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Marxism and the Failure of Environmental Protection in Eastern Europe and the U.S.S.R.

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In 1971, at a United Nations-sponsored environmental conference in Czechoslovakia, Mayor Zdeněk Kupka of Ostrava proclaimed socialism superior to capitalism in protecting the environment. Pointing first to the old capitalist-era factories belching plumes of black smoke and then to the newer and apparently cleaner factories built by the socialist government, he announced, "the new system is solving the city's environmental problems."¹

Throughout the 1970s and into the 1980s, Mayor Kupka's sentiments echoed on both sides of the Berlin Wall. There was no denying the ecological failings of capitalism; the destructive effects of the free market were abundantly evident and well publicized in the American and European presses. On the other hand, there was scant news of environmental problems in Eastern Europe. For some, this simply confirmed an intuition that the socialist system was inherently more protective of the natural environment than capitalism.² It stood to reason: socialist industries did not operate from an environmentally harmful profit-motive; and social ownership of property, together with central economic planning, presumably ensured the rational utilization of natural resources.

But by the early 1980s, information began leaking out of the Soviet Union and Eastern Europe suggesting that the socialist countries were not immune after all from environmental crises. Government and Party officials were compelled to admit that pollution problems existed, but, they maintained, these problems were not endemic to socialism, as they were to capitalism. On the contrary, only the progress of planned socialism could and would ultimately eradicate pollution and the other undesirable effects of industrialization and economic growth.³

Then in 1986, the disaster at the Chernobyl nuclear power plant in the Soviet Ukraine aroused, despite all official efforts to hush it up, intense domestic and international scrutiny of Soviet environmental policies and practices. Complete government ownership, control and planning were not, it seemed, the absolute guarantors of environmental preservation that some had thought. Three years later all the myths about the inherent environmental superiority of socialism fell along with the Berlin Wall. Behind the iron curtain stood another curtain of poisonous smog so dense that, in some places, sunlight could

not pierce it.⁴ Between 1971, when Zdeněk Kupka declared that the socialist system was solving Ostrava's environmental problems, and 1985, sulfur dioxide concentrations in the area increased by more than fifty percent.⁵ Today Ostrava is a poisoned city situated within the most heavily polluted region on earth, the "Black Triangle" of Czechoslovakia, Poland and eastern Germany.

In the "Black Triangle" and throughout Eastern Europe and the Soviet Union, severe pollution is having a catastrophic impact on natural resources, national economies, and public health. In Poland, for example, half of all river water is unfit for industrial use, let alone human consumption; in the medieval city of Kraków the greatest collection of Renaissance architecture in all of Europe is literally dissolving in the acid rain; sixty percent of all food produced in the Kraków region is unhealthy because of massive concentrations of metals in the soil; in the industrial region of Katowice, 40 miles to the west of Kraków, two-thirds of all ten-year-olds suffer from mental or physical disabilities due to pollution; and some Polish scientists expect that, by the year 2000, one-quarter of the entire population will develop some form of pollution-related cancer.⁶ The economic costs of Poland's ecological crisis amount to ten percent or more of annual gross national income.⁷ These truly shocking, almost inconceivable environmental statistics might appear to make Poland an extreme example, but its experience is, in fact, representative of the former Soviet Bloc as a whole.⁸ From all appearances, the environmental destruction of the socialist countries at least matches, and perhaps exceeds, anything in the experiences of the capitalist West.

The reasons for the complete and utter failure of environmental protection in socialist Eastern Europe are systemic — lack of effective legislation, poor to nonexistent environmental law enforcement, bureaucratic inflexibility, economic instability, lack of political accountability. Each of these problems has some basis in the ideology of Marx, Engels and Lenin. This article examines essential features of their political, economic and legal theories and concludes that environmental degradation was (in hindsight, of course) a predictable, if not unavoidable, consequence.

Marx, Engels and Lenin wrote little on specifically environmental matters, but much of what they wrote about economics, politics and law has indirectly (and sometimes directly) contributed to the appalling environmental conditions in the Soviet Union and Eastern Europe. I will analyze four specific elements of Marxism, each of which, in practice, has contributed to the devastation of the natural environment: (1) the relationship between man and nature; (2) the theory of social ownership of property, natural resources, and the means of production; (3) Marx's labor theory of value; (4) Marxist theories of law and state, including the dictatorship of the proletariat and the devaluation of the rule of law.

The purpose of this article is not to prove the ultimate superiority of capitalism over socialism in environmental protection — such a broad and simplistic comparison may or may not be warranted, but would not be particularly illuminating in either case. This article seeks merely to demonstrate that the Marxist theory of socialism is inherently suspect and obsolete from an environmental point of view. The implication that Marxism is not the only theory of socialism is intentional. In fact, as Professor Leszek Kołakowski has pointed out in his comprehensive intellectual history of socialism, *Main Currents of Marxism* (1978), Marxism was not the first socialism, and what goes by the name of Marxism today actually are *several* theories of socialism, some of which are associated only tenuously with the writings of Marx. It is important, therefore, to distinguish between the Marxism of Marx and the Marxism of the Marxists.⁹

This article is about what might be called, "classic" Marxism, the Marxism of Marx, his colleague Engels, and to a lesser extent, Lenin. It concludes that *their* Marxism is, in fundamental ways, intellectually incompatible with environmentalism and practically inimical to environmental protection. This is not to say that one can no longer claim to be both a "Marxist" (of sorts) and an environmentalist; only that their "Marxism" will be fundamentally different from Marx's. In other words, an environmental socialism (or eco-socialism) is necessarily post-Marxian.

I. Marx, Engels and Lenin on Man and Nature

Since the 1970s, historians, environmentalists, and political writers have shown intense interest in what Marx, Engels and Lenin thought about man's relationship to the natural environment. This is somewhat ironic as, for Marx, Lenin and, to a lesser extent, Engels,¹⁰ the natural environment was not a particularly interesting subject, except insofar as it provided a basis for man's socio-economic relations. Despite efforts by "Marxist" writers, such as Howard Parsons, to portray Marx and Engels as early ecologists or environmentalists,¹¹ it is clear that they were nothing of the kind. Their writings display a consistent economic utilitarian and anthropocentric attitude toward nature. Several of their theories are, in fact, implicitly hostile to the environment. While recognizing significantly that man is a part of nature, Marx and Engels describe the entire course of human history as an effort by man to gain dominion over nature and, thereby, become truly free. This could and would happen, they maintained, only under communism.

The concept of man's domination of nature recurs throughout their writings. In *Capital*, Vol. I, Marx wrote, "It is the necessity of bringing a natural force under the control of society, of economising, of appropriating or

subduing it on a large scale by the work of man's hand, that first plays the decisive part in the history of industry."¹² Through his industry, "[m]an 'annexes' nature to his own bodily organs. His labor is the interaction of man and nature wherein 'man of his own accord starts, regulates, and controls the material reactions between himself and Nature.'"¹³ And, according to Engels, "it is precisely the alteration of nature by men, not solely nature as such, which is the most essential and immediate basis of human thought, and it is in the measure that man has learned to change nature that his intelligence has increased."¹⁴ Admittedly, this kind of interaction between man and nature occurs under capitalism, but for Marx and Engels it is only under socialism that man achieves the goal of complete dominion over nature. In *Herr Eugen Dühring's Revolution in Science (Anti-Dühring)*, Engels wrote:

The seizure of the means of production by society puts an end to commodity production, and therewith to the domination of the product over the producer. Anarchy in social production is replaced by conscious organisation on a planned basis. The struggle for individual existence comes to an end. And at this point, in a certain sense, man finally cuts himself off from the animal world, leaves the conditions of animal existence behind him and enters conditions which are really human. The conditions of existence forming man's environment, which up to now have dominated man, at this point pass under the dominion and control of man, who now for the first time becomes the real conscious master of Nature, because and in so far as he has become master of his own social organization. The laws of his own social activity, which have hitherto confronted him as external, dominating laws of Nature, will then be applied by man with complete understanding, and hence will be dominated by man. Mens' own social organization which has hitherto stood in opposition to them as if arbitrarily decreed by Nature and history, will then become the voluntary act of men themselves. The objective, external forces which have hitherto dominated history, will then pass under the control of men themselves.¹⁵

According to Engels, the entire history of man is the struggle to overcome the external forces of nature that bind him, and to subordinate nature to serve man's purposes.

