

MARXIST JURISPRUDENCE IN THE SOVIET UNION: A PRELIMINARY SURVEY

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In all theories of law and in all theories of ethics the bond between legal norms and moral norms is regarded as so close as to be overlapping to some varying extent, at least in subject matter, if not more deeply. The bond between the ethical realm and the legal realm in any philosophy can be formulated only from principles arrived at through much prior thought revolving about the extremely difficult problems facing all social philosophy — the problems of the nature of the state and the essence of law confronting the legal philosopher — the problems of the nature and the end of man facing the moralist, and to some extent the jurist. Even these issues, basic though they be to social theory, are also derived suppositions from even more elementary principles in man's search for reality. Admittedly, some schools of social and psychological theory would deny this to be the case. Among these, not unnaturally, would be that of Karl Marx.

Because the topic to be covered in this paper is based on prior ideological suppositions, it is to a degree imperative that some summary presentation of the immediate Marxist antecedents to the relationship of law and morality, (*i.e.*, the general theory of law and its link with the state, together with the source and nature of morality) be given. It is after we have recalled the essentials of historical materialism pertinent to the point at hand that we find it possible to relate law and morality as a logical consequence fitting neatly in its place within the Soviet ideology.

*The Soviet Theory of the State and Law*¹

Lenin, following in the dogmatic footsteps of Marx and Engels, purports the state to be essentially "a machine for upholding the dominance of one class over another."² When historically man existed in a state of primitive communism, there were no classes in society — no special group set apart for exercising dominion over all the rest of society. Class conflict arose only with the appearance of slavery which came about when a certain portion of the people by crude agricultural toil were able to produce a surplus over and above what was essential for life. This strengthened the existence of one class over the others who became their slaves. In order that this new slave-owner class remain in power and strengthen its position, it was essential that the state appear. And it did appear — a mechanism giving over into the hands of the slave-owner the power and possibility of governing all the slaves. For without a permanent

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1 The classic statements of Marxism are to be found in ENGELS, *THE ORIGIN OF THE FAMILY, PRIVATE PROPERTY AND THE STATE* and his *ANTI-DÜHRING*, as well as MARX, *CRITIQUE OF THE GOTHA PROGRAM* and *THE CIVIL WAR IN FRANCE*, together with the *COMMUNIST MANIFESTO*. Lenin's main thought on this point is to be found in *THE STATE AND THE REVOLUTION*.

2 Lenin, *The State*, *Pravda* (No. 15), Jan. 18, 1929, reprinted in *SOVIET LEGAL PHILOSOPHY* 1-15 (Babb trans. 1951).

mechanism of constraint one part of society cannot be forced to work systematically for another and smaller part.

Historically it was noted that as the form of exploitation changed so also did the governmental form. Out of slavery came serfdom which closely resembled slavery but opened the gate to greater emancipation of the oppressed. The development of trade led to the segregation of a new class — the capitalist. With its rise and with the decline of the squire, society was reorganized in such a way that while in theory all citizens were considered equal, in practice this was not so. The right to property was universal but the control of property was not. The property rights of the few allowed them to once again encroach economically on the many, classes were created, the one controlled the state machinery, the other became subservient. Thus arose the bourgeoisie and the proletariat.

In the conception of the state as an organization of authority of the dominant class there is already found a hint as to the nature of law. In its activity, the state realizes the *will* of the dominant class to which authority belongs. It defends and guarantees the interests of that class. For this task, it is required that the mandates of the will of the governing class be binding on society. All the citizens of the state must be subject to, and observe them. In a socialist state, it is the will of the worker class — which has abolished exploitation and which thereby expresses true human values — that is binding upon all citizens.

The realization of the will of the dominant class for the purpose of establishing and strengthening social conditions advantageous to this class is attained with the aid of *law*, binding rules of conduct ordinarily in the form of legislation.³ To the Soviets, the class essence of bourgeois law is the key to understanding the class essence of all law. This is seen to be merely the will of the dominant class elevated into legislation. As bourgeois law expresses the will of the exploiter class, the law of socialist society likewise expresses the will of the now dominant worker class. The law is the will of the Soviet people, who have built socialist society under the guidance of the worker class headed by the Communist Party.

