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Law, Marxism and the State

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Abstract The Communist Manifesto's salient point was set out in *Critics of the Gotha Program* as "From Each According to Their Abilities, to Each According to Their Needs" (Marx 1875, p. 19). The demise of communism in the former Soviet Union has caused its critics to claim that 'revolutionary' political theory has no basis for legal or philosophical development. The contention of those who oppose radical socialism achieved by the levelling of the classes proclaim that this is an unattainable goal. They argue that a 'withering of the state' is not possible for the implementation of Marx's theory because of the centralisation that is inevitable in socialism which leads to an aggregate of relationships that redistributes power at the apex of the hierarchy. However, this appraisal has to be viewed with reference to the adoption by Marxists of socio legal theory as an analytical tool that has spawned arguments based on legal realism. This article examines the construction of these arguments within the sociology of law and looks at the inception of critical race theory which projects historical injustices towards a racial minority and seeks to transform society by exposing law as an instrument of oppression.

Keywords State · Ideology · Dialectic materialism · Ownership of the means of production · Critical legal theory · Sociology of law

The doctrinal basis for scientific socialism still exists if a critical approach to adopted to the structural inequality in society.

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1 Introduction

The ideology of communism is part of a specific political and economic doctrine of state organisation. This legal system rests upon socialist legality which provides a mandate that addresses the structural changes in society on the path to creating a workers state. The vanguard of the ideological imperative to enact socialism is the Communist Party which is entrusted to carry out the transformation that abolishes the state based on the capitalist norms where industrial is a commodity. After the disintegration of the USSR it is necessary to inquire if the concept of socialist law has any validity in adopting a critique of the modern state where there are institutional inequalities.

The Russian revolution of October 1917 was a critical moment when a Marxist party acceded to power and implemented reforms to transfer the ownership of the means of production from the bourgeois to the working class. The intention was to interpret the Communist Manifesto but the dismantlement of the former Soviet Union and the rise of market socialism in China has called into question its application. This has to be evaluated against the ideals of Marxism that give it universal appeal and the reasons why after the Communist party lost its power in the USSR there are states that still draw on socialist law in order to construct a state based on its principles.

The conceptual basis of Marxism is primarily a social, political, and economic theory that interprets history through an evolutionary process. The legal content is expressed mainly in the *Communist Manifesto*, in which Karl Marx describes law as an instrument of the ruling class. He sets out that the "law, morality, religion, are so many bourgeois prejudices, behind which lurk in ambush just as many bourgeois interests" (p. 494).[1]

This is a form of reasoning denies any immutability or divinely inspired law and the notion of the rule of law is deemed as the preservation of the ruling class that exists in the form of the bourgeoisie as follows:

> "Your very ideas are but the outgrowth of the conditions of your bourgeois production and bourgeois property, just as your jurisprudence is but the will of your class made into a law for all; a will, whose essential character and direction are determined by the economic conditions of existence of your class … The selfish misconception that induces you to transform into eternal laws of nature and of reason, the social forms springing from your present mode of production and form of property—this misconception you share with every ruling class that has preceded you" (p. 501).

The Soviet Union was the first major attempt to implement Marxist theory into practice. This was in the framework of Marxist—Leninism and it was meant to achieve an epoch of transformation from an agricultural state to an industrial society after the revolution when it adopted socialism as part of the New Economic Policy in 1921. It abolished serfdom on land and introduced collective farming and brought about a welfare state that was in accordance of its goal of a socialist society.

[1] See [38].

The USSR was a confederation for nearly 70 years and consisted of a multi national framework with one common denominator of the constituent republics that were ideologically socialist and conformed to Marxist–Leninist principles of government. The demise of the world's only industrialised state that espoused the theory of state socialism brings up the question whether Marxism is a philosophical theory that has any ideological credibility.

This article evaluates the development of Communist legal theory and the emergence of socialist legality that proclaims the ideal of a 'workers state'. It will reveal the conceptual changes in the former USSR by increasing bureaucracy and centralization that failed to attain the dictatorship of the proletariat. There is also discussion of the socialist law that contributes to the theory of state formation and forms a vital critique of inequalities that exist in modern western societies. This paper focuses on one such area where sociology of law has been used for an evaluation and focuses on the critical race theory to argue that despite its dissolution the Marxist doctrine retains its integrity and plausibility as a critique of society.

2 Theoretical Framework of Dialectic Materialism

The development of the legal theory that corresponds with Marxist doctrine owes itself to the philosophical thought of GWF Hegel. This is because of the influence in the construction of a political theory that S Hooks states in *From Hegel to Marx: Studies in the Intellectual Development of Karl Marx* reflected "both dialectical and historical materialism in which the world is an evolving living organism and that scientific and political progress was by friction with other contrary forces that resulted in a consequent social reality" (p. 16).[2]

Hegel drew upon the concept of Adam Smith's political economy in *The Philosophy of Right* and set out the concept of "*bürgerliche gesellschaft",* which meant bourgeois society as well as civil society that comprised a sphere of individuals engaged in social and economic relations for personal gain, in contrast to the institution of the state in which social unity was realized.[3] Hegel interprets that the society required the "universal" principle of the state as the manifestation to its inherent organic unity (p. 188).[4]

Marx defined history within the framework of materialist analysis and acknowledged the power of thoughts to affect change, such as in *A Critique of Hegel's Philosophy of Right,* where he acknowledges that *"this* 'critical re-examination' caused him to conclude that legal relations or political forms could be properly understood neither within their own terms nor in terms of the general development of ideas. The origins of law and politics had to be sought in civil society, the totality of the material conditions of life, and the 'anatomy' of this civil society was to be uncovered by political economy" (p. 21).[5] He accepts the evolutionary process of history but rejects the perspective of "a mystical driving

[2] See [29].

[3] See [27].

[4] See [16].

[5] See [39].

force in human history"; (p. 125) and that "the proletariat cannot be superseded without the actualisation of philosophy" (p. 142). This implies that philosophy has a real impact on the progression of history and the that an idealist perspective had to be derived that would be the motive force for revolution.

Marx also rejects the structure of a civil society that was contemplated by Hegel on the basis that "legal relations as well as forms of state could neither be understood by themselves, nor explained by the so-called general progress of the human mind, but that they are rooted in the material conditions of life, which are summed up by Hegel after the fashion of the English and French writers of the eighteenth century under the name 'civil society', and that the anatomy of civil society is to be sought in political economy [i.e. in economic forces]…" (p. 310).[6]

The philosophical movement in the nineteenth century also included the critique of the various interpretations of the accepted basis of religion. The primary theoretician of adopting an approach that views religious induction as a tool of social engineering was Ludwig Feuerbach. He had a significant impact on the development of Marx in terms of dialectical approach and is viewed as a bridge between Hegel and the development of Marx as an advocate of social change.

