”

The latter would, in his opinion, shake society even more severely than the introduction of the socialist social system itself. This confusion of concepts is

understandable as on p. 94 our scholar talks about a *socialist theory of value*, imagining, as others have done before him, that Marx's theory of value is supposed to provide a yardstick for distribution in the society of the future. Indeed, on p. 56 it is stated that the full proceeds of labour are nothing definite, as they can be calculated according to at least *three* different standards, and eventually, on pp. 161, 162, we are told that the full proceeds of labour constitute the "natural principle of distribution" and are only possible in a society with common property but individual use—that is, a society not today proposed as an ultimate goal by a single socialist anywhere! What an excellent basic right! And what an excellent philosopher of the law for the working class!

In this way Menger has made it easy for himself to give a "critical" presentation of the history of socialism. Three words I'll tell you of import great, and even though they are not on everyone's lips,⁴ they are quite sufficient for the matriculation examination that is being carried out with the socialists here. So step this way, Saint- Simon, over here, Proudhon, come on, Marx and whatever you are called: Do you swear by No. 1, or No. 2, or No. 3? Now quick into my Procrustean bed, and if anything overhangs, I'll chop it off, as economic and philanthropic fripperies!

The point at issue is simply in whom the three basic rights foisted onto socialism by Menger are first to be found: whoever is the first to come up with one of these formulas is the great man. Understandably enough, it is impossible to do such a thing without dropping a few ridiculous clangers, the would-be learned apparatus notwithstanding. He believes, for example, that to the Saint-Simonists the *oisifs* denote the owning classes and the *travailleurs*, the working

4 Paraphrase of two lines from Schiller's poem "**Die Worte des Glaubens.**"— *Ed.*

classes (p. 67), in the title of Saint-Simon's work *Les oisifs et les travailleurs.— Fermages, loyers, intérêts, salaires* (*The Idle and the Workers.— Farm Rents, Rents, Interest, Wages*),⁵ where the absence of *profit* alone should have taught him better. On the same page Menger himself quotes a key passage from the *Globe*, the organ of Saint-Simonism, which, alongside the scholars and the artists, lavishes praise on the *industriels*, i.e. the *manufacturers*, (as opposed to the *oisifs*) as mankind's benefactors and which simply demands the abolition of the tribute to the *oisifs*, that is, the rentiers, those who are in receipt of farm rent, rent and interest. In this list, *profit* is again excluded. In the Saint-Simonist system the manufacturer occupies a prominent position as a powerful and well-paid agent of society, and Mr. Menger would do well to study this position more closely before continuing his treatment of it from the point of view of the philosophy of law.

On page 73 we are told that in the *Contradictions économiques* Proudhon had, "*albeit rather obscurely,*" promised "a new solution of the social problem," while retaining commodity production and competition. What the worthy professor still finds *rather obscure* in 1886, Marx saw through as early as in 1847, demonstrating that it was actually an old idea, and predicting the bankruptcy that Proudhon in fact suffered in 1849.⁶

But enough of this. Everything we have discussed up to now is only of secondary concern to Mr. Menger, and also to his audience. If he had only written

5 Headline of an article by B. P. Enfantin published in *Le Globe*, No. 66, March 7, 1831.—*Ed.*

6 See K. Marx, **The Poverty of Philosophy. Answer to "The Philosophy of Poverty" by M. Proudhon** (present edition, Vol. 6, pp. 105-212). In January 1849, Proudhon made an attempt to establish a "People's Bank" founded on the Utopian principles of "free" credit that he was expounding. The bank, through which Proudhon intended to effect peaceful social reform by abolishing loan interest and introducing money-free exchange based on the producer's receiving a full equivalent of his earned income, collapsed two months after its establishment.

a history of right No. 1, his book would have disappeared without a trace. The history is only a pretext for writing the book; the purpose of that book is to *drag Marx down*. And it is only read because it deals with Marx. For a long time now it has not been so easy to criticise him—ever since an understanding of his system has gained wider currency and the critic has no longer been able to count on the ignorance of his audience. There is only one option: in order, to drag Marx down, his achievements are attributed to other socialists in whom no one is interested, who have vanished from the scene and who have no political or scientific importance any longer. In this way they hope to dispose of the founder of the proletarian world view, and indeed the world view itself. Mr. Menger undertook the task. People are not professors for nothing. They want to make their mark, too.

