

Metaphor, Marx, Agamben and International Law: The Jamaican Quashee/ Quasheebea, the Necessity of Labour, and the Subjectivity of Emancipated Slaves

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1 Introduction

Laziness is taboo, yet this paper is a manifesto for the lazy and I its author count myself as one of that otherwise nondescript rabble. Laziness is not something to be proud of or to proclaim publicly without embarrassment. ‘Otiose’, a word that originally meant leisure, has come to mean of no practical benefit, as if leisure is not practically beneficial as such. Yet like a taboo or a ghost, its non-existence still haunts us, and this essay seeks to trace its wilful outline by means of certain similarities in shape and form or isomorphisms that relate otherwise distinct phenomena. Outlining that isomorphism is akin to drawing the chalk outline of a body in a murder scene without the body – only by the signature of that body.

The body of which I speak is the figure—the fantasy or the metaphor—of the emancipated slave (even though actual human beings are the concrete historical material referent of this metaphor) who would resolutely not work beyond what was necessary. Metaphors are not strange to law. The ubiquitous social contract and its synonyms, the veil of ignorance, the original position, (see e.g., Rawls 1971: 136, Nozick

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1974: 42), etc. endure. As we shall see below the point is that Marx uses the *metaphor of the slave* as the basis of his analysis of capitalism. And he seizes on the *story of the Quashee* to prove what is ideological in the metaphor. What needs pointing out is that if anyone knows the limits of that metaphor it is the freed slaves themselves. Their stand and what happened to them – not in fiction but in the real world of 19th C Jamaica – shows us what is stake in the metaphorical and ideological contours of capitalism. And it also shows us the possibility of resistance, of refusing the duty to work and reclaiming the dream of laziness once and for all. But this will require us to move beyond mere metaphor to a more concrete historical analysis of a basic and fundamental feature of international law and jurisprudence.

2 Pastoral Scenes: Marx and Faust and Agamben

No less as astute a reader of Agamben than Jessica Whyte has written that ‘Marx remains a subterranean influence on Agamben’s thought’ (Whyte 2017: 263). Whyte goes on to identify two types of readers of Marx, ‘Rousseauists’ who valorise an ‘actually existing’ working class, and those readers of Marx, like GM Tamás, who see “the ‘Faustian-demonic’ expropriative power of capital as the condition of possibility of a class ‘with nothing to lose but its chains’” (Whyte 2017: 229). For Tamás,

Marx is the poet of that Faustian demonism: only capitalism reveals the social, and the final unmasking, the final apocalypse, the final revelation can be reached by wading through the murk of estrangement which, seen historically, is unique in its energy, in its diabolical force.’ (Tamás 2005: 230)

Tamás explains that Karl Marx and Marxism aimed at the abolition of the proletariat, as opposed to ‘the apotheosis and triumphant survival of the proletariat’ (Tamás 2005: 229). This is why ‘Rousseauian’ EP Thompson’s masterpiece, *The Making of the English Working Class* ‘had to ignore the Faustian-demonic encomium of capitalism inherent in Marx, and so he had to oppose ‘critical theory’, and then theory tout court’ (Tamás 2005: 229).

Whyte notes that although ‘Hannah Arendt prepared manuscripts on Marx’s thought, which exerted a strong influence on Agamben’ (Whyte 2017: 267), nonetheless ‘Agamben is closer to Marx than to Arendt’ (Whyte 2017: 268). To illustrate: ‘[t]he exclusion of ‘necessity’, or the maintenance of biological life, from the polis is, in his view, the abandonment that structures all subsequent Western politics, rendering it biopolitical from its inception. And like Marx, Agamben envisages a world, which he tends to locate at the end of history, in which humanity will be freed from the compulsion to labour’ (Whyte 2017: 268). Whyte notes how strange it was that Arendt does not mention the role of the slave in Athenian society whereas in *The Use of Bodies* Agamben clearly describes the special status of slaves who were both excluded and included in humanity in the sense that a free man implies a slave as a necessary condition of its possibility (Agamben 2015: 20).

Whyte points out that ‘Marx’s examples of a worker who ceases to be a worker, by stealing or inheriting money, suggest a new freedom not merely from labour itself, but from the compulsion to sell one’s labour power in order to put it to work’ (Whyte 2017: 266). So too for Agamben—and this is the key to their connection to the metaphor of slavery and its opposite, the otiose—‘inoperativity cannot simply be equated with the absence of work’ (Whyte 2017: 267). Whyte adds:

Just like the abolition of labour that Marx and Engels wrote of, Agamben’s inoperativity is not simply an idleness but a human activity freed of instrumentality and a necessary relation to an end. What would such an activity look like? Perhaps, if we were to envisage it in a bucolic key, we would ‘hunt in the morning, fish in the afternoon, rear cattle in the evening, criticize after dinner’ - all ‘without ever becoming hunter, fisherman, shepherd or critic’(Whyte 2017: 263 from Marx and Engels 1976: 5).

