STATE AND LAW IN MARXIST THEORY OF STATE AND LAW

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State and law are the principal topics of the marxist theory of state and law. The underlying theses of historical materialism link these two phenomena in their origins, in their historical development, and in their withering away. Theory based on this philosophy also amply discusses the functional relationships between state and law.

I cannot deal with all the aspects of state and of law in this essay since to do so would require an exposition of the whole marxist theory of state and law. I have therefore selected four topics that are interesting in the context of actual discussions concerning these political phenomena. The problems chosen are vital both within marxist theory and as points of confrontation with other theories. The theses are generally known and accepted, and therefore, I have presented my own viewpoint on many of the issues. The topics are: the role of definition in legal theory, the definition of state, the definition of law, and the relation of state and law to social classes. This last topic is the cornerstone of the marxist theory and the target of criticisms launched from many directions.

I. THE ROLE OF DEFINITION OF LAW AND STATE IN LEGAL AND SOCIAL PHILOSOPHY

The role of definition of state and law in legal and social philosophy is controversial. The divergent approaches to solution of this problem reflect the broader issues of general methodology and philosophical conceptions which are the basis for or are implied by the different solutions. For the purposes of this essay it is sufficient to identify and briefly describe two basic approaches to definition.1

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The first is the essentialist approach. Based on a methodological conception of definition as built from an ontology of essences, this approach holds that the definition should be a real definition stating the essence of the defined object (the definiendum). Thus a definition is a sentence that can be either true or false. Rather than the preliminary condition of inquiry it is the supreme achievement of theory. It expresses basic truth concerning the essential answer to the question "What is the State?" or "What is the Law?" The essentialist conception of real definitions has its roots in classic philosophy. Apropos our present purpose this approach presents the following problems: How can one determine the essence or essential properties of the definiendum? How can one avoid a definition that is merely a maximally condensed theory of the definiendum? And how can one avoid the controversies concerning essences, if one accepts neither the alternate conventionalist approach nor the functionalist negligence in defining the studied phenomena for the sake of inquiring how they work?

In opposition to the essentialist approach is the nominalist or conventionalist treatment of definition. According to this approach definition is a mere convention used to replace a longer set of words (the definiens) by a shorter one (the definiendum). It is a purely linguistic operation implying not philosophy but convenience. Defining is a purely technical operation without any pretensions to grasp any essential properties of the definiendum. A definition is neither true nor false, it is judged according to its operational qualities in a given language. A nominal definition presents only the problem of whether it is functionally satisfying in the linguistic context in which it operates.

Each type of definition serves a certain purpose. The real essentialist definition aims at grasping the essence of the definiendum and thus becomes a fundamental part of the theory of the defined phenomenon. Nominal definitions seek to facilitate research and analysis by providing convenient linguistic tools. A definition must be examined to decide whether it realizes its assigned goal or, in other words, what is its real function.

These elementary features of the goals and functions of definition are complicated by the fact that definitions may be constructed to persuade or that definitions not constructed to per-
suade may have persuasive functions. Construction of a persuasive definition is a technique of argumentation aimed at enforcing certain ideas or changing or strengthening certain attitudes. Although it is difficult to imagine a political doctrine or ethical creed that does not use this technique, its use in scientific discourse can be explained only by axiological involvement of the topic and rather loose attachment of the adjective "scientific" to this discourse.

Even without the conscious use of argumentative techniques the definitions in social sciences can have persuasive functions. This occurs when either the *definiendum* or the *definiens* or both have an emotive meaning in ordinary language that influences their use in the more specialized language of a particular social science. Thus essential or nominal definitions not constructed for persuasion can nevertheless function as a tool of persuasive argumentation.

These properties of definitions are relevant for defining state and law in legal and social philosophy in general and in the marxist theory of state and law in particular. The terms defined in legal and social philosophy, or at least the key terms, do not usually have axiologically neutral meanings, for at least in ordinary language they have emotive meanings. "State," "law," "legality," "democracy," and "justice" are examples sufficient to demonstrate this trivial truth. Thus we must recognize that the definitions of these and like terms, even if not persuasively constructed, may have a persuasive function.

Expressed by a tendency to formulate real definitions and to attach great importance to defining key concepts, the dominant definitional approach of the marxist theory is the essentialist approach. This position is based on the ontological assumption of dialectical materialism that essences are inherent in reality and that these essences are accessible through the historical process of cognition. Historical materialism, which seeks to determine the essences by analyzing the origins and development of

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defined phenomena, demonstrates this approach in the area of social processes.

Real definition is very important to the marxist theory because it formulates the essence of the analyzed phenomenon and, if the definition is not explicit, it is implicit in and can be reconstructed from the way a theory uses particular terms. The need for definition cannot be avoided in spite of obvious difficulties in dealing with rather complex social phenomena.

The essentialist attitude prevailing in marxist theory is prone to treat nominal definition as a technical trick aimed at avoiding the principal issues. At the same time there is a tendency to put into definition all the features of state and law considered essential. This tendency results in rather long definitions that try to give *in nuce* the main theses of the theory. These rather long definitions cannot be used like nominal definitions because they cannot be used as tools for abbreviating discourse.¹ In my opinion a definition should at least determine the sense of the applied term, which means that the term must be defined in a way that distinguishes it from rival and rejected uses.²

Granting that the essentialist approach is fundamental, one must still take into account the possible persuasive functions of the definitions. This factor also contributes to the tendency to multiply the elements of a definition. Although there are no criteria to determine the best way to define state, law, and other key concepts for any legal and social philosophy, the problem is meaningful with respect to a single philosophy. We will address the problem in the particular context of marxist theory.

