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# Marxism, Marxian Theories of Law and Pakistan's Experience with Socialism

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## Abstract

There are three basic assumptions in the Marxist theories of law, first, that law is the product of economic forces; secondly, law is considered to be the tool of the ruling class to maintain its powers over the ruled; finally, that law will wither away in the future communist society. However, according to Engels, state in the future will disappear. The third assumption has been repudiated and a novel concept is evolved that of 'socialist legality'. However, in different communist countries, either the first or the second of the words in 'socialist legality' has been stressed. Pakistan has done some experiments with socialism by nationalizing private industries, properties and excess land. However, the highest Court in Pakistan ruled that Bhutto's land reforms were against the Injunctions of Islam.

**Key words:** Marx, Engels, Marxian theories of law, Marxist, socialist legality, capitalism, socialism, communism, Pakistan.

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## **Introduction**

Legal theorists either have a normative focus on law or a sociological one. If we approach law as a set of principles which inform the interpretation of a rule, our approach is normative. The sociological approach enquires into the way the law fits into the society in which it functions.

We may analyze how effective or ineffective a particular law is; who is its beneficiary and who is the loser; why are crimes committed; and what are the social backgrounds of offenders? Karl Marx (1818-83) is not interested in both these approaches. He is concerned with the social context in which the answer to the question of whether or not one legal rule is more adequate than the other.

This paper explains the social setting Marx was concerned with. Moreover, what was the role of law in the capitalist society; what legal changes are required when capitalism collapses; what is the role of law, if any, in the future communist society; and how was Pakistan's experiment with socialism? These are some of the issues that are discussed in this essay.

### **1.1 Basic Assumptions in the Marxist Theories of Law**

There are three basic assumptions in the Marxist theories of law. The first one is that law is the product of economic forces. According to Karl Marx, the way of your work will determine your law and other institutions. He believed in the 'two level model' in which economy was the base and law as well as other institutions were in the super-structure. Marx thought that the most important domain of social relations to consider were the relations of economic production. Marx in 1904 stated the following:

Legal relations as well as forms of the State could neither be understood by themselves, nor explained by the so-called progress of the human mind, but they are rooted in the material conditions of life.

... With the change of the economic foundation the entire immense superstructure is more or less rapidly transformed (p. 11).

According to this view, law seems to be nothing more than a function of the economy without any independent existence. Engels, however, admitted that the various components of the superstructure, including the norms and institutions of the law, exercise a reciprocal effect upon the economic basis and may, within certain limits, modify it (Engels, 1890).

Thus, if we understood the way in which societies produced and reproduced the basic goods and services which constituted their wealth, then we could understand much of the other things going on in those societies. It would be helpful to explain their characteristic religious, political, moral, artistic, and legal principles.

He believed that in a capitalist economy the working classes or proletariat were exploited by the capitalist class or the bourgeois. He argued that every society will start with capitalism and initially both the bourgeois and the proletariat will be happy as the capitalist will get huge profits and the proletariat will be getting salaries.

However, in the second stage, capitalism will collapse because to be able to compete small corporations will merge into big conglomerates. These big corporations, in order to compete, will reduce production prices and consequently lay off most of the workers. As a result, some capitalists will go bankrupt and a great number of proletarians will become jobless. These will join those proletarians who had no job from the beginning. There will be a lot of resentment and protests in the society.

Marx calls it the 'internal contradictions in capitalism'. He thought that capitalism would initially provide wealth for all but, as it matured, would provide less and less for fewer and fewer. He believed that capitalism would encounter the unavoidable crisis. The only

alternative system in which workers will have greater control over the means of production is socialism.

For Karl Marx, law plays a very bad role in a capitalist society especially the law of ownership of private property and assets. In socialism, all the properties will be owned by the state and the working class will work in their capacity and will be given everything according to their needs. He believed that true human freedom was only possible if people obtained real control over their working environment.

Therefore, the progress to the ideals of freedom and justice that Marx embraced was, he felt, only possible via progress to the sort of material control over working life that he envisaged. According to this view, law does not have any independent existence and is only a function of the economy. Marx was convinced that the society should distribute its goods according to the principle of 'from each according to his ability, to each according to his needs [*Jeder nach seinen Fähigkeiten, jedem nach seinen Bedürfnissen*]' (This is the original German).

Once society has changed to Communism, it will produce enough goods and services so that everyone's needs can be satisfied (Walicki, 1997). The phrase, though commonly attributed to Marx, he was not the first to use it. This phrase was used by socialist philosophers. Louis Blanc first used it in 1839 and Morelly in 1755 Code of Nature (Gregory, 1996).

