

Milton Fisk, The State and Justice: An Essay in Political Theory, Cambridge: Cambridge University Press, 1989. x + 391pp.

This is an important, ambitious book. Rather than continuing the debate about what Marx thought about justice or the state, Fisk has set out to construct a materialist theory of each, and their interrelation. Although there is little mention of Marx here, the work is informed by a deep Marxian sensibility. Like Marx, Fisk refuses to theorize in abstraction. He draws on concrete historical and contemporary experience to a degree rare among philosophers.

Here's the problem that concerns Fisk. How can one reconcile an historical materialism that claims primacy for the economic with 1) state autonomy, as evidenced by state willingness on occasion to act contrary to the interests of the economically dominant class, and with 2) the clear importance of normative elements in challenging an economic system? His solution is intricate and ingenious.

State autonomy is seen to emerge from the conflict between the function and form of ruling. The function of ruling, Fisk hypothesizes, is to reproduce the economy. A class-divided society's economy cannot reproduce itself without an overarching authority that has the power (and mandate) to keep the class conflict in check. A state is required. However, a state cannot govern if it is no more than the agent of the dominant class. To secure the acquiescence of the dominated, it must place limits on the losses they might sustain and limits also on the benefits the dominant can extract. It must be seen by the majority as the upholder of justice. Justice, says Fisk, is the form of ruling.

The state has real (if not absolute) autonomy due to the possible contradiction between the need to reproduce the economy and the demands of justice. But whence come the demands that set up this contradiction? Not, says Fisk, from the rational apprehension of some ideal form of justice. No such

form exists. Justice derives from the conflicting interests of the groups that compose society, the interests of the dominant group to be sure, but also the interests of the dominated.

In every society there is justice. There is always an "official justice" that the state is expected to uphold, which sets limits on dominated and dominant alike. It is "official" in that it does not jeopardize the reproduction of the economy. In most societies there is also a latent "radical justice" -- stronger demands on behalf of the oppressed that, to be satisfied, would require a new economic order. When the demands of radical justice become widespread, pressure builds for reform, which, if enacted, modifies institutions and the content of official justice as well. If the underlying economic structure cannot accommodate such reform, the impasse can be broken only by repression or revolution.

This, succinctly put, is Fisk's account of the state and justice. But in giving justice a weight equal to that of the economy, doesn't it violate a basic tenet of classical historical materialism: the primacy of economics? Fisk argues that it does not. He proposes that an explanation may invoke two conceptually distinct kinds of causality corresponding to two ontologically distinct levels of reality. Agents act to produce effects. They are stimulus causes. But an action has the effect it does because of the structural framework within which the action occurs. The relevant elements of this framework are the structural causes of the event. An explanation may be regarded as genuinely historical materialist if the structural causes to which it appeals--but not necessarily the stimulus causes--are economic.

In the case at hand, the motivations and actions of members of dominant and dominated groups and of agents of the state are stimulus causes, and hence need not be reducible to economic considerations. In particular, considerations of justice need not be so reducible. So long as it is recognized that the framework that makes possible the connection between state actions and their effects is economic, the explanation is historical materialist. For example, an historical materialist can allow that Cold War hysteria was an important stimulus cause of the nuclear arms race without claiming that this hysteria was, at base, economically motivated. Even if agitation by the military-industrial complex was significant, the hysteria may well

have had non-economic bases as well--revelations concerning Stalinist crimes, shock at the speed at which the Soviet Union acquired nuclear technology, misperceptions of Soviet intent, among others. An historical materialist need not deny these non-economic bases, nor even insist that the economic was paramount. An historical materialist will insist, however, that this hysteria would not have generated a nuclear arms race apart from specific economic structural factors conducive to, or at least compatible with, the development and deployment of massive amounts of such weaponry. Apart from an appropriate economic structure, Cold War hysteria, whatever its source, would not have brought about the missiles and warheads.

I have sketched what I take to be the core of Fisk's theory. In the book's concluding section Fisk asks that the theory be judged from the perspective of "those interested in promoting some form of radical justice." This seems to me a fair request.