It is the teaching of Marxism-Leninism that neither the state nor the law takes precedence over the other. As we have seen, law emerged jointly with the state in consequence of the disintegration of the primordial-communal social order, the appearance of private property and the division of society into classes. In class society the antagonistic classes struggle among themselves and the dominant class, aided by the instrument of constraint, the *state*, holds the oppressed classes obedient, and aided by *law* dictates its will to them.

Law and the state are not two distinct phenomena — one preceding the other — but are two sides of one and the same phenomenon: class dominance, which is manifested (a) in the fact that the dominant class creates its apparatus of constraint (the state), and (b) in the fact that it expresses its will in the shape

³ Cf. GOLUNSKII AND STROGOVICH, *THE THEORY OF THE STATE AND LAW* (1940), reprinted in *SOVIET LEGAL PHILOSOPHY* 365 (1951).

of rules of conduct which it formulates (law) and which — with the aid of its state apparatus — it compels people to observe.⁴

The law of the socialist state, like the socialist state itself, passes through the process of development and strengthening. When and only when both the state and law have reached their maximum strength in the preceding stages of their historical development will they finally come to their demise. The dictatorship of the proletariat along with its legal order will become ever more powerful as long as the remains of the old order exist within the confines of the socialist state or while this state is in danger from foreign imperialistic powers. The “withering away” of the state and its laws cannot be abortive without disaster.

It is not through a relaxing of state authority that the withering away of the state will come, but through the maximum intensification of that authority: such intensification is essential in order to make an end of the remnants of the dying classes and to organize the defence against capitalist encirclement which is as yet far from having been destroyed, and will not be destroyed in the near future.⁵

The state and the law in Soviet thought are historical phenomena, emerging under the specific causes mentioned above. The law and the state will disappear only with the disappearance of the causes that evoked them. With their “withering” will come the higher form of society — perfect communism.

From the foregoing principles we can now define law as seen in the light of Soviet legal philosophy. Law is defined as *the aggregate of the rules of conduct expressing the will of the dominant class and established in legal order, as well as of customs and rules of community life confirmed by state authority, the application whereof is guaranteed by the coercive force of the state to the end of safeguarding, making secure and developing social relationships and arrangements advantageous and agreeable to the dominant class.*⁶

Not all norms of conduct existing and operative in society are specifically referable to the category of law. Laws of morality and rules of community living are not always publically regulated. It is the fact that state authority is the source of its force and binding character which compels fulfillment of the rule directly, or applies effective sanctions upon offenders that causes a norm of conduct to be characterized as legal. This does not mean that it is only by direct constraint that the vitality and effectualness of law is realized. Legal norms are for the most part effected without the state’s intervention. Thus from the Soviet viewpoint it would be incorrect to assert that a legal norm is *put into operation* coercively by direct constraint on the part of the state. Rather, the coercive power of the state *guarantees* that legal norms are put into operation.⁷

The regulation of human conduct by law means that by legal norms definite rights are granted and obligations imposed. In virtue of these legal rights one can require that others carry out or refrain from definite actions in-

4 *Id.* at 366.

5 STALIN, *QUESTIONS OF LENINISM*, quoted in VYSHINSKY, *THE LAW OF THE SOVIET STATE* 40 (1948).

6 VYSHINSKY, *THE FUNDAMENTAL TASKS OF THE SCIENCE OF SOVIET SOCIALIST LAW* (1938), as reprinted in *SOVIET LEGAL PHILOSOPHY* 303-41, quote at 336.

7 *Cf.* GOLUNSKII AND STROGOVICH, *op. cit. supra* note 3, at 369.

dictated by the legal norm. The obligors must fulfill this requirement or the state will compel them to do so. The law then always creates correlative rights and obligations. It is on the strength of the rights and obligations which the legal norm creates that it becomes a "living reality" among the citizenry. In this connection the term "law" takes on two meanings signifying:

(1) the rules of conduct themselves — the norms — expressed in statutes and other legislative measures of state authority, and (2) that a citizen or an organization can require definite acts on the part of other persons and of organs of authority.

