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# The Communistic Inclinations of Sir Thomas More

David Ray Papke\*

## INTRODUCTION

Sir Thomas More has extraordinarily high standing in western religion and politics. Pope Pius XI honored More as the greatest martyr of the English Reformation, and the Catholic Church canonized More in 1935.<sup>1</sup> He remains, to this day, the patron saint of statesmen and politicians.<sup>2</sup> Jonathan Swift, eighteenth-century Anglo-American satirist and political commentator, said in his essay, “Concerning That Universal Hatred, which Prevails Against the Clergy” that when Henry VIII “cut off the head of Sir Thomas More,” he beheaded “a person of the greatest virtue this kingdom [the United Kingdom] ever produced. . . .”<sup>3</sup> Not to be outdone in praising More, the early twentieth-century critic and lay theologian C.K. Chesterton predicted that More “may come to be counted the greatest Englishman, or at least the greatest historical character in English history.”<sup>4</sup>

In light of this lavish lionizing from devoted Christians and from champions of individualism, it comes as a bit of a surprise that further to the east, where atheism and collectivism often trump Christianity and individualism, important spokesmen have also lionized More. Karl Kautsky, who, from 1895 to 1914, was the most important theorist of Marxism in the world and “did more to popularize Marxism in Western Europe than any other intellectual, with the possible exception of Friedrich Engels,”<sup>5</sup> published an entire book on More: *Thomas More and His Utopia*. According to Kautsky, More’s ideas may be regarded as “the foregleam of Modern Socialism.”<sup>6</sup> At the time of the Bolshevik Revolution in Russia, Lenin himself suggested that More be included in a monument honoring great western thinkers that was erected in Alekandrovsky Gardens in Moscow.

It is fair to say More’s work as a barrister, service in the Parliament, honesty as Lord High Chancellor, and even his beheading by Henry VIII, are *not* the

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1. Robert J. Barro, Rachel M. McCleary & Alexander McQuoid, *Economics of Sainthood (a preliminary investigation)*, 2 fn 6 (2010).

2. Pope John Paul II, *Apostolic Letter: Proclaiming Saint Thomas More Patron of Statesmen and Politicians* (given on Oct. 31, 2000), [http://w2.vatican.va/content/john-paul-ii/en/motu\\_proprio/documents/hf\\_jp-ii\\_motu-proprio\\_20001031\\_thomas-more.html](http://w2.vatican.va/content/john-paul-ii/en/motu_proprio/documents/hf_jp-ii_motu-proprio_20001031_thomas-more.html) (on file with *The University of the Pacific Law Review*).

3. 13 JONATHAN SWIFT, PROSE WORKS OF JONATHAN SWIFT 123, 123 (1959).

4. C.K. Chesterton, *A Turning Point in History*, THE FAME OF THE BLESSED THOMAS MORE 63 (R.W. Chambers, ed., 1929).

5. GARY P. STEENSON & KARL KAUTSKY, 1854–88: MARXISM IN THE CLASSICAL YEARS 3 (1978).

6. KARL KAUTSKY, THOMAS MORE AND HIS UTOPIA, iii (1959).

reasons for the secular and collectivist praise. Instead, More appealed to Kautsky, Lenin, and other socialists and communists chiefly because of what he wrote. They thought certain of the analyses and arguments in *Utopia* tilted figuratively to the left and, more specifically, prefigured Marxist thought.

None of this is to say, meanwhile, that More's *Utopia* is a political "tract," that is, a work directly advocating a political position and hoping to win over large numbers of readers. The best-known tract from the American Revolutionary Period, for example, is Thomas Paine's *Common Sense*, whose direct and fiery call for a break from England sold an estimated 100,000 copies in only three months.<sup>7</sup> More's *Utopia*, by contrast, is complex and sometimes contradictory. Originally written in Latin, *Utopia's* intended audience was a distinct group of Northern Renaissance Humanists, More's intellectual peer group.<sup>8</sup> He hoped they would be intrigued by his work, but More did not envision a large readership spurred to political action.

And indeed, More would have been foolhardy to think *Utopia* could have inspired a political movement given the odd, deflecting nature of the work.<sup>9</sup> More wrote or edited everything in *Utopia*, but the work includes the supposed Utopian alphabet and several mock Utopian poems as well as letters from More to Peter Gilles, a town clerk in Antwerp, and from Gilles Jerome Busleiden, a religious deacon and teacher.<sup>10</sup> In the latter, Gilles praises More to a rather embarrassing extent.<sup>11</sup> The lengthiest parts of the work are Book One, which takes the form of a conversation between More and a fictional Portuguese seaman named Raphael, and Book Two, in which Raphael describes and praises Utopia, the fantastic world he has supposedly visited.