Feuerbach states in *The Essence of Christianity* that "The necessary turning-point of history is therefore the open confession, that the consciousness of God is nothing else than the consciousness of the species; that man can and should raise himself only above the limits of his individuality, and not above the laws, the positive essential conditions of his species; that there is no other essence which man can think, dream of, imagine, feel, believe in, wish for, love and adore as the absolute, than the essence of human nature itself" (p. 270).[7]

Initially, Marx was impressed by Feuerbach and he states in the "Theses on Feuerbach" in *The German Ideology* that Feuerbach sets out the platform for the later humanist traditions which "makes man-with the inclusion of nature as the foundation of man-the unique, universal and highest object of philosophy".[8] He then becomes critical of Feuerbach's metaphysical framework in which only an abstract conception of "man" was raised separated from society the dialectic materialist approach called for the fact of understanding him as a product of social interactions.

Marx proposed abolishing religion in the state by arguing that it gave rise to social contradictions and that "The philosophers have only interpreted the world in various ways; the point is to change it" (p. 5).[9] The formulation of a blueprint for the elimination of religion was based on social revolution which he set out in that "The production of ideas, of conceptions, of consciousness, is at first directly interwoven with the material activity and the material inter course of men. All collisions in history have their origin, according to our view, in the contradiction between the productive forces and the form of intercourse" (p. 74). In the course of this a continuity is established between successive stages in the process of social

[6] See [40].

[7] See [21].

[8] See [41].

[9] See [41].

development which is fundamentally materialist and this was a historical process that was principally a materialist force that led to the stage where there is a polarisation between the social classes.

Peter Singer argues in *Marx: An Introduction* that it was in this phase that there was a paradigm shift in the philosophy of Marx when he developed a critique for Feuerbach. "It is at this atheistic humanism which caused the shift from the God-centeredness to human focus in the political philosophy of the period that inspired Marx's dialectical materialist approach".[10]

The consciousness of the person as to which strata of the society he belongs to is essential if there is to be change in the Marx's reasoning. The working class individual who does not feel able to identify with the proletariat is guilty of false consciousness and that social consciousness was essential with in the ideological superstructure of the legal system. He gave importance to the basic question of philosophy: "Consciousness [das Bewusstsein] that can never be anything else than conscious being [das bewusste Sein], and the being of men is their actual life-process… it is not consciousness that determines life, but life that determines consciousness" (p. 36).

The development of consciousness is impacted by the class structure of society and that the dominating consciousness was the self identification of the ruling class. This had a bearing on the relationship of the state and law to property and this depended on the hierarchy of the state. Marx illustrates the bourgeois state in particular "in which the individuals of a ruling class assert their 'common interests, and in which the whole civil society of an epoch is epitomised". The capitalist state represents an "organisation which the bourgeois are compelled to adopt, both for internal and external purposes, for the mutual guarantee of their property and interests" (p. 90).

In their original concept of scientific socialism Marx and Engels set out the primacy of economics over politics in their theory of state and the law. The Marxian theory presumes that the economic production and the social relationships (the *Produktionsverhaeltnisse*) determine the necessity for the proletariat to conquer political power as the only way of carrying out a communist revolution. They state that "Every class which is aiming at domination, even when its domination, as is the case with the proletariat, leads to the abolition of the old form of society in its entirety and of all domination, must first conquer political power" (p. 47).

The dialectical materialism of Marx was based on the dynamics where the conflict is not one of ideas or principles but solely the interests of social classes in their struggle over the ownership and control of the means of production. The consequence of this was that when history was interpreted in accordance with that dialectical materialism, socio-political institutions appear to always protect the interests of the dominant class. The legal system is superimposed to meet the practical needs of this dominant class and these designate the economic status in society.

David, R. and Brierley J interpret the Marxist legal doctrine in the following manner: "Law is only a superstructure; in reality it only translates the interests of

[10] See [47].

those who hold the reins of command in any given society; it is an instrument in the service of those who exercise their 'dictatorship' in this society because they have the instruments of production within their control. Law is a means of expressing the exploited class; it is, of necessity, unjust—or, in other words, it is only just from the subject point of view of the ruling class. To speak of a 'just' law is to appeal to an ideology—that is to say, a false representation of reality; justice is no more than an historical idea conditioned by circumstances of class".[11]

The constitution of the state reflects the sum total of these relations of production that are regulated by the economic structure of society which are the real foundation, on which legal and political institutions are based. These reflect the definite forms of social consciousness which correspond to a fixed stage of development of society defined by its material powers of production. The forces of production and the unequal distribution leads to the alienation of the working class and the state is no longer an agent for their benefit.

Accordingly, Marx states in the *Communist Manifesto* that law is a kernel of rules which protects the privileges of one class over another. This is premised to keep the balance "In order that these … classes with conflicting economic interests, may not annihilate themselves and society in a useless struggle, a power becomes necessary that stands apparently above society and has the function of keeping down the conflicts and maintaining 'order'. And this power, the outgrowth of society, but assuming supremacy over it and becoming more and more divorced from it, is the State" (p. 501).[12]

The success of the revolution in Russia in October 1917 allowed the Marxists to begin the project of implementing the socialist theory into practice. This was orchestrated by Vladimir Ilyich Lenin who began the process of underwriting the framework of the Soviet theory of the state and the law. He immediately sanctioned the revolution as a product of socialist legality by stating in *The State and Revolution* that "The revolutionary dictatorship of the proletariat is a victory by the proletariat against the bourgeoisie and is uninhibited by a rule of law and is contingent on revolutionary legality" (p. 9).[13]

Lenin advocates in *On Socialist Ideology and Culture* that the doctrine of scientific socialism that was in consequence of the growth of the productive forces, that grew out of capitalism that itself originated in feudalism. The main objective was to interpret the revolutionary movement according to dialectics that society was a creation of the powerful industrial elite who had imposed their own code on the disenfranchised social classes (p. 51).[14]

This ideological framework was based on the abolishment of all the institutions of the ancient regime when the revolution will proceed through the various phases that will eventually lead to the state 'withering away'. The dictatorship of the proletariat would be the interregnum which will be the stage of the government exercising power on behalf of the workers and it will be required to exercise

[11] See [13].

