

Marxist jurisprudence in the former soviet union: a critical appraisal

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Resumo

O marxismo foi a teoria e a fé dos fundadores da primeira sociedade moderna comunista: a antiga União Soviética. Funcionou como o objetivo ideológico e autojustificação de todo o experimento soviético. Este artigo analisa criticamente o sistema jurídico soviético e explica como a teoria jurídica marxista foi desenvolvida e aplicada durante a União Soviética.

Palavras-chave: Marxismo. União Soviética. Sistema Jurídico Soviético. Ideologia.

Abstract

Marxism was the theory and faith of the founders of the first modern communist society: the former Soviet Union. It functioned there as the ideological goal and self-justification of the entire Soviet experiment. This article critically analyses the former Soviet legal system and explains how Marxist jurisprudence was developed and applied during the Soviet Union.

Word-Keys: Marxism. Soviet Union. Soviet Legal System. Ideology.

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Introduction

Karl Marx believed the final advent of communism required ‘a period in which the state must be nothing but the revolutionary dictatorship of the proletariat’.² For him, dictatorship was the only way the ideal of communism could be advanced. This was the official doctrine in the Soviet Union after its emergence in 1917. Also made official was the Marxist theory that law is an instrument of oppression and only a reflection of existing economic forces, and that once a more perfect form of communist society were achieved the state and its legal and institutional apparatuses somehow would disappear.³ This article performs a critical analysis of Marxist jurisprudence as it was understood and applied over the seven decades of the Soviet Union, a country that claimed Marxism as its official ideology.

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² Karl Marx, *Critique of the Gotha Programme*. Cited in Maureen Cain and Alan Hunt (ed.), *Marx and Engels on Law* (London: Academic Press, 1979), 163.

³ J.M. Kelly, *A Short History of Western Legal Theory* (Oxford: Oxford University Press, 1991), 357.

Marxist jurisprudence in the former Soviet Union

In a normative sense all the most prominent jurists in the former Soviet Union considered the mere existence of law ‘a theoretically inconvenient fact’.⁴ They maintained that the rule of law was an objectionable bourgeois notion that served to mask economic inequalities and to cripple the power of the socialist state.⁵ In *The General Theory of Law and Marxism* (1924), the leading Soviet jurist Evgeny Pashukanis (1891-1937) contended that the ‘excessive’ neutrality and formality of the rule of law served as a mask to the ‘hegemonic’ underpinnings of the ‘bourgeois legality’. For Pashukanis, the rule of law is no more than ‘a mirage, but one which suits the bourgeois very well, for it replaces withered religious ideology and conceals the fact of the bourgeoisie’s hegemony from the eyes of the masses’.⁶

Through his political writings Marx often commented on the importance of law for the formation, organisation and maintenance of the capitalist modes of production and social relations. Pashukanis built his entire jurisprudence on the basis of such assumptions. His ‘Commodity Exchange Theory of Law’ asserts that, in the organization of human societies, the economic factor is paramount and that, as a result, legal and moral rules are a mere reflection of the economic forces operating at each social context. When communism achieved its final stage of development, Pashukanis concluded, not only the state and its laws would disappear, but all moral principles should also cease to perform any practical function.

384 Curiously, Vladimir Lenin (1870-1924), the main leader of the 1917 October Revolution and first Head of State of the Soviet Union, was a lawyer who had practiced law in the Volga River port of Samara. This was so before Lenin moved to St Petersburg, in 1893, to pursue his career as a political agitator. Although being a lawyer, Lenin despised the rule of law and believed, as he himself put it, that ‘the revolutionary

⁴ Igor Grazin, ‘The Role of Ideas in Political Change’, in S. Ratnapala and G.A. Moens (eds), *Jurisprudence of Liberty* (Sydney/NSW: Butterworths, 1996), 249.

⁵ R.C. van Caenegem, *An Historical Introduction to Western Constitutional Law* (Cambridge: Cambridge University Press, 1995), 260.

⁶ The entire passage in Pashukanis’ book read as follows: “*The constitutional state (Rechtsstaat) is a mirage, but one which suits the bourgeois very well, for it replaces withered religious ideology and conceals the fact of the bourgeoisie’s hegemony from the eyes of the masses... The free and equal owners of commodities who meet in the market are free and equal only in the abstract relations of appropriation and alienation. In real life, they are bound by various ties of mutual dependence. Examples of this are the retailer and the wholesaler, the peasant and the landowner, the ruined debtor and his creditor, the proletarian and the capitalist. All these innumerable relationships of actual dependence form the real basis of state structure, whereas for the juridical [i.e. the conventional Rechtsstaat-related] theory of the state it is as if they did not exist... One must, therefore, bear in mind that morality, law, and the state are forms of bourgeois society. The proletariat may well have to utilise these forms, but that in no way implies that they could be developed further or be permeated by a socialist content. These forms are incapable of absorbing this content and must wither away in an inverse ratio with the extent to which this content becomes reality. Nevertheless, in the present transition period the proletariat will of necessity exploit this form inherited from bourgeois society in its own interest. To do this, however, the proletariat must above all have an absolutely clear idea – freed of all ideological haziness – of the historical origin of these forms. The proletariat must take a soberly critical attitude, not only towards the bourgeois state and bourgeois morality, but also towards their own state and their own morality. Phrased differently they must be aware that both the existence and the disappearance of these forms are historically necessary*”. Evgeny Pashukanis, *Law and Marxism* (1978), 143-60. Cited in Kelly, above n.2, 358.