More's prefiguring of Marxist thought is most evident in Raphael's comments on England in the early sixteenth-century and particularly in his enthusiastic description of Utopia. Part One of the essay at hand discusses the communistic bases of Utopia, especially its communal ownership of property. Part Two considers Utopia's welfare program, criminal justice system, and laws. And Part Three contemplates the way meaningful work in Utopia prevents alienation. In the end, do More's communistic inclinations help us understand the problematic features of contemporary society? Does *Utopia* offer insights that are of value in the present?

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7. See generally DAVID RAY PAPKE, *HERETICS IN THE TEMPLE: AMERICANS WHO REJECT THE NATION'S LEGAL FAITH* 1 (1998).

8. See generally COLIN STARNES, *THE NEW REPUBLIC: A COMMENTARY ON BOOK 1 OF MORE'S "UTOPIA" SHOWING ITS RELATION TO PLATO'S "REPUBLIC"* 3 (1990).

9. Colin Starnes says *Utopia* "is like one of those wooden puzzles, a segmented ball, where we seem always to end with some dominant idea that approximates the whole and yet find ourselves with a number of awkward-shaped pieces that cannot be made to fit." *Id.* at 1.

10. See generally THOMAS MORE, *UTOPIA* (Paul Turner ed., 2003).

11. *Id.*

PART ONE

The true foundation of the fantastic world called Utopia is its approach to property. According to More, speaking through Raphael, the Utopian society is “based on communal ownership instead of private property.”<sup>12</sup> Indeed, a fair distribution of goods and a satisfactory organization of human life are “impossible until you abolish private property altogether.”<sup>13</sup> Once private property is eliminated, meanwhile, true equality, prosperity, and security follow.

Differences of course exist, but Marx also called for an end to private property ownership. For example, in *The German Ideology*, one of Marx’s initial efforts to articulate his communist philosophy, he links private property ownership to oppressive regimes and class dominance. Private property, Marx says, began with the ancients and then grew in importance over the centuries until, in the present, private property corresponds to the modern state, which has been “purchased gradually by the owners of property . . . .”<sup>14</sup> We must abolish private property, Marx says, “because the productive forces and forms of intercourse have developed so far that, under the domination of private property, they have become destructive forces, and because the contradiction between the classes has reached the extreme limit.”<sup>15</sup> Marx was even blunter in *The Communist Manifesto* of 1848. “[T]he theory of the Communists,” Marx said, “may be summed up in a single phrase: Abolition of Private Property.”<sup>16</sup>

These attitudes regarding private property are of course antithetical to certain common assumptions in Anglo-American thought. Since Lord William Blackstone summarized the common law in the eighteenth century, and, perhaps earlier, western theorists and policymakers have extolled the virtues of private property. According to the legal historian Jedidiah Purdy, private property has seemed “the centerpiece of a new way of understanding society as a semi-voluntary, semi-spontaneous order of mutual benefit that people brought about to overcome brute material necessity and make themselves and others freer.”<sup>17</sup> The framers of the United States Constitution “regarded the protection of property as a great object of the Constitution and a necessary condition for the preservation of liberty.”<sup>18</sup> The Fifth Amendment to the Constitution of the United States of America protects private property rights in two ways. First, Americans are not to

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12. *Id.* at 43.

13. *Id.* at 45.

14. KARL MARX & FREDERICK ENGELS, *THE GERMAN IDEOLOGY* 79 (C.J. Arthur ed., 1978).

15. *Id.* at 117.

16. KARL MARX, *THE COMMUNIST MANIFESTO* 75 (Frederic L. Bender ed., 2013).

17. JEDIDIAH PURDY, *THE MEANING OF PROPERTY: FREEDOM, COMMUNITY, AND THE LEGAL IMAGINATION* 5 (2010).

18. Steven J. Eagle, *Property*, *THE OXFORD COMPANION TO AMERICAN LAW* 358 (Kermit L. Hall ed., 2002).

be “deprived” of property without “due process of law,” and second, American property “shall not be taken for public use, without just compensation.”<sup>19</sup>

In the present, American law schools—and particularly the standard first-year course in “Property”—champion private property. Almost everyone who teaches and studies property law takes private property to be a good and glorious thing. Its ownership carries with it the metaphorical “bundle of rights.”<sup>20</sup> The so-called “bundle” includes rights connoting both exclusivity and transferability, and these rights expand or shrink according to the historical context. In general, these rights have greater economic value than the actual land or anything built on the land. Overall, legal education subtly urges people to obtain property and to move it quickly and frequently through the marketplace. Law schools are, in general, prepared to honor and respect those who have lots of property, and the schools also commend those who sell their property in order to make money.