The symptom of this situation is a multiplicity of definitions of state and law within marxist theory. A comparison of these definitions demonstrates, however, that they have common elements directly determined by the basic theses of historical materialism: because state and law are elements of a superstructure, they have class characteristics and class functions. The common

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¹ See the representative four volume system on the theory of state and law 1

property of these definitions is that they are treated as real definitions. This expresses the general methodological attitude.

II. Definition of State

The definition of state is of major importance in all political sciences and in legal and social philosophy. The impact of these definitions on political controversies is likewise patent. In marxism the basic nature of state was delineated in the Communist Manifesto which described the state of that period as a state of the bourgeoisie, used by this class to exploit the workers. From this time on state has usually been defined as "a machine serving one class to keep in obedience other classes subordinated to the former" or that the state is "nothing other than the machine by which one class chokes the other." The analogy between the state and a machine for exploitation was formulated during the political fight; applied to the capitalist state it emphasized the exploitative character of the capitalist state and conversely emphasized the anti-capitalist character of the dictatorship of the proletariat. The analysis of the state in terms of class struggle served as argument in political activity and resulted in unity of theory and practice. The political involvement of the definitions of state is thus evident.

Today there are theories negating the class character of the state. One asserts that parliamentary mechanisms based on majority rule but necessarily taking into account the interests of minority are the source of the class compromise. The welfare state theories place the state above the classes protecting just interests of the poor and restricting the financial powers of the mighty. There are theories of the "modern technocratic" state, the aftermath of the technological revolution of the "technological" age ruled by a class of "modern technocrats." Although these concepts are very diverse, one thesis is common to them all: the negation of the thesis formulated in 1845 that the capitalist state is the state of domination by bourgeois class.

This cursory picture demonstrates that political ideologies are very deeply involved in the definition of the state as a class organ-

ization. Hence the definition of a state as a class phenomenon or a super-class phenomenon has a strong persuasive function on the contemporary arena of political discourse.

The marxist definitions of state always include two elements: the relation of state to the social classes and the use of coercion by the state. Although the degree of coercion and the proportion of coercive functions to non-coercive functions are historically changing, no contemporary treatment disputes the existence of a coercive element in the definition of state. The class relation is, however, the distinctive property of marxist definitions of state.7

Identifying the class properties of the state is closely related to typing states according to the class that dominates the economic, political, and ideological levels of a given society. Because economics is the decisive factor structuring the society and determining its dynamics, the economic relations of the basis, dependent on the existing techniques of production, determine the fundamental relations of the superstructure which includes the phenomena of state and law. The importance of the relations of state, law, and classes will be discussed separately because of its importance to the marxist theory of state and law.8

The definition of state within the marxist theory that I think is most helpful in understanding current thinking about this concept is the following: State is a form of political organization of a global society based on a territorially organized coercive apparatus whose functions are determined by the given society’s level of civilization and system of class relations. A brief commentary will place this tentative definition in the context of contemporary marxist theory.

Defining the state as a form of political organization stresses that analysis of the state must take into account the general theory of organization. Organization requires members with assigned roles, institutionalized patterns of behaviour based on a


8. See text at notes 6-7 supra.
necessary minimum of shared values, mechanisms to control the behaviour of its members, and the means to determine the external relations of the group to other groups. All these elements are implied by the definition of the state as a form of organization and refer to the formal legal institutions and to some informal rules of its functioning. There are many forms of political organizations if we take the term "political" in its widest meaning. The state is one of them and, for the present, the only one that can legally and legitimately coerce.

The organization is that of a global society—the society in which, roughly speaking, all the vital activities and interactions of the members take place. The concept of a global society is a product of contemporary sociological theory which contrasts the contemporary national state of the developed countries with the historical forms of societies organized as families, big families, or tribes, based primarily on the nexus of blood. Saying that a state is a kind of organization also recognizes its structural characteristics.

The state's functional characteristics are determined by the two remaining basic factors—the system of class relations and the level of civilizational development. This means that the essential relation of the state to the social classes is described by its functions. The last section of this essay will examine this class character.

The definition avoids some difficulties in applying the current definitions of state to the socialist states, for example the difficulties that arise when one argues that there are no class antagonisms. At the same time the definition avoids the oversimplification of treating all state functions as class-dependent, for several of the state's functions depend on the level of civilizational development and are, therefore, common to all states at the same level. Although certainly it cannot satisfy all viewpoints presented in theoretical writings, the given definition satisfies all the essentialist requirements and is sufficiently rich to fulfill the expectations of the firm traditions of marxist theory.

III. Definition of Law

In contemporary legal philosophy the problems of the definition of law are even more complicated than those of the definition
of state. The problem of the class character of the law is strictly analogous to the problem of the class character of the state and, therefore, the same factors influence the discussion. Additional complications ensue due to theoretical problems in identifying law as a certain type of phenomena and due to the greater philosophizing on law—at least in contemporary theoretical writings—than on state. These problems have produced notorious disputes over the definition of law that sometimes result in an apparent renunciation of any attempt to define this theoretically elusive but socially very real phenomenon. In addition to the basic opposition between law as fact and law as norm (or more strictly as a system of norms) some attempts at definition approach law on various levels as a complex phenomenon combining norms, facts, and even values.