This utilitarian and anthropocentric attitude towards nature is a common trait of Marxism and nineteenth-century capitalism. As Howard Parsons notes, "Marx and Engels agreed with the capitalist 'strategem' to 'subdue' nature for 'human requirements.'"¹⁶ Like the capitalists, Marx viewed contemporary man as *homo-oeconomicus*, driven by economically-derived needs, wants and relations,¹⁷ and he shared the capitalists' faith in "the inexorable progress of science and technology which would guarantee man's eventual mastery over the

external forces of nature."¹⁸ Like Marx and Engels before him, Lenin wrote little specifically about the natural environment, but what he did write suggests that he too believed that nature's primary purpose is to serve man. His writings on the subject of natural resources development display a "rather crude economic utilitarianism," suggesting, in the words of Zigurds Zile, that "if one only digs, dams, drains, plants, breeds, and irrigates, he can satisfy humanity's needs"¹⁹ Lenin firmly embraced the classical Marxist notion that the history of man is his struggle first to grasp the laws of nature and then to consciously and rationally manipulate nature for the benefit of society.²⁰ This conception of nature "justifies classification of animal and plant life into useful and useless," as Professor Zile suggests, "[i]t can doom the wolf as nothing but trouble and elevate the carp and lamprey for their high protein yield."²¹

Still, one could hardly pick up a Soviet publication on nature during the last forty years without reading an homage to Lenin as the father of Soviet conservationism.²² This is in large part a myth. Lenin's actions, like his writings, demonstrate that he was far less interested in preserving than in fully exploiting natural resources. While it is true that several so-called nature conservation laws were enacted during his lifetime, and relatively few for decades after his death,²³ the laws enacted during Lenin's tenure are better characterized as natural resource *use* laws than as protection or preservation laws.²⁴ Of those that were genuinely conservationist, most merely restated old, pre-revolutionary laws, and there is scant evidence that Lenin personally was involved with any of the legislation.²⁵ The most that can be said accurately is that Lenin thought conservation a laudable goal, but only so long as it did not hinder economic development.²⁶ In this, he did not deviate from Marx's utilitarian view of nature.

II. Social Ownership of Property, Natural Resources and the Means of Production

If, as Marx maintained, the history of man is his struggle to know and control the external forces of nature, then communism provides "the genuine resolution of the conflict."²⁷ Under the prevailing socio-economic relations of capitalism men were alienated from each other and from nature; Marx's socialism would harmonize these relations by abolishing the primary determinant of capitalist socio-economics, private property. By abolishing private property entitlements and the exploitative relations they create between men and between man and nature, communism provides the necessary pre-conditions for men to work together in "solidarity," as Engels put it, in opposition "to the rest of the world — the world of minerals, plants, and animals."²⁸ Freedom consists in "socialist man," wrote Marx, "the associated producers, rationally regulating their interchange with Nature, bringing it under their common

control, instead of being ruled by it as by the blind forces of Nature; and achieving this with the least expenditure of energy and under conditions most favourable to, and worthy of their human nature."²⁹

Marx and Engels were primarily concerned with capitalism's private property entitlements as they affected relations between men, but occasionally, they also pointed to the negative environmental effects of private ownership of the means of production. For example, in *The Condition of the Working-Class of England in 1844*, Engels wrote of life in the squalid quarters of the urban working poor, surrounded by dung-heaps that poisoned the air and contaminated streams:

The way in which the vast mass of the poor are treated by modern society is truly scandalous. They are herded into great cities where they breathe a fouler air than in the countryside which they have left. They are housed in the worst ventilated districts of the towns; they are deprived of water because this is only brought to their houses if someone is prepared to defray the cost of laying the pipes. River water is so dirty as to be useless for cleansing purposes. The poor are forced to throw into the streets all their sweepings, garbage, dirty water, and frequently even disgusting filth and excrement. The poor are deprived of all proper means of refuse disposal and so they are forced to pollute the very districts they inhabit.³⁰

Marx and Engels reviled the environmental failings of nineteenth-century capitalism's private property regime. At the time, it must have seemed intuitively sensible that if private property entitlements were abolished, the despoilation would cease — social control and rational management of natural resources, with no profit-motive, should ultimately eliminate pollution and other environmental problems. Neither Marx nor Engels ever explicitly made this claim, but it is implicit in their condemnations of the capitalist system. Aside from general statements about socialism's reconciliation of man and nature (under man's dominion, of course), they made no claims about the specific environmental effects of the system they advocated. Nevertheless, throughout the twentieth century, supporters of Marxist socialism have proclaimed that socialist ownership of natural resources is self-evidently more protective of the environment than any private property regime.³¹

What might have seemed self-evident in theory, has not been at all evidenced in practice. The countries of Eastern Europe and the former Soviet Union have suffered from environmental crises as bad or worse than any in the capitalist West's experience despite social ownership of property, natural resources, and the means of production. These crises vexed ardent socialists, whose attempts to explain away the problems grew increasingly dubious as the evidence of environmental destruction mounted. First, in the early 1970s, it

was claimed, the Soviet Union and Eastern Europe simply did not suffer from the environmental problems of the capitalist West.³² After news began leaking out about environmental problems in the East, socialist government officials and western supporters alternately claimed (1) their problems were "accidental" and far less substantial than environmental problems in the West;³³ (2) environmental problems in socialist countries were fundamentally different in kind from such problems in the West because, once discovered, social ownership and rational planning could quickly and painlessly resolve them;³⁴ (3) the environmental disorders of the socialist countries were substantially caused by international capitalism — the U.S.S.R. and Eastern European countries were forced to industrialize rapidly and single-mindedly, it is asserted, in order to deter attack and destruction from the West.³⁵ However, the evidence suggests that the chronic environmental problems of the former Soviet Union and Eastern Europe are not different in kind from those in the West; if anything, they are more severe. They are the result of chronic neglect and malfeasance, not any international capitalist conspiracy. And they are not quickly or easily remedied by central planning.³⁶ The destruction of the Aral Sea provides a compelling example.

The Aral Sea is a large, shallow and saline lake in Central Asia. In 1960, it was the world's fourth largest lake by area, measuring 68,000 sq. km. By 1987, it was only the sixth largest lake in the world. Its area had diminished by 40 percent, and its volume had decreased by 66 percent. The reason for the change was centrally-planned irrigation. Soviet planners simply concluded that the fresh waters flowing to the Aral Sea were more valuable for irrigation than for preserving the region's ecosystem, despite continued warnings from scientists of serious environmental consequences. Over the past three decades, irrigation in the Aral Sea basin has increased by more than forty percent, from five to over seven million hectares, and water consumption has doubled.³⁷

As the sea has receded, seventy-five percent of its native fish species have been lost, taking with them a formerly lucrative commercial fishing industry. The newly exposed bottom lands, with their high salt content, resist revegetation and erode easily. Great dust storms blow up, depositing toxic salt on valuable agricultural lands, killing crops. Meanwhile, the entire climate of the region has changed, becoming so much warmer and less humid that farmers of the area were forced to switch crops.³⁸

The story of the Aral Sea, like dozens (if not hundreds) of other environmental catastrophes in the Soviet Union and Eastern Europe, belies the apologetics of socialist governments and their supporters. First of all, it was no accident. It resulted from the conscious decisions of central planners guilty of the same kind of economic short-sightedness that has caused so many environmental problems in the West. Once environmental problems appeared at the

Aral Sea, central planning (combined with bureaucratic inertia) proved singularly incapable of ameliorating them. Perhaps planners felt they had to sacrifice the Aral Sea in order to boost production, so that they could continue to compete economically with the capitalist West. Even if that's true, it hardly denotes an international capitalist conspiracy. It is rather more likely that decisions to divert waters from the Aral Sea were based on domestic considerations alone — on the Soviet Union's preoccupation with large-scale economic development to fulfill Marx's promise of perpetual economic progress under socialism.