[12] See [38].

[13] See [33].

[14] See [34].

discipline of the "strictest control by society by the state of the quantity of labour and the quantity of consumption" (p. 149).[15]

Lenin qualifies this by stating:

> "The dictatorship of the proletariat produces a series of restrictions of liberty in the case of the oppressors, the exploiters, the capitalists. We must crush them in order to free humanity from wage slavery; their resistance must be broken by force; it is clear that where there is suppression there is also violence, there is no liberty, no democracy" (p. 153).

The notion of dialectical materialism that stems from this Marxist–Leninist approach can be interpreted as law being the instrument of the ruling class. The legal rules emerge from the interactions of human beings within social structures that contain class distinctions. It is a deduction based upon the notion that class divisions within societies cause conflict and disorder and, therefore, law and the state, which are the superstructure form to deal with this conflict.

L.S. Jawitsch, states that Lenin denied that law could be in alienable or indivisible in concept and that his theory of its application implied "There are no eternal, immutable principles of law". Therefore, law cannot be derived from any other source except human rationality. The masses' struggle for "their democratic rights and liberties can only be achieved by overcoming monopoly capital's economic and political domination and establishing a state authority that expresses the interests of the working people".[16]

As the Communist ideologies gained ground in the wake of the formation of the USSR in 1917 the Marxist concept that bourgeois law was oppressive gained currency, because the Soviet jurists argued that it protected the concept of private property over the 'workers' rights. This was the basis of unequal distribution of power and wealth that depended on the economic system that had impoverished the masses.

The society based on capitalist norms was responsible for the lack of respect for the labour and the Marxist solution to this unjust society and illegality or 'lawlessness' was to overthrow the bourgeoisie, and thus, allow the proletariat to legislate until the state was abolished. The legal system that promotes the interests of the working class by their representatives is called a 'proletarian dictatorship' and its authority is premised on socialist legality.

3 Development of the Communist Theory of Law

The socialist legal framework emerged in the formative period of communism in the USSR. The Bolshevik party after the revolution in Russia advocated the doctrine of "revolutionary legality" as a product of class consciousness. It essentially means that the legal system can be constructed by extra constitutional means that is legally

[15] See [35].

[16] See [30].

valid if it is structured on a higher ideal such as ruling in the name of an oppressed class.

The initial attempt to form a specific Soviet theory of law was by P. L. Stuchka, who was the first Soviet Commissar of Justice in the Soviet Union. He argued in *Revolutionary Part Played by Law and the State* as the basis of his doctrine that there were certain basic principles of law that underpinned the 'Soviet' formulation of the regulation of labour exchange. "Law is a system (or order) of social relationships which corresponds to the interests of the dominant class and is safeguarded by the organised force of this class" (p. 53).[17]

The promulgation of law derives from a system of 'social relationships' that arise from the relationships of production and distribution. He interprets the term society as primarily the aggregate of 'production' relationships, and later the aggregate of 'distribution' relationships as well. This is based on the interpretation of Marxist doctrine as follows: "The individual relationships of production—and of exchange, it may be added—in each society, constitute a single whole" (p. 51). This is a manifestation of social order by which law is identified as a medium of controlling and regulating the division of labour in the economy. It is not determined by the hierarchy of the state but by the process of supply and demand in the economy.

The Soviet ideology premised on the rule by one class over another and the achievement of an equilibrium where all classes disappear which gained its most lucid exponent in the form of the Soviet jurist Evgeny Pashukanis. He set out in *Marxist theory of State and laws* to develop a comprehensive Marxist doctrine of law in which he contrasted the bourgeois legal theory, which he accused of obscuring the social fact of the oppression of labour in a legal jargon or "ideological fog" (p. 111).[18]

He elaborated this development on the following terms:

> The struggle for revolutionary legality is a struggle on two fronts: against legal formalism and the transfer to Soviet soil of bourgeois chicanery, and against those who do not understand the organizational significance of Soviet decrees as one of the methods of the uniform conduct of the policy of the dictatorship of the proletariat (p. 273).

Pashukanis was instrumental in devising a system of jurisprudence that reduced the legal principles to economic variables that exist in the framework of a capitalist state. In his critique he repudiates the normative theory of law that defines the law as a system of norms and in particular the pure theory of law that his contemporary in the west Hans Kelsen was developing at this period in history. The orthodox Marxist theory that he expounded caused Pashukanis to argue that the pure theory is abstract even though that also rejects law as a value based system that separates law from morality.

He contends that law by its basic structure, promulgations and instruments protects the economic transactions of the bourgeois society and that law can, therefore, only achieve its fulfillment in a capitalist society. By his definition "all

[17] See [7].

[18] See [42].

law is private law and as the state itself is external to the legal framework there cannot be true public law establishing the relationship between the State and private individuals because the State is outside the legal system" (p. 275).

There was a reaction against the ideological premise of Pashukanis's theory that law is simply an aggregate of social relationships and the view was expressed by later Soviet jurists that law could be a system of norms. This expressed a need for the law to be enacted in order to safeguard the existing order of social organization. It was argued as a necessity in order to perpetuate the economic and social imperatives that could be utilised by the fledgling state that had to enact laws to protect its vital social and economic interests.

This premises was supported more assiduously by the successor of Pushukanis and the leading Soviet legal theoretician of Stalin's period AY Vyshinshky who advocated at the First Congress on Problems of the Sciences of Soviet State and Law (Moscow, 1938) that 'the fundamental tasks of the science of Soviet socialist law' was that legal framework had to be an effective instrument of the policy of the government that was directed at the abolition of capitalism and the achievement of scientific socialism.

The essential focus of his legal theory was set out in *The Fundamental Tasks of the Science of Soviet Socialist Laws* as follows:

> "Law is neither a system of social relationships nor a form of production relationships. Law is the aggregate of rules of conduct—or norms: yet, not of norms alone, but also of customs and rules of community living confirmed by state authority and coercively protected by that authority" (p. 331).[19]

He argued that the law could be used to strengthened the state which could then be used for implementing socialism. The theory of the proletarian revolution was interpreted to mean that it will embody the framework of a state of the workers and that did not mean the dissipation of the legal system. It was meant to provide the politburu with the means to sustain the revolution which was based on the direction of the Communist Party.