Considering these difficulties it is more fruitful to analyze the definitions of law in marxist theory in a somewhat different manner than the definition of state. I shall start by giving the definition of law that in my opinion is appropriate for the present marxist theory and then analyze the definitions of law as norm and law as fact stressing the peculiarities of these approaches with respect to the given definition. I will not deal with the class character of the law because the definition refers to the concept of state and some aspects of this problem will be discussed later.

The definition is this: Law is a system of norms that is genetically and functionally related to the activity of the state and whose functions are determined by the class relations and the level of civilizational development of the society in which it operates.

The definition refers to the state. According to the elementary theses of historical materialism the genetic processes of law and of state are determined by the same factors and the two are func-

10. See, e.g., OBSCZAJA, supra note 4, at ch. X; S. EHRlich, supra note 7, at ch. IV.
11. See text at notes 6-7 supra.
12. See text at notes 52-55 infra.
tionally dependent both historically and in the future. Their common origins and functions are indicated by the same description of their functions justified in the same way in each definition.

The definition includes *in nuce* a multi-level approach to law. Law treated as a system of norms implies the linguistic analysis of rules, its relation with state in performance of determined functions implies analysis as a social phenomenon. Hence, in its functional aspect law has been treated as a socio-psychological phenomenon, analyzed on the levels of sociology and psychology.

There are vital problems concerning the complexity of law and the methodology of its research that, in my opinion, have not been satisfactorily resolved. These are, however, separate problems of ontology, epistemology, and methodology of law which are not appropriately discussed in this essay. The outlines of a solution do, however, appear in the following discussion of selected conceptions of the law as norm and law as fact.

There are many definitions of law as norm. These definitions all treat law as a system of ought-rules formulated in a determined language. This “ought” is broadly construed to cover all normative modalities expressed in legal texts. Legal science is treated as a science concerning legal norms.

The theories of the “law as norm” are, in spite of their common “ought” denominator, very strongly differentiated. The place of marxist theory within this group can best be understood by contrasting it with three of these theories: legal normativism, natural law theories, and the egological theory. I will outline only the features of these theories that are necessary to clarify the concept of law in the definition given above. This means, of course, simplification but simplification that, because we are aware of it, should not be dangerous.

Normativism is the ultimate example of the way of thinking formerly expressed by continental legal positivism. The Pure Theory of Law as a theoretical science is the science of legal

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norms. The legal norm is the object of this science and justifies its methodological status. The legal norm in the normativist conceptual framework is a linguistic ought-statement formulating the specific relation of imputation and ascription. The analysis of a norm must take place exclusively on a logico-semiotic level. The normativist science of legal norms deals primarily with problems of the elaboration of the conceptual apparatus necessary for cognition of any positive law and convenient for any systematization of this law. Problems of factual operation of law are rejected as sociological or psychological, problems of decision-making (e.g., decision-making in the creation or application of law) are rejected or superficially treated as dealing with the problems of content and evaluation. Problems of the criticism of law are rejected as unscientific evaluative activities stemming from the criticized natural law tradition. This normativist legal theory, as a theory of legal norm, is a strictly one-level reductionist approach to the linguistic expressions of the formal ought.

Natural law theory is an example of an evaluative theory of law. At least in some of its forms it treats law as norms that must be evaluated and assumes that there are true solutions for all decisional problems involving evaluations. Positive law is composed of norms created and applied according to the rules of just natural law. In the classic versions of natural law these rules of just law are absolute; they do not depend on the historical circumstances in which they are “discovered.” Normativism rejects the evaluative approach to legal norm exemplified by natural law because according to normativism evaluation lies outside the scope of science which assumes emotive theory of value. Egology rejects the evaluative approach because there is no proper ontological basis for natural law. Marxist theory rejects it because of the historical relativity of values and marxist acceptance of the legal science model.

19. Cf. H. Kelsen, supra note 17, at ch. VIII.
22. Cf. Opalek & Wróblewski, Axiology: Dilemma Between Legal Positivism and
The egological theory of law is based on phenomenology and existentialism\(^\text{23}\) and therefore has at its command an ontology and axiology permitting it to formulate propositions, value judgments, and norms and to assert their truth or falsity. Egology is interested in the formulation of eidetic truth. This theory conceives legal norms specifically as the meaning of human conduct in intersubjective interference. This kind of conduct eidetically is law, and the legal norm is only a meaning assigned to this conduct specifying its normative status.\(^\text{24}\) Egology rejects normativism as a whole theory of law but accepts it as a logic of law; it rejects natural law as not properly philosophically grounded. The acceptance of the egological idea of legal norm wholly depends on the acceptance of its philosophical foundations—this is a true example of a theory expressing a philosophical attitude.\(^\text{25}\)

Summarizing the issue: Normativism treats the legal norm as an ought-statement analyzed exclusively on a logico-semiotic level and treats it as the object of legal science. Natural law doctrine postulates the evaluative treatment of norms of positive law treating its criteria of evaluation as discovered and deduced from fact. Egology treats norm as the concept (meaning) with which one cognizes law, which is a fact of specially qualified conduct. All of these theories define law as norm, but are wholly different.