What Marx and Engels evidently never considered, and what their followers have since ignored or avoided, is that public ownership of natural resources does not *ab initio* solve all environmental problems. In fact, in one important respect, it can exacerbate them. In *Capital*, Marx wrote of the "robbery of the commons" under primitive capitalism,³⁹ but he never pondered the relatively greater potential for despoliation of the commons under socialism, where all natural resources are socially owned. Social ownership in theory means that everyone owns and is responsible for preserving resources; in practice it has meant that no one owns or is responsible for anything.⁴⁰ In his classic article *The Tragedy of the Commons* Garrett Hardin described the free-rider problem of common property (or socially owned) resources:

The tragedy of the commons develops this way. Picture a pasture open to all. It is to be expected that each herdsman will try to keep as many cattle as possible on the commons

As a rational being, each herdsman seeks to maximize his gain. Explicitly or implicitly, more or less consciously, he asks, 'What is the utility to *me* of adding one more animal to my herd?' This utility has one negative and one positive component.

1. The positive component is a function of the increment of one animal. Since the herdsman receives all the proceeds from the sale of the additional animal, the positive utility is nearly +1.
2. The negative component is a function of the additional overgrazing created by one more animal. Since, however, the effects of overgrazing are shared by all the herdsmen, the negative utility for any particular decision-making herdsman is only a fraction of -1.

Adding together the component partial utilities, the rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another; and another But this is the conclusion reached by each and every rational herdsman

sharing a commons. Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit — in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all.⁴¹

Unregulated common ownership leads to over-use and eventually to destruction of scarce natural resources. It also leads to problems of pollution. According to Hardin, "[t]he rational man finds that his share of the cost of the wastes he discharges into the commons is less than the cost of purifying his wastes before releasing them. Since this is true for everyone, we are locked into a system of 'fouling our own nest,' so long as we behave only as independent, rational, free-enterprisers."⁴²

The environmental tragedies of Eastern Europe and the Soviet Union confirm Hardin's thesis. Indeed, the environmental history of the socialism in Eastern Europe can be seen as one giant tragedy of the commons.⁴³ Nevertheless, Marxist scholars have rejected out of hand Hardin's theory as a "[s]uperficial dismissal of Marxism."⁴⁴ It is, in truth, neither superficial nor necessarily dismissive of Marxism. Hardin's theory may raise doubts about the ability of any society, including a communist one, to regulate itself, but it does not proscribe social (or public) ownership of property. For Hardin, privatization is only one (though, perhaps, a preferred) solution to the destruction of the commons; regulated public ownership (e.g., entry and use restrictions) is another.⁴⁵ Of course, until most recently, privatization of socially-owned property in the Soviet Union and Eastern Europe was not an option for ideological reasons. The remaining alternative, governmental regulation of the commons, unfortunately failed in those countries, thanks in no small part to other dominant elements of Marx's political-economic system, particularly the labor theory of value and the dictatorship of the proletariat.

III. Marx's Labor Theory of Value

The labor theory of value is a logical by-product of the Marxist theory of nature with its utilitarian focus — what distinguishes man from the other animals and brings about his mastery of nature is, according to Marx, labor.⁴⁶ Indeed, Marx wrote in *The Economic and Philosophic Manuscripts of 1844* that the entire history of the world is defined by human labor.⁴⁷ Along with the social ownership of property, natural resources and the means of production, the labor theory of value is central to the entire political-economic system and a major source of Marxism's popular appeal to workers.⁴⁸

Marx first outlined his labor theory of value in *Capital* to explain the exploitation of workers under capitalism. While recognizing that material wealth is the product both of labor and the base materials provided by nature,⁴⁹ Marx maintained that only labor invested the product with real economic value; nature, like capital, contributed no *real* value to the product. In volume 1 of *Capital*, he wrote: "In the extractive industries, mines, &c., the raw materials form no part of the capital advanced. The subject of labour is in this case not a product of previous labour, but is furnished by Nature gratis, as in the case of metals, minerals, coal, stone, &c."⁵⁰ Later, in volume 3, Marx added: "Natural elements entering as agents into production, and which cost nothing, no matter what role they play in production, do not enter as components of capital, but as a free gift of Nature to capital, that is, as a free gift of Nature's productive power to labour, which, however, appears as the productiveness of capital, as all other productivity under the capitalist mode of production."⁵¹ The same sentiments appear implicit in Marx's *Grundrisse*: "Nature builds no machines, no locomotives, railways, electric telegraphs, self-acting mules etc. These are products of human industry; natural material transformed into organs of the human will over nature, or of human participation in nature. They are *organs of the human brain, created by the human hand*; the power of knowledge, objectified."⁵²

For Marx, the environment and natural resources were constants. "The idea that all resources are scarce, that is, the concept of limited resources, does not fit into Marx's framework."⁵³ He presumed that communism, with rational economic planning and ever-advancing technologies, would ensure an adequate supply of air, water, soil and minerals for any size population.⁵⁴ Marx's faith in technology was excessive. Economists today realize that "technology alone cannot sustain an economy if erosion of the natural resource base deprives it of the materials required for meeting human needs."⁵⁵ Others, notably Barry Commoner, (rightly or wrongly) view technology not as an ecological savior, but as potentially destructive of the environment, and environmentally neutral at best.⁵⁶

Marx's denial of value-generating mechanisms other than human labor, combined with his excessive faith in technology, proved disastrous for environmental regulation in socialist countries. As a cornerstone of Marxist political-economic theory, the labor theory of value attained a dominant position in the socialist countries. The result, as several authors have noted,⁵⁷ has been massive waste and wanton destruction of the natural environment. Nevertheless, most economists in the Soviet Union and Eastern Europe, as late as the middle 1980s, continued to accept as gospel Marx's labor theory of value, "namely that nature has no value until human labor is added."⁵⁸ As a consequence of the theory, raw materials used (and wasted) and other social costs, including environmental

degradation, were ignored in determining costs and prices. To borrow Peter Maggs's vivid example:

the steel produced in a steel mill would be valued as the sum of the values of the coal and iron ore used as inputs plus the labor cost of the steelworkers. The coal and iron would be valued at the cost of their extraction. Yet, no value or cost would be attached to the destruction of farmland or scenery by open pit mining, to the exhaustion of the country's best energy and mineral reserves, or to the pollution of air, water and land by the steel mill, since none of these resulted in the production of goods incorporating human labor.⁵⁹

Because the natural resources used in the production processes are provided free of charge under the labor theory of value there is a built-in incentive for industry to waste.⁶⁰ In addition, pollution and other environmental costs resulting from the production process are completely externalized. Since the prices of goods do not reflect these costs, companies have no economic incentive to avoid waste, to recycle resources, or to limit pollution (just as under unfettered capitalism).⁶¹

The free use of natural resources under the labor theory of value was neither a tacit policy of the socialist countries nor a mere "legitimizing cloak for other motivations,"⁶² but a specific and express goal of natural resources legislation.⁶³ Though the Soviets finally imposed some (usually nominal and wholly inadequate) resource charges in the 1980s, strong opposition to them remained on grounds that they conflicted with basic socialist political-economic theory.⁶⁴ Into the 1980s, the official line in the Soviet Union was, "[u]se of land free of charge is one of the greatest achievements of the October Socialist Revolution."⁶⁵ In practice, this "achievement" undermined the ability of socialist countries to regulate use of the commons.