The claim for a proletarian 'law' was made by Soviet jurists after Stalin's Political Report to the Central Committee in 1930, in which he unambiguously affirmed the need for strengthening the dictatorship of the proletariat through a formal state of proletarian rule altering the then dominant view of rapidly seeking the withering away of the state. The political theory underpinning this was that socialism had to be achieved in one country because it was surrounded by capitalist states and it needed the protection of a strong State and such a state needed a strong legal system.[20]

The promulgation of the 1936 Constitution inaugurated an era when law was proclaimed as an integral part of the socialist society. It was based on the formulation of a community that was established as a 'true' state, or the Soviet state. It was a recognition that the state will not wither away but consolidate itself as a necessary expedient in the circumstances. This was enunciated when the Soviet

[19] See [49].

[20] See [1].

government was undergoing the transition period under Stalin who assumed power and centralized authority in the Politburo. In this period a major theoretical change began when socialist society led to the development of the concept of a Soviet 'law' or 'socialist law'. The notion of law as part of the state was recognised by Article 5 of the 1936 Constitution which stated that "Judges shall be independent and subordinate to the law".

The Constitution implicitly rejected the theory of reducing law to an economic variable in the framework of civil laws as a product of historic materialism. There has to be a formulation of the codes of conduct that regulated the law in the interchange of personal relationships such as marriage and family relationships. This had to be achieved from the perspectives of "socialist planning" and that would include a relationship broader than those of production and commodity exchange. In this framework the economics and political reality had to merge to determine the codes of a legal system and the statutes had to be given their appropriate respect and obeyed.

The final phase in the formative period of the USSR was when the jurists S. A. Golunskii and M. S. Strogovich in *Theory of State and Law* which interpreted the concept of the law was interpreted as the will of the people and its promulgation was seen as the elevation of the working class. The means of production in socialism was defined as follows.

> 'become social property, and can no longer be used for manipulation the then grounds of the society into classes disappears. They assert that the current stage in the "USSR was governed by socialism and that it has not reached the perfect communism because "the productivity of labour 'is still not high enough to satisfy the requirements of all the members of society" (p. 351).[21]

The need for a law was justified by the following factors:

> 'There are still traces of class differences: the worker class is still distinct from the peasantry (although that difference is constantly being effaced, and there is no antagonistic conflict of interest between the worker class and the peasantry). There is still a difference between city and village, between intellectual and physical labour: wherefore intellectuals are preserved as a special social stratum of persons performing intellectual labour. However, they too, are not only not hostile to the worker class and the peasantry as is frequently the case under capitalism: on the contrary that stratum is itself made up of the advanced and best workers and peasants and serves their interests' (p. 352).

The establishment of law as an instrument for the control economy was premised on the centralisation of authority. The dictatorship of the Proletariat and then its withering as a logical progression could only be achieved by the abolition of a legal framework that enforced if there was de centralisation and then the workers taking over the ownership of the means of production. The aggregate of commodity relationships that led to bureaucratisation was the inevitable outcome of a command

[21] See [24].

economy that was based around 5 year plans determined by the politburo of the Communist party.

John N Hazard defines the metamorphoses of Marxist legal philosophy in *Soviet Legal Philosophy* in which he defines the phases as the "(1) The Early Period, (2) The Climax of Marxian Theory, and (3) The Retreat to Bourgeois Positions". These could be branched into "(1) The Early Period (1918–1928), (2) The Middle Period (1929–1937), and (3) The Period of Cleansing and Establishment of a New Base (1938–1951)" (p. 29).[22]

These were two phases of theoretical development "(1) when law and socialism were still treated as incompatible, and (2) after the idea of incompatibility had been openly abandoned, namely in 1936–1937". The notion of a jurisprudence that was designed to regulate the aggregation of social relationships was considered as an anti thesis of Marxism in the first epoch while in the second, the need to achieve a command economy and assume a hierarchical model was deemed as a state necessity.

The Soviet legal system were effectively subordinate to the leadership of the Soviet Communist Party and legislation was debated and approved by top party leaders and then transmitted to the Supreme Soviet, the legislature of the USSR which granted it approval. This allowed primacy to the executive which was the CP that exercised the power of determining the policy in which the Soviet Union was directed.

The criminal justice system institutionalised the executive's role in the judicial process. James Diehm, in *The Introduction of Jury Trials and Adversarial Elements in the Former Soviet Union* argues that the process of the trial by jury was abolished in 1917 that had been introduced in 1866 by the Czar Alexander's mixed reforms package (p. 47).[23] Instead, the centuries-old Russian institution of the Prokuratura (Procuracy) was established that had been introduced by Peter the Great in 1722 which defined it as "the eyes of the monarch" over the administration's role in carrying out orders of the Czar and the laws.

The Prokuratura had a significant role because the criminal justice system along with the economy were integrated within the socialist framework. David and Brierley, argue in *Major Legal Systems in the World Today* that these activities that had an adverse effect upon government control of the economy such as "purchases for resale, failure to accomplish the minimum amount of work due to the kolhoz, and defaults in performance of a contract in the collectivized sector carried penal sanctions".[24] This institution was deemed as the guardian of socialist legality in all areas of Soviet life including the courts. In criminal law the procurator served to file a protest if it appeared to him that the judge was taking a position contrary to socialist legality.

Gary S. Gildin, in *Trial by Jury in the New Russia* states that the judiciary was under the direct supervision of the procurator in the system of maintaining the basis that reflected the will of the Communist party (p. 156).[25] At the apex of the legal

[22] See [26].

[23] See [15].

[24] See [12].

[25] See [23].

system was the procurator followed by investigators, criminal defence attorneys, and at the nadir judges. The socialist legal framework of the USSR had the potential for tension in dealing with the question of consolidating the state or its withering and the consequent taking over by workers of the ownership of the means of production.

The Soviet legal theory was influenced by the anti-normative approach to social phenomena that is an essential element of the Marxian theory in general and of law in particular. However, it was a political necessity and the compulsion to enact a command economy that allowed the emergence of the laws that became more complex and hierarchical. Their promulgation defeated the progression towards the transition of socialism to communism and the reversal of its originating principles led to its downfall.

4 Dissipation of the Communist Theory of Law

After Stalin the Soviet Union continued the legal tradition set in motion by the 1936 Constitution. The emphasis was in realising 'socialist legality ' which was to be carried out in the name of 'legal justice'.[26] The Khrushchev slogan replaced the dictatorship of the proletariat and it became the 'state of the whole people' which provided the framework for legislation to be framed in the USSR.[27] It was set out in the Communist Party Congress of 1961 and it signified the depoliticisation, decentralisation and "de—Vyshmystification "of the legal system.[28]

The was performed by the new Soviet Constitution of 1977 which viewed law as the practical dimension for problem solving and conflict resolution instead of the former search for an adequate theory that was based on state ideology.[29] The implication was that the USSR had entered a new phase of a mature classless society under socialist legality. This was viewed under Brezhnev as "strict and unflinching fulfillment of Soviet law by all organs of the socialist state and public organisation and citizens".[30] It was not premised on the notion that the state monopolises legislative power and the socialist law serves to lay its foundation until communism brings about the withering of the state.