More and Marx’s views of private property provide a stark contrast, but these views might seem less troubling if one notes that neither had *all* material possessions in mind when suggesting that the ownership of private property be eliminated. For More, “private property” did not include property for personal use and consumption. Each town in Utopia has a shopping area, where individuals can obtain products from the various shops.<sup>21</sup> Given surpluses and the like, the Utopians do not have to beg or pay for these products, but they are nevertheless able to get and keep what they want for their individual households.<sup>22</sup>

The type of property More insisted be communally-held is the land and things built on the land, that is, what we in the present call “real property” or “realty.” In both More’s era and during immediately subsequent centuries, wealth in England continued to be associated with land ownership. In 1700, farmland constituted two-thirds of English wealth,<sup>23</sup> and as late as 1911, 700 families literally “owned a quarter of the country.”<sup>24</sup> The typical member of the gentry had income approximately 30 times that of the average Englishman. This gave the gentry extraordinary power and even a sense that they had the responsibility of living a “civilized” life on behalf of everyone else. Surely the enjoyment of literature, music, and art was their special province.<sup>25</sup>

Marx implicitly agreed with More that work tools, cooking implements, treasured books, mementos, family archives, and personal records were not

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19. U.S. CONST, amend. V.

20. See generally Jane B. Baron, *Rescuing the Bundle-of-Rights Metaphor in Property Law*, 82 U. CIN. L. REV. 57 (2013).

21. MORE, *supra* note 10, at 80.

22. *Id.*

23. See generally, THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY 119 (2014).

24. Thomas Mallon, *Before the Lights Went Out*, N.Y. TIMES BOOK REVIEW, May 22, 2007, 21, (reviewing JULIET NICOLSON, *THE PERFECT SUMMER: ENGLAND 1911, JUST BEFORE THE STORM* (2008)).

25. See generally, PIKETTY, *supra* note 23, at 411–16.

included within the type of “private property” that had to be eliminated.<sup>26</sup> This personal property or “personalty” did not trouble him. “The distinguishing feature of Communism,” Marx said explicitly in *The Communist Manifesto* of 1848, “is not the abolition of private property generally, but the abolition of bourgeois property.”<sup>27</sup> This bourgeois property could be obtained through the exploitation of workers *and* could also be used for further exploitation. Marx respected the “hard-won, self-acquired, self-earned property” held by peasants and artisans.<sup>28</sup> He insisted, “There is no need to abolish that. . . .”<sup>29</sup> Why would anyone want to take away people’s personal belongings?

If More and Marx had a more specific understanding of private property than many think, one type of private property *did* seem to them to have great importance. This type of property is sometimes called the “means of production.” Included in this category would be machines, structures, and physical environments, and the owners of the means of production could use it to produce things of value, monetary or otherwise.

For More, the best example of value-producing property is farmland, and he suggested that in the ideal utopian society, all farms would be communally owned. Farmland areas in Utopia are associated with fifty-four big towns, but the towns are uninterested in exercising firm control of boundaries.<sup>30</sup> None of the towns are trying either to take over other towns or to seal off their own boundaries.<sup>31</sup> The simple reason for the harmony among the towns is that “they don’t regard their land as property but as soil that they’ve got to cultivate.”<sup>32</sup>

Some trades such as carpentry and stonemasonry are practiced in Utopia’s towns, but as Raphael puts it, farming is “everybody’s job.”<sup>33</sup> Utopia’s farmers cultivate the soil, feed the farm animals, cut down the timber, and transport farm products to one town or another. They prefer to use oxen rather than horses.<sup>34</sup> Why? They use the horses only for riding practice. Also, slaves rather than Utopians do all the slaughtering of animals so that Utopian farmers “can maintain their natural feelings of humanity.”<sup>35</sup>

A presumably playful More, once again speaking through Raphael, goes on at some length about the vast numbers of chickens raised on Utopia’s farms.<sup>36</sup> Instead of allowing the hens to sit on their eggs, the farm workers apply a steady

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26. See generally MARX, *THE COMMUNIST MANIFESTO*, *supra* note 16, at 75.

27. *Id.* at 75.

28. *Id.*

29. *Id.* at 76.

30. MORE, *supra* note 10, at 70.

31. *Id.* at 75.

32. MORE, *supra* note 10, at 50.

33. *Id.* at 55.

34. *Id.* at 71.

35. *Id.* at 61.

36. *Id.* at 71.

heat to the eggs.<sup>37</sup> This enables the hens to leave the eggs they laid and get busy producing more eggs. What's more, there are additional advantages in the area of chicken control. When the chicks hatch, they consider the poultry man to be their mother and follow him wherever he wants them to go.<sup>38</sup>

Obedient chickens aside, More's sketch of farming in Utopia is a commentary of sorts on agricultural production in England at the same time. Utopian works inevitably invite readers to reflect critically on the norms and practices of the actual historical epoch of the works' authors. And lest there be any doubt, the landed estates of England century were *not* communally owned. The implication in *Utopia* is that we would be better off doing what was done in the land of Utopia than doing things the way they were done in More's England.

In fact, certain parts of the fictional conversation in Book One of *Utopia* forcefully criticize developments in the sheep-farming branch of England's agricultural sector. More puts the critical words in Raphael's mouth, but the criticism seems certainly to be More's. In particular, he critically recalls the way the English gentry seized control of sheep-farming, much to the detriment of everyone but themselves.