When we say that soviet socialist law (*pravo*) establishes the method and the measure of wages payable to workers and clerks, we have in mind law (*pravo*) as an aggregate of norms. But when one declares: "the law (*zakon*) grants me the right (*pravo*) to demand payment for work," this means that out of the norms of law (*pravo*) — definite rights which he can utilize are created in his behalf.⁸

This two-fold distinction of law must not be taken to mean that the Soviets delimit law into the concepts of "law in the objective sense" and "law in the subjective sense." Such a distinction often found in bourgeois jurisprudence is attributed by Marxists to the desire of the exploiters to conceal the class essence of law. With this end in mind the bourgeois jurist contrasts legal norms with civil rights. This leads logically to the idea that law exists objectively, somehow expressing principles eternal and independent of the reality of a peculiar social phenomenon existing in definite social conditions. The attempt to cover up the exploitive character of the bourgeois state is evidenced likewise by the bourgeois jurists regarding civil rights, law in the subjective sense, in isolation from the operative norms of the state. This gives to these rights an independent nature in the eyes of the people; they become attributes innate to the person and prior to both the legal norms reflecting the will of the dominant class and to the social relationships which they regulate.

In contrast, the Soviets look upon law in a single sense — as the expression of social class relationships. Rules of conduct expressed in the legislative acts of state authority grant to the citizens definite rights and impose definite obligations. Civil rights, therefore, are established by law and constitute an area within which citizens may require of their fellows or of authority that their interests insofar as they fall within the scope of legal norms be respected.

The social class relationships which the law expresses are, of course, human relationships in society. As we know from Marx's basic doctrine of "economic determinism," this social life is founded on production relationships — mutual relationships into which people enter during the production process. These economic relations are the foundation or the base on which the superstructures of law and politics (as well as those of religion, art, literature, philosophy, etc.), develop. Based as they are on the methods used by any given society to produce, buy and sell its commodities, these relations are historically determined and arise independently of human volition. If independent of the class will, they also arise independently of law.

8. *Id.* at 370-71.

In the social production which men carry on they enter into definite relations that are indispensable and independent of their will. These relations of production correspond to a definite stage of development of their material powers of production. The sum total of these relations of production constitutes the economic structure of society — the real foundation, on which rise legal and political superstructures and to which correspond definite forms of social consciousness. The mode of production in material life determines the general character of the social, political and spiritual processes of life.⁹

Law, then is the product of economic relations, but unlike these relations it emerges out of conscious human activity. As such, it has its reaction on the economic base. Economics should never be looked upon as the sole cause of activity in society, with law and the other ideologies passively changing as economics directs. This would be to seriously misunderstand the Marxist concept of development in society by assigning to it a fatalistic quality completely foreign to its spirit of progression through human activity.

Political, juridical . . . development is based on economic development. But . . . these react . . . also upon the economic base. It is not that the economic position is the *cause and alone active*, while everything else only has a passive effect.¹⁰

Yet, significant changes in juridical theory do not come about by mere criticism of prevailing legal thought or the current status of society. A revolutionary change in the material basis of society, the modes of production, is the only force potent to bring about the evolvement of the true nature of law — or any reality. The *content* of the Constitution of the U.S.S.R. and its statutes is quite similar to that of the United States, and Western Europe, but the Soviets insist that the *form* is essentially different. The law of a socialist state and that in a capitalistic sovereignty differ in *principle* regardless of their extrinsic similarity. This essential difference follows necessarily, in the Marxist viewpoint, from the more perfect status of the economic social relationships found in the socialist society of the Soviet Union. As the socialist society changes to the higher form of communism both the state and law will “wither away.” The rules of life will be observed without constraint, but solely in virtue of the conscious discipline of the communist social order based as it is on the most perfect mode of production — “from each according to his capacities, to each according to his needs.”

With these summary considerations of the theory of law in mind let us now consider in broad perspective the principles and nature of bolshevik morality.

*The Theory of Soviet Morality*¹¹

To the Marxist, every moral code is simply a derivation of the mode of economic production proper to a particular time or age. Men are born to find themselves living in a society with a definite mode of production by which they

⁹ MARX, CONTRIBUTION TO CRITIQUE OF POLITICAL ECONOMY 11(1904).