The matter becomes quite simple.

The present social order gives landowners and capitalists a “right” to part—the bulk—of the product produced by the worker. Basic right No. 1 says that this right is a wrong and the worker should have the whole proceeds of his labour. This takes care of the entire content of socialism, unless basic right No. 2 comes into the picture. So whoever first said that the present right of those who own the soil and the other means of production to part of the proceeds of labour is a *wrong* is the great man, the *founder of “scientific” socialism!* And these men were *Godwin, Hall and Thompson*. Leaving out all the interminable economic fripperies and getting to the legal residue, Menger finds nothing but the same assertion in Marx. Consequently, Marx simply copied these old Englishmen, particularly Thompson, and took care to keep quiet about his source. The proof has been adduced.

We give up any attempt to make this hidebound lawyer understand that nowhere does *Marx demand the "right to the full proceeds of labour,"* that he makes no legal demands of any kind at all in his theoretical works. Even our lawyer seems to have a faint inkling of this when he reproaches Marx for nowhere giving "a thorough presentation of the right to the full proceeds of labour" (p. 98).

In Marx's theoretical studies legal right, which always merely reflects the economic conditions prevalent in a specific society, is only considered as a matter of purely secondary importance; his main concern is the historical justification for certain conditions, modes of appropriation and social classes in specific ages, the investigation of which is of prime importance to anyone who sees in history a coherent, though often disrupted, course of development rather than, as the eighteenth century did, a mere muddle of folly and brutality. Marx views the historical inevitability of, and hence the justification for, the slave-owners of classical times, the feudal lords of the Middle Ages, etc., as the lever of human development for a limited historical period. He thereby also recognises the temporary historical justification for exploitation, for the appropriation of the product of labour by others. Yet at the same time he demonstrates that not only has this historical justification disappeared, but that the continued existence of exploitation in any form, far from furthering social development, is daily impeding it more and more and involving it in increasingly violent collisions. Menger's attempt to force these epoch-making historical investigations into his narrow, legalistic Procrustean bed only goes to show his total inability to understand things that go beyond the narrowest legal horizon. Basic right No. 1, as formulated by him, does not exist for Marx at all.

But here it comes!

Mr. Menger has discovered the term “SURPLUS VALUE” in Thompson. No doubt about it—Thompson is the discoverer of surplus value, and Marx a wretched plagiarist:

In Thompson's views one immediately recognises the mode of thinking, indeed even the forms of expression, that are later found in so many socialists, particularly *Marx* and *Rodbertus* (p. 53)

Thompson is therefore undeniably the “foremost founder of scientific socialism” (p. 49). And what does this scientific socialism consist in?

[The view] that rent and profits on capital are deductions which the owners of land and capital make from the full proceeds of labour, is by no means *peculiar to socialism*, as many representatives of bourgeois political economy, e.g. Adam Smith, *proceed from the same opinion*. Thompson and his followers are *original only in so far* as they regard rent and profit on capital as *wrongful deductions* that conflict with the worker's right to the full proceeds of his labour (pp. 53-54).

Thus, scientific socialism does not consist in discovering an economic fact—according to Menger, this had already been done by earlier economists—but simply in declaring this fact *wrongful*. That is Mr. Menger's view of the matter. If the socialists had really made it so easy for themselves, they could have packed up long ago, and Mr. Menger would have been spared his legal-philosophical clanger. But that's what happens when you reduce a movement in world history to legal slogans that fit in your waistcoat pocket.

But what about the surplus value stolen from Thompson? The facts of the matter are as follows. In his *Inquiry into the Principles of Distribution of Wealth* etc.

(Chapter 1, section 15), Thompson considers

what proportion of the products of their labour ought the labourers to pay (“OUGHT,” literally “are obliged,” hence “ought to pay under the law”) for the use of the articles, called capital, to the possessors of them, called capitalists.