This observation grows even more pointed if considered in historical context. In the late medieval period, England became known for the quality of its wool and woolen cloth.<sup>39</sup> Given the international acclaim, the English eagerly exported raw wool in the fourteenth century and then woolen cloth in the fifteenth and sixteenth centuries.<sup>40</sup> Wool became a central engine in the English economy and modernization.<sup>41</sup> The King, for his part, was only too happy to levy a tax on the sacks of exported wool and rolls of woolen cloth. And the seat of the Lord High Chancellor in the House of Lords paid homage to wool as a great source of English pride and wealth. The Lord Chancellor, if he is so inclined, could plunk himself on a "woolsack," a big seat cushion if you will.<sup>42</sup>

Raphael, meanwhile, is having none of this. He outlines the way the English gentry gave up their "lazy, comfortable lives" in order to profit from the wool trade.<sup>43</sup> The gentry not only raised sheep on their own lands, but also seized control of common lands in order to create even more privately-owned pastures, a process known in later times as "enclosure." According to Raphael, "Each greedy individual preys on his native land like a malignant growth, absorbing field after field, and enclosing thousands of acres with a single fence."<sup>44</sup> Result—

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37. *Id.* at 51.

38. *Id.* at 71.

39. *Id.* at 151.

40. *Id.*

41. See generally ADRIAN R. BELL, CHRIS BROOKS & PAUL R. DRYBACH, *THE ENGLISH WOOL MARKET* (2007).

42. See generally JONATHAN SUMPTION, *THE HUNDRED YEARS WAR I: TRIAL BY BATTLE 188–89* (1991).

43. MORE, *supra* note 10, at 46.

44. *Id.* at 25.

hundreds of farmers are evicted.”<sup>45</sup> Suddenly, the price of wool began to rise steeply because a few rich men—an oligarchy—had control of the wool industry. “Thus a few greedy people have converted one of England’s greatest advantages into a national disaster.”<sup>46</sup> None of this would have happened if the gentry had not acquired and held onto the means of production as private property.

For his own part, Marx is most interested in the property of the industrial era—mines, factories, railroads, etc.—and he argued at length for the abolition of these privately-owned means of production. However, Marx *does* agree with More about what happened to farmland in the early-modern period in England. Marx suggested in the *Economic and Philosophic Manuscripts* that in this period the landlord was “transformed into the captain of industry, into a capitalist . . . .”<sup>47</sup> Landowners could and did exploit tenant farmers and profit from their labor. However, with benefit of critical hindsight, Marx also observed that the dominance of the large landowners did not last. Eventually, according to Marx, one sees “the necessary victory of the capitalist over the landowner—that is to say, of developed over undeveloped immature private property . . . .”<sup>48</sup> There is an inevitability about this victory, “just as in general movement must triumph over immobility; open, self-conscious baseness over hidden, unconscious baseness; greed over self-indulgence; the avowedly restless, adroit self-interest of enlightenment over the parochial, naïve, idle and deluded self-interest of superstition; and money over the other forms of private property.”<sup>49</sup>

From a materialist perspective, More and Marx’s special concern with the agricultural means of production in sixteenth-century England reflects a sense that the *means* of production in a given epoch yield a dominant *mode* of production. This is an important point because the mode of production is not only the defining feature of a society’s economic structure but also the foundation for societal superstructures. The mode of production, according to Marx writing in *Capital*, is “the inner-most secret, the hidden basis of the entire social structure. . . .”<sup>50</sup> The mode of production heavily influences the social, political, and legal processes of a society, be that society an imaginary utopian society or an exploitative real one.

## PART TWO

As one would expect in a perfect, ideal society, Utopia’s most important secondary features are supposedly quite appealing. More’s Utopia has generous welfare, humane criminal justice, and simplified laws. All of these features of

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45. *Id.* at 47.

46. *Id.* at 48.

47. KARL MARX, *ECONOMIC AND PHILOSOPHIC MANUSCRIPTS OF 1844*, 123 (Dirk J. Struick ed., 1964).

48. *Id.* at 126.

49. *Id.*

50. 3 KARL MARX, *CAPITAL, A CRITIQUE OF POLITICAL ECONOMY* 791 (Frederick Engels ed., 1967).



Utopia are held out as worthy of emulation, and as with the basic foundation of Utopia—its communal ownership of property—these secondary features might well have been endorsed by Marx.

As for welfare, it is probably misleading to even think of More's Utopia as the type of "welfare state" western political conservatives have been attacking for decades.<sup>51</sup> Yes, Utopia provides food, clothing, housing, and health care for its residents, but the benefits available in Utopia are so great that the state is probably best thought of as, to coin a phrase, a "well-being state."