Whyte’s choice of adjective, bucolic, to invoke Marx’s utopia in this context (together with its cognates, Edenic, heavenly, pastoral - as in pastoral scenes, paradisiacal, idyllic, Arcadian, utopian, etc), recalls the walled garden of Eden especially in its distinction from the wilderness

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of Eden itself. In that telling, humans were originally born in an already divinely cultivated garden and were then by divine judgment cast out into the wilderness as opposed to being born in the wilderness and then had to cultivate a garden through their own efforts. In this narrative what marks us as demonstrably living human beings (the imperative need for life's necessities like food, clothing, shelter, medicine) is re-read and re-presented as a demonic curse. Work specifically is *only* necessary through the operations of the law and it is all mostly women's fault. Surely, it is not unreasonable to speculate that the biblical Eve who entered into a deal with the devil in exchange for knowledge was Faust's prototype.

Marx's utopia is therefore both Faustian and Edenic in origin. Although he was not particularly enamoured of rights as propounded by the bourgeoisie, he nonetheless championed a species of freedom in touting that everyone should have life's necessities automatically availed to them by society in order for them to achieve their potential (Ross 2019: 119-120). The contemporary bifurcation of rights into (more or less right wing) civil and political rights enshrined in the *International Covenant for Civil and Political Rights* (ICCPR) on the one hand, and (more or less left wing) economic social and cultural rights enshrined in the *International Covenant for Economic, Social and Cultural Rights* (IESCR) on the other, ensured that there could be no single human rights covenant as was envisaged in the *Universal Declaration of Human Rights* (UDHR). More than that, it ensured that paid work remains what it always was: a continuing form of slavery. This is probably why Agamben repeatedly proffers Bartleby's signature phrase "I prefer not to" via repeated engagement with Aristotle as a way of paralysing the apparatuses of power in western liberal societies without breaking the law (Agamben 1993: 34, Agamben 1995: 65, Agamben 1998: 48, Agamben 1999: 177, Agamben 2000: 23).

This is not a mere petty philosophical, political or ideological squabble either. It remains a monument to a metaphysical split between comedy and tragedy: between the status of a legal person that is able to bear rights and duties (as in civil and political rights); and the

condition of a human being whose life requires the constant provision of necessities (as in economic social and cultural rights). Crucially, only one figure, the slave, can readily cross that threshold between status and condition, as the first Article of the *Slavery Convention of 1926* shows us: ‘the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised’.

Even in early discussions of the ICCPR’s Article 8 outlawing slavery ‘it was pointed out that slavery, which implied the destruction of the juridical personality, was a relatively limited and technical notion’ (Bossuyt 1987: 167). This convenient juridical evisceration of the concept directly invokes and relates to Article 16 which states ‘Everyone has the right to recognition everywhere as a person before the law’. Hannah Arendt would have described this as the right to have rights (Arendt 1949, Michelman 1996: 200). The evolution of that article is intriguing. At the first session of the drafting committee, it read as: ‘No person shall be restricted in the personal exercise of his civil rights or deprived of judicial personality’. It then shifted to ‘No person shall be restricted in the personal exercise of his civil rights or deprived of juridical personality’ and on to ‘No person shall be deprived of his juridical personality’, then to ‘No one shall be deprived of his juridical personality’ (Bossuyt 1987: 335), before settling into the current form of words that preferred ‘recognition’ over ‘deprivation’ of personality. Article 16 left intact the proposition that law can both deprive and recognise personality and therefore confer or withhold the capacity to enjoy rights as such. The basis of the final draft was article 6 of the UDHR which (unlike the ICCPR and the ICESCR) was “understood to apply to human beings, not to ‘juridical persons’” (Bossuyt 1987: 336). This is why ‘[t]here was general agreement that article 16 was intended to ensure that every person would be a subject, and not an object, of the law’ (Bossuyt 1987: 336).