The final act for the Soviet Union came when it was still seeking the vestiges of socialist legality came under Gorbachev. It was based on perestroika which was restructuring with the help of law the reform of the infrastructure of the state.[31] This was to be underpinned by glasnost which was to provide the proper legal foundation for the citizen status with the democratisiation of the institutions of state. The inability to achieve these goals led to the fall of the USSR in December 1991.[32]

[26] See [46].

[27] See [48].

[28] See [47].

[29] See [44].

[30] See [20].

[31] See [45].

[32] See [3].

The inability to sustain the Soviet state has led to the critique that the socialist legal theory has been flawed in many respects and this is aggravated by the chasm between the positivist socialist law and Marxism. The acceptance of socialist created uncertainties which has become integral to the question about the future of state and law in Marxist ideology. The most significant is the lack of success to resolve satisfactorily the issue of law in a class less society which was raised by the Soviet Communists jurists in their search for a formula that would explain the economic probabilities of a workers state.

The contemporary challenge to formulating legal norms by economic materialists has upset the very foundation of the socialist theory of law, since the demands of a new definition of law which goes beyond positivism.[33] The argument of positivists is that the priority of socialist theory rests on the communists fundamentalist approach of taking law as a concept that is outside the outside the main thrust of human history which is the preserve of dialectic materialism.

This has raised legitimate question of how to adopt a theory of Marxism as an instrument of control of one class over another and its role as a mechanism for class exploitation. The issue that it raises in the aftermath of the failure of the Soviet Union is the role Marxism has in the formation of the state that is based on a socialist legal framework. Despite the failure of Marxists to be successful in the former USSR there may be a basis for arguing its legal philosophical principles to make a valid proposition for socialist transformation in society.

This is not premised on supporting fundamental rights as the main objective of classical Marxist jurisprudence is not to promote the concept of human rights, or the checks and balances in the constitution, or even equality before the law. Marx argued that basic human rights are not fixed but rather are constantly evolving according to the progressive stages of class warfare. The concept of the universality of human rights is rejected which Pashukanis, in *Law and Marxism*: *A General Theory* defined as the "narrow horizon of bourgeois right" that has to be eliminated in its entirety (p. 130).[34]

The notion of a rights is, therefore, entirely subject to the supreme authority of the state. The nineteenth century philosopher Charles Darwin who wrote the *Origin of the Species* had a profound influence on Marx and he drew a parallel in the theory of biological evolution with that of revolutionary communism. He viewed the struggle of classes on the same principle as Darwin's attempt to demonstrate how humans would have evolved from animals by a blind process of natural selection.

Engels stated in *Ludwig Feuerbach and End of Classical German Philosophy* that "The world is not to be comprehended as a complex of ready-made things, but as a complex of processes" (p. 54). This was an evolutionary process and "*Just as Darwin discovered the law of evolution in organic nature, so Marx discovered the law of evolution in human history*". This was extended to imply that it was the survival of the fittest in the jungle of capitalism (p. 64).[35]

[33] See [36].

[34] See [43].

[35] See [17].

He predicted that as the regular pattern of evolution controlled the human condition, it was the destiny of humankind that it would eventually lead to a more perfect society of classless individuals. This meant that law was interpreted as not encompassing any universal values or principles, but rather as representing a transitional device that merely illustrates "the course of political struggles and the evolution of social formations" (p. 54).[36] The correlation between societies was that their legal superstructure was always dependent for their form and content upon determining forces emanating from the economic basis of society. The rejection of a universal concept of human rights was also the reason why Marx strongly advocated the abolition of all legal and moral rules (p. 21).[37]

In *The German Ideology* Marx and Engels argued the law was a conveyance of the ruling class over the exploited class and was of necessity, unjust. The notion of a 'just' law based on human rights was rejected as an appeal to an ideology which was "a false representation of reality; justice is no more than an historical idea conditioned by circumstances of class". It was an abstraction of the power relationships and reflected in the "The individuals who rule in these conditions, besides having to constitute their power in the form of the State, have to give their will… a universal expression as the will of the State, as law" (p. 329).[38]

John Plumenatz argues in Karl Marx's *Philosophy of Man* that "Marx was a positivist who tried to turn social theory into a 19 th Century political science" (p. 221).[39] He finds it difficult to reconcile it to Marx's other formulations on "human nature" including the various concepts of human creativity and objectification that he sets out in the rest of his work (p. 223).

This stems from Marx's view that the foundation of a society that leads to Communism would in itself be the fulfillment of humanity's aspirations. It is defined by Michael Freeman in *Lloyd's Introduction to Jurisprudence* as "a self-consistent attack on non-relativist ethics" which in essence "Marx, and subsequent Marxists have singled out [morality] as ideological and relative to class interests and particular modes of production" (p. 1150).[40]

Freeman notes in:

> "… all that 'basic laws' would do is furnish principles for the regulation of conflicting claims and thus serve to promote class compromise and delay revolutionary change. Upon the attainment of communism the concept of human rights would be redundant because the conditions of social life would no longer have need of such principles of constraint. It is also clear (particularly in the writings of Trotsky) that in the struggle to attain communism concepts like human rights could be easily pushed aside—and were" (p. 1151).

[36] See [18].

[37] See [19].

[38] See [41].

[39] See [44].

[40] See [22].

The conversion from a society where the ownership of means of production are at the disposal of the ruling class would need a transfer to the working class by means of socialist legality. This is a premises that rejects the concept of fundamental rights and the reality of the communist society such as the one created in the Soviet Union has in the view of its critics suspended human rights in periods of its rule. It has in those instances supported the Marxist revolutionary thought and deed and enforced any procedures in accordance with its ideology by means of enacting the law as a means to an end.

5 Base and Superstructure in Social Theory

The doctrine of Marxism has contemporary relevance because it has deeply influenced legal thinkers, who have adopted some aspect of this radical theory. The intention behind it are the structural inequalities of society that reflect the polarisation of social forces that Marx pointed to in determining the lack of fundamental justice in society. The ideological reasoning of the theorists who have interpreted Marxism in the last few decades is not to seek any inspiration from the human rights legislation but to argue for the conceptual change that will transform society.