The concept of “law as fact” is very widely accepted. There is only one theory explicitly and almost consequently rejecting the “law as fact” approach, that is the normativism of Kelsen based on the ontological, epistemological, and methodological dichotomy of the Is and Ought. But there are many theories treating law as fact. Let us take for example American and Scandinavian realism and the psychological theory of Petrazycki.

American realism treats law as fact in opposition to the formalist traditions of the common law and its application in the way called by Llewellyn “the Formal Style.” There are many


\(^\text{25}\) Wróblewski, L’attitude Philosophique et L’attitude Aphilosophique dans La Théorie Contemporaine du Droit (Philosophical and the Aphilosophical Attitude in Contemporary Legal Theory), 11 Archives de Philosophie du Droit 266 (1966).
facts connected with law, but the standard opinion is that the fact is the behavior of men connected with law, for example, judges, sheriffs, and other officials. The highest position is that of a judge and therefore law is defined as the behavior of the judge or as the prediction of judicial decisions, the verbal results of the judge’s behavior.\textsuperscript{26}

The treatment of law as behavior implies that for legal analysis one should use the methods and techniques adapted for this kind of research—those of the behavioral sciences. In fact these techniques are extensively used in empirical research dealing with the judge’s activities and lead to some rapprochement with the quantitative techniques of empirical sociology. The worth of this approach and of the results obtained is, however, very controversial, and the postulates of jurimetrics are often challenged.\textsuperscript{27}

The realist concept of law, especially in radical formulations, satisfies neither theoretical nor practical needs (those of the “bad man” aside). Law cannot even partially guide decision-making if it is defined as decision-making or its prognosis. Practically the extreme versions of the law as fact theory undermine the elementary demands for stability of law and evoke criticisms even within the realist movement. Hence, the compromises do not neglect the “normative side” of law. The three concepts of law put forth in Pound’s sociological jurisprudence, for example, take into account the negative effects of the one-sided approach of certain realists.\textsuperscript{28} One had to add that to speak of law as a kind of behavior does not determine the used concept of law. The behavior in question can be treated in the perspective of empirically oriented behavioral sciences (as in the realist movement) or as a cultural phenomenon (as in the egological theory\textsuperscript{29}). Treated in the culturalist framework, law as behavior demands, of course,

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\item For the classic formulation see Holmes, \textit{The Path of the Law}, in \textit{The Holmes Reader} 59 (1955); K.N. Llewellyn, \textit{The Bramble Bush} 8-10, 12 (2d ed. 1961). As to this concept of law see, e.g., J. Kowalski, \textit{Funkcionalizm w Prawie Amerykańskim} ch. III (1960) (\textit{Functionalism in American Law}); K. Opalek & J. Wroblewski, \textit{Współczesna Teoria i Socjologia Prawa w Stanach Zjednoczonych Ameryki Północnej} 158, 175, 183 (1963) (\textit{Contemporary Sociology and Theory of Law in the United States of America}).
\item See K. Opalek & J. Wroblewski, supra note 26, at chs. IV, V; Lang, Malinowski, & Mrozek, \textit{Prawometria i Jej Zastosowania w Badaniu, Tworzeniu i Stosowaniu Prawa (Jurimetrics and Its Use In Research, Law-Making and Law-Applying)}, 7 \textit{PANSTWO i PRAWO} 17 (1972).
\item Cf. 2 R. Pound, \textit{Jurisprudence} 104-06, 123 (1959).
\item See text at notes 24-26 supra.
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no quantitative techniques, but evaluative culturalist understanding.

Scandinavian realism, as American realism, starts from the revolt against the traditional positivist thinking. This realism rejects the concept of law as a norm or a command, but is stronger in criticism than in positive formulation. One member of the Scandinavian school states that it is difficult to define law in a compact formula and therefore defines it rather loosely as “independent imperatives” which function by means of the stabilized human convictions concerning rights and duties and the existence and functioning of state institutions operating with law, that is to say, by means of the functioning of the whole state machinery. Another describes law as a set of socio-psychological phenomena and norms that determine the use of coercion and the competences of the state organs, which in turn influence the shaping of attitudes toward law. In this approach one sees clearly that the concept of law is coupled with a normative element. In this respect, these conceptions, in spite of their emphasis on law as fact, are not one-sided, as is their opposite, legal normativism.

The third example of a theory treating law as fact is found in the writings of Petrazycki. In his theory law is a psychological phenomenon which has to be investigated by the methods and techniques proper for psychology. Petrazycki is commonly thought of as espousing a rather one-sided psychological analysis of law. There are, however, in his writings some interesting suggestions regarding the sociological aspects of the “legal emotions.” Treating law as a special imperative-attributive emotion, Petrazycki rejects the concept of law as a norm, and especially as a norm connected with state coercion. For him the law functioning in the state is only a peculiar kind of law, one not fit to be an object of a scientific theory. The legal norm is treated as a “projection” of legal emotions and can be analyzed for the sake of practical needs but not as the object of legal science. The