The simple fact is that Utopians have everything they need. As Raphael puts it, "Nobody owns everything, but everyone is rich."<sup>52</sup> There are no people living in poverty, and no beggars asking for handouts. In fact, since there is so much to go around, Utopia gives one-seventh of all exports to the poor of any country receiving the exports.

To the extent Utopia has a welfare program *per se*, it involves support for the elderly and, by extension, those who are injured or too ill to work. Details are sketchy, but as a result of this program, people do not have to work if it is difficult for them to do so. Utopia's workers need not, to use one of More's favorite metaphors, work like "cart-horses."<sup>53</sup> Dating back to medieval England, if not before, these large, heavy animals were bred for the hardest of farm work and were often worked until they dropped.

Marx, of course, also urged better treatment of workers, and complaints about the exploitation and oppression of workers were central to Marxism. The bourgeoisie, Marx thought, had replaced what might be thought of as routine exploitation of the workers with "naked, shameless, direct, brutal exploitation."<sup>54</sup> In the capitalist epoch, workers became "proletarians," and in the context of a "communistic revolution," "The proletarians have nothing to lose but their chains."<sup>55</sup>

The abolition of private property and money, too, has also led to a striking reduction of crime in Utopia. In fact, the types of criminal behavior for which money is the end seem to have been eradicated completely; they include "fraud, theft, burglary, brawls, riots, disputes, rebellion, murder, treason, and black magic."<sup>56</sup> Why would black magic be on the list? Perhaps More thought black magic could lead to people being swindled and losing their personal belongings.

Punishment of certain crimes could be harsh in Utopia, and in some cases, criminals are imprisoned, forced to work on chain gangs, or even sold into slavery. Criminals from Utopia, it seems, are actually punished more severely than criminals from foreign lands. "The idea is," Raphael reports, "that it's all the

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51. See generally Norman Barry, *Conservative Thought and the Welfare State*, 45 POL. STUD. 331 (1997).

52. MORE, *supra* note 10, at 128.

53. *Id.* at 129.

54. MARX, THE COMMUNIST MANIFESTO, *supra* note 16, at 63.

55. *Id.* at 96.

56. MORE, *supra* note 10, at 130.

more deplorable if a person who has had the advantage of a first-rate education and a thoroughly moral upbringing still insists on becoming a criminal—so the punishment should be all the more severe.”<sup>57</sup>

But if More is not opposed to punishing criminals, he does stop short of endorsing the most severe form of punishment—capital punishment. Raphael comments directly on the widespread and, in his opinion, misguided use of capital punishment in England at the beginning of the sixteenth-century. “We’re hanging them all over the place,” he says. “I’ve seen as many as twenty on a single gallows.”<sup>58</sup> He argues in a supposed conversation with the Archbishop of Canterbury that capital punishment is not only too severe, but also ineffective when used to address perceived theft and robbery problems:

In this respect you English, like most other nations, remind me of incompetent schoolmasters, who prefer caning their pupils to teaching them. Instead of inflicting these horrible punishments, it would be far more to the point to provide everyone with some means of livelihood, so that nobody’s under the frightful necessity of becoming first a thief and then a corpse.<sup>59</sup>

Raphael’s alternative to capital punishment, meanwhile, is hardly rehabilitation or a healing circle. He suggests using a system of punishment found in the playfully-named “Tallstoria,” a purportedly semi-autonomous region of Persia.<sup>60</sup> The Tallstorians first require that the thief return what he has stolen, and then they clip his hair short, just above the ears. This haircut, in effect, marks the thief as a criminal, but if any doubt remains, the Tallstorians also chop off a small piece of one of his ears. The thief is then assigned to hard labor in chains on public works.<sup>61</sup> This assignment is not imprisonment *per se*, but the Tallstorians lock up their thieves every night.<sup>62</sup> If a thief puts down his tools or works too slowly, the Tallstorians attach more chains and also whip him.<sup>63</sup> Friends and relatives are allowed to give the convicted criminals food and drink, but it is a capital crime for anyone to give these criminals money or for the criminals to accept it.<sup>64</sup> This system, Raphael says, “comes down heavily on crime, but it saves the lives of criminals, treating them in such a way that they’re forced to become good citizens, and spend the rest of their lives making up for

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57. *Id.* at 101.

58. *Id.* at 44.

59. *Id.*

60. *Id.* at 53.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

the harm they've done in the past.”<sup>65</sup> According to the ever-confident Raphael, this system is “obviously most convenient and humane.”<sup>66</sup>

While entire books have been written on Marxist criminology,<sup>67</sup> Marx himself wrote relatively little about crime and criminal justice.<sup>68</sup> However, Marx *did* offer his thoughts on capital punishment, and, like More, Marx disapproved of it. He detailed his thoughts in an article published in the *New York Daily Tribune* on February 18, 1853, sounding in the article like a would-be criminologist. Wielding rudimentary data to back up his argument, Marx argued that capital punishment had a counter-deterrent effect; that is, use of the death penalty prompted people to commit heinous offenses.<sup>69</sup> Overall, according to Marx, “[I]t would be very difficult, if not impossible, to establish any principle upon which the justice or expediency of capital punishment could be founded in a society glorifying in its civilization.”<sup>70</sup>

*Utopia* also includes discussions of law, and More, who himself had a long distinguished career in the law, deplored an over-reliance on laws. Speaking through his mouthpiece Raphael, More notes that England passes dozens of new laws every day. Many of these laws seem primarily designed to legitimize the tricks and dodges of the rich, and, more generally, the laws could confuse and confound the citizenry.