The Soviet satellites generally showed less reluctance to deviate from the classic Marxist doctrine and, starting in the mid-1960s, imposed resource use charges. Even East Germany, always among the more ideologically conservative of the socialist countries, chose pragmatism over ideology on this issue. In 1968 and 1971, respectively, the East German government imposed land and water use fees.⁶⁶ It needs to be stressed, however, that East Germany's imposition of resource-use fees did not demonstrate the 'flexibility' of Marxist economic theory, but an unmistakable, if implicit, rejection of a key component of that theory. As the Soviet ecologist Ze'ev Wolfson (writing under the pseudonym "Boris Komarov") recognized, there is an unavoidable contradiction between certain principles of socialist economics, such as the labor theory of value, and environmental preservation.⁶⁷

IV. The Dictatorship of the Proletariat, Distrust of Legality, and Denigration of the Rule of Law

Marx's labor theory of value and other economic principles are certainly not the only or even the primary reasons for the failure of environmental protection in socialist Europe. The dominant social, political, and legal institutions bear a large measure of the blame for the criminal wastage of resources and despoliation of the natural environment. Laws were poorly drafted and laxly enforced, when enforced at all. Planners and bureaucrats jealously guarded administrative turf and clung rigidly to environmentally destructive practices and methods of analysis that secured their authority. Most importantly, the party in power acted out of concern only for its continuing "leading role." The lack of political and legal accountability of the so-called "People's" parties and their tight grip on the flow of environmental information were major factors in the failure of environmental protection in the Soviet Union and Eastern Europe.

No doubt many of the political, social and legal institutions of the Soviet Union and Eastern Europe (before 1989) would have greatly disappointed Marx and Engels. More than anything, Marx's was a moral theory intended to improve the living conditions of the masses. He would have been shocked by the oppressions committed in his name. (More to the point, had he lived in Stalin's USSR, Marx himself might well have fallen victim of those oppressions). Nevertheless, the political, social and legal institutions of the socialist countries all had some basis in Marxist theories of law and state; Marx's theories 'legitimized' the practices.

A. *The Marxist-Leninist Concept of Law*

Throughout the twentieth century, scholars have debated whether there is or even can be, a Marxist theory of law.⁶⁸ Marx and Lenin, both with legal training, wrote fairly extensively about law, but mostly about its failings under capitalism. Most importantly, neither of them believed law to be an independent determinant of social relations; it was merely a part of the ideological "superstructure" erected over the economic "base" of society.

In his early writings, Marx displayed a surprising reverence for the concept of law. In his *Debates on Freedom of the Press* (1842), Marx wrote:

Laws are in no way repressive measures against freedom, any more than the law of gravity is a repressive measure against motion, because while, as the law of gravitation, it governs the eternal motions of the celestial bodies, as the law of falling it kills me if I violate it and want to dance

in the air. Laws are rather the positive, clear, universal norms in which freedom has acquired an impersonal, theoretical existence independent of the arbitrariness of the individual. A statute-book is a people's bible of freedom.⁶⁹

However, as Marx's political-economic theories matured, he apparently abandoned this liberal democratic, even bourgeois, view of law; or if he did not abandon it, he failed to articulate how it could be reconciled with the more instrumental view of law he took in subsequent, philosophically more mature works.⁷⁰ In his *Contribution to A Critique of Political Economy* (1859), for example, Marx wrote that legal relations were rooted in the material conditions of life. When the economic foundation changes, the entire immense superstructure is sooner or later transformed.⁷¹ In Marx's base and superstructure model, the economic foundation initially determines social relations. Legal (and other ideological) institutions are later erected upon the economic base to reinforce the prevailing order. Thus, legal relations are neither autonomous nor objective. The law's natural and inevitable purpose is to reinforce the power of the dominant class.

In *Capital*, Marx illustrated this by pointing to the capitalists who plied their influence in bourgeois parliaments, manipulating legislation to support their interests and defying laws that diminished their profits.⁷² The notion of a "rule of law," applicable equally to the rich and poor, powerful and powerless, was for Marx a dangerous myth propagated to obstruct the rise of class consciousness.⁷³ Law had little, if anything, to do with justice. As Engels argued, "equality before the law" means only "equality in spite of the inequality of rich and poor — equality within the limits of the chief inequality existing — which means, in short, nothing else but giving *inequality* the name of equality."⁷⁴ Law was, for Marx and Engels, an inherently coercive instrument of power. As Robert Hildebrand has noted:

In Marxian theory, law is viewed as an emanation of the "state" and is therefore fundamentally determined by economic relations Since the state is a product of the struggle of classes, dominated by the ruling class, law is viewed as a political *means* for maintaining the economic interests of the ruling class. Law is an ideological superstructure of society, constructed upon the economic basis, which reflects the materialistic outlook of the ruling class. Law is not oriented to the idea of "justice;" rather it is a means of dominance and a tool of the exploiters or ruling class who use it in their own interests.⁷⁵

On rare occasions, the law might be used against the dominant class, e.g., in a mass societal backlash against alienation and exploitation, but it could never resolve these problems because they lay at the economic base of the system.⁷⁶ To resolve them, the entire system would have to be changed. Merely changing

the law had the same effect as treating the symptoms of an illness: it might make the patient feel a little better for a short time, but it does not cure and, in some cases, it can even prolong society's sickness.

In *The Communist Manifesto* (1847-48), Marx expressed confidence that the entire legal and political structure of the state would collapse soon after the workers' revolution radically altered the economic "base" of society. But as he grew older, Marx realized that the transition period to communism might be protracted, and that bourgeois law might prove useful, even necessary, "for proletarian purposes, until relative abundance was created and people formed new social habits."⁷⁷ However, Marx never created a positive theory of what bourgeois law would become along the socialist road to communism.⁷⁸

Following Marx, Lenin conceded that bourgeois legal institutions would have to be maintained after the socialist revolution in order to secure the road to communism.⁷⁹ But, unlike Marx, he showed no philosophical trepidation about the role of law in a socialist society. The pragmatic Lenin realized that the law was just as effective a tool for repressing enemies of the new social order as it had been for repressing workers under the old system. Hugh Collins has written that Lenin's "legal system was a coercive organization which issued orders backed by threats in the form of criminal codes. Together with the remainder of the state apparatus the law ensured that the wishes of the dominant class were carried out. Legal rules were in the basic form of commands addressed to the masses to do or to abstain from doing something, and the significance of the law in a society depended entirely upon its potential to affect behaviour by threats of sanctions."⁸⁰ In *State and Revolution* Lenin wrote, "The proletariat needs state power, the centralised organisation of force, the organisation of violence, both for the purpose of crushing the resistance of the exploiters and for the purpose of *guiding* the great mass of the population — the peasantry, the petty-bourgeoisie, the semi-proletarians — in the work of organising Socialist economy."⁸¹

Lenin had no illusions that the law would become an instrument of real justice, fairness and equity under socialism. To the contrary, his skepticism about legality exceeded even Marx's. For Lenin, the law was simply a tool to be used in the revolution. A patina of legality could bolster the new regime's international legitimacy, but be quickly discarded as the needs and goals of the revolution dictated.⁸² Following Lenin, the Soviet jurist E.B. Pashukanis argued that socialist legislation must "possess maximum elasticity." "We cannot fetter ourselves," he wrote, "by any sort of system." For Pashukanis, as for Lenin, the law necessarily occupied "a subordinate position with reference to policy."⁸³

Given Marx's instrumental view of law and Lenin's contempt for and cynical use of legality, it is not at all surprising that scholars, lawyers and judges

in socialist states have had persistent difficulties reconciling Marxist-Leninist legal theories with increasingly formalistic legal practices. As Hugh Collins has pointed out, "to be a Marxist and a lawyer promises to be a contradictory or schizoid experience."⁸⁴ The socialist lawyer had to search unceasingly for some balance between Marxist-Leninist legal theories and practical realities, between historical materialism and pragmatism, between bourgeois legality and the ongoing revolution leading to the classless society.