33. See L. Petrazycki, Wstęp do Nauki o Prawie i Moralności §§ 3, 16 (2d ed. 1959) (INTRODUCTION TO THE SCIENCE OF LAW AND MORALITY); 1 L. Petrazycki, Teoria Prawa i Państwa chs. I, II (1959) (THEORY OF LAW AND STATE); cf. J. Kowalski, Psychologiczna
following elaboration of Petrazycki’s theory leads to the multi-
aspect approach to law as emotion, as its linguistic projection (a
norm), and as its sociological counterpart in mass behavior of
norm addressees.34

In the marxist theory there were and are tendencies to define
the law as norm and as fact. The latter conceptions dominated
in the past when law was treated as a kind of social relation.
There is no room here to describe these attempts.35 There has also
been a recent attempt to treat law in a somewhat similar man-
ner.36 The dominant position, however, is that of defining law as
a system of norms.37 This kind of definition, however, is
linked—at least in Polish theory—with the multi-level approach
to legal norms.38

Roughly speaking the postulated approach to law, defined as
a system of norms but combining the treatment of law as norm
and as fact, can be summarized in the following way: Law is a
system of the rules of due behaviour (legal norms). Each rule is
expressed in a determined legal language and consists of com-
plexes of signs having a meaning, constructed according to the

34. See Wróblewski, Jerzy Lande jako teoretyk prawa (Jerzy Lande as a Theoretician

35. Compare M.A. Rejsner, Teoria L. Petrazackiego, Marksizm i Socialnaja
Ideologija (1908) (Theory of Petrazycki, Marxism and Social Ideology) and M.A. Rei-
sner, Pravo, Nasze Pravo, Czuj-que Pravo, Obszczije Pravo (1925) (Law, Our Law,
Foreign Law, Community Law), with Izbrannyje Proizwiedzenia po Marksistsko-
Leninskoj Teorii Prawa (P.I. Stuczka ed. 1964) (Selected Works on the Marxist-
Leninist Theory of Law) and E.B. Paszukanis, Algemeine Rechtslehre und Marxismus
(1929) (General Legal Theory in Marxism). Compare Obszczaja, supra note 4, at ch.
(Legal Philosophy in U.S. 1917-1953) and the review by Wróblewski, in 2 Panstwo i
Prawo 319 (1967).

36. I.F. Mikolenko, Pravo i Formy Jego Przejawienia (Law and the Forms of Its
Manifestation), 7 Sojuzskoj Gosudarstwo 47 (1965). For a criticism see D.A. Kerimow,
P.E. Nedsbaj, L.S. Samoszchenko, L.S. Jawicz, Kwoprosu o Oprziedleni Ponijotja
Socialisticeskogo Prava (On the Problem of Defining Socialist Law), 2 Izwiestyja Wysszy-

37. See Wróblewski, supra note 16, passim. See also a specific construction in J.
Kowalski, Teoretyczne Problemy Normy i Stosunku Prawnego (Theoretical Problems of
Norm and Legal Relations), 37 Studia Prawnicze 37 (1973).

38. Compare Wróblewski. supra note 16, with K. Opalek, supra note 33, at ch. III.
See also Wróblewski, Prawo i Piaszczyny Jego Badania (Law and Levels of Legal
rules of sense proper to the language. 39

A legal norm is a social fact: it is purposefully stated by men aiming to realize socially determined goals. The goals of law and the ways in which these goals are realized are determined by a set of factors, among which economic factors and the class structures on which they depend play a dominant role. The relations between these factors and social norms conceived of as phenomena of socio-psychological reality can be intersubjectively verified.

Legal norms operate within a society by determining the patterns of due behavior thus prescribing the ways in which the determined classes of persons ought to behave and at the same time classifying types of situations that give rise to duties or rights under the state apparatus. For legal norms to function they must be understood by those who must consider them in their cognitive and motivational processes. This is why one can also treat legal norms as the content of certain psychical processes of given groups of men (e.g., of the lawmakers, of the law-appliers, and of the addressees of the norm).

Last but not least a legal norm is a means of purposefully influencing social relations and, thus, can be examined with respect to its effectiveness and its conformity with extra-legal norms or values that operate in the same socio-political context in which law is created and is functioning. Law as a system of legal norms is thus a complex phenomenon. Its complexity is an inherent quality of the reality of law, which as a whole belongs to one ontological category determined by historical materialism. 40 This complexity means that on the methodological level one should use the methods and techniques proper in analyzing all levels of the complex phenomenon; that is to say, the tools proper to logico-semiotic, sociological, and psychological research depending on the legal problems one examines.

IV. LAW AND STATE AND SOCIAL CLASSES

The problem discussed in this section is one of the crucial controversies concerning the definition of state and law. Marxism

40. Wróblewski, supra note 15, at 845.
posits the class character of both phenomena. The concept of a social class, outlined in the classic writings of Marx and Engels, is based on the relation of a social group to the means of production and is expressed in ownership.\(^{41}\) Each of the pre-socialist socio-economic formations have separated two basic and opposed classes. This dichotomic model has been the starting point for every macro-sociological analysis based on historical materialism.