In opposing the juridical protection of economic, social and cultural rights the delegate of the United Kingdom expressed the view that ‘the world needed free men and not well-fed slaves’; consequently ‘economic and social rights and social security rested primarily on

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the affirmation of freedom of speech and the right to association' (Schabas 2013: 1318). This expressed view and attitude that granting legal protection of civil and political rights would somehow lead as a matter of fact to the enjoyment of economic, social, and cultural rights has held sway to the present day and profoundly influences the development of international criminal law, international human rights law, and international humanitarian law. No wonder that in her appraisal of Agamben and Arendt, Sara Maria Sorentino argues that the paradigmatic use of the slave 'infects thought, deranges time, delineates death, demarcates human-ness, and disavows its violence' (2019: 656). The figure of the slave has become the lazy scapegoat of the modern world, the opposite of liberal freedom, the opposite of the capitalist west and all it stands for, the opposite of its 'civil and political rights'—and thus as the very opposite of what Marx had intended us to see, metaphorically but endemically in our own practices of thought word and deed.

While slavery, servitude and forced or compulsory labour are prohibited under article 8 of the ICCPR as a negative right, the positive expression of the right to work is recognised elsewhere. Article 6 of the ICESCR includes the right of everyone to earn a living by work which is freely chosen or accepted, Article 7 provides everyone the right to enjoy just and favourable working conditions, and Article 8 provides for safe and healthy working conditions (Schmid 2015). Slavery is abolished from paid human labour and removed to the status of human chattel-hood for which there is no or at least no longer any legal excuse. In terms of human rights law that definition has been interpreted as we saw above in a way that favours civil and political rights over economic social and cultural rights (Schmid 2015). Because Agamben's work has shown the unbridgeable gulf between the UDHR on the one hand and the ICCPR and ICESCR is the self-same gulf between the human and the person at the heart of contemporary western legal anthropogenesis, then the more pressing task is to either paper over the gap in the name of business as usual or, on the contrary, to sever or jam that relationship in search of a different legal anthropogenesis based upon freedom as opposed to liberty.

Simone Bignall suggests that although 'Agamben's Continental Philosophy shows a redemptive capacity that may release (aspects of) European thought from its long complicity with imperialism'... 'it remains unclear whether Agamben betrays the redemptive potential of his philosophy when his own conceptual language remains contained by an insular Westernity' (Bignall 2014: 46). Magnus Fiskesjö, in a less charitable reading, sees Agamben as either complicity or unwittingly (it is not clear which) participating in the disavowal of the world historical Haitian antislavery revolution (Fiskesjö 2012). This will shortly return us to the question of whether the concept of slavery remains in Marx and Agamben a mere metaphorical flourish or whether there is something in the historical record which might illuminate it. Given that Agamben is bent upon unveiling of the mysteries of the West's politics and law, eurocentrism might be read more as a descriptor than an accusation. Nonetheless, it cannot hurt to investigate the point further.

The primary distinction in Roman Law was that between slaves and freemen (Buckland 2010: 735). Importantly 'in Roman legal discourse, the term *homo*, when used in isolation, meant simply "slave or servant"' (Heller-Roazen 2009: 148) Roberto Esposito makes the point that the term 'person' not only separates '*servi* [slaves] and *liberi* [free men]' but also further distinguishes, amongst *liberi*, 'between *ingenui* [freemen born free] and *liberti* [those manumitted from legal slavery]' (2012: 22). Writing in the early eighteenth century Anton Wilhelm Amo, the first African-born person to attend, to graduate from, or to teach at a European university, relied on the Justinian Code to mount the argument that Africans, whose Kings had pledged allegiance to the Roman emperor, were consequently vassals of Rome (Abraham 1964: 60-81 and Abraham 2006: 191-1999). This allegiance was constantly renewed through the issue of imperial patents including by Justinian himself (Abraham 2006: 69). Furthermore, Christian emperors, he argued, were precluded from enslaving their fellow Christians (Abraham 1964: 70). It is only after mounting these legal and theological arguments that Amo turns to the violations of elementary principles of humanity as a third justification for the criminality of slavery (Abraham 1964: 70).

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The perspicacious revelation of Amo's work was that the concept of *humanity* was impoverished - deficient even - as a *legal* concept. This is clearly illustrated in the human right to recognition as a person, as we saw above. That problematic gulf between the person and the human has lost none of its contemporary relevance. In focussing on liberty - and hence on the not-slave - we would *still* indelibly base our liberal conceptions of rights in the abstract not on the notion of a free human being that was born free (the *ingenui*) in Esposito's taxonomy but on the figure of the *liberti* - a freed human being that was once enslaved but no longer is. It is worth recalling what Agamben says: "What is called "face"- writes Cicero - cannot exist in any animal except in man" and the Greeks defined the slave, who is not master of himself, *aproposon*, literally "without face"." (Agamben 2021). Tellingly Agamben notes too that 'Persona originally means "mask" and it is through the mask that the individual acquires a role and a social identity' (Agamben 2011: 46). The basis of all rights for everyone that enjoys them is projected onto an artificial legal personality rather than being grounded in any actual concrete material human life. As the subject of rights, we are as faceless and as abstract as the slave against whom our 'freedoms' are pitted, materially, historically and legally. Did any of the actual slaves that litter the pages of human history themselves find a way out of this universal Faustian bargain—giving up our humanity in exchange for legally enforceable rights as persons? This is the task of the following section of this essay. What after all does Agamben's 'inoperativity' or Marx's utopia stand for if not a plea for human dignity from which has been stripped—*pace* Arendt—not just our right but our duty to work. *Unworkers of the world unite! You have nothing to lose but your chains!*

