



International Journal of Research Publication and Reviews

Journal homepage: www.ijrpr.com ISSN 2582-7421

Marxist ideology on Law

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ABSTRACT

Marxist Philosophy can be interpreted as a theory that defines the historical evolution of human society. Marxist jurisprudence identifies the class struggle as the motivating force in history, in which the law and jurisprudence are not neutral but stand for the needfulness of the dominant class of the society. However, it is difficult to identify a Marxist theory of law. This paper tends to examine the Marxist approach to the law from a jurisprudential perspective.

Keywords: Class approach, Dialectical Materialism, Ideology, Law, Marxism

1. Who is Karl Marx?

Karl Marx is the greatest western philosopher in human history. He was born on May 05, 1818, in the city of Trier in Rhenish Prussia, Germany. He studied in Bonn and Berlin, at first taking up Jurisprudence, but he soon devoted himself exclusively to the study of history and philosophy. In 1841, Marx submitted his doctoral thesis on the philosophy of Epicurus. At the time young Marx was a Hegelian idealist in his views. In Berlin, he belonged to the circle of 'Left Hegelians' who sought to draw atheistic and revolutionary conclusions from Hegel's philosophy.

In September 1844 Marx met his colleague, Frederick Engels in Paris and both of them worked together to produce the first mature work of Marxism "The German Ideology". However, Marx and Engels were banished from Paris in 1845, considered by the government as dangerous revolutionaries. Both then moved to Brussels. In the spring of 1847, Marx and Engels joined a secret propaganda society called the 'Communist League'.

In 1848 Marx and Engels publish the "Communist Manifesto" the document which describes the theory of the class struggle; the tasks of the Communists; and the revolutionary role of the proletariat, the creators of a new communist society. In 1867 Marx was able to publish the first volume of his greatest academic work, 'Das Capital' in German. According to Engels, 'Das Capital' expounds on the foundations of Marxist economic socialist conceptions and the main features of Marx's criticism of existing society, the capitalist mode of production and its consequences. However, ill-health prevented Marx from completing the last two volumes.

On March 14, 1883, Marx passed away. In his funeral, Frederick Engels stated that "just as Darwin discovered the law of development of organic nature, so Marx discovered the law of development of human history." Marxist Philosophy, therefore, can be interpreted as a theory that defines the historical evolution of human society.

2. What is Marxism?

Hugh Collin interprets that Marxism as a theory about the meaning of history. The general theory of Marxism is called historical materialism. It explains how social systems work, and why transformations in societies take place. The Marxist view of the world is not only materialist but also dialectical. Dialectical materialism considers the universe, not as static, not as unchanging, but as in the continual process of development. The essential idea of materialist dialectics is the recognition of the contradictory, mutually exclusive, opposite tendencies in all phenomena and processes of nature. Historical materialism is the extension of the principles of dialectical materialism to the study of social life, an application of the principles of dialectical materialism to the phenomena of the life of society, to the study of society and of its history.

Dialectical materialism can be identified as the fundamental philosophical base of Marxism. Dialectics is opposed to the formal, metaphysical mode of thought of ordinary understanding which begins with a fixed definition of a thing according to its various attributes. Hegel (1770-1831) had tried to explain the mechanism of social change through a dialectical method. Marx sought to combine Hegel's dialectical method with his philosophy of materialism. The basic tenets of dialectical materialism are: that everything that exists is material and is derived from matter; that matter is in a process

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and constant change; and that all matter is interconnected and interdependent.

According to Marxism, there are two structures in society. Marx and Engels used the term 'Infrastructure' or 'Base' for the economic structure of society, and 'Superstructure' for the juridical-political institutions, the State, the Law, etc. Engels says, "the economic structure of society always forms the real basis from which, in the last analysis, is to be explained the whole superstructure of legal and political institutions, as well as of the religious, philosophical, and other conceptions of each historical period."

The nature of production relations determines the economic system of a given society. This economic system is the basis on which the various social relations, ideas and institutions arise, for the mode of production eventually determines all aspects of life in a given society. Since the basis determines the superstructure, it follows that every change of basis entails a change in the superstructure, i.e., in the existing political institutions and ideology. However, the superstructure, though dependent upon the basis, can in turn influence production relations and can either accelerate or delay their replacement. Every society is thus an integral organism, a socioeconomic formation, a definite historical type of society with its distinctive mode of production, basis and superstructure.

Marx described that the existence of social classes and the theory of class struggle. According to Engels, It was precisely Marx who had first discovered the great law of motion of history, the law according to which all historical struggles, whether they proceed in the political, religious, philosophical or some other ideological domain, are only the more or less clear expression of struggles of social classes, and that the existence and thereby the collisions, too, between these classes are in turn conditioned by the degree of development of their economic position, by the mode of their production and of their exchange determined by it. This law, which has the same significance for history as the law of the transformation of energy has for natural science.

In the Communist Manifesto Marx and Engels state that "The history of all hitherto existing society is the history of class struggles." Class struggle is the confrontation that is produced between two antagonistic classes when they are struggling for their class interests. The class struggle appears when one class opposes another in action, and, therefore, it only appears in a given moment in the development of a society. Modern society can be divided into two social classes, the owners of the means of production (the Bourgeois) and the Proletariat who work for them. Marx predicted that eventually, a political struggle would occur as a result of the conflict of interest between the polarized classes of capitalist society. The Marxist solution to the social and economic oppression in the capitalist epoch is the heralding of a classless Communist state, following the violent and revolutionary overthrow of the economic forces and relations of bourgeois production.