The inconsistencies of Marxist law, particularly its ambivalence about legality, severely hampered environmental protection in the socialist countries. Most of their environmental laws were mere declarations, without specific standards or penalties. Such "details" were left for planners, directors and other Party officials to fill-in, and true to Marxist-Leninist theory, the administrators felt free to ignore or avoid environmental regulations whenever they proved economically or politically inconvenient.⁸⁵ In actuality, the environmental regulations of the socialist countries were not 'laws' at all, as we understand the term in the West, but mere abstractions or ideals to be achieved gradually, from one five-year plan to the next.⁸⁶ As a result, environmental protection (or the lack of it) in socialist countries had relatively little to do with what the laws said or did not say. As Peter Maggs has written:

The environmental protection measures taken in the Soviet Union depend not upon the language of the laws setting acceptable pollution levels nor upon the enthusiasm with which they are enforced, but upon the decision of state planning officials to order the construction, installation and operation of pollution control equipment and upon the incentives planners create to implement their orders. Thus, to find the applicable law of environmental protection in the Soviet Union is to look first at the internal guidelines of the State Planning Committee and second at the incentives and sanctions provided to ensure that environmental protection plans are fulfilled.⁸⁷

Legislative enactments thus had less "legal" effect than the political-economic decisions of Party bureaucrats. This was true both in fact and by definition. In the 1930s, the Soviet Institute of Law of the Academy of Sciences defined the term "law" "in complete accord with the Marx-Lenin methodology:"

Law is 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.⁸⁸

In Soviet society the workers were said to be the dominant class. In truth, it was their self-appointed vanguard, the Communist Party.⁸⁹ And, as the Marxist-Leninist definition of

law ordained, the laws reflected that party's interests. Charles Ziegler has noted that in the Soviet Union laws were enacted in accordance with Party preferences (1) to serve as general state policy statements, vaguely guiding (but not necessarily compelling) the actions and decisions of state agencies and individual citizens, and (2) to educate the citizens in the "spirit of communist ideology."⁹⁰ So, like all laws in Eastern Europe and the Soviet Union, environmental legislation primarily served a coercive political function, not a legal function.⁹¹

B. The Dictatorship of the Proletariat

By abjuring the rule of law, Marx enabled another precept of his political theory, the dictatorship of the proletariat — by definition, dictatorship cannot coexist with the rule of law. In a dictatorship, Marxist or otherwise, legal authority and political power are necessarily merged. The close relation between law and power in Marxist dictatorship was illustrated by a legendary event that took place in the Soviet Union shortly after the Bolshevik Revolution, which has been cited for decades as proof of Lenin's ardent conservationism. A man called Vever was caught felling trees (which was in fact his job) near Lenin's summer home in the Gorky government estate. Lenin had him arrested and summarily sentenced to prison for one year. As Ze'ev Wolfson ("Boris Komarov") has written, this story accurately reflects the "fundamental property" of the Soviet system of justice: "power and the law are in the same hands."⁹²

Despite Marx's pretensions to a scientific analysis of political and economic theories through history, his conception of a transitory dictatorship of the proletariat is plainly utopian. Ironically, it is this feature of Marx's program that proved to be the most lasting in practice. Only the complete dissolution of the Soviet Union in 1991 brought an end to single party rule there. Meanwhile, totalitarianism persists in the remaining Marxist states, including China and Cuba. Marx's dictatorship of the proletariat, together with the jealous inflexibility of his ideology — permitting of no ideas in competition — is what led Karl Popper, among others, to conclude that Marxism is totalitarian in theory, as well as in practice.⁹³

In the *Communist Manifesto* Marx and Engels called for the workers to rise up, overthrow the capitalists, and establish a dictatorship of the proletariat that would lead society to communism.⁹⁴ This call was seized upon by Lenin and others who established the Soviet state. The "leading role" of the communist or "Peoples'" parties was ever after fixed in fact and, paradoxically, in law. The constitution of each socialist country explicitly recognized the supremacy of the Party.⁹⁵ Apparently the communists believed their regimes acquired legitimacy through the legal codification of their supra-legal status, but the

irony of this was never lost on the people of Eastern Europe and the Soviet Union. Nevertheless, single-party rule, based on Marx's dictatorship of the proletariat, was one constant of Soviet political history, a tie that bound Gorbachev to Lenin and Stalin.

Marx's vision of a short-lived proletarian dictatorship, beneficently leading society to class-less and state-less communism proved a mirage, just as Marx's contemporary and the founder of Anarchism, Mikhail Bakunin, had presciently predicted it would. In *Statism and Anarchy*, Bakunin wrote, "as soon as [the working class] become the rulers of the representatives of the people, [they] will cease to be workers and will look down at the plain working masses from the governing heights of the State; they will now no longer represent the people, but only themselves and their claims to rulership over the people."⁹⁶ Indeed, almost from the very start, the chief motivation of Party actions was not the speedy advent of communism, but the perpetuation of power and its perquisites.⁹⁷

The implications of this for environmental protection were significant. In many cases, the instincts for self-preservation simply prevented the communist governments of Eastern Europe and the Soviet Union from taking any action against pollution because, as Ze'ev Wolfson ("Boris Komarov") has noted, such steps could have led to "major changes in the system of power."⁹⁸ Taking action on the environment might have required reductions in industrial output and even employment, which would have undermined the legitimate claim to power of the so-called "workers'" parties.⁹⁹ Environmental problems were, as a result, marginalized, when not completely ignored.¹⁰⁰

When the socialist governments did try, in good faith, to protect the environment, single-party rule together with social ownership of property impeded their regulations. According to the French jurist Laurent Cohen-Tanugi, government regulation tends to be most effective where the regulator does not participate in the economic risks of the regulation. It tends to be less effective where the government is, in effect, both the regulator and the regulated industry, as in Marxist socialist countries.¹⁰¹ Indeed, the history of environmental law enforcement in those countries demonstrates the regulatory problems that naturally arise where the government has such a conflict of interest. In the Soviet Union and Eastern Europe, polluting enterprises were extensions of the government and, as such, they typically played a prominent role in setting environmental standards and penalties. Predictably, fines often were set too low to deter noncompliance.¹⁰² And when regulators did levy substantial fines, the effects were usually blunted, as governments determined to keep up production figures compensated penalized enterprises with increased budget allocations. Money taken from one pocket was simply replaced in another.¹⁰³ In this way, the concept of "fines" or "penalties" for environmental crimes was

an illusion. Industrial enterprises had no *real* incentive to comply with environmental norms. So they didn't. As Cohen-Tanugi's thesis might predict, the regulatory conflict of interest of socialist governments was a key factor in the comparatively poor performance of environmental regulations in the Soviet Union and Eastern Europe.¹⁰⁴

The "proletarian" dictatorships also undermined environmental protection by their close control over the flow of environmental information; that is, by censorship of the press. In his early years, Marx been an outspoken advocate of a free press. In *Debates on Freedom of the Press* (1842), he wrote:

The essence of a free press is the characterful, rational, moral essence of freedom. The character of the censored press is the characterless monster of unfreedom; it is a civilised monster, a perfumed abortion.