The capitalists say that “without this capital, in the shape of machinery, materials, etc., mere labour would be unproductive; and therefore it is but just that the labourer should pay for the use of that.” And Thompson continues:

Doubtless, the labourer must pay for the use of these, when so unfortunate as not himself to possess them; the question is, how much of the products of his labour OUGHT⁷ to be subtracted for their use (p. 128 of the Pare edition of 1850).

This certainly does not sound at all like the “right to the full proceeds of labour.” On the contrary, Thompson finds it quite acceptable that the worker should forfeit part of the proceeds of his labour for the use of the borrowed capital. The question for him is simply how much. Here there are “two measures, the worker's and the capitalist's.” And what is the worker's measure? It is

the contribution of such sums as would replace the waste and value of the capital, by the time it would be consumed, with such added compensation to the owner and SUPERINTENDENT of it, as would support him in equal comfort with the MORE ACTIVELY EMPLOYED⁸ productive labourers

7 The English word “ought” is given after the quotation, which is in German.— *Ed.*

8 The English words “superintendent” and “more actively employed” are given after their German equivalents in the text.— *Ed.*

Thus, then, is the worker's demand, according to Thompson, and anyone who does not "immediately recognise the mode of thinking, indeed even the forms of expression" from "Marx" would be mercilessly failed in Mr. Menger's philosophy-of-law examination.

But surplus value—what about surplus value? Patience, dear reader, we are almost there.

The measure of the capitalist would be the *additional value produced* by the same quantity of labour, *in consequence of the use of the machinery* or other capital; *the whole of such surplus value* to be enjoyed by the capitalist for his superior intelligence and skill in accumulating and advancing to the labourers his capital, or the use of it (Thompson, p. 128).

This passage, taken literally, is utterly incomprehensible. No production is possible without the means of production. But the means of production are here assumed to be in the form of capital, i.e. in the possession of capitalists. So if the worker produces without the "use of machinery or other capital," he is attempting the impossible; he does not in fact produce anything at all. But if he does produce *with* the use of capital, then his *entire* product would be what is called surplus value here. So let's read on. On p. 130 Thompson has the same capitalist say:

Before the invention of machinery, before the accommodation of workshops, or factories, what was the amount of produce which the unaided powers of the labourer produced? Whatever that was, let him still enjoy... To the maker of the buildings or the machinery, or to him who by voluntary exchange acquired them, let all the *surplus value* of the manufactured article go, as a reward,

And so forth.

Here Thompson's capitalist is simply expressing the manufacturers' everyday illusion that the working hour of the worker producing with the aid of machinery, etc., produces a greater value than the working hour of the simple artisan before the invention of machinery. This notion is fostered by the *extraordinary* "surplus value" pocketed by the capitalist who breaks into a field hitherto held by manual labour, with a newly invented machine on which he and perhaps a few other capitalists have a monopoly. In this case, the price of the hand-made product determines the market price of the entire output of this sector of industry; the machine-made product might cost a mere quarter of the labour, thus leaving the manufacturer with a "surplus value" of 300 per cent of his cost price.

Naturally, the general spread of the new machine soon puts paid to this sort of "surplus value;" but then the capitalist notices that as the machine-made product comes to determine the market price and this price progressively falls to the real value of the machine-made product, the price of the hand-made product also falls and is thus forced down below its previous value, so that machine labour still produces a certain "surplus value" compared with manual labour. Thompson places this fairly common self-deception in the mouth of his manufacturer. How little he shares it himself, however, he expressly states immediately before this, on p. 127: "The materials, the buildings, the wages, can add nothing to their own value. The *additional* value proceeds from labour alone."

We must beg our reader's indulgence when we point out especially for Mr. Menger's edification that this "additional value" of Thompson's is by no means

the same as Marx's surplus value but the *entire* value added to the raw material by labour, that is, the sum total of the value of the labour power and surplus value in the Marxian sense.

Only now, after this indispensable “economic frippery,” can we fully appreciate the audacity with which Mr. Menger says on p. 53:

In Thompson's view ... the capitalists consider ... *the* difference between *the worker's necessities of life* and the real proceeds of their labour, rendered more productive by machinery and other capital expenditure, to be SURPLUS (or ADDITIONAL) VALUE,⁹ which must fall to the owners of land and capital.