Fortunately *Utopia* has very few laws, and the Utopians think “it’s quite unjust for anyone to be bound by a legal code which is too long for an ordinary person to read right through, or too difficult for him to understand.”<sup>71</sup> What’s more, the average Utopian fully understands the laws that do exist and is a “legal expert” because “the crudest interpretation is always assumed to be the right one.”<sup>72</sup> The only purpose of law in Utopian society, Raphael tells More, is “to remind people what they ought to do, so the more ingenious the interpretation, the less effective the law, since proportionately fewer people will understand it—whereas the simple and obvious meaning stares everyone in the face.”<sup>73</sup>

Reducing the complexity of the laws has one extremely unfortunate ramification for the legal profession. As critics of the legal profession often delight in noting, there are no lawyers in *Utopia*, the thinking being that trained legal professionals would be too over-ingenious about individual cases and points

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65. *Id.*

66. *Id.*

67. See, e.g., RICHARD QUINNEY, *CLASS STATE AND CRIME: ON THE THEORY AND PRACTICE OF CRIMINAL JUSTICE* (1977).

68. See generally Robert M. Bohm, *Karl Marx and the Death Penalty*, 16 *CRITICAL CRIMINOLOGY* 285, 285 (2008).

69. Karl Marx, *Capital Punishment*, in Karl Marx & FRIEDRICH ENGELS, *BASIC WRITINGS ON POLITICS AND PHILOSOPHY* 485, 486 (Lewis S. Feuer ed., 1959).

70. *Id.*

71. MORE, *supra* note 10, at 106.

72. *Id.*

73. *Id.* at 106–07.

of law. The Utopians think it is better for each man to plead his own case and to tell the judge the same story he would otherwise have told a lawyer: “Under such conditions, the point at issue is less likely to be obscured, and it’s easier to get at the truth—for, if nobody’s telling the sort of lies that one learns from lawyers, the judge can apply all his shrewdness to weighing the facts of the case, and protecting simple-minded characters against the unscrupulous attacks of clever ones.”<sup>74</sup>

Interestingly enough, traditional Marxist sources also suggest that law will wither away in the projected communist state. Friedrich Engels, Marx’s colleague and chief collaborator, suggested this in 1878 in the lesser work *Anti-Dühring*, and later Vladimir Lenin reiterated the idea in his book *The State and Revolution*.<sup>75</sup> The thinking was that once capitalism, with its class oppression, had been ended, the state and its concomitant legal system would be rendered obsolete. According to Hugh Collins, discussing the Marxist understanding of law in *Marxism and the Law*, “The remorseless progress of history ensures that the end of law is nigh.”<sup>76</sup> In the twentieth century, the expectation that law would wither away was so fully accepted in Marxist circles that some self-identified Marxists questioned the claims of the Soviet Union to be a Communist state when its law kept growing and growing.<sup>77</sup>

Overall, Utopia’s distinctive welfare program, criminal justice system, and accessible laws rest upon and extend from Utopia’s communal ownership of property and dominant mode of production. In imagining what could emerge after capitalism’s demise, Marx might well have envisioned comparable secondary features in the society he hoped would follow the collapse of capitalism.

### PART THREE

Although Sir Thomas More’s schemes for welfare, criminal justice, and law are certainly intriguing, the most valuable discussions in *Utopia* may involve something else. More provocatively argues in *Utopia* that meaningful work can protect human beings from alienation. Resonating as it does with the later writings of Karl Marx, More’s *Utopia* suggests the citizens of a society in which property is communally owned can, in and through their work, feel fulfilled and be happy.

As previously noted, the Utopians are essentially farmers. As Raphael puts it, “[T]here’s one job they all do, irrespective of sex, and that’s farming.”<sup>78</sup> Children

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74. *Id.* at 106.

75. See HUGH COLLINS, *MARXISM AND LAW* 104–05 (1982).

76. *Id.* at 103.

77. *Id.* at 104.

78. MORE, *supra*, note 10, at 75.

learn the principles of agriculture at school, and “they’re taken for regular outings into the fields near the town, where they not only watch farm-work being done, but also do some themselves, as a form of exercise.”<sup>79</sup> The standard stretch of farm-work lasts two years, “but those who enjoy country life—and many people do—can get permission to stay there longer.”<sup>80</sup> Knowing they are the co-owners of the farms, Utopian farmers eagerly anticipate and truly enjoy their work.