To get a handle on Fisk's project, some comparisons might be helpful. As the theory of the state and justice, Fisk's invites comparison with Rawls'. The differences are striking. For Rawls, a state is required so that principles of justice may be enforced;¹ it must insure, among other things, that the economy not transgress these principles. The principles themselves are (quasi-)universal, derived via a mechanism that brings our considered moral judgments into reflective equilibrium. For Fisk, a state is required so that the economy (in which a minority exploit a majority) may be reproduced. The state enforces principles of justice in order to secure its legitimacy, without which it could not perform its primary function. As to the principles themselves, Fisk highlights the problematic status of the "our" that modifies Rawlsian "considered moral judgments." He also highlights the instability of these principles, subject always to contestation from below. In all these comparisons, Fisk's positions seem superior to Rawls'--more accurate, more helpful to one concerned with fundamental social change, certainly more in line with my considered judgments.

¹ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), p. 240.

Fisk's theory also stacks up well against those crude (and common) versions of Marxism that view the state as simply the superstructural political expression of the economically dominant class, and justice as the superstructural ideological expression of the same. With respect to the state, this view is problematic, not only intellectually (in view of state actions that oppose the interests of the dominant class) but politically and morally as well, leading as it does to a refusal to participate in reform politics. Fisk's theory points to a more nuanced view. If the function of the state is to reproduce the economy, radical reform will be very difficult indeed. We should have no illusions about that. Yet the state's own need for legitimacy may compel it to make concessions to oppressed groups that contradict this function--and hence set the stage for radical transformation. (Might we not read the recent events of Eastern Europe in this light?)

With respect to justice, the crude Marxian view is similarly deficient. It cannot explain the palpable importance of moral outrage in fuelling rebellions of the oppressed, and it leads (all too often) to a repellent moral cynicism on the part of a party leadership allegedly committed to radical change. Again Fisk's theory points in a more fruitful direction. Radical justice is central to radical change. Moreover, the content of that justice is not to be identified with the interests of one segment of the oppressed, or even all such segments. To be a form of justice, it must be capable of legitimizing a new state, and hence must aspire to represent the interests of everyone. To be sure, the interests of the exploiters will not be given the same weight as under the official justice. (Capitalist acts among consenting adults may well be prohibited.) But moral cynicism gets no theoretical backing here.

I've defended (if very briefly) what we might think of as Level One of Fisk's theory: claims about the state, its autonomy, its form and function, and the nature and role of justice. I'm more troubled by Level Two: the claim that the Level One analysis is compatible with an historical materialism that maintains the primacy of the economic. It's not so much the claim itself that bothers me, as its raison d'etre. (Milton will not be surprised by this criticism; I raised it with him some years ago in private correspondence.)

In a word: why does one want to insist on economic primacy? Why is this important to those committed to radical justice? The costs are evident. One risks alienating elements of the radical opposition who have been burned

by Marxian dogmatism. One risks a certain myopia regarding other crucial structures. What is to be gained? Of course, if the economic primacy thesis were true, I'd withdraw my objection, but Fisk doesn't argue that it is. The theoretical machinery constructed at Level Two works only to establish the compatibility of the Level One theory with (an economistic) historical materialism; it does nothing to show this historical materialism's validity. It doesn't show, for example, that the economic framework has primacy over other possible frameworks. Nor does it show that a materialist framework must be exclusively economic.²

However ingenious the compatibility argument might be, it has the feel of theology. I'm reminded of the argument that one can be a Christian and still believe in evolution--though it's clearer in this later case what is at stake. I wish that the what's-at-stake-here issue had been addressed more forthrightly.

Because of space constraints, this review has concentrated on Fisk's core theory. There is much more to the book than this, however. The issues I've discussed comprise only the first two parts. Part Three examines in detail how the capitalist state functions to reproduce the capitalist economy. Part Four presents a theory of "global justice," in the abstract and as applied to the superpower rivalry between the United States and the Soviet Union. Part Five reflects on forms of radical justice, the nature of a socialist economy and the structure of a transitional state. In all of these sections Fisk is bold, unconventional, provocative. Few readers will agree with everything here; fewer still will come away without new ideas buzzing in the brain.

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² I am inferring Fisk's identification of "materialist" with (narrowly construed) "economic" from his rejection of Iris Young's proposal to include gender structures among those regarded as basic by historical materialism (p. 344, note 9).