This purports to be the “free” German rendering of the passage that we quoted above from Thompson, p. 128. But all that Thompson's capitalist is referring to is the difference between the product of THE SAME QUANTITY OF LABOUR,¹⁰ according to whether the work is performed with or without the use of capital: the difference between the product of the same quantity of labour performed manually or with the help of machines. Mr. Menger can only smuggle in “the worker's necessities of life” by totally falsifying Thompson.

To sum up: The “surplus value” of Thompson's capitalist is not Thompson's “surplus” or “additional value;” much less is either of them Mr. Menger's “surplus value;” and least of all is any of the three Marx's “surplus value.”

But that does not bother Mr. Menger in the slightest. On p. 53 he continues: “Rent and profit on capital are therefore nothing but deductions which the owners of land and capital are able to make from the full proceeds of labour, to

9 The English words are given after their German equivalents in the text.— *Ed.*

10 *Idem.*

the detriment of the worker, by virtue of their legal position of power” — the whole substance of this sentence is already found in Adam Smith—and then he triumphantly exclaims: “In *Thompson's* views one immediately recognises the mode of thinking, indeed even the forms of expression, that are later found in so many socialists, particularly *Marx* and *Rodbertus*.”

In other words, Mr. Menger came across the term SURPLUS (or ADDITIONAL) VALUE in Thompson, only managing to conceal by means of an outright misrepresentation that in Thompson the term is used in two totally different senses, which again are both totally different from the sense in which Marx uses the term surplus value [*Mehrwert*].

This is the entire substance of his momentous discovery! What a pitiful result when set against the grandiose proclamation in the preface:

In this work I shall *present proof* that *Marx* and *Rodbertus* borrowed their principal socialist theories from older English and French theorists, without giving the sources of their views

How miserable the comparison that precedes this sentence now seems:

If anyone had 'discovered' the theory of the division of labour thirty years after the publication of Adam Smith's work on the wealth of nations, or if a writer today sought to present Darwin's theory of evolution as his own intellectual property, he would be considered either an *ignoramus* or a *charlatan*. Only in the social sciences, which almost entirely lack an historical tradition, are successful attempts of this kind conceivable.

We shall disregard the fact that Menger still believes Adam Smith “discovered” the division of labour, while Petty had fully developed this point as

long as eighty years before Adam Smith. What Menger says about Darwin, however, now rather rebounds on him. Back in the sixth century B. C, the Ionian philosopher Anaximander put forward the view that man had evolved out of a fish, and this, it will be recalled, is also the view of modern evolutionary science. Now if someone were to stand up and maintain that the mode of thinking and indeed the forms of expression of Darwin could be recognised in Anaximander and that Darwin had done nothing more than plagiarise Anaximander carefully concealing his source, he would be adopting exactly the same approach to Darwin and Anaximander as Mr. Menger adopts to Marx and Thompson. The worthy professor is right: "only in the social sciences" can one count on the ignorance that makes "successful attempts of this kind conceivable."

But as he places so much emphasis on the term "surplus value," regardless of the concept associated with it, let us divulge a secret to this great expert on the literature of socialism and political economy: not only does the term "SURPLUS PRODUCE" occur in Ricardo (in the chapter on wages),¹¹ but the expression "*plus-value*," alongside the "*mieux-value*" employed by Sismondi, is commonly used in business circles in France, and has been used as far back as anyone can remember, to designate any increase in value that does not cost the owner of the commodities anything. This would seem to make it doubtful whether Menger's discovery of Thompson's discovery (or rather Thompson's capitalist's discovery) of surplus value will be recognised even by the philosophy of law.

However, Mr. Menger is not finished with Marx yet, by any means. Just listen: "It is characteristic that Marx and Engels have been *misquoting* this *fundamental*

11 D. Ricardo, **On the Principles of Political Economy, and Taxation**, pp. 90-115.—*Ed.*

work of English socialism" (viz. Thompson) "for forty years" (p. 50).

