David Renton’s thoughtful and trenchant article in Socialist Lawyer 64 has done us all a great service by opening up questions of crucial importance to the Haldane Society. That is because we are socialists, committed to solidarity in resistance to the depredations of capital, and to fighting for its abolition. We are not simply human rights defenders, though many of us are active in a host of human rights organisations, for example the Bar Human Rights Committee and the Solicitors International Human Rights Group.

What then should be our understanding of the discourse of human rights, which has become something like a secular religion or substitute for religion? The practice of human rights protection often looks worryingly like Euro-centrism; European standards set against USA power politics or geopolitical mayhem.

That was the issue in the notorious Kadi judgment of 2008, in which the European Court of Justice (ECJ) annulled the decision, taken initially by the United Nations Security Council (as the Sanctions Committee) placing Mr Kadi on a terrorist list. The ECJ did so in the light of the critiques of the rights contained in the French Revolution, its rejection of the ‘social and economic rights, and refuses to ratify the Council of Europe’s Revised Social Charter with its system of collective (not individual) complaints by trade unions and NGOs to the European Committee of Social Rights, or the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The jurisprudence of the European Committee of Social Rights, with many decided cases, can be found at www.coe.int/d法官monitoring/socialcharter/default_en.asp.

David Renton is not a liberal; he is a revolutionary socialist. He has made a fine reputation as a lawyer fighting for workers’ rights, and is well known for his 2012 book Struck out: Why Employment Tribunals fail workers and what can be done.

What does he say? He writes that, drawing on Marx, a useful approach to the problem of rights in the present situation:

‘... could be to disregard temporarily the search for further and better lists of rights in order to focus on their revolutionary kernel: i.e. the right to a just outcome [my emphasis]. Part of establishing a fair outcome depends on a system of expropriation.’

There is no disagreement between David Renton and me as concerns the need for expropriation.

We differ in respect of what Marx actually wrote. Indeed, Marx and Engels wrote very little on law, and even less on what a future communist society might look like. David Renton asserts that after Marx’s acerbic critique of the rights contained in the French and American declarations of the late 18th century, essentially the same rights as are contained in the ECHR, in 1844 in his On the Jewish Question:

‘Over the next 40 years Marx and Engels were to sharpen this critique of rights and develop a richer sense of how an alternative society might work.’

In actual fact, Marx and Engels affirmed the opposite, in 1845 in The German Ideology. They wrote that:

‘Empirically, communism is only possible as the act of the dominant peoples “all at once” and simultaneously, which presupposes the universal development of productive forces and the world intercourse bound up with communism.’

And continued with one of my favourite passages from their works:

‘Communism is for us not a state of affairs which is to be established, an ideal to which reality [will] have to adjust itself. We call communism the real movement which abolishes the present state of things. The conditions of this movement result from the premises now in existence.’ (Their emphases)

This is very far from being a serious vision of the future, but is instead part of a comment on the present.

Rights and wrongs

Bill Bowring replies to David Renton, who asked, ‘Do socialists still have an alternative concept of rights?’

Opposite page: ‘Karl Marx (Holzschnitt)’ (170) by Robert Diedrichs (1923–1995), German graphic artist, painter and illustrator. See more of his work at: http://commons.wikimedia.org/wiki/Robert_Diedrichs
Furthermore, their Manifesto of the Communist Party of 1848 says nothing about a future communist society. Instead, the final section, Part IV, begins: ‘The Communists fight for the attainment of the immediate aims, for the enforcement of the momentary interests of the working class; but in the movement of the present, they also represent and take care of the future of that movement.’

Communists, therefore, struggle on the side of the working class in the present day. And Marx and Engels go on to specify their attitude to existing parties in the various European countries. The class struggle has not gone away, far from it, and now intensifies all over the world. In passing, it is not gone away, far from it, and now European countries. The class struggle has not gone away, far from it, and now intensifies all over the world. In passing, it is not gone away, far from it, and now intensifies all over the world.

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‘…one worker is married, another is not; one has more children than another, and so on and so forth. Thus, with an equal performance of labour, and hence an equal in the social consumption fund, one will in fact receive more than another, one will be richer than another, and so on. To avoid all these defects, right, instead of being equal, would have to be unequal.’

‘It is not, as David Renton suggests, that for Marx ‘…all universal rights… result in unequal treatment’. The point is that human beings are unequally endowed, and have unequal personal lives. As Marx makes clear, his famous slogan ‘From each according to his ability, to each according to his need’, can only be realised ‘…after the productive forces have also increased’ and ‘all the springs of co-operative wealth flow, and abundantly’. We now know, as Marx and Engels did not, that there are severe ecological barriers to achieving abundance.

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‘It is an eternal cycle in which matter moves… a cycle in which every finite mode of existence of matter… is equally transient, and wherein nothing is eternal but eternally changing, eternally moving matter and the laws according to which it moves and changes. But however often, and however relentlessly, this cycle is completed in time and space… we have the certainty that matter remains eternally the same in all its transformations, that none of its attributes can ever be lost, and therefore, also, that with the same iron necessity that it will exterminate on the earth its highest creation, the thinking mind, it must somewhere else and at another time again produce it.’

This is Spinoza. One can be quite sure that if the earthly paradise were ever achieved, that would be the moment at which a passing asteroid would eliminate the planet and all its inhabitants, workers and capitalists alike. Something like Lars von Trier’s film Melancholia.

To return to the question of rights. I think that a strong case can be made for the proposition that each generation of ‘human rights’ has its origins in revolutionary struggle, and that is why they remain, unlike black-letter law, so powerful and so scandalous. The first generation of civil and political rights, now enshrined in the ECHR, had their origin in the French and American Revolutions, abhorred by Edmund Burke, the father of English conservatism. We should take our stand with Burke’s enemy, Tom Paine, whose Rights of Man and Common Sense still read as a full frontal attack on contemporary English political corruption.

The second generation, social and economic rights, were first treated as legal rights in the International Labour Organisation which was created in 1919 as a direct response to the October revolution of 1917. Haldane’s John Hendy and Keith Ewing have shown how the UK shamelessly violates its ILO obligations. And the key right of the third generation, the right of peoples to self-determination, was first promoted by Marx, Engels and Lenin, and came to fruition in the anti-colonial struggles after World War Two. Self-determination struggles continue for the Irish, Basques, Kurds, Palestinians, and Tamils. That, for me, is the ‘revolutionary kernel’ of rights.

Bill Bowring teaches law at Birkbeck College. He is a barrister practising at the European Court of Human Rights and is International Secretary of the Haldane Society.

“Marx and Engels insisted that communists fight in the present, we cannot predict the future, and of course there is no certainty that the working class will win.”