The Utopian farmers’ contentment is evident in the way they live their lives. They genuinely care for one another, *and* they take care as well to nurture and maintain their personal “joie de vivre,” that is, their capacity for delighting in life. “What greater wealth can there be,” Raphael asks, “than cheerfulness, peace of mind, and freedom from anxiety?”<sup>81</sup> Indeed, Utopians even die happily. Funerals are not sad affairs, and Utopians enjoy reflecting on the deceased’s cheerfulness and optimism.<sup>82</sup> After attending a funeral, Utopians “go home and discuss the dead man’s character and career, and there’s nothing in life that they dwell on with such pleasure as the happy state of mind in which he left it.”<sup>83</sup>

As for Marx, he, too, took work as a starting point, at least if that work was not the alienated labor so common in the capitalist epoch. Marx’s essay titled *Estranged Labor*, in fact, stands to this day as one of the most important critiques of alienated labor.<sup>84</sup> If we turn what he says in that essay on its head, we see the Marxist view of meaningful work and how it leads to happiness and fulfilled, self-actualized human beings.

If human beings are working for themselves and not for bourgeoisie’s profit, they might avoid alienation. For starters, workers in society with communally owned property and meaningful work might find personal value in the products of their labor, no matter if it is a crop they harvest or a train’s engine they manufacture. Given some degree of satisfaction in the products of their labor, workers might also be expected to be engaged in the processes of working. Then, if workers can avoid competing with one another for better work tasks and higher salaries, they are more likely to avoid negative feelings and attitudes about one another. They might actually like the people with whom they work. If we delight in our work products, work processes, and fellow workers, we can, according to Marx, avoid alienation from ourselves and reaffirm the essence of our human nature.

The latter point is the most important and corresponds to the profound happiness that More suggests, but Marx’s thinking is somewhat abstract. He posits the idea of a “species being” or, in the original German,

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79. *Id.*

80. *Id.* at 71.

81. *Id.* at 128.

82. *Id.* at 121.

83. *Id.*

84. See MARX, ECONOMIC AND PHILOSOPHIC MANUSCRIPTS OF 1844, *supra* note 47, at 106–09.

“Gattungswesen,”<sup>85</sup> and he takes man as a “species being” who believes what he does to be the object of his wishes. This presumption on man’s part makes him feel his activity is intentional and free-willed. Meaningful work objectifies man’s species life, “for he duplicates himself not only, as in consciousness, intellectually, but also actively, in reality, and therefore he contemplates himself in a world he has created.”<sup>86</sup> The problem, meanwhile, is that in the capitalist epoch, man becomes estranged and alienated from his labor. “In tearing away from man the objects of his production . . . estranged labor takes him from his species life . . . His inorganic body, his nature, is taken from him.”<sup>87</sup>

A postmodernist determined to subvert humanism by decentering the human being as the focus of study would disagree with More and Marx,<sup>88</sup> and some modern sociologists would argue that work has become so variable and sometimes secondary as to preclude generalizations about it. The highly-regarded sociologist Gale Miller, for example, has studied various types of work in depth and explicitly taken issue with the assumption that work is a centerpiece of human life. According to Miller, workers do not necessarily expect to find themselves through their labor, and, as a result, they are not overly disappointed when their work is meaningless.<sup>89</sup> Most just want to “make a living.”<sup>90</sup>

What Miller and others overlook is that attitudes such as this, in themselves, speak of workers’ alienation. As More and Marx both insist, meaningful labor can instill pride in one’s work products and lead to enjoyable working experiences. Meaningful work can connect a worker to fellow workers and provide a sense of personal fulfillment. In short, meaningful work can insulate human beings from alienation.

#### CONCLUSION

As it turns out, self-styled Marxists *did* accurately detect communistic inclinations in Sir Thomas More’s *Utopia*. In admittedly indirect and undeveloped ways, the work prefigures some aspects of Marxist thought by pointing out and proposing solutions for problems related to the growth of capitalism. The biggest problem in this regard was the private ownership of the means of production, and More proposes communal ownership as an alternative. More also critiqued the emerging structural and legal institutions and also suggested capitalism’s denial of meaningful work led to alienation. Using his vehicle of utopian fiction, More offered schemes for addressing these problems.

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85. *Id.* at 114.

86. *Id.*

87. *Id.*

88. *See generally* M. H. ABRAMS, A GLOSSARY OF LITERARY TERMS 118 (7th Ed., 1999).

89. *Id.* at 93–94.

90. *Id.* at 3.

Later in time, Marx and his interpreters criticized similar problems and offered comparable solutions.