So Marx—not content with hushing up his secret Egeria for forty years—also has to go and misquote her! And not just once, but for forty years. And not only Marx, but Engels too! What an accumulation of premeditated villainy! Poor Lujo Brentano, who has been hunting in vain for twenty years for just one single misquotation by Marx, and during this witch-hunt has not only burnt his own fingers but has brought ruin upon his gullible friend Sedley-Taylor of Cambridge¹²—kick yourself, Lujo, for not finding it! And in what does it consist, this horrendous falsification that has been stubbornly pursued for forty years, is "characteristic" into the bargain, and, to cap it all, is given the character of a treacherous plot by Engels' malicious forty-year-long complicity?

"...misquoting for forty years by giving its year of publication as 1827!"

When the book had appeared as early as 1824!

"Characteristic," indeed—of Mr. Menger. But that is far from being the only — listen here, *Lujo!* — the only misquotation by Marx and Engels, who seem to

12 The reference is to the hostile campaign against Marx conducted in the 1870s by the German bourgeois economist Lujo Brentano, a leading representative of armchair socialism (see Note 289). He accused Marx of deliberately falsifying the phrase from Gladstone's speech delivered on April 16, 1863, which appeared on April 17 in almost all London newspaper reports of this parliamentary session (*The Times*, *The Morning Star*, *The Daily Telegraph*), but was omitted in Hansard's semi-official publication of parliamentary debates, in which the text was corrected by the speakers themselves. This gave Brentano a pretext for accusing Marx of unscrupulous misquotation. Marx retaliated in his letters to the *Volksstaat* editors on May 23 and July 28, 1872 (see present edition, Vol. 23, pp. 164-67 and 190-97). After Marx's death, the same accusation was made in November 1883 by the English bourgeois economist Taylor. It was disproved by Eleanor Marx in February and March 1884 in two letters to the *To-Day* magazine, and by Engels in June 1890 in his preface to the fourth German edition of *Capital* (see present edition, Vol. 35) and in 1891 in the pamphlet *Brentano Contra Marx* (present edition, Vol. 27).

practise misquotation professionally— perhaps even on the move? In the *Misère de la philosophie* (1847) Marx got *Hodgskin* mixed up with *Hopkins*, and forty years later (nothing less than forty years will satisfy these wicked men) Engels commits the same offence in his preface to the German translation of the *Misère*.¹³ With his eagle eye for printer's errors and slips of the pen it really is a loss to mankind that the good professor did not become a printer's proofreader. But no—we must take back this compliment. Mr. Menger is no good at reading proofs, either; for he, too, commits slips of the pen, that is to say, he misquotes. This happens not only with English titles but also with German ones. He refers, for instance, to “Engels' translation of this work,” i.e. the *Misère*. According to the title page of the work the translation was not by Engels. In the preface in question Engels quotes the passage from Marx mentioning Hopkins *verbatim*: he was thus obliged to reproduce the error in his quotation in order not to misquote Marx. But these people simply cannot do anything right for Mr. Menger.

But enough of these trivia in which our philosopher of law takes such delight. It is “characteristic” of the man and the likes of him that he feels obliged to show he has read two or three more books than Marx had “forty years ago,” in 1847, even though he became familiar with the entire literature on the subject through Marx in the first place—nowhere does he quote a single English author not already quoted by Marx, apart from perhaps Hall and world-famous people like Godwin, Shelley's father-in-law. A man who has the titles of all the books quoted by Marx in his pocket and all the present facilities and amenities of the British Museum at his disposal and is unable to make any discovery in this field

13 This inaccuracy in Marx's book was set right by Engels in the second German edition of *The Poverty of Philosophy* published in 1892. It also gave a more precise wording of the quotation used by Engels in the preface to the first German edition (see this volume, p. 280), and the correct date of the publication of Thompson's book.

apart from the fact that Thompson's *Distribution* appeared in 1824, and not 1827, really should not brag about his bibliographical erudition.

The same applies to Mr. Menger as to many other social reformers of our day: grand words and negligible deeds, if any. He promises to demonstrate that Marx is a plagiarist—and shows that one *word*, “Mehrwert” [surplus value], had been used before Marx, though in a different sense!