This formulation of modern Marxism theories of law are designed to be critical theories based on legal realism, feminist jurisprudence and critical racial theories. These draw in essence on the same material dialectical reasoning that lie at the core of Marxism and do not refer to any moral values. They are fundamentally geared to describe the injustices that are the result of judicial partiality and political arbitrariness.

Paul Hirst states in *On Law and Ideology* that "Ideology has developed a significance and centrality in Marxist theory in the last decade which it never possessed before" (p. 1).[41] He objects to the three tier division of economics, sociology and politics and locates the role of law in the ideological context. The main area of concern is to avoid the twin pillars of reductionism in defining law as a direct and essentially unmediated expression of the narrowly defined objective interests of the ruling class and liberal pluralism in treating law as completely autonomous expression of values of processes.

In developing an epistemology Hirst repeatedly avers to the inability of traditionally Marxists to comprehend feminist and anti racist movements and the importance of socialist theory to understand such centrifugal tendencies in the structure of society (p. 13). He offers the reason of why there are difficulties in postulating the theory of developing a position between reductionism and liberalism. This was because "however, elaborate the formal methods of analysis in the social sciences may be, such methods could never be more than a limited stage of a more comprehensive interpretation theory" (p. 53).

The base and superstructure argument has been considered to achieve a clearer framework in the law and ideology argument. M Cain and A Hurst state in *Marx*

[41] See [28].

and Engels on Law, that when it comes to defining the ideology or legal transformation the concepts of orthodox Marxism do not provide useful tools. They argue that the ideology and law are concepts that stretch Marxist doctrine to its limits and the need arises to make them diverse and accessible. This is presented in a framework whereby the concepts of ideology, state, law and politics are elaborated to argue the proposition of "law's potential for transforming our society" (p. 12).[42]

Cain and Hunt support the notion that Marxist theory recognises legal relations as a legitimate object of political struggle. They subordinate the reductionist theory of law which they argue is "confined to Hegel's early works and define it as a simplified formulation of historical materialism" (p. 50). They state that the development of modern forms of organization has transcended ideology such as continual speed of bureaucratic organization. This was because the "primary source of the superiority of bureaucratic administration lies in the role of technical knowledge which through the development of modern technology and basic methods in the production of goods has become indispensible" (p. 149).

They argue that "the capitalist system has undeniably played a major role in the development of bureaucracy without which it cannot continue and any rational type of socialism would have to take it over and increase its importance" (p. 150). This was a positive development because "bureaucracy greatly favours the leveling of status and this has shown historically to be normal tendency. Conversely, every process of social leveling creates a favourable situation for the development of bureaucracy by eliminating the office holder who rules by virtue of status privileges and the appropriation of the means of power of administration in the interests of "equality", it also eliminates those who can hold office on an honorary basis or by virtue of their wealth" (p. 151).

This is reasoning in law that provides the basis to argue that bureaucracy is an essential process and it is a result of modern communication and technology. It is part of the indispensible structure of the state and would not be possible to be dismantled if a socialist state was built upon its institutions. The stability that it would provide will be essential in the transformation and consolidation of the state even if the transition was from capitalism was accomplished.

Marx does provide a vital distinction between the economic and material base or infrastructure of society and its social superstructure that is formulated in the legal system. However, the problems have arisen in respect of Marx's historical materialism which are necessary to define in order to ascertain what are the categories under which institutions of the state can be defined. The first issue is if the material base confined to economic factors or does it include the law?

GA Cohen in *Karl Marx theory of history: A defence* argues that the base consists of material factors any "inference in the base to legal rights and duties to refuse to possess which are not legal" (p. 207).[43] There is also the question of what is meant by superstructure on the assumption that it has a number of uses in Marx's writings including the definition as the legal and political institutions, which express the relations of production and forms of consciousness that reflect a particular

[42] See [8].

[43] See [9].

perspective of the world. The laws role in the process is subtle and complex and is akin to a symbolic framework with which individuals and groups interpret their rights, interests and conflicts.

Collins elucidates further in *Marxism and the law:*

> "The legal system plays a vital role …. In particular the legal framework of rules and doctrine provides a comprehensive interpretation and evaluation of social relationships and events which is in tune with the main theme in the dominant ideology. Because the legal system is encountered frequently in daily life, its systematic articulation and dissemination of a dominant ideology are some of chief mechanism for the establishment of ideological hegemony" (p. 77).[44]

This is an interpretation that confirms the legal system as the superstructure and the hierarchical construct of the state where the authority of the state is situated. The enforcement of the law through the agencies of state and the courts is the means by which the norms that govern the relationships in the infrastructure are implemented. It cannot be separated from the ideology that governs the foundations of the state that are premised on the base superstructure model.

The socio legal theories that have emerged in the west are to ascertain Marx's thesis and to determine if it has a part to play in socialist state formation. This has to evaluate the modern developments such as bureaucracy that is technology driven and is part of the ability of the state to function by achieving a division of labour. The ideological context is important and Marxian arguments have to be proposed in its terms that clearly sets out the base and superstructure in order to frame laws that are reform the economic infrastructure in accordance with socialist theory.

6 Critical Race Theory

The purpose of socio legal study has an aim which is to equate legal equality with racial justice. This is based on the critiques of the conventional legal and scholarly norms which are themselves viewed as part of the discriminatory hierarchies that need to be reformed. In many cases the main proponents of this concept are from ethnic minorities who seek to overturn long held belief systems in which ethnicity and racial power are constructed by the legal system's inherent cultural bias.

The subject of critical 'race theory' stems from an academic format that provides an intellectual rigor in evaluating colonial history and determining the unequal relationship that stem from the colonising nation. It had its genesis in the 1970s, and it is a presumption of the exercise of power by a more privileged class that impinges on equality despite the rule of law and constitutional guarantees of equal protection laws. The critical race theorists view law itself not as an objective instrument but as part of a framework of effectively disenfranchising the racial minority in the legal system.

[44] See [10].

The discourse among the critical race theorists is based on the argument that the liberal critique of racism is an insufficient framework and that a more radical platform of analysis is an imperative. The proponents of this theory argue in terms of the oppression of the black people in terms that require a Marxist analysis.