Or does it still need to be proved that freedom of the press is in accord with the essence of the press, whereas censorship contradicts it?¹⁰⁵

A free press, even (or, perhaps, especially) when it opposed the government, was for Marx an important attribute of the "moral state."¹⁰⁶ Censorship, on the other hand, was based on an immoral premise, which undermined the moral basis of the state: "Laws against frame of mind are based on an unprincipled frame of mind, on an immoral, material view of the state. They are an involuntary cry of a bad conscience."¹⁰⁷ "Censorship . . . converts a struggle over principles into a struggle of principle without power against power without principle."¹⁰⁸

Despite his principled defense of freedom for the press, Marx himself planted the seeds for the very "immoral" censorship he deprecated when he postulated a proletarian dictatorship. The history of the world has never seen a dictatorship coexisting with a free press; the one is inimicable to the other. However "principled" Marx conceived *his* proletarian dictatorship would be, he did, after all, conceive it as a "dictatorship,"¹⁰⁹ not as some more 'open' form of government. And, of course, dictatorships were exactly what the Soviet Union and Eastern Europe received, complete with censors.

In the Soviet Union and throughout Eastern Europe, Communist governments censored the press by the law and by their control of the means of production. These governments displayed the very "anti-state frame of mind" that Marx had written about and, as he predicted, their censorship fueled a struggle between principle without power and power without principle. It is the ultimate testimony to the strength of principle that, in the end, power was defeated.

For decades, the Soviet government withheld information about environmental conditions in order to avoid troublesome political pressure at home

and to score propaganda points in the western press. Environmental statistics were state secrets. They were, as Ze'ev Wolfson (Boris Komarov) wrote, "the property of the government, just like the earth, the rivers, and the forests and their denizens of animals."¹¹⁰ Later, in the 1980s, the Soviet press grew more open in its consideration of environmental issues, but information remained privileged. The Soviet citizen might learn something about environmental problems and how the government was reacting to them, but further investigation was usually blocked.¹¹¹ The government retained firm control over the flow of information.

The 1986 explosion at the Chernobyl nuclear power plant exemplified how, even in the age of *Glasnost*, the Soviet press was "free" only to publish whatever information the government decided was appropriate. As Zhores Medvedev has written, "the Chernobyl catastrophe . . . was born of secrecy," and "many of the mistakes and miscalculations which were made afterwards and which significantly increased the human and economic cost were also the result of secrecy."¹¹² The explosion and subsequent melt down and radiation release at Chernobyl occurred on Saturday, April 26, 1986. The first "brief" public report of the accident was not issued until Monday, April 28, and then only because of pressure from the Swedish government, which had detected the accident (from the radioactive cloud hovering over Scandinavia) and established its source.¹¹³ For ten days following the accident, the Soviets maintained a "news blackout," only occasionally releasing terse statements that treated the incident — among the world's worst nuclear accidents and the costliest industrial accident in history — as "minor."¹¹⁴ The primary reason for the news blackout was to prevent the domestic population of the Soviet Union from realizing that the socialist government was "helpless" to first prevent and then control the accident.¹¹⁵ The government had not prepared for such a massive nuclear accident because it was supposed to be impossible in the Soviet Union.¹¹⁶ In the words of one Chernobyl official, "the accident wasn't in the plan."¹¹⁷

Throughout the Chernobyl episode, the press was fed a steady diet of misinformation.¹¹⁸ When accurate reports, based on data collected by US and Western European intelligence services, appeared in the Western press, President Gorbachev called them "an unrestrained anti-Soviet campaign with mountains of lies, most dishonest and malicious lies."¹¹⁹ This same sentiment appeared almost every time some Western news organization reported on environmental problems anywhere in the Soviet Union or Eastern Europe. For example, in 1986 Radio Free Europe (RFE) reported accurately on the "Apocalypse" of Poland's environment. The Polish government press agency responded by denouncing the report as "lies, lies and only lies," and by attacking *ad hominem* the RFE reporter, a former Polish government economist named Stefan Bratkowski:

The alleged remedial measures aired by the RFE commentator are the same rubbish as his diagnoses, while the entire hysterical argument designed to scare people uses environmental protection as a pretext alone to express a political view that under the existing rule in Poland our people will die with no one to come to the rescue because these stupid and inefficient authorities deliberately aim at society's destruction.

Free Europe proclaims apocalypse hoping for collective unrest if it manages to succeed in giving Poles a good scare and arousing each listener's anxiety. Former economy rationalizer Bratkowski perished for this kind of service, getting poisoned with political venoms of his milieu, while there was born a hysterical demagogue seeking idiots among listeners.¹²⁰

It is interesting to note that Radio Free Europe's report on Poland's environmental crisis came a full year after an equally dramatic report appeared in *Trybuna Ludu*, the official daily newspaper of the Polish United Worker's Party (the Communist Party of Poland), without comment from the normally irrepressible government press spokesman, Jerzy Urban.¹²¹

Almost to the very end of the socialist era in Eastern Europe, unfettered press coverage of environmental problems remained unacceptable because it tended to expose Party and government officials to the informal political accountability that public scrutiny brings. A free environmental press was at odds with the Communist Parties' main goal, maintenance of power.

Conclusion: From Marxism to Eco-Socialism

From Solidarity's rise to power and the fall of the Berlin Wall in 1989, to the dissolution of the Soviet Union in 1991, the communist parties of Europe have lost their dominions;¹²² in some countries, they have disappeared entirely. Initially established in the name of Marx to bring material prosperity and improved living conditions to the working classes, they have left a legacy only of poverty and environmental annihilation.¹²³

Some of this legacy rightfully falls to Marx, Engels, and Lenin, whose ideas directly and indirectly contributed to the failure of environmental protection in the socialist countries. Elements of their political-economic system, particularly the combination of social ownership of property (including natural resources), the labor theory of value and the dictatorship of the proletariat, contributed to despoliation of the commons by obstructing effective regulation. Other central tenets of Marxism, such as the right to work, which was constitutionally guaranteed in every one of the "People's Republics," often took precedence over conservation and environmental protection. Ze'ev Wolfson ("Boris Komarov") wrote of whole cities of timber, sitting rotting by the train tracks

in Siberia, waiting for trains that never came. A Deputy of the Supreme Soviet rationalized this wastage by raising the constitutional right to work: "There are people out there in the taiga and they have to be paid their wages. We set up the lumber camp and brought people there. They have the right to work, and they are not responsible for our problems with the railroad cars."¹²⁴ The effect, for Wolfson, was to "pervert the very notion of work," persuading the loggers that "turning the majestic cedar woods into mold and rot was a decent job."¹²⁵

This is not to say that the right to a job or public ownership of property is necessarily an environmental evil, only that something inimical to the environment inheres in the formulations by Marx, Engels and Lenin of these and other economic, political and legal concepts. The debates about public versus private ownership, free markets versus central planning, etc., are bound to continue as socialist theory enters a new, post-Marxian era.¹²⁶

Today a new group of scholars reject both capitalism and central tenets of Marxist socialism, calling instead for a new kind of "eco-socialism," a socialism based not on class conflict, but on the needs of the biosphere for its survival. Writers like Rudolf Bahro and Andrew McLaughlin retain what they perceive to be adaptable parts of Marx's theories, most notably social ownership of natural resources, while they reject what they consider to be ecologically unsound, such as Marx's fervent faith in technology and fetish for economic growth. For example, in his book *Socialism and Survival*, Rudolf Bahro condemns the conception of technological progress based on increased material production that is common to both classical Marxism and capitalism:

The technocratic and scientific faith that the progress of industry, science and technique will solve humanity's problems virtually automatically is one of the illusions of the present age most hostile to life. The so-called scientific and technological revolution that is still moving ahead chiefly in this dangerous perspective must be reprogrammed by a social transformation. The very idea of progress must be interpreted in a completely new way. The per capita consumption of raw materials and energy, the per capita production of steel and cement that are adduced in all the statistics as criteria of progress, are typical criteria of a progress that is totally alienated.¹²⁷

The capitalist remains the chief culprit for Bahro, and the only solution to the global ecological crisis lies in the "combination of all anti-capitalist and socialist tendencies for a peaceful democratic revolution against the dominant economic structure."¹²⁸ At the same time, however, Bahro blames Marxism for failing to foresee the catastrophic ecological consequences brought about by technologies designed to expand consumption beyond all limits.¹²⁹ While Bahro claims that he is not against the Marxist conception of socialism as a worker's movement it is

clear to him that "this is no longer enough."¹³⁰ What the class struggle could not accomplish, he claims, the ecological crisis will: the end of capitalism.¹³¹

Bahro does not claim to be anything other than a Marxist, but he makes clear that his conception of socialism is very different from Marx's in at least one crucial respect: For Marx, industrialism was evil only in the hands of the capitalist; in the hands of the workers, industry was to be the key to ever increasing productivity, universal prosperity, and emancipation from alienation. Marx's "socialism was a classless *industrial* society."¹³² Bahro, by contrast, views industrialism as evil regardless of who is in control. The industrial system "does not create the basic conditions for socialism," as Marx surmised, "but leads us ever further away from its possibility."¹³³ Bahro's mission, therefore, is "to circumscribe ecologically the traditional political economy of both capitalism and socialism Once this is done, nothing in our (socialist) economic theory will look the same as it did before — with two exceptions: the goal of general emancipation, and the starting-point of the analysis," which remains capitalism.¹³⁴

Like Bahro, Andrew McLaughlin abjures the classic Marxist conception of socialism and its material/industrial basis, writing, "Marxism, as well as capitalism, is under the spell of the idea that material production is the key of human social development."¹³⁵ For Marx, the goal was to free the workers enslaved by capital by seizing the means of production, which, under social control, would become a source of universal prosperity and social progress. For McLaughlin, as for Bahro, the means of production are not neutral forces that might be used for good or evil, depending on who controls them, but an inherent source of enslavement, the enslavement of nature by man: "For Marxism, there is simply no basis for recognizing any interest in the liberation of nature from human domination."¹³⁶

Whether or not Bahro and McLaughlin conceive of themselves generally as "Marxists," it is clear that their new formulations of socialist concepts are, in important respects, post-Marxian. By discarding such central precepts of classic Marxism as the labor theory of value, the aspiration to material abundance based on ever-advancing technological sophistication, and the historical materialist view of the man-nature relationship, these ecological socialists implicitly (and sometimes explicitly) reject the economic class-based foundations of Marxism. As Paul Raskin and Stephen Bernow have written:

The ecological critique of Marxism is fundamental. The claim of that critique is that the Marxist theory of the dynamics of modern capitalism, of the nature of its crises, and of the social agency for its transformation, is deeply flawed. Specifically, Marxism stresses

conflict within the mode of production — the contradictions between the relations and forces of production and among social classes. Ecology stresses the conflict between this human enterprise and the natural environment. Put starkly (and too simply), the debate is about which set of conflicts should be viewed as more fundamental: class against class or humanity against nature.¹³⁷

What the eco-socialists retain — social ownership of property and Leninist central planning — rests on a completely new philosophical basis: a seemingly utopian ecological steady-state theory. The merits of this new theory of socialism are certainly debatable, but its significance for an environmental critique of Marxism is not. The writings of Bahro and McLaughlin signify that the economically-determined and environmentally destructive theories of Marx and Engels are, from an ecological point of view, obsolete.¹³⁸

This should come as no great surprise. Marx was, after all, a creature of his times. Despite his intentions to create a theory that would witness the end of history, his ideas reflected the period and culture in which he lived.¹³⁹ As noted earlier, they displayed many traits in common with nineteenth-century capitalism, including boundless faith in technological and economic progress,¹⁴⁰ and an anthropocentric/utilitarian view of nature;¹⁴¹ both systems are, after all, firmly rooted in the Judeo-Christian worldview.¹⁴²

Over the last century, capitalist economic systems have evolved considerably. While capitalist economists continue to quote Adam Smith and John Stuart Mill (much as contemporary socialists continue to look to Marx and Engels), hardly a "free" (unfettered) market exists anywhere in the world today. As Karl Popper wrote in 1945, "*laissez-faire* has disappeared from the face of the earth."¹⁴³ The nations of the industrialized West have long since abandoned the free-wheeling capitalism of the nineteenth century with its Social Darwinist overtones. The "invisible hand" has been sheathed in a thick glove of government regulation, designed to alleviate at least some of the grosser iniquities of the marketplace. This is especially true in the field of environmental protection, where even the staunchest supporters of the free market and limited government, such as Milton Friedman, see a legitimate role for government intervention and regulation.¹⁴⁴ Capitalism today (what Popper called "interventionism" or "democratic interventionism") bears little resemblance to the capitalism of Marx's time (which Popper referred to as "unrestrained capitalism").¹⁴⁵

There is no reason to expect that Marx's socialist theories would be any more relevant today than nineteenth-century capitalist notions. If anything, we might reasonably expect Marx's ideas to have proved more fragile, less amenable to alteration and adaptation than capitalism, for his

was a jealous, even theological ideology,¹⁴⁶ which unlike capitalism, purported to resolve comprehensively the ills of civilized (European) society. His conception of socialism claimed to be both scientific and historically inevitable.¹⁴⁷ The sheer weight of these claims made it more difficult for Marxism to adapt to new political or cultural circumstances.

Still, Marxist theory has not remained completely stagnant in the century since Marx's death. It has been subject to continual interpretation and reinterpretation, as followers have sought answers to questions Marx never considered,¹⁴⁸ and practice has at least occasionally forced theory to heel.¹⁴⁹ However, contemporary Marxists seem always to be constrained by the need to "legitimize" their hypotheses by reference to the writings of Marx and Engels. As with the Bible, many groups, antagonistic to one another, have found something in Marx to cling to — a sentence, a phrase, an implicit theme.¹⁵⁰ As Leszek Kołakowski suggests, they may all be entitled to call themselves "Marxists";¹⁵¹ but at some point(s) Marx and Marxism part company. As this paper has shown, ecology is one clear point of divergence: Marx's theory of socialism and environmentalism are intellectually incompatible.