The second important doctrine of the Marxian theory of law is the doctrine of the class character of law. According to Marx and Engels (1820-95), law is considered to be the tool of the ruling class to maintain its powers over the ruled. Law is characterized as an expression of class will. In 1918, a Soviet philosopher Stuchka, (1951) defined law as "a system of social relations which corresponds to the interests of the dominant class and is safeguarded by the organized force of that class" (p. 20). This definition became official in 1919 when it was incorporated into a statute.

It was reconfirmed 20 years later by the then Attorney General of the USSR, Andrei Vyshinsky, by describing law as a system of norms designed “to guard, secure, and develop social relationships and social orders advantageous and agreeable to the dominant class.” (Vyshinskiĭ, Babb, & Hazard, 1948, p. 50).

Law was seen as the will of the working class. In the first stage in the USSR, the dominant class was identified as the working class, which was the majority of the people. This was considered as a historical necessity for the dictatorship of the proletariat. The USSR was called a proletarian dictatorship.

At the time of President Nikita Khrushchew, it was claimed that the USSR had become the state of all the people, and that Soviet law had merged with the general will of the people. In the words of two leading academicians, Ioffe, & Shargorodskii, (1963):

Soviet law, subsequent to the disappearance of the historical necessity for the dictatorship of the proletariat in our country, now constitutes the expression of a unified will of the entire people, and the will of the working class and the laboring masses under its leadership, as was formerly the case (p. 4).

Law was viewed as the expression of a unified will of all the people of the USSR. However, this is not supported by Marxism but is the idea of Jean Jacques Rousseau – the bourgeois philosopher.

The third doctrine attributed to Marx and Engels is what is known as the ‘withering away’ of law in the future communist society. There is some controversy about this doctrine. Engels predicted that the society of the future would substitute the administration of things for the government of persons and that state in such a society would wither away (Engels, Dutt, & Burns, 1934).

This does not specifically refer to law and the capitalist state would wither away. The ‘withering away’ phenomenon was expounded by Eugene Pashukanis (Bodenheimer, 1962). He argued

that law is a social regulation in a market economy in which independent private producers and owners of commodities exchange their products by means of contracts and transactions.

He believed that law was out of place in a socialist society characterized by a unity of social purpose. He maintained that legal rules for settling disputes between individuals and groups would not be needed in a socialist society.

Consequently, according to this view, when classes disappear after the revolution, there is no need for a legal apparatus in which to experience class-rule. So that poverty and exploitation, seen as the root causes of a crime, will vanish within the new classless society and people will develop into 'group creatures' having no need for codes and rules so that the need for institutionalized law vanishes.

Vyshinsky considered it necessary to retain law as an administrative law as a means of regulating social relationships. Pashukanis treated 'all law as bourgeois law and viewed Soviet law as a relic of the former bourgeois state. This idea has since been repudiated and a novel concept evolved that of 'socialist legality'.

Law is needed as an instrument for constructing the new society. In different communist countries, either the first or the second of the words in 'socialist legality' has been stressed. Sometimes it is insisted that our legality is 'socialist', i.e. that it has nothing to do with the bourgeois concept of the rule of law. At other times it is urged that socialist administration insists on 'legality', i.e. the strict observance of the law by citizenry and even party officials.

## 1.2 Critiques

Marxist theory is best understood in its historical context – as an observation on the nature of law, as it existed in the nineteenth century under capitalism. Unfortunately, most predictions of Marx and Engels were wrong.

These included the prediction that every society will start with capitalism; that there will be crisis in capitalism between the capitalists and the working class; that there will be mass unemployment during the mature stage of capitalism which will lead to mass protest and the society will eventually decide in favour of socialism; that socialism will eventually lead into communism; that law will disappear in the future communist society and so on.

## **2. Socialism: Pakistan's Style**

Marxism had influenced many world leaders in the middle of the twentieth century those who came to power democratically or otherwise. Zulfikar Ali Bhutto (d. 1979) – the head of Pakistan People's Party who ruled Pakistan and gave the country the 1973 Constitution, tried to impose an "Islamic socialist" agenda that was neither religious nor socialist.

Starting from January 1972 Bhutto nationalized basic industries, took control of 32 life insurance companies, private banks were nationalized and the State Bank of Pakistan extended control over them, and nationalized private educational institutions (Hussain, 2010; Zaidi, 2005). Land reforms were carried out in March 1972. Land in excess of 150 acres had to be confiscated without compensation. The Martial Law Regulation No. 115 of 1972, commonly known as MLR 1972, restricted ceiling of individual holdings of land.