3 Quashee or the Quashees? Slavery and Freedom Beyond Metaphor

Marx's *Grundrisse* contextualises so-called indolence in freed slaves. Marx himself credits: 'The Times of November 1857 [which] contains an utterly delightful cry of outrage on the part of a West-Indian plantation owner' penned by an anonymous 'Expertus':

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The Quashees (the free blacks of Jamaica) content themselves with producing only what is strictly necessary for their own consumption, and, alongside this ‘use value’, regard loafing (indulgence and idleness) as the real luxury good; how they do not care a damn for the sugar and the fixed capital invested in the plantations, but rather observe the planters’ impending bankruptcy with an ironic grin of malicious pleasure, and even exploit their acquired Christianity as an embellishment for this mood of malicious glee and indolence.³⁹ They have ceased to be slaves, but not in order to become wage labourers, but, instead, self-sustaining peasants working for their own consumption. (Marx 1973).

Whereas Marx says ‘the Quashees’, Expertus says Quashee without the definite article. treating it as a generic name for the freed slaves. The Ghanaian Quashee or Quasie, or Kwesi, or Kwasi, or Akwesi, etc. for males along with the feminine Quasheeba, Quasheba, Kwasiba, etc. originally referred to a child, born on a Sunday (DeCamp 1967). Appropriately so, as Agamben reminds us that redemption is not work but is rather akin to the cessation of activity during the sabbath or while taking a sabbatical (Agamben 2011). This is also what makes us able to work in the first place whereas after the real practice of real slaves (as opposed to metaphorical ones) shows how much they value not work or money but idleness. This is the essence of their freedom – not to be paid but to LIVE without work. The Quashees show both the possibility of resistance to the capitalist mode of production – and just what a risk true freedom poses for it. The freed slave undermines the whole motivational assumptions behind capitalism. And it is the passage from metaphor to the material reality of slavery and freedom that lights the path. Simon Choat, in his *Reader’s Guide to the Grundrisse*, would probably concur given his critique of the ‘crudely materialist, unable to recognize that the qualities that they attribute to machines in themselves – whether their capacity to emancipate or enslave – are not the natural properties of machines but result from the social relations within which machines are put to use’ (Choat 2016: 165). The question whether mechanization is a mode of freedom or just another mode of slavery is at its clearest in the freed slave who would no longer use,

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nor allow another to put to use (even for money), their body beyond what was necessary to sustain them. A difficult model for the rest of us to live up to. Just as the freed slave or Quashee illuminates, in their shift from metaphor to materiality, the possibilities of resistance, so in the language of the machine ‘by love possessed’, so-called economic freedom reveals itself as nothing but a ‘poisoned swollen-bellied rat.’

4 Conclusion

This article begun by bringing together the overlapping thoughts of Marx, Goethe and Agamben in a meaningful way to examine the praxis of the freed slaves in Jamaica and the law’s violent response. What other figure than the taboo figure of the slave concretely and materially ticks such sundry Agambenian boxes as crossing the human/animal, and slave/free citizen, and instrument/actor divides, is virtually reduced to walking death, is denied both a face and a mask, discloses how validity is granted to juridical acts which would otherwise be a nullity, plays with roles for whose canonical role they have no respect, and deactivates legal relations while rendering itself inoperable, all the while combining poiesis and praxis in a life inseparable from its form? The Agambenian figure *par excellence* is none other than the Quashee/Quasheeba, a figure in which theory turns to praxis, and metaphor comes to life. Metaphor is never enough. We must not just imagine freedom but live it. Ironically enough their example, suffering, and sacrifice indicate that it takes a lot of time, work, and effort to be lazy in contemporary society. Let us all together now, in unison with Quashee and Quasheeba, see through, see off and bid adieu to the implied duty to work. We need no longer consent to swap our humanity for legal personality.

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Endnotes

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