The dychotomic concept of class structure has been challenged in many ways—the criteria determining the classes have been much discussed and the conceptions of social stratification have been critically analyzed.\(^{42}\) It is the task of sociology to identify more precisely the fundamental categories of the structure of contemporary society and to refine the basic class dichotomy by identifying inner class stratification and social strata not part of any particular social class but used politically by each of them. The basic dichotomies are an essential tool of explanation, but more detailed analysis cannot rest on this level of generality. Even in the first period of evolution of marxist thought, the class of capitalists was divided into several sub-groups with different interests, different functions, and different political aspirations. In the contemporary world, the role of intelligentsia, which is not a class but a powerful, continuously growing group, has to be considered by any sociological theory, not to mention its crucial importance to the ideologies of the new ruling class in the "technological era."\(^{43}\)

The sociological discussions concerning the structuralization of contemporary society do not change the basic thesis of the marxist theory of state and law. The theory operates upon the classic notion of dichotomic classes: The state is always a state

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41. See, e.g., from the basic Polish philosophical and sociological literature Filozofia Marksistsowska ch. X (2d ed. 1971) (Marxist Philosophy); S. Kozyr-Kowalski & J. Ladosz, Dialektyka a Spoleczenstwo chs. IV-VI (2d ed. 1974) (Dialectics and Society); J. Wiater, Spoleczenstwo chs. VI, VII (5th ed. 1953) (Society); J. Wiater, Marksistsowska Teoria Rozwoju Spolecznego chs. V, VI (1973) (Marxist Theory of Social Development).


43. For a marxist criticism of technocratic ideologies see, e.g., G.W. Ospow, Technika i Postep Spoleczny chs. V, VI (1961) (Technics and Social Progress).
of a dominant class and, anthropomorphically speaking, the positive law is "an expression of the will and interests" of this class. The internal differentiation of the classes do influence all political phenomena and are essential in analyzing their functions, but the differentiation does not touch the theses of basis-superstructure relations asserted in historical materialism.

I will discuss two topics vital to the understanding of the class character of state and law. The first is the relation of the ruling group to the class character of the state; the second is the verification of the class character of law through an examination of the socialist legal system's use of "old law."

The state, according to the definition discussed above, is functionally related to the dominant class. The class dominates the economic system because it owns the principal means of production. Political domination results from economic domination, and the class seeks to preserve its position by political means, especially by the convenient organization and functioning of the state machinery and by the system of legal rules, which in principle can be enforced by coercion monopolized by the state. This general schema is both a historical and genetic explanation of the class character of state power and a basis from which to consider the future of the state and law.

In particular, we are interested in one of the problems concerning the class character of the state, namely, the concept of the ruling group, recently discussed in Polish legal theory. Close analysis of the state's functions demands introduction of the concept of a ruling group as a group that determines the shaping of highly important operational political decisions. In order to use this concept we must understand the relation of this group to the dominant class. It is clear that neither the dominant class as a whole nor its majority is an operational decisionmaker. The operational decisionmaker is a ruling group consisting of persons belonging to the narrower social groups that are in certain relations with the basic social classes. This narrower group "rules" by shaping the important decisions that guide the use of the state

44. See text at note 46 supra.
machinery. It is not necessary, however, that the decisions in question be made according to the determined formally institutionalized legal procedures. Therefore, we must separate the loose general notion of class dominance from the concept of ruling in the large and informal sense.

The concept of the ruling group is based on functional criteria. The men belonging to this group are actively shaping the sufficiently relevant decisions. The term "shaping" is purposefully loose in order to include decision-making as well as decisively influencing the decisions made outside the ruling group. The decisions in question are not strictly defined because what decisions are important depends on what decisions are crucial in the concrete situation to the functioning of the state as a whole. Because current observations are not always sufficient, deciding what decisions define the ruling group may require a proper historical perspective.

The ruling group concept is a part of each class domination system. Although a part of socialist systems as well, it has not been a major subject of marxist sociological research. The concept is barely introduced, and no empirical research is available other than analyses of the workings of the Communist Party and data concerning its membership and operation.

The ruling group's relation to the dominant class can be analyzed by examining (1) the class origins of the members of the ruling group and (2) the class interests furthered by the decisions shaped by the ruling group.

The ruling group is shaped by informal political processes; membership in the group is neither formally recognized nor granted according to any institutionalized procedure. The changing selection processes and the shifting inner structure of the group are demonstrated, for example, by C.W. Mills' analysis of the power elite.46 Other capitalist systems include similar ruling groups made up of members with common features of career and social background.

Relevant for our purposes is the fact that the members of the ruling group come from the higher strata of a society and from top positions in the political, economic, or administrative hierarchies. In marxist sociology this leads to the thesis that the

origins and the careers of the members of the ruling groups demonstrate the clearly privileged position of the members of the dominant class. Verification of this thesis, as of any empirical thesis, requires relevant data and interpretation within the framework of an adequate sociological theory. The data are in principle available. Difficulties arise, however, at the interpretative theoretical level—some marxist interpretations strongly influence contemporary sociological thinking, but other sociological theories either introduce a new concept of class based on control (the new managerial technocratic class in highly developed capitalist and socialist states) or reject the class concept entirely and substitute other criteria of social stratification (thus making dominance of the higher strata the background for the ruling group concept).

