

A question and reply on law under socialism

Mike Head
9 September 2004

Dear Sir/Madam,

I would greatly appreciate if you could help me understand the way Marx viewed the role of law in a capitalist society. What I can gather is that he views the law as being a mechanism employed by the elite to control the working class. Is this correct? And if so, how does this proposition differ from the legal system under socialist or community control?

I am confused with these questions as I have little experience or education in economics, sociology, or philosophy. Thank you for considering my question.

Best regards,

AG

Dear AG,

Thanks for your inquiry to the *World Socialist Web Site*. You might find helpful a reply that we posted on the site to a similar question some years ago. The reply includes a list of suggested further reading. You can find it on WSWS at “Marxism and the law”.

As you can gather from that reply, your description of Marx’s analysis of the role of law is a little simplistic. In summary, I would say that the two fundamental, underlying Marxist conceptions are:

(1) that, in general, all forms of law and the state are in the final analysis derived from the development of the productive and hence cultural level of human society and (2) that law and the state will wither away in the process of arriving at a genuinely communist society. That is, the need for formal, bureaucratic and repressive instruments of rule will disappear with the creation of a bountiful, egalitarian and democratic world.

Under capitalism, while law and the state apparatus serve the interests of the ruling elite, sometimes with brutal force, contradictions arise constantly from the ideological role of law—from the need of any modern ruling class in the epoch of mass politics to present its political order as just and impartial. In a letter to Conrad Schmidt, Frederick Engels stated:

“In a modern state, law must not only correspond to the general economic condition and be its expression, but must also be an internally coherent expression which does not,

owing to internal conflicts, contradict itself. And in order to achieve this, the faithful reflection of economic conditions suffers increasingly. All the more, so the more rarely it happens that a code of law is the blunt, unmitigated, unadulterated expression of the domination of a class—this in itself would offend the ‘conception of right’.”

On the question of the approach a revolutionary socialist government would take in the transition from capitalism to communism, an indication can be drawn from the measures adopted by the Soviet government led by Vladimir Lenin and Leon Trotsky in Russia between 1917 and 1923, before the usurpation of power by the Stalinist bureaucracy.

The Soviet Revolution in Russia marked the first attempt internationally (apart from the short-lived and localised 1871 Paris Commune) to fundamentally reorganise economic, social and legal life along anti-capitalist, participatory and egalitarian lines.

In relation to legal theory and practice, the October 1917 revolution launched the boldest and most sweeping experiment of the twentieth century. The Soviet government dispensed with the previous courts, legal system and legal profession and sought to fashion a radically new approach to the state, law and legal theory, with some striking results in many fields, including criminal and family law. Moreover, it attempted to create the conditions for the fading away (“withering away”) of law and the state.

Never before had a mass revolution placed in power an administration whose avowed intent was to dissolve itself into a classless, stateless society. This program of state disappearance was enshrined as a constitutional principle. In the words of the first Constitution of the Russian Republic, adopted in 1918:

“The basic task of the Constitution ... at the present transitional moment is the establishment of the dictatorship of the city and village proletariat and the poorest peasantry in the form of a powerful All-Russian state authority for the purpose of complete suppression of the bourgeois, the destruction of exploitation of man by man, and the installation of socialism, under which there will be neither division into classes nor state authority.”

The early years of the Soviet Revolution and its social and

legal reforms presented a fundamental challenge to Western capitalism and law.

* Where Western law asserted the sanctity of private property, freedom of contract and the “rule of law” itself, as supposed guarantors of liberty and formal equality, the Bolsheviks argued that these doctrines inherently produced economic and social inequality.

* While Western law enforced the stability of the nuclear family as an economic unit, the Soviet government called for genuine freedom of choice in undertaking and leaving marriage, and gender equality in family and social relations.

* Whereas Western law declared miscreants punishable because of their alleged personality defects, Soviet law treated “crime” primarily as a product of social inequity and, accordingly, sought to replace “punishment” with social improvement, education and other remedial measures.

* Western jurists insisted that law was an organic and indispensable method of governing society, essential to combat or curb the alleged deficiencies and aggressive tendencies of human nature. Soviet jurisprudence regarded humanity as capable of rising to a higher social and moral level, given the right conditions. It viewed the state and law as legacies of exploitative, class society and sought to create the social conditions for them to be supplanted by more participatory and democratic forms of administration.

Informed by this approach, Soviet law struck out in new directions, often setting benchmarks that Western governments later felt compelled to emulate. This was especially so concerning gender equality, domestic relations, labour protection and social welfare.

Soviet law was the first in the world to give women equal rights in marriage, divorce and economic status. The 1918 Russian Socialist Federated Soviet Republic (RSFSR) family code instituted divorce on demand, without a separation period, and gave wives equal legal authority with husbands in decisions affecting their children. In Britain, by contrast, divorce was only available on the ground of adultery and while a husband need only prove adultery, a wife had to prove cruelty or desertion in addition to adultery. According to the French Code Civil, a wife owed “obedience to her husband” and was obliged “to live with her husband and to follow him wherever he chooses to reside”.

In 1919, Lenin could claim with some justification that: “In the course of two years of Soviet power in one of the most backward countries of Europe, more has been done to emancipate women, to make her the equal of the ‘strong’ sex, than has been done during the past 130 years by all the advanced, enlightened, ‘democratic’ republics of the world taken together.”

There were similar groundbreaking achievements in labour

protection (e.g., the eight-hour day), social welfare (e.g., social insurance) and housing (e.g., rent controls and rent-free public housing). Overall, the Soviet government sought to make a fundamental shift from private property and individual rights to social ownership and collective rights and responsibilities, underpinned by the nationalisation of land and key enterprises.

The first Criminal Code of 1919 made criminal law hinge on “social danger” and “measures of social defence,” replacing the notions of “crime” and “punishment”. Soviet leaders drew the conclusion that the latter terms, together with “guilt,” functioned to obscure the social causes of crime. The Communist Party program of the same year looked ahead to when “the entire working population will participate in administering justice and punishment will be replaced once and for all by educational measures”. Despite the primitive and difficult social and economic conditions that the Soviet government confronted, its programmatic and legal instruments looked forward to more humane possibilities.

Many of these early initiatives were reversed or abandoned under the Stalinist regime that took hold after the end of the 1920s. However, that does not mean that communism proved to be a hopelessly utopian failure. The degeneration that ultimately overtook the Soviet Union was bound up with the immense difficulties facing an isolated workers’ state under conditions where the revolution failed to spread to the economically advanced countries of Western Europe. Adapting to these pressures, Stalin adopted the anti-Marxist notion of building “socialism in one country”, abandoning the perspective of world revolution, which is the only basis for genuine communism.

To understand that degeneration, the best book to read is Trotsky’s *The Revolution Betrayed*, which includes a seminal chapter on “Socialism and the State”, where he examines and explains the causes of the glaring contradiction between the Marxist vision of a stateless society and Stalin’s dictatorial regime.

I hope this reply is of assistance.

Regards,

Mike Head

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