The same holds for Mr. Menger's legal socialism. In his preface, Mr. Menger declares that in the “legal treatment of socialism” he sees the “most important task of the philosophy of law of *our time*.”

Its correct handling will substantially contribute to ensuring that the indispensable amendments of our legal system are effected by way of a peaceful reform. Only when the ideas of socialism are transformed into sober legal concepts will the practical politicians be able to acknowledge how far the existing legal system needs reforming in the interests of the suffering masses.¹⁴

He intends to set about this transformation by presenting socialism as a legal system.

And what does this legal treatment of socialism amount to? In the “Concluding Remarks” he says: “There can surely be no doubt that the formation of a legal system that is fully dominated by these fundamental legal concepts” (basic rights 1 and 2) “can only be *a matter of the distant future*” (p. 163).

What appears to be the most important task of “our time” in the preface is assigned to the “distant future” at the end.

14 A. Menger, **Das Recht auf den vollen Arbeitsertrag...**, p. III.— *Ed.*

The necessary changes [in the existing legal system] will take place by way of prolonged historical development, just as our present social system eroded and destroyed the feudal system over the centuries, *until all that was needed was one blow to completely eliminate it* (p. 164).

Fine words, but what place is there for the philosophy of law if society's "historical development" brings about the necessary changes? In the preface it is the lawyers who determine the course taken by social development; now that the lawyer is about to be taken at his word, his pluck deserts him and he mutters something about historical development, which does everything on its own. "But does our social development advance towards realising the right to the full proceeds of one's labour or the right to work?"

Mr. Menger declares that he does not know. How ignominiously he now abandons his socialist "basic rights." But if these basic rights cannot coax a dog away from the hearth, if they do not determine and realise social development but are determined and realised by it, why go to all the trouble of reducing socialism to the basic rights? Why all the bother of stripping socialism of its economic and historical "fripperies," if we are to find out in hindsight that these "fripperies" are its real substance? Why only tell us at the end that the whole study is utterly pointless, since the objective of the socialist movement cannot be perceived by turning the ideas of socialism into sober legal concepts but only by studying social development and its motive forces?

Mr. Menger's wisdom ultimately amounts to declaring that he cannot say which direction social development will take, but he is sure of one thing: "the weaknesses of our present social system should not be *artificially* exacerbated" (p. 166) and, to make it possible to preserve these "weaknesses," he recommends

—*free trade* and the avoidance of further *indebtedness* on the part of the State and the local communities!

This advice is the sole tangible result of Mr. Menger's philosophy of law, which presents itself with such fuss and self-praise. What a pity that the worthy professor does not let us into the secret of how modern states and local communities are supposed to manage without “contracting national and local debts.” If he should happen to know the secret, let him not keep it to himself forever. It would certainly pave his way “to the top” and a ministerial portfolio a good deal faster than his achievements in the “philosophy of law” ever will.

Whatever reception these achievements may find in “high places,” we believe we can safely say that the socialists of the present and the future will make Mr. Menger a gift of all his basic rights, or at any rate will refrain from disputing his right to the “full proceeds of his labour.”

This does not mean to say, of course, that the socialists will refrain from making *specific legal demands*. An active socialist party is impossible without such demands, like any political party. The demands that derive from the common interests of a class can only be put into effect by this class taking over political power and securing universal validity for its demands by making them law. Every class in struggle must therefore set forth its demands in the form of *legal demands* in a programme. But the demands of every class change in the course of social and political transformations, they differ from country to country according to the country's distinctive features and level of social development. For this reason, too, the legal demands of the individual parties, for all their agreement on ultimate goals, are not entirely the same at all times and for every

nation. They are an element subject to change and are revised from time to time, as may be observed among the socialist parties of different countries. When such revisions are made, it is the *actual conditions* that have to be taken into account, it has not, however, occurred to any of the existing socialist parties to construct a new philosophy of law out of its programme, nor is this likely ever to happen in the future. At any rate, Mr. Menger's achievements in this field can only have a deterrent effect. That is the only useful thing about his little book.

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