¹⁰ Engels, *Letter to Starkenburg*, Jan. 25, 1894, MARX AND ENGELS, LITERATURE AND ART 8(1947).

¹¹ The Marxist doctrine on morality is found principally in the COMMUNIST MANIFESTO, in Engels' ANTI-DÜHRING and Lenin's RELIGION.

are to procure for themselves and their families the material necessities of life. Obtaining these necessities is the most commanding motive for activity, for without them, life ceases. So long as men feel that the current mode of production is supplying them with their needs, they are not only content with this mode, but they are determined, moreover, to defend it. Thus men consciously or unconsciously create a moral code whose purpose is to protect the current mode of economic production. The principal defenders of these moral laws would be those who profit most by them, namely, those who own the means of production. In the moral code these owners see one of the best defenses and supports of their dominance. The moral code of each historical period is a class morality, a system of morality whose purpose it is to protect the position of the then ruling and exploiting class. In brief, the Marxist conception of the nature and function of every moral code is to act as a defense and a justification of the currently prevailing mode of production.

We maintain . . . that all former moral theories are the product, in the last analysis of the economic stage which society has reached at that particular epoch. And as society has hitherto moved in class antagonisms, morality was always a class morality; it has either justified the domination and the interests of the ruling class, or, as soon as the oppressed class has become powerful enough, it has represented the revolt against this domination and the future interests of the oppressed.¹²

It is this class morality that the Communist absolutely rejects. He refuses to accept as eternal truths moral standards which are the creations of an exploiting system of economic production, based upon private ownership, and used as a weapon of oppression to preserve the system and to entrench the exploiting class deeper in the position of power.

He considers it an historical fact that all codes of morality have been intimately bound up with religious beliefs. Instead of realizing the true basis of moral standards — economics — men have invariably placed the basis of their moral code in religion. All moral codes, it is believed, are derived from religious “truths” such as the existence of God, a future life, a future reward or punishment. The Marxist, on the other hand, with his superior knowledge, realizes that the true basis of this “bourgeois morality” is only an ideology created by the economic system of private ownership and, therefore casts aside all such morality. It is only this false “bourgeois morality” which the Soviet rejects. They must not be regarded as rejecting all ethics and morality. Lenin is explicit on this point.

In what sense do we deny ethics, morals? In the sense in which they are preached by the bourgeoisie, which deduces these morals from god’s commandments. Of course, we say that we do not believe in god. We know perfectly well that the clergy, the landlords, and the bourgeoisie all claimed to speak in the name of god, in order to protect their own interests as exploiters. . . . We deny all morality taken from superhuman or non-class conceptions. We say that this is a deception, a swindle, a befogging of the minds of the workers and peasants in the interests of the landlords and capitalists.¹³

12 ENGELS, *ANTI-DÜHRING*, 105 (1939).

13 LENIN, *RELIGION* 47-8 (1935).

If it is only "bourgeois morality" that is rejected, what then are the moral laws acceptable within the U.S.S.R.? In answer, the Soviet philosopher would call attention to the fact that he does not regard *all* current moral norms as products of religious superstition and the prevailing mode of production. He would acknowledge a science of morality which proposes numerous moral norms some few of which are objectively valid for all times.¹⁴ However, he too, would freely admit that it would be extremely difficult, and perhaps impossible to single out any particular moral standard which men have, and always will accept as true. The Marxist believes that there are a few such standards mingled in the mass of moral laws which mankind now holds in reverence, but at present it is implausible that anyone discover which these might be. But certainly the moral concepts which at the present time do *de facto* represent the hidden desires of man to overthrow the present social system are those most likely to possess the element of durability. For these are at least destined to endure beyond the present capitalistic system; hence, whatever eternal moral truths there are, we may expect to find in the proletarian moral code of the present time.

