

Marxism and the law

16 September 1998

To whom it may concern,

I am an Australian university student undertaking an assignment on the contrasts between the legal systems which should theoretically exist under systems of Marxism, Confucianism and liberal Rule of Law. I was wondering if you could give me any information on the kind of role Marx desired law to play in a Communist society. I am aware that he deemed law would be superfluous in a Socialist utopia, and that he thought that law in Capitalist society was a tool of the elite bourgeoisie. Thank you for your time.

ZJ

Dear ZJ,

The role that Marx foresaw law playing in the transition from capitalism to communism and ultimately in communist society flowed from his analysis of the part that it played under capitalism and previous forms of society divided into classes.

In most university courses and texts, Marx and his close collaborator Engels are presented as mechanical economic determinists, hence, perhaps the expression that Marx thought law in capitalist society to be a 'tool of the elite bourgeoisie'. This somewhat simplifies Marx's analysis.

For Marx and Engels, the driving force of all economic, political and social life were the contradictions in material and economic life. Essentially, these arise from the conflict between the social forces of production and the relations of production--the class and property relations of society--within which those productive forces have hitherto developed. As Marx wrote in his famous Preface to *A Contribution to the Critique of Political Economy*, law is one of the ideological forms through which men become conscious of this conflict and fight it out.

This analysis is far from the passive, lifeless and mechanical caricature peddled on the campuses. While the decisive factor in shaping law are the economic

relations, the legal system remains one of the arenas within which the class struggle is fought out. Nor is this conflict automatically reflected in legal doctrines but refracted through the need to elaborate legal principles that have the appearance of internal coherence and universality and to continually adjust those doctrines to meet changing economic circumstances.

Hence, on law, as other social phenomena, Marx and Engels had a **dialectical** materialist analysis that examined the interaction between the economic base of society and the ideological superstructure. This analysis was also dynamic in relation to the continual contradictions produced by the further development of the productive forces and new forms of property rights.

I could illustrate this method of analysis with many quotes from Engels, who had the opportunity later in life to investigate and compare various capitalist legal systems, particularly those of England, France, Germany and the United States. Allow me to give you one brief taste of Engels' writings.

In *Ludwig Feuerbach and the End of German Classical Philosophy*, written in 1886, he compared the French Civil Code and Roman law with English and Prussian law. He made the following observation, contrasting the gradualist and pragmatic groping of the English common law with French legal theory in the wake of the 1789 Revolution:

'If the state and public law are determined by economic relations, so, too, is private law, which indeed in essence only sanctions the existing economic relations between individuals which are normal in the given circumstances. The form in which this happens can, however, vary considerably. It is possible, as happened in England, in harmony with the whole national development, to retain in the main the forms of the old feudal laws while giving them a bourgeois content...However, after a great revolution it was also possible for such a classic law code of bourgeois society as the French *Code Civil* to be worked out on

the basis of Roman Law. If, therefore, bourgeois legal rules merely express the economic life conditions of society in legal form, then they do so well or ill according to circumstances.'

This materialist conception guided Marx and Engels and the great Marxists who developed their analysis, particularly Lenin and Trotsky, in their understanding of the role law would play in future communist society, and in the preceding transformation of economic and social life.

Here it is necessary, as Trotsky did in *Revolution Betrayed*, to clear away the malignant distortions of the Stalinist regime, which falsely claimed to have created communism in the Soviet Union, even as it elevated the powers of the state apparatus to new dictatorial heights. This was the antithesis of the Marxist conception, by which the old state machine would be abolished and replaced by a more egalitarian and genuinely democratic state as soon as the working class took power and began to construct socialism, the first stage of the transition to communism.

As Marx and Engels emphasised, the state would immediately begin to die away and would ultimately 'wither away' altogether when communism was really achieved, that is, when the productive forces of man had developed and been rationally planned to the point where, for all practical purposes, scarcity and inequality was eliminated and along with it, the struggle for individual existence.

Not only would the root causes of social antagonisms--private and conflicting ownership of the productive forces, the division of the globe into nation-states and the inherent social inequality produced by the capitalist market--be overcome, but the great majority of working people would become accustomed to administering their own affairs and those of society without the need for legal and physical coercion.

Of course, today's ruling class and its academic and legal representatives decry such a vision as 'utopian', as if the anarchy and injustice produced by the capitalist market were the highest form of social organisation to which humanity can aspire. One of the best answers to this came from Trotsky in *Revolution Betrayed*: 'The material premise of communism should be so high a development of the productive forces that productive labor, having ceased to be a burden, will not require any goad, and the distribution of life's goods, existing

in continual abundance, will not demand--as it does not now in any well-off family or 'decent' boardinghouse--any control except that of education, habit and social opinion. Speaking frankly, I think it would be pretty dull-witted to consider such a really modest perspective 'utopian'.'

If you are to do justice to your topic, I highly recommend a full reading of Trotsky's chapter entitled 'Socialism and the State' in *Revolution Betrayed*. My brief remarks here can only begin to sketch the main lines of the rich and intellectually rewarding writings of classical Marxism on the role of law. I have added a preliminary list of other suggested reading below. I hope this is of assistance.

Regards,

Mike Head

Marx, *A Contribution to the Critique of Political Economy*, (Progress, Moscow 1977)

Engels, *The Origin of the Family, Private Property and the State*, (International Publishers, New York 1942)

Engels, *Ludwig Feuerbach and the End of German Classical Philosophy* (Progress, Moscow 1978), especially part IV

Engels, letters to Schmidt, Blockh, Mehring and Borgius in the period 1890-94 (you will find passages from these in Paul Phillips, *Marx and Engels on Law and Laws*, Martin Robertson, Oxford, 1980. You will find longer extracts in Selsam & Martel, *Reader in Marxist Philosophy*, International Publishers, New York 1977)

Lenin, *The State and Revolution*, (Progress, Moscow 1969)

Trotsky, *The Revolution Betrayed*, (Labor Publications, Detroit 1991) chapter three, Socialism and the State

Trotsky, *Terrorism and Communism*, (New Park, London 1975) chapter three, Democracy

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