The continuum from More to Marx is part of a critique of western society focusing on its capitalist economy and the private ownership of the means of production. This tradition is radical in that it does not merely urge the elimination of troubling surface phenomena, but rather “goes to the root of things, in this case, the major institutions of the capitalist society.”<sup>91</sup> To be sure, this tradition is usually drowned out by voices praising private property and extolling the virtues of the market economy. Capitalism, after all, has the power to mystify and to thereby “mask what is ‘really going on.’”<sup>92</sup> But still, More and Marx—and also selected theorists between and after them—question the glory and accomplishments of capitalist states built on the private ownership of property.

Some have suggested that the collapse of communist governments, first in Eastern Europe and later in the Soviet Union, has forced radicals in this tradition “to rethink the idea that history is moving in a predetermined direction in which the inequities of capitalism would be superseded by a more cooperative organization of politics and society.”<sup>93</sup> True as that might be, socioeconomic inequality in the United States is currently “as extreme as in old Europe in the first decade of the twentieth century . . . .”<sup>94</sup> In addition, this inequality has “exploded” since 1980.<sup>95</sup> According to surveys conducted by the Federal Reserve, in 2011 “the top decile own 72 percent of America’s wealth, while the bottom half claim just 2 percent.”<sup>96</sup> Wage inequality explains part of this inequality, but even more important is the wealth derived from capital in the form of dividends and interest. While the well-to-do continue to benefit from their private ownership of assets, the poor and working classes derive virtually no wealth from property holdings and other forms of capital. “The inescapable reality is this: wealth is so concentrated that a large segment of the society is virtually unaware of its existence, so that some people imagine that it belongs to surreal or mysterious entities.”<sup>97</sup>

Other legal and political superstructures in the contemporary United States are also disconcerting. Critics rail about the mushrooming “welfare state,” but in reality the American government provides smaller benefits than do European social democracies.<sup>98</sup> In fact, the situation worsened in the early 1990s when the

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91. N. SCOTT ARNOLD, *MARX’S RADICAL CRITIQUE OF CAPITALIST SOCIETY*, vii (1990).

92. *Id.* at 61.

93. Eric Foner, *Foreword*, in *THE AMERICAN RADICAL*, at xii (Mari Jo Buhle, Paul Buhle, & Harvey J. Kaye eds., 1994).

94. PINKETTY, *supra* note 23, at 293.

95. *Id.* at 294.

96. *Id.* at 257.

97. *Id.* at 259.

98. *See generally* Eduardo Porter, *Income Inequality Is Costing the Nation on Social Issues*, N.Y. TIMES, April 29, 2015, at B1.

elected federal government found ways to reduce benefits.<sup>99</sup> According to current estimates, poor families receive only one-quarter of what they would need to escape poverty.<sup>100</sup> The nation relies heavily on imprisonment as a form of punishment. With few exceptions, prisons warehouse, rather than rehabilitate, inmates. The number of Americans imprisoned is five times as high on a per capita basis as that in any western European country, and American prison sentences are also much longer on average than those in most parts of the world.<sup>101</sup> Unwieldy legal codes have become completely impenetrable for average citizens, leading Bayless Manning, the former Dean of Stanford Law School and President of the Council on Foreign Relations, to declare the country suffered from “hyperlexis.”<sup>102</sup> Edmund Muskie, prominent Senator of Maine, was so certain law was overabundant that he read one of Manning’s articles into the *Congressional Record*.

With little wonder, alienation is widespread in the United States. The lack of meaningful work frequently leads not only blue-collar workers, but also office staff, service providers, and professionals to dread their jobs and occupations. According to a recent Gallup Poll, a mere 30 percent of American workers are engaged by and committed to their work.<sup>103</sup> “For most of us, work is a depleting, disrupting experience, and in some obvious ways it’s getting worse.”<sup>104</sup>

It is of course impossible to know what More would have made of these complex phenomena. Contemporary mass democracy, in general, might completely befuddle him. Consumer and finance capitalism could very well seem to him not a descendent of the agricultural capitalism he critiqued but rather a totally different economic system. However, More would grasp how the gap between haves and have-nots is widening. He might also be troubled by the United States’ mass incarceration, minimal welfare benefits, incomprehensible laws, and widespread alienation. More might conclude that Western society, and particularly the United States, had surely not evolved into something that could be considered utopian.

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99. See generally MONICA PRASAD, *THE LAND OF TOO MUCH: AMERICAN ABUNDANCE AND THE PARADOX OF POVERTY* (2012).

100. See generally Eduardo Porter, *The Republican Party’s Strategy to Ignore Poverty*, N.Y. TIMES, October 28, 2015, at B1.

101. See generally Sarah Sun Beale, *The Many Faces of Over-Criminalization*, 54 AMER. UNIV. L. REV. 747, 750 (2005).

102. Bayless Manning, *Hyperlexis: Our National Disease*, 71 NW. U. L. REV. 767, 767 (1979).

103. See generally Tony Schwartz & Christine Porath, *Why You Hate Work*, N.Y. TIMES, June 1, 2014, at SR1.

104. *Id.* at 2.