This concept of morality is more easily comprehended if one recalls the Marxian doctrine professing the relative character of all truth. In the perpetual dynamism of both Marx's ontology and social philosophy, relativity is the *sine qua non* of progress; yet progress gives to the fruits of relativity a permanence and a universality. Thus, the criterion of morality can be said to be relativistic to a given epoch or class-controlled society, yet, nonetheless, there is found in humanity in some measure a common approach to the "good." This follows from the nature of the Hegelian dialectic itself. The synthesis, it is to be remembered, sublates the truth contained in the thesis and antithesis; it in no way destroys or discards it. The moral truth and goodness of the primitive and capitalistic societies are not foreign to true society. In the dialectical progression of man and his economic environment, nothing is lost, save error, evil and ugliness.

Of all the sciences there is none which possesses so few of these stable truths as the science of morality. Precisely because ethics contains so few durable truths it is extremely difficult to point out any moral standard which will remain valid for all time. The moral codes of Christianity and capitalism will die with those systems, whereas much of the proletarian morality found its way into the socialist society now prevailing in the U.S.S.R. Some will endure even after the final stage of perfect, classless communism is reached. Since both the Christian and capitalistic moral codes have almost reached the term of their existence, whatever eternal moral truths there are will most likely be found in the moral norms of the socialist society.

What, then, is the present socialist code of morality? What is the criterion which determines the moral goodness or badness of human activity? The answers to these questions are to be found in the words of Lenin in his work called *Religion*. He tells us that the needs of the class-struggle determine the norms of morality. Whatever fosters the revolutionary task of the proletariat

14 For an excellent analysis of the Communist philosophy of morality, see McFADDEN, *THE PHILOSOPHY OF COMMUNISM*, ch. VII, XV (1939).

in its fight for economic emancipation, whatever aids in the struggle to overthrow the remnants of capitalism and feudalism, is a morally good act. Whatever hinders the revolutionary work of the proletariat, whatever serves to perpetuate the continuation of the reactionary aspects of society, is a morally evil act. Morality is wholly subordinated to the interest of the class-struggle.

We say that our morality is wholly subordinated to the interests of the class-struggle of the proletariat. We deduce our morality from the facts and needs of the class-struggle of the proletariat. . . .

That is why we say that a morality taken from outside of human society does not exist for us; it is a fraud. For us morality is subordinated to the interests of the proletarian class-struggle.¹⁵

It is necessary . . . to use any ruse, cunning, unlawful method, evasion, concealment of the truth (to obtain the goals of the proletariat).¹⁶

The struggle of the proletariat is not destined to go on indefinitely. Eventually the proletariat will succeed in its class conflict. What then will be the norm of morality? In essence, it will be the same as it is at present. The reason can be grasped if the norm of morality is stated in more generic terms than those of Lenin above. *An act is morally good which by its very nature is conducive to the material betterment of mankind, to the economic development of society, to the inevitable state of future communism.*¹⁷

The material betterment and economic development to the Marxist lies in the class struggle and the perfection of the socialist state. The world-wide success of Marxist socialism will, in turn, be followed by true communism. Class struggles will have ceased, and the material betterment of mankind is no longer to be found at this level. It is rather to be found in greater social consciousness and in the unselfishness in one's own labor as contributing to the common need. It is such acts that would then be considered morally good. But in each period the basic norm of morality — material betterment and economic development — remains the same. One can readily understand why the Marxist feels that even socialist moral standards have, in general, only a transitory validity. The moral norms of today may not be valid tomorrow precisely because that which now aids the proletariat may not help, but instead, hinder it in the future.

Marxism offers a morality which is stripped of all superhuman elements and their alleged sedation; a morality which they represent as a truly "human morality" destined at all times to eradicate exploitation from man's life and to aid continually in the material prosperity of his life in society.

Having considered the essentials of both Soviet law and morality, let us now proceed to discover their mutual relationship.

The Interrelationship of Law and Morality Within the Soviet Union

As to be expected, the bond between the law and morality is very close within Soviet ideology. Law has been defined as the aggregate of the rules of

15 LENIN, RELIGION 47-8 (1935).

16 LENIN, *Left-Wing Communism*, in 10 SELECTED WORKS (1943).

17 McFADDEN, *op. cit. supra* note 14, at 141-2.

human conduct; moral norms too, regulate human conduct and are likewise operative in society. Moral norms, then, are differentiated from legal norms in that it is only the influence of social opinion and not coercive power of the state that guarantees their observance.