The class content of the decisions shaped by the ruling group also indicates the group's relation to the dominant class. These decisions can be characterized in terms of the interests they realize or serve. "Interest" is a key concept in contemporary sociology. In marxist sociology "interest" is understood according to its "objective meaning," that is, in the framework of the patterns of the social changes stated by the laws of historical materialism. This idea can be illustrated as follows: Activity A is in the interest class of class C if according to the stated regularities of the historical process the activity favors the development of social relations that support the domination of class C or at least favors maintenance of class C's position for a certain period of time. Accurate determination of class interest thus requires knowledge of historical regularities. This in turn requires analysis of the global activity of the ruling group for a sufficiently long period of time in order to ascertain the historical regularities. With this method of analysis one can demonstrate the class character of the decisions shaped by the ruling group. Attacks on this marxist assertion deny the regularities that form the basis for "objective meaning," or reject the class character of the activities described, either treating them as the result of a class-compromise or denying the class structure of a society as a whole.

Assessment of the class character of particular decisions is more complicated. The difficulty is that _ex hypothesi_ the decisions shaped by the ruling group have results as divergent as they
are diffuse in time and space. The standard example is a vital economic decision such as the decision to make large investments in relatively less developed and less urbanized areas. In the long run the effects of this decision can include emergence of new patterns of life and destruction of traditional ones, and changes in jobs, agglomerations and ecological and environmental conditions. The same divergent and distant effects can flow from decisions involving the state as a whole or influencing international relations. The multiplicity of results, their interactions, and long-range effects often make it difficult to ascribe to these decisions a single interest or to identify the interest according to class. Some decisions can easily be "classified" but others, because of the complexity of the various interests in the given society, are more difficult.

In spite of the evident difficulties in classifying concrete decisions, on a global scale the decisions shaped by the ruling group have a definite trend in terms of objective class interests. As a rule, the decisions are shaped in the interests of the dominant class as a whole, but particular decisions may be the product of other, narrower interests.

Thus the ruling group has a certain autonomy in shaping decisions; it may take into account the interests of different subgroups within the dominant class and their competition for particular national and international decisions. Although the foundations of the system within which the ruling group operates must be maintained, these foundations do not determine each decision. The relative autonomy of the ruling group that results is expressed in the fact that concrete decisions shaped by this group can pass over the actual opinions of the dominant class. The degree of autonomy depends on concrete circumstances and the features of the particular historical period. In contemporary highly developed states, the decisions in question depend to a high degree on the opinions of managerial groups. These groups have relatively great autonomy and exert a strong influence on the state’s policy. It is this objective factor that prompts various technocratic ideologies and ideas of an emerging new class of neither capitalist nor socialist character.

Ruling groups are related to the political system in many

47. For the socialist society, see W. WESOLOWSKI, supra note 42, at ch. IV.
ways. The ruling group neither belongs to the institutionalized state apparatus nor participates in the formal processes of decisionmaking, but does shape the decisions and influences the decisionmakers. The links with political parties and pressure groups are clear. Political sociology analyzes the degree to which the ruling group is relatively closed or open to outside groups, their attitudes, and ideologies. The tendency of sociology to characterize the ruling group in terms of elitism and oligarchy is prompted by theories that substitute the struggle of elites for the struggle of classes. The features of the ruling group, and especially the degree of its closedness, are examined in terms of democratic principles—whether and in what a degree these groups can informally represent democratically formulated attitudes and opinions and what are the possibilities of democratic participation in these groups. The analysis of concrete phenomena belongs to the sociology of politics. The democratic character of the ruling group depends on the structure and operation of the particular political system and especially of the party systems and the activities of the pressure groups. From this standpoint there are basic differences between the features of ruling groups in contemporary socialist and capitalist systems. One can say in summary that the existence of the ruling group can be explained in terms of the class analysis of the political processes and can aid deeper analysis of the class character of law and state.

The class character of the state is also revealed in the functions of the state. In the marxist theory these functions are generally understood as the general tendency of the global results of the activities of state organs. State functions have been variously classified for the purpose of concrete research. The interesting typology for our present question focuses on the functions that continue class domination and that protect the state as a whole. The first has always been an important part of marxist theory;

48. The typical enumeration singles out the following functions: internal, external, economic and organizational, cultural and educational. See, e.g., S. Ehrlich, supra note 7, at ch. V; Filozofia Marksistowska ch. XI, § 5 (2d ed. 1971); J. Kowalski, supra note 7, at ch. IV; A. Lopatka, supra note 7, at ch. V; Obszczaja, supra note 4, at ch. V.

analysis of the latter is, however, relatively recent. Because of its position, the dominant class has certain of its functions determined by the society's stage of civilizational development. In spite of internal class antagonisms the global society is a social whole and the historically changing conditions for its existence demand that the state perform certain functions. This is the minimum that must be done by any dominant class. Especially in today's world some patent exigencies of civilizational development are necessarily in the interests of each global society and even of the international community as a whole. In this respect there is no comparison between the present and past because the rate of development and the potentialities of the contemporary "technological revolution" have no previous analogies. Certainly there is no precedent for the present potential to destroy both man and his environment. Minimum provisions for health, education, and protection of environment is necessary for the existence of each global society organized as a state and for the existence of mankind.

The class character of law can also be analyzed from the point of view of the functions of law. In marxist theory, however, the functions are generally treated as the realization of the functions of the state. Nevertheless, one can analyze the means by which the law functions by separating the homeostatic and instrumental goals the law serves and by relating these functions to some values assigned the application of law.50 These topics are, however, beyond the scope of the present essay, and we limit ourselves to an example demonstrating the class function of law—the use of "old law" in a new system.