3. Marxist Theory of Law

It is hard to identify a Marxist theory of law. Hugh Collin said that, Since the main thrust of Marxist analysis is directed towards the economic infrastructure and the organizations of power in a community it has often been remarked that there is no Marxist theory of law.

Marx asserted that the capitalist state, and by inference its legal architectural institution, was and still is used as an oppressive instrument, and one whose diverse theoretical aims and functions are mere embodiments of "the ideological mystifications of bourgeois intellectualism." Therefore, Marx criticized the existence of the law in a Capitalist society. According to Marxism, every phenomenon of the superstructure of the society is derived from the base. Law is one such phenomenon.

Marx in his book 'The German Ideology', explains 'the Relation of State and Law to Property. According to Marx, Civil law developed simultaneously with private property. As Marx explains in The German Ideology, Law, along with the whole state apparatus, exists only for the sake of private property. According to Lenin's (1870-1924) 'class instrumentalism' argument, that "the law is a direct expression of the will of the dominant class" and that legal and political institutions are 'causally determined' by their economic base. Pashukanis (1891-1938) stated "law cannot be understood unless we consider it as the basic form of the policy of the ruling class," Pashukanis interprets that capitalist society "is above all a society of commodity owners" and legal rights are a mere embodiment of a contractual relationship. Regarding Criminal Law, he further stated that Criminal justice in the bourgeois state is organised class terror.

Accordingly, Marxist jurists interpret that, the conception of justice and law is nothing else than the instrument that the bourgeoisie used to uphold their property interests.

4. Marxist Ideology of Law

Professor Mikhail Reisner (1868-1928) tried to establish that Marx and Engels themselves considered law as one of the 'ideological forms'. and that many other Marxist theoreticians held the same view. According to Pashukanis, "The task of the Marxist critique was not confined to refuting the bourgeois individualistic theory of law, but also consisted of analysing the legal form itself, exposing its sociological roots, and demonstrating the relative and historically limited nature of the fundamental juridical concepts." Christine Synowich states, Marxism assumes the "material abundance under communist society" and the lack of "interpersonal conflict" under socialism which automatically erases the need for legal mechanisms of mediation. Therefore, in a classless society, according to Marxist ideology, the law will "Withering Away".

However, Marxist materialist theories, typically tend to refuse the primary importance of law, presenting it as a mere class instrument for the advancement of oppression, and societal inequality. According to Marxism, the Law ultimately determined by the material conditions of society.

5. Marxist approaches on Law and State

5.1 Marxist Criticism on Legal System in the Bourgeois State

The definition of the state is one of the most important questions in political science and legal philosophy. In the Communist Manifesto modern state is described as a phenomenon governed by capital ownership to exploit the workers. Accordingly, there are two main elements of Marxist definitions of state. The relation of the state to the social classes and the use of force by the state. The state, according to the definition discussed above, is functionally related to the dominant class. Therefore, Law can be identified as the tool used by the ruling class to control the state.

Marx criticized the so-called equality before the law in the bourgeois constitutional state. The bourgeois equality before the law only ensures equality for free competition. O'Hagan notes, "legal freedom and equality coexist with economic inequality." The free-market economy requires a legal structure to function effectively. A market economy consists of many private actors who establish consensual economic relations to promote their separate and mutual advantage. Therefore, the legal system and institutes in the bourgeois state always servers in favour of the free market economy and capital ownership.

5.2 Legal System in the Socialist State: Soviet Model

The former Soviet Union can be identified as the ideal 'Socialist Model State Structure' which was formed in 1917 and remained almost a century. Lenin was the founder and first leader of the Soviet Union. His main desire, as Milovan Djilas (1911-1995) pointed out, 'was to construct a system out of Marx's ideas.' In a lecture delivered at Moscow University in 1919, Lenin advocated that "the revolutionary dictatorship of the proletariat shall be ruled, won, and maintained by the use of violence by the proletariat against the bourgeoisie, rule that is unrestricted by any laws. Therefore, according to Vladimir Tismaneanu, "For Lenin, the dictatorship of the proletariat was rule by force and unrestricted by any law. The class enemy had to be weeded out, destroyed, smashed without any sign of mercy." Accordingly, in the Socialist legal system Law is functioning as a Class instrument that is held by a proletariat dictatorship.

Lenin believed that the Soviet judiciary needed to be "an organ of state power." Therefore, it can be identified that the court in the socialist state is an organ of the power of the proletariat dictatorship. Also, the socialist judiciary is an instrument for inculcating social discipline.

The Soviet legal system created institutional safeguards for the individual citizen that was only nominal. The Socialist legal system always focused to ensure Social and Economic equality rather than ensuring individual rights. Therefore, the Socialist model proposed that Social and Economic Rights are more important than Civil and Political Rights.

6. Conclusion

As discussed earlier, Marxism is a political philosophy based on the foundation of dialectical materialism. When history is understood according to this dialectical process, political and legal institutions are regarded as corresponding to the economic interests of the ruling economic class. According to Marxism, the legal system is therefore perceived as a mere superstructure that suits the material needs of the dominating class. Marxist jurisprudence identifies the class struggle as the motivating force in history, in which the law and jurisprudence are not neutral but stand for the needfulness of the dominant class of the society.

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