Contrary to bourgeois ethicists, the Marxist holds that morality, like law, is a social phenomenon and not merely one of the inner activities of man's psychic life. As a tonic to social discipline moral norms have important social significance, and like legal norms they have a place in the social relationships of mankind. The application and observance of these ethical norms, therefore, cannot be relegated *ad forum internum*. External, social constraint must in a certain measure be called in as their guarantor. But this constraint is not the coercive mechanism of the state. It is rather, the constraint exerted by social environment, social opinion, the attitude of persons living in society towards those who violate moral norms. Social condemnation of immorality, loss of respect, exclusion from membership in social groups, etc., unquestionably induce the observance of moral norms. Such constraint is essentially different from that of the state, being effectuated without use of the governmental organs of compulsion or without application of specific legislative norms, as are needed in the fields of law. The force of moral influence rests on the conviction of any class in the society — on the social opinion expressing the views and ideas prevalent in the given society.

As we know, both morality and law have a class nature and are delimited by the material conditions of the life of society. But the norms of morality lack the unity to be found in the law. The law of the state insofar as it represents the will of the dominant class raised to the statutory level is unified. Within a single state, moral norms, on the other hand, may vary in respect to the different classes to be found in any one state. That which from the viewpoint of the capitalist may be a perfectly moral phenomenon (*e.g.*, strike-breaking by individual workers), may at the same time be construed a serious moral violation on the part of the workers. In the Soviet outlook, only socialist morality reflecting as it does true moral principles in the genuinely human sense of the word can realize in a one class society a unity within itself and an integration with legal norms.

The interrelation of law and morality is of considerable interest to the Communist legal philosopher and ethicist. The issue involves difficulties whose solution is far from being self-evident even to those most well-versed in the classic postulates of Marxism. By their very content many socialist legal norms comprise moral norms. At the same time there are legal norms touching matters which are no concern of morality; such as norms of juridical procedure, regulations of legal method in civil contracts, and so on. What then is the relationship between the two spheres?

A better insight of the Soviet position can be had if their criticism of non-Marxist theories be briefly considered before we investigate their own standpoint. This is in keeping with Marxist dialectical method wherein truth is best discovered as emerging from contradiction. Of the several different generic points of view on the matter of this relationship offered in the course of history, and

that have been singled out for castigation, perhaps the most widely held in non-Marxist philosophic thought is that in which the realms of law and ethics are strictly differentiated — both by internal content and by methods of effectuation. Morality in this view would belong to the province of man's inner spiritual life, and law, to that of external relationships. To the Marxist, this position is obviously incorrect. As we have seen, morality is also concerned with man's behavior in society, and it too regulates human conduct. This comes about chiefly through influence upon man's internal sensibilities rather than external force. At the same time, law considers the internal stimuli evoking external action as well as the external actions in themselves. A patent example is found in the varying degrees of punishment inflicted under criminal law for the same external action in proportion to the perversity of intention and motive. Likewise, law attempts by positive influence to stimulate man internally towards voluntary fulfillment of its requirements as being reasonable and socially expedient. The two realms are seen thereby to necessarily blend into one another.

Another "bourgeois" theory of law asserts that "law is the minimum of morality." This is interpreted to mean that from the entire ensemble of moral norms, some small number of them — those necessary for the well-ordering of society — is taken, and the character of law is attributed to them. Law therefore is a part of morality. As it relates to bourgeois morality such a theory is considered unsound. The Marxist adjudges it so in that bourgeois laws are often immoral even by bourgeois norms of morality (*e.g.*, the legalization of prostitution under some codes). Basing their morality often on super-human concepts the bourgeoisie destroy the true human basis for law — economic relationships.

Going to the other extreme, other jurists maintain that the requirements of morality have no significance whatever for law. Norms of law draw their force from within themselves or from their promulgation, not from morality. This is a less hypocritical standpoint for the bourgeois theorist to hold, considers the Marxist. Nonetheless, it makes a mockery of the elementary ideas of justice as entertained by the broad masses of the people.

