

# On capitalist economic relations and the foundations of law

Mike Head

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Dear all,

The question I have is “in what ways have capitalist economic relations shaped the foundation and structure of law”?

Thanks,

GB

Dear GB,

Thank you for your inquiry to the *World Socialist Web Site*.

The development of capitalist economic relations shaped the content and structure of law in many ways but the most fundamental concern the core concepts of private property and contract. Both required an essential break with feudal relations, based on communal and feudal property, fixed status and personal allegiance. Capitalism, as an expansionary economic system, demanded the unfettered accumulation of capital based on the private ownership of the means of production.

Past societies had developed concepts of property. What was new with capitalism was the development of **exclusive** private property. This involved a sharp shift from the previous conception that land and the fruits of the earth were originally given to mankind in common. Writing in the second half of the 17th century, the British political theorist John Locke for the first time nominated “property” as an inalienable right of man and sought to provide a justification for its accumulation.

Previous societies, including the Roman Empire, had also known commodity exchange. With capitalism, however, this became the predominant form of economy. Labour power itself was transformed into a commodity to be bought and sold on the market. The idea of contract, the supposed free and equal exchange of commodities rose to dominance. The very notion of contract became central to the extraction of surplus value via the purchase and consumption of labour power. The whole process was cloaked ideologically in the doctrine of freely given offers

and acceptances giving rise to mutual agreements.

Of course, historical traditions and peculiarities played a part in shaping the particular forms taken by the law in different countries, but the essential form and content of bourgeois law was similar everywhere.

In *Ludwig Feuerbach and the End of German Classical Philosophy*, written in 1886, Frederick Engels commented on the universal content of law in Britain, France and Germany, notwithstanding certain revealing variations. Comparing the French Civil Code with English and Prussian law, he contrasted the gradualist and pragmatic groping of the English common law—which substantially attempted to mould old feudal forms, particularly in the field of real estate—with French legal theory, which was radically overhauled 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; in fact, directly reading a bourgeois meaning into the feudal name.

“But, also, as happened in Western continental Europe, Roman Law, the first world law of a commodity-producing society, with its unsurpassably fine elaboration of all the essential legal relations of simple commodity owners (of buyers and sellers, debtors and creditors, contracts, obligations, etc.), can be taken as the foundation.”

Engels observed that the law could be developed through judicial practice (common law) or codified, sometimes badly as in the case of the Prussian *Landrecht*. “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.”

Marx and Engels established that the ultimate driving forces of all economic, political and social life are the contradictions in material and economic life. Essentially, in contemporary capitalism these arise from the conflict between the forces of production (world economy) and the social relations of production—the class and property relations of society (the nation state based on private ownership). 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 passive, lifeless and mechanical. While the decisive factors shaping law are economic relations, the legal system remains one of the arenas within which the class struggle is fought out. This conflict is not 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. On law, as other social phenomena, Marx and Engels demonstrated the dialectical interaction between the economic base of society and the ideological superstructure.

I hope this is of assistance. Much more could be said. For further reading the above-mentioned works are invaluable, plus Engels, *The Origin of the Family, Private Property and the State*, Lenin, *The State and Revolution* and Trotsky, *The Revolution Betrayed* (Chapter 3, Socialism and the State).

Regards,  
Mike Head



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