The problem is embodied in the evolution of Polish law. Analogous phenomena have arisen in all the people's democracies in which some norms of the "old law," law enacted before the Second World War, have been incorporated in the new socialist system of law. The theoretical basis of the problem can be briefly stated as follows: If the law has a class character (the "will of the dominant class"), then how can a socialist system contain norms enacted under a capitalist system?

50. See Wróblewski, An Outline of the Principal Problems of the Relations Between Law and Cybernetics, 2 BULLETIN DI CENTRO DI GIUSCIBERNETICA DELL’UNIVERSITA DI TORINO § 5 (1970); Wróblewski, Funkcje Prawa a Pownosc Prawna (Functions of Law and Legal Certainty), 13 STUDIA PRAWNO-EKONOMICZNE 7 (1974).
Some states have rejected all norms of the "old law," the classic example is the Soviet Union. This situation poses no theoretical problem, although in practice socialist legal consciousness had to serve as a guide for human behavior until new law could be enacted.

In Poland the situation was more complicated because the "old law," that in force before the occupation of Poland in September 1939, was never totally disestablished. In theory and in practice the validity of the "old law" was accepted with the exception of: (1) the Constitution of 1935, viewed as a fascist enactment; (2) laws enacted after April 23, 1935, treated as void because predicated on the 1935 Constitution; (3) the legal provisions superseded either explicitly or implicitly by legal provisions subsequent to September 21, 1945, the date of the Manifest of the Polish Committee of National Liberation; (4) provisions no longer applied because contrary to the socio-political and economic principles of the new system.51 The main problem of legal practice was assessing situations in the last category. It was stated that

provisions enacted in bourgeois Poland ought not be . . . applied if disposition [of the case according to those provisions] manifestly cannot be reconciled with the principles of the constitution and the goals of the People's State; if this kind of situation occurs, the impossibility of the application of a concrete provision is a result of the principle of legality in spite of lack of a formal derogation.52

Thus the class character of the state directly influences the validity of legal norms. The class character of the state also causes a more intricate problem, the old norms accepted by the new system may change in meaning if:53

(1) the principles of the present legal system change;
(2) old rules influencing legal provisions are amended;
(3) legal provisions referred to in interpreted provisions are changed;
(4) extra-legal evaluations and rules change;

52. Resolution of the Whole Civil House of the Polish Supreme Court of 12.II.1955.
53. For an analysis and examples of judicial decisions see J. Wróblewski, Zagadnienia Teorii Wykładni Prawa Ludowego ch. VI, § 4 (1959) (Problems of the Theory of Interpretation of the People's Law).
(5) the socio-political and economic situation that forms the basis for the principles of the present legal system change. The result of (2) and (3) is clear. Let us therefore comment on the remaining situations.

One example of a change of principle causing a change of meaning (1) is the interpretation of the provisions concerning extra pay for over-time work under a December 18, 1919, statute. Under the "old system" the Polish Supreme Court held that an employee must demonstrate the unjust enrichment of the employer in order to recover; in the "new system," in which work is highly protected by the state, the interpretation of the provisions has been radically changed. The employee has only to demonstrate: (1) that he worked a certain number of extra hours and (2) that either the employer ordered the work or knew the employee worked overtime.54

Changes in extra-legal social evaluations and rules influence the understanding of legal norms (4). Much discussed is the evolution of the interpretation of the term "strong effect" in provisions of the Penal Code of 1932. It was originally considered a circumstance mitigating the penalty. For a long time the Polish Supreme Court interpreted this term to include only those effects not contradictory to the principles of socialist morality. This interpretation changed when the court held that the term has no evaluative moral meaning but only denotes the intensity of the effect measured by descriptive psychological scale.55 In this case the impact of extra-legal factors was so strong that it changed the type of meaning—evaluative for descriptive—of the interpreted term. There are many general phrases, "important reason," for example, that refer to these changing extra-legal rules and evaluations which are clearly connected with the socialist axiological framework.

Changes in the socio-political and economic situation are explicitly incorporated in Polish statutory provisions containing interpretative directives. Thus, in the Polish Civil Code of 1964

54. Decision of the Polish Supreme Court 28.II.1950.
it was stated that "legal provisions of civil law ought to be interpreted and applied in conformance with the principles of the constitution and the goals of the People's State." This provision clearly directs that interpretation take into account the actual socio-political context and thus directs a "qualitative" change in the "old law" incorporated into the new system.

Determining the changed meaning of "old law" has obvious drawbacks; it makes it difficult to maintain the uniformity of judicial decisionmaking and thus undermines stability and predictability of decision and the effectiveness of legal regulation. The remedy is to enact new law more in line with current needs. Recent codification of all the principle areas of Polish law has satisfied these needs.

Theoretically, the changed meaning of "old law" was explained by the manipulation of the content and form of legal norms. Simplifying the issue, one can state that the norms in the system of "new law" fell into the following groups: (1) new norms enacted by the People's State; (2) "old norms" not changed in meaning (the pattern of due behavior) but changed in function in the new context; (3) "old norms" changed both in function and in meaning without change in form (the "letter of law"); and (4) "old norms" changed by amendment.

The change in "old law" when incorporated in a new system illustrates class involvement in the operation of law because the decisive factor leading to change in law is the change of the type of state in which the law functions.
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