Under the MLR 72 an individual could under no circumstances own or possess land in excess of 150 acres of irrigated land, or 300 acres of unirrigated, or a combination of irrigated and unirrigated land, the aggregate area of which exceeds the equivalent of 150 acres of irrigated land, or an area equivalent to 15,000 produce index units, whichever is greater.

Unlike the 1959 reforms, the ceiling provision was applicable to religious, charitable and educational societies and trusts, excepting only universities established by law. In addition, land transfer in any

manner, made by anyone possessing land in excess of the ceiling, on or December 20, 1971, was declared null and void. In 1977 Z. A. Bhutto's government passed through Parliament another series of land reforms through Land Reforms Act (2 of 1977).

## **2.1 Marxian Provisions in the 1973 Constitution of Pakistan**

The 1973 Constitution of the Islamic Republic of Pakistan has many provisions that are manifestly inspired by Bhutto's socialist agenda. For instance, article 3 of the Constitution says, "The State shall ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principle, from each according to his ability, to each according to his work."

As mentioned above, according to Marxism this principle should be applied in communism. However, Bhutto disguised his socialist agenda by replacing the word 'need' with the word 'work'. Moreover, Bhutto also inserted another article in the fundamental rights chapter of the Constitution.

Consequently, courts could declare any law inconsistent with or in derogation of Fundamental Rights void. Article 23 provides that "Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, *subject to the Constitution and any reasonable restrictions imposed by law in public interest.*" Thus, Bhutto considered his land reforms to be reasonable as well as in public interest.

Article 253(1) provides that Parliament may by law (a) prescribe the maximum limits as to property or any class thereof which may be owned, held, possessed or controlled by any person and (b) declare that any trade, business, industry or service specified in such law shall be carried on or owned, to the exclusion complete or partial, of other persons, by the Federal or a Provincial Government, or by a corporation controlled by any such Government.



Paragraph two of article 253 states that “Any law which permits a person to own beneficially an area of land greater than that which, immediately before the commencing day, he could have lawfully own beneficially or possessed beneficially shall be invalid.”

The era of Z. A. Bhutto’s Islamic socialism was soon over when he was toppled in a military coup. General Zia ul-Haq reversed Bhutto’s agenda and started Islamization of laws. The most noteworthy tools of Islamization created by Zia are that he created the Federal Shariat Court by amending the Constitution which could rule whether a particular law or a custom having the force of law is repugnant to the injunctions of Islam, i.e. the Qur’an and the Sunnah or not.

Bhutto’s land reforms were challenged in the Federal Shariat Court that did not declare them un-Islamic. However, the petitioners appealed to the Shariat Appellate Bench of the Supreme Court which clubbed all similar cases and ruled in *Qazalbash Waqf* case by a majority of three to two (Justice Naseem Hasan Shah and Justice Shafiur Rehman opposed Justice Taqi Usmani, Justice Pir Karam Shah and Chief Justice Afzal Zullah.) decision that Martial Law Regulations were against the Injunctions of Islam (“*Qazalbash Waqf Case*”, 1990).

Interestingly, the *Qazalbash Waqf* case is challenged in a review petition on December 13, 2011 after a lapse of 21 years in the Supreme Court which constituted a nine members Bench headed by the then Chief Justice Iftikhar Muhammad Choudhry.

The petitioners were led by a prominent communist lawyer and leader of Workers Party who argued before the Court to set aside the decision given in 1990 (DAWN, 2013). It is very surprising to know that the Supreme Court is hearing the review petition of a case decided by the Shariat Appellate Bench of the Supreme Court. In addition, the later has dismissed the review petition of *Qazalbash* case as well. Should the Supreme Court start entertaining petitions against the decisions of the Shariat Appellate Bench it would lead to chaos.

Moreover, it would be against the doctrine of *res judicata*. Should the Supreme Court entertain the petition it would do more harm than good to the legal system as there would be overlapping between the Shariat Appellate Bench and the remaining Supreme Court. Technically the revival of land reforms in Pakistan has taken the shape of revival of socialist ideas.

### 3. Conclusion

To sum up the above Marxian theories of law are not about law as such. They are about the role law plays in a capitalist society; during the transition from capitalism to socialism and during the communist society. Communist philosophers are split about whether law would wither away or not. Communist philosophers had to interpret and re-interpret the role of law in the former USSR.

Moreover, most claims of the communist philosophers are utopians and not achievable. Law never vanished in the former USSR. Instead it grew in its own way. The idea of 'socialist legality' has no origin in Marxism. Pakistan has done some experiments with socialism but with the end of Z. A. Bhutto's era the downfall of his reforms also started and eventually the country's highest court ruled that Bhutto's land reforms were un-Islamic and thereby illegal.

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