Derrick Bell, the Harvard law professor who is regarded as a leading proponent of the critical race theory movement expounded the theory that there was an 'interest convergence' between the regime of laws that imposed racial injustice and those who accepted that they could be modified to achieve racial equality (p. 518).[45] He wrote a controversial critique of the *Brown v Department of Education 347 U.S. 483 (1954),* a landmark United States Supreme Court case which declared state laws establishing separate schools for black and white students were illegal. In this he criticised the desegregation litigation strategy of the NAACP Legal Defense Fund (National Association for the Advancement of Colored People) based on his reasoning that it would not make a substantive difference to the circumstances of Black people in the United States.

This was because, Bell argued, that there was structural inequality that governed the laws of racial differentiation and in terms of reform the "racial equality will be accommodated only when it converges with the interests of whites. However, the fourteenth amendment, standing alone, will not authorize a judicial remedy providing effective racial equality for blacks where the remedy sought threatens the superior societal status of middle and upper class whites" (p. 523).[46]

Bell explained further in *Racism in American courts* that racism is a subtle yet powerful institutionalized force and that the law designated racial differences, maintained inequality, and consolidated the status quo. He challenged the assumed fairness of the American political system, arguing that the abstraction of "the 'rational' or 'objective' truth, [allows] the privileged elite to de-personify their claims and then convey them as though they were the universal authority and virtue" (p. 165).[47]

Bell reasoning was based on causal effect of racism: Those who have authority in the legal process tend to underplay the seriousness of racism in the judicial system, acknowledging the need for progress, while extolling the overt racism of the courts (p. 166).

The analytical framework was premised on exposing the fallacy of legal neutrality and analyzing the role of self-interest in the United States' tentative progress toward racial equality. Bell reasoned that there was a permanency of racism and that Black people had a subordinate role in its framework based on their "slave forbearers that the struggle for freedom is, at the bottom, a manifestation of inhumanity that survives over the duration of time. The basic premise of Bell's critical race theory was that the law was an instrument of the white ruling class and he viewed law as an instrument of control and oppression.

Vinay Harpalani, *From Roach Powder to Radical Humanism* infers that in Bell's perspective was that the US Constitution was not overriding because the Justices

[45] See [4].

[46] See [5].

[47] See [6].

"voted their preferences in most cases" (p. 24).[48] The comparison with slavery as an institution corresponds with the proletariat in this analogy and the resulting disenfranchisement of the ordinary coloured person in the US and the 'interest convergence theory' is a dialectic based on the notion of the systems of privilege sanctify their own normative place in the hierarchy by co opting black people in managerial roles.

This form of structural critique has provided lawyers the basis to challenge established notions of the equal protection legislation with differing requirements in cases of structural racism. They have done this by setting out a critique of the criminal justice system where coloured and people from ethnic minorities suffer from discrimination. In R Delgado and J Stephanic provide in *Critical Race Theory Today* an example of the immigration law of the US that impacts on the migrants from the South American countries.

The law limits on the arrival of immigrants and monitoring of the border with Mexico assiduously. The judicial review of immigration policy is restricted by the plenary powers doctrine that grants Congress virtually un limited power to regulate immigration. The consequential harsh treatment of people fleeing poverty, death squads, or repression in their home countries offers them a new opportunity where they are often racially profiled.

Delgado and Stephanic enquire as to the fact that "the civil rights scholars have been challenging racial profiling of Latin looking immigrants, local ordinances aimed at immigrants, border vigilantes, and the privatisation of immigration detention centres. They have also been asking as to who benefits from increased immigration enforcement and prison building" (p. 125).[49]

They take the analogy further into the contemporary issues and address the racism in the criminal justice system and provide an example of an average day "when 60 % of the black men in the District of Columbia are held in detention, probation, parole, or have a warrant issued. They also offer the statistic that black men who murder whites are executed at a rate nearly 10 times that of whites who murder blacks" (p. 126).

The argument they further is that the critical race theory identifies areas not considered by the dominant thesis which defines crime in a subjective manner. They state that many punishable acts such "as marketing defective automobiles, alcohol, or pharmaceuticals or waging undeclared wars are not considered crimes" that are mainly carried out by privileged classes. However, what many black and Latin men are prone to do as "to languish on street corners, cruising in row ruder cars, or scrawling graffiti in public places, are energetically policed, sometimes under new ordinances" that leads to their criminalisation (p. 127).

This provides support to the view that the function of critical race theory is to evaluate the difference of how power relations are shaped in society and in the wider structural context. It deals with the perception of those who are marginalised as a critique of the established order and the view that is predominant in the majority culture. They take into consideration the impact from discrimination and present an

[48] See [25].

[49] See [14].

alternative version with the supporting evidence that law is the instrument for maintaining the status quo ante.

7 Sociology of Law and the 'Science' of Law

The critique of the legal system that is the foundation of the critical race theory draws its essence from the sociology of law. The sociology of law employs social theories and applies scientific data to the scholarship of law, legal approaches and institutions in order to describe and evaluate legal behavior in their social, cultural and philosophical contexts. It views law in context and its most important facet is the sociological evaluation rather than as purely a normative discipline and is aimed to transcend traditional legal boundaries by bringing into consideration the role of society and its system of values and norms.

The theories and approaches of the sociology of law investigate the operation of law as a social institution. It examines social thought that attempt to explain the relationship between law and society. The various processes of inquiry consist in the main of social foundations of law; law and social cohesion; law and governability; and the conflict perspective of law. It is the last in this category of research that comes under the Marxist sociological approach. This requires a theoretical framework in order to arrive at a methodology to make its judgments that enquire into the circumstances in which the laws have been promulgated.

Its critical aspect is summed up by R Cotterell in *Sociology of Law* who describes the discipline of sociological enquiry as "the systematic theoretically grounded, empirical study of law as a set of social practices or as an aspect or field of social experience" (p. 1413).[50] He states that academic lawyers interested in the study of law have often turned to the sociology of law to escape the narrow disciplinary network of academic law. This is a discipline that is diverse but has the logic of evaluating the jurisprudential norms in the socio legal context.

This view is echoed by Reza Banakar and Max Travers in *Law in Social Theory* who state that "Sociology of law, both as an academic discipline and an interdisciplinary field of research, embraces a host of disparate and seemingly irreconcilable perspectives and approaches to the study of law in society. This diverse character is celebrated by some scholars, who regard it as a source of theoretical pluralism and methodological innovation, and criticised by others who see it as a cause of theoretical fragmentation, eclecticism and discontinuity in research" (p. 1).[51]

The difference between the sociology of law and jurisprudence is that while the former studies human behavior to the extent it is determined by commonly recognised ethico—legal norms, the science of jurisprudence studies the law as a normative kernel of rules. This is from 3 angles which are analytical, historical and the theoretical. The contrast can be made between the positive jurist such as Hans

[50] See [11].