The true relationship between bourgeois law and morality is seen in the concept of them as different means of confirming the exploitation and oppression of the masses, of misleading and deceiving the proletarian class. In some cases, the rules of human conduct expressing bourgeois interests are guaranteed by governmental coercion (law); while in other cases ideological influence and psychological prompting (morality) are adequate to induce the desired rules of conduct. Bourgeois law and bourgeois morality aim at precisely the same purpose — the dominance of the class and the protection of their interests. But since the moral norms of the opposing classes conflict in such a society, the bourgeoisie are forced to keep to a minimum the correlation of law to moral principle. Law for the most part is consciously isolated from the domain of morality and considered completely extraneous to it.

The link between socialist law and morality rests on foundations completely different in principle. As we know, they have a common base and common principles. Also the tasks of socialist *law* — to eliminate capitalist

remnants in human consciousness and to cooperate in the building of a classless communist society — are at the same time *moral* tasks in that they are moral norms also. As is to be expected, law and morality in many instances have a common content owing to their common foundation. The most basic moral norm, in the eyes of Lenin — “the struggle for the strengthening and consummation of communism” — is also guaranteed by the coercive force of the state under Article 130 of the U.S.S.R. Constitution.¹⁸ Yet in becoming a legal norm it loses none of its moral content. Similarly, Article 12 states that labor in the U.S.S.R. is both an *obligation* and a matter of *honor*. Thus in content and form it is at once legal and moral.

It has become manifest that as moral norms differ from legal norms insofar as they are not guaranteed by state sanction, many rules of conduct lie outside the scope of law in socialist society. On the other hand the structure of law includes norms that pertain to juridical form and procedure only and are of no concern of morality. The Russian jurists Golunskii and Strogovich have suggested that the interrelationship between the two realms *qua* content may be graphically portrayed by two intersecting circles which coincide in one part and are in different planes in all other parts.¹⁹ The relation between these circles is not constant — they may come together, or they may draw apart, depending on whether the state authority furnishes coercive force to the given rules of conduct or relegates their observance to the social discipline of citizens.

At arriving at a decision regarding what norms of social morality are to be given legal status, the state considers several factors. The moral norm would ordinarily be of some special importance from the state's point of view. However, not all such norms can be successfully guaranteed by state constraint. The moral norms requiring love among spouses and friendship among the workers, although vitally important to the state, are impossible to enforce by legislation.

The Soviets would here seem to be falling back into the conception of law as “the minimum of morality” in spite of their harangues about its meaninglessness. In fact they come very close on the point of relegating the question of the demarcation of the two realms to the arena of prudence to the position of Aquinas²⁰ and others — whose thought the Marxist is only too eager to characterize as an archaic remnant of feudalism.

The bond between socialist law and morality does not presuppose that state coercion can be automatically transferred into the sphere of morality. There always remains this line of demarcation between the spheres. Any arbitrary application of state sanction for the violation of moral norms would of itself be unlawful by the Constitution and contrary to the best interest of the proletariat. The bond between law and morality finds further expression in the fact that observance of law is the moral duty of the citizen of the Soviet Union irrespective of the threat of constraint. Furthermore, socialist law becomes a salubrious factor in the development and confirmation of moral views in the

18 VYSHINSKY, *op. cit. supra* note 5, at 641.

19 GOLUNSKII AND STROGOVICH, *op. cit. supra* note 3, at 379-80.

20 AQUINAS, *SUMMA THEOLOGICA* I-II, Q. 96, art. 2; II-II, Q. 77, art 1 ad 1; II-II, Q. 50, art. 2.

community. By applying the law and compelling observance, the state strengthens the citizens' consciousness of their moral obligations with reference to the state and to each other.

As the historical cycle is completed and man once again finds himself living in a classless communist society, the law and state constraint will have withered away. Only morality and social customs will then regulate the relationships of communal life, and in the words of Lenin:

. . . people will gradually get the habit of observing the elementary rules of life together — rules known for ages and commonplace for thousand of years in all the copybooks — of observing them without violence, without constraint, without subordination — *without the special mechanism* for constraint which is called the state.²¹

These rules observed by force of habit will be the moral norms and social customs of mankind in its perfection.

21 LENIN, WORKS 21, quoted in GOLUNSKII AND STROGOVICH, *op. cit. supra* note 3, at 383.