[51] See [2].

Kelsen who rejected the sociology of law based on Marxist evaluation that determined the legal system was the superstructure of the oppressive state.

This 'science' of law that is based on reasoning of an abstract system of a pyramid of norms which rises upwards onto the apex norm or the *grund* norm. This is the abstraction of the base or the original constitution upon which rests the legitimacy of the legal system. Kelsen states in the *Pure Theory of Law* that the normative science is based on the ontological understanding of what the law "is" and not what it "ought" to have been. It is an analytical tool for the interaction of the state and the institutions that are intended to uphold the law and accept its validity (p. 21).[52]

Kelsen argues in *The Communist Theory of Law* that the study of law for Marxist jurists becomes a discourse about the legal system as an "aggregate of social relationships that was central to the legal theory in which the USSR was constructed". However, the attempt to develop a theory of law on the basis of Marx's economic interpretation of society has not been successful, according to Kelsen because of the "tendency to substitute for instead of adding to a normative interpretation of the law, that is, a structural analysis of a specific system of norms, a sociological inquiry of the conditions under which such a normative system comes into existence and is effective" (Preface).

This critical assessment of the communist theory of law he interprets as the "so-called historic materialism", that corresponds to the "economic interpretation of social reality" as evident "in the widespread tendency to reject any normative interpretation of social phenomena, even if they undoubtedly fall within the realm of morality or law". While both the Pure Theory of Law and Marxist jurisprudence rely on a logical determination of abstract principles they can be distinguished by the framework of Communist legal sociology which Kelsen argues is a compulsion "to reduce human relations, ethics and jurisprudence are presented as duties, responsibilities, rights established by moral or legal norms, to factual relations of political or economic power; and to characterise value judgments concerning right and wrong, just and unjust, as propositions about facts observable by individual or social psychology, in opposition to their interpretation as judgments concerning conformity or disconformity with a norm presupposed as valid" (p. 193).[53]

The ideological character of the Marxist theory of law is contrary to the anti-ideological assumptions of the Pure Theory of Law. The social science premises in general and the science of state and law in particular is a political value judgment, that result in methods and platforms of political struggle of one group against another. The nature of social science for the Kelsenian jurists is that it is not independent of politics. The sociology of law whose premises is the conflict in society takes into consideration only economic conditions and shows an incapacity to grasp the normative meaning of the law, according to its critics. This can be interpreted to mean that it evaluates the regulation of industry and the division of labor before it can judge the construction of the hierarchy of government of the state that it predicts will be erased.

[52] See [31].

[53] See [32].

The social scientists have observed Marxist doctrine as an exercise in which the ownership of the means of production is the central goal of the working class that assumes power. It is based on a view of history that there are two classes that have come into being by a dialectical process and this will lead to an equalisation of the power relationship when the ruling class is usurped from power. The validity of change is not viewed from the perspective of the efficacy of the transfer of authority but on grounds of revolutionary legality dependent on the complete severance from the past that had enabled the previous 'dominant' class to exercise power.

8 Conclusion

The original question posed was whether the terminology of Marxist jurisprudence in predicting the withering of the state is based on a logical assessment. This is because the agents of change will have the power to enact the laws that lead to the withering of the state and for the workers utopia to de declared. It would have to be premised upon the bourgeoisie structures being eradicated and for workers taking over the ownership of production.

In the Communist Manifesto, Marx sets out the basis of bourgeois law as nothing more than a reflection of the desires of the ruling class and its jurisprudence was a testament whose essential character and direction are determined by the economic conditions and social status of this class. The reason as to why it was oppressive is because it was based on the concept of private ownership of property, and was therefore, the instrument for the creation and promotion of unequal rights. This becomes the reason for an unjust social framework in which the workers are exploited class.

The Marxist theory is very clear that there can be no separation between the law and the state. As the class distinctions within societies create conflict and disorder and therefore legal system and the state comes into existence to deal with this chaos. The need then arises for a power to come into existence that becomes necessary and which stands apparently above society and has the function of maintaining 'order'. This power is deemed the extension of society, but assuming supremacy over it and becoming more and more separated from it and that is the State.

The socialist theory of law emanated from the principles that Lenin advocated at the time he framed the constitution of the Soviet Union. It then led to the commodity exchange theory that Pashukanis formulated as a socialist theory of law by setting out the rejection of the laws that regulate the surplus value of production was abandoned for state socialism. While this reasoning to frame a legal theory to advance towards a workers utopia is considered naive it was an attempt to compose a socialist theory of law.

The creation of a command economy in the USSR in 1936 led to the Communist Party implementing 5 year plans and it also become an instrument of coercion in implementing these policies of state control This shows a significant difference between the theory and the practice where the ideological texts of Marxist Leninist legal theory were the governing texts in the exercise of 'socialist legality'. The legal theory which the Soviet Union developed on the basis of orthodox Marxism

developed a system of norms or an aggregate of social relationships that played a decisive role in the formulation of the legal order those primacy was located at the centre of power in the state hierarchy.

However, the socio legal theory that has come in the wake of the abandonment of the workers state in the USSR has set out framework for understanding the importance of ideology. It has formulated rational analysis of bureaucratic institutions and the knowledge based systems that they adopt that are an advance on the theory of the formation of the socialist state. There has also been approaches towards legal realism and critics of gender and racial discrimination that are radical in concept and an intrinsic part of this theoretical framework that locates the base and infrastructure of society.

The discipline of legal sociology is quite diverse but it explains Marxist jurisprudence in the process of its analytical framework. This explains the ideology of scientific socialism by framing human relations presented in ethics and laws into duties, responsibilities, and rights established by moral or legal norms into factual relations of political or economic power. They set out their assumptions concerning right and wrong, just and unjust, as propositions about facts observable by individual or social evaluation. This is in opposition to another abstract theory developed by Kelsen whose interpretations concerns the structure of laws as a pyramid of norm that are framed in a constitution which is formulated as the definition of a valid law i the Pure Theory of Law.

The Marxist state has not followed the discourse of its legal reasoning by materialising into a workers state. This is a notion that the economic dialectics through history determine the progress of the humans who are social animals and which leads to the alienation of the working class when the state enters the phase of industrialisation. In the USSR which originally followed the doctrine of revolutionary legality an elite who conveyed the semantics of a theory became inseparable from the state and wove into its fabric their powers of determining its laws and the basis of its economic infrastructure.

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