Notes

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1. "Czech Official Says Communism is Best Able to Combat Pollution," N.Y. Times, May 16, 1971 at 11.
2. See, e.g., Hansmeyer and Rürup, *Umweltgefährdung und Gesellschafts-system*, WIRTSCHAFTSPOLITISCHE CHRONIK 7, 13 (1973) quoted in translation in Zweigert and Gessner, *The Environmental Damage: Sociological Background and Means for Prevention and Compensation*, in I.C. PRIETO AND R. NOCEDAL, EDs., *LEGAL PROTECTION OF THE ENVIRONMENT IN DEVELOPING COUNTRIES* 83, 93 (1976) ["Industry working under an ideal central plan for the economy should not create any specific environmental problems."]. It was, of course, the Soviet Union's intention to create this impression. Until very recently, air and water quality statistics in the Soviet Union were state secrets or, as Soviet ecologist Ze'ev Wolfson (who wrote under the pseudonym Boris Komarov) put it, "These statistics are the property of the government, just like the earth, the rivers, and the forests and their denizens of animals." B. KOMAROV (pseud.), *THE DESTRUCTION OF NATURE IN THE SOVIET UNION* 16-17 (1980). In effect, there was no environmental crisis in the Soviet Union because the government would not recognize the fact. *Id.* See *infra* notes 97-99 and accompanying text.
3. See C.E. ZIEGLER, *ENVIRONMENTAL POLICY IN THE U.S.S.R.* 26 (1987) ["the ecological contradictions produced in capitalist systems are still deemed to be far more serious. These ecological difficulties cannot fully be resolved within the capitalist framework. Under socialism, the same scientific-technical revolution that poses unprecedented environmental dangers also provides new potential for solving the problems that confront socialist systems. Hence Soviet theorists decisively reject suggestions that technology or production in itself constitutes a threat to the environment. They display a seemingly boundless

confidence in the inventive capacities of humankind to overcome the inherent limitations of the physical environment. Pollution in a socialist system has generally been viewed as a temporary anomaly, a deviation from the environmentally benign norm that will be resolved as socialism advances."] Soviet writers could not publish information about environmental problems in the U.S.S.R. without repeatedly recognizing the environmental superiority of socialism over capitalism. See B. KOMAROV *supra* note 2, at 137.

4. Kraków, Poland, for example, receives 20 percent less sunlight than other parts of Poland. See Forbes, *Poland Grapples With Pollution Crisis*, Reuters N. Eur. Service, Aug. 23, 1985 (NEXIS, Omni file).

5. See FEDERAL COMMITTEE FOR THE ENVIRONMENT, *THE ENVIRONMENT IN CZECHOSLOVAKIA* 23, Table 3 (1990).

6. On these and other environmental statistics for Poland, see Cole, *Cleaning Up Kraków: Poland's Ecological Crisis and the Political Economy of International Environmental Assistance*, 2 COLO. J. INT'L ENVTL. L. & POL'Y 205, 208-216.

7. Kabala, *Environmental Deterioration and Public Health*, Radio Free Eur./Rep. E. Eur., Oct. 5, 1990, at 27, 30.

8. On pollution problems in other parts of Eastern Europe and the Soviet Union, see, e.g., H. FRENCH, *GREEN REVOLUTIONS: ENVIRONMENTAL RECONSTRUCTION IN EASTERN EUROPE AND THE SOVIET UNION* (1990); IUCN EAST EUROPEAN PROGRAMME, *ENVIRONMENTAL STATUS REPORTS: 1988/1989, VOL. I: CZECHOSLOVAKIA, HUNGARY, POLAND* (1990); FEDERAL COMMITTEE FOR THE ENVIRONMENT, *THE ENVIRONMENT IN CZECHOSLOVAKIA* (1990); M. GOLDMAN, *THE SPOILS OF PROGRESS: ENVIRONMENTAL POLLUTION IN THE SOVIET UNION* (1972); B. KOMAROV, *supra* note 2.

9. L. KOŁAKOWSKI, *THE MAIN CURRENTS OF MARXISM, VOL. I*, 3-4, 182-218 (1978).

10. Engels, at least, recognized that nature is not simply a passive material base for man's activities, writing presciently, "[l]et us not, however, be very hopeful about our human conquest over nature. For each such victory, nature manages to take her revenge." F. ENGELS, *DIALECTICS OF NATURE* 291-292 (1940). However, Engels never really developed an ecological theory. H. PARSONS, *MARX AND ENGELS ON ECOLOGY* 24 (1977). He subscribed, with Marx, to the view of man's necessary (and natural) dominance over nature, going so far as to assert that the struggle against nature constitutes the basis of human thought. See *infra* note 14 and accompanying text. Engels even defined 'freedom' in terms of man's control of external nature. F. ENGELS, *HERR EUGEN DÜHRING'S REVOLUTION IN SCIENCE (ANTI-DÜHRING)* 125 (1939).

11. See H. PARSONS, *supra* note 10. Parsons's book catalogues virtually all of Marx's and Engels's writings touching, however tenuously, on nature. Along the way, Parsons provides explanations, commentary, and apologies. His ardent desire to view Marx and Engels's as early environmentalists leads Parsons too frequently into interpretations that strain credulity. To take just one example, in a letter to his friend Lavrov, Engels wrote, "the idea of solidarity could finally...grow to a point where it will embrace all mankind and oppose it, as a society of brothers living in solidarity, to the rest of the world — the world of minerals, plants, and animals." Incredibly, Parsons interprets Engels's use of the word 'oppose' to mean "unite with." *Id.* at 55.

Even that bastion of capitalism the Wall Street Journal recently portrayed Marx as an early environmentalist. Myer, *Das Kapital: His Statues Topple, His Shadow Persists: Marx Can't Be Ignored*, Wall St. J., Nov. 25, 1991, at 1.

12. K. MARX, *CAPITAL, VOL. I*, 514 (1967).

13. H. PARSONS, *supra* note 10, at 9-10.
14. F. ENGELS, DIALECTICS OF NATURE, *supra* note 10, at 306.
15. F. ENGELS, HERR DÜHRING'S REVOLUTION IN SCIENCE, *supra* note 10, at 309-310. See also K. MARX, CAPITAL, VOL. III, 820 (1967) ["Just as the savage must wrestle with Nature to satisfy his wants, to maintain and reproduce life, so much civilised man, and he must do so in all social formations and under all possible modes of production. With his development this realm of physical necessity expands as a result of his wants; but, at the same time, the force of production which satisfy these wants also increase. Freedom in this field can only consist in socialist man, the associated producers, rationally regulating their interchange with Nature, bringing it under their common control, instead of being ruled by it as by the blind forces of Nature; and achieving this with the least expenditure of energy and under conditions most favourable to, and worthy of their human nature."]
16. H. PARSONS, *supra* note 10, at 67.
17. Even in their early writings, Marx and Engels maintain that communism was, at its essence, economic. K. MARX AND F. ENGELS, THE GERMAN IDEOLOGY, PART I, 86 (1974).
18. *Id.* at 69-70.
19. Zile, *Lenin's Contribution to Law: The Case of Protection and Preservation of the Natural Environment*, in B.W. EISSENSTADT, ED., LENIN AND LENINISM: STATE, LAW AND SOCIETY 83, 85 (1971).
20. *Id.* at 86.
21. *Id.*
22. *Id.* at 83.
23. M.I. GOLDMAN, THE SPOILS OF PROGRESS: ENVIRONMENTAL POLLUTION IN THE SOVIET UNION 16 (1972).
24. Zile, *supra* note 19, at 95.
25. Zile, *supra* note 19, at 95.
26. M.I. GOLDMAN, *supra* note 23, at 18.
27. K. MARX, ECONOMIC AND PHILOSOPHIC MANUSCRIPTS OF 1844 135 (1964).
28. Letter from Friedrich Engels to P.L. Lavrov, Nov. 12-17, 1875, in K. MARX AND F. ENGELS, SELECTED CORRESPONDENCE 369 (1975).
29. K. MARX, CAPITAL, VOL. III, at 820.
30. F. ENGELS, THE CONDITION OF THE WORKING-CLASS OF ENGLAND IN 1844 110 (1958) For a similar, if less graphic, commentary by Marx, see, e.g., K. MARX, CAPITAL, VOL. I, *supra* note 12, at 661-663.
31. See, e.g., *supra* H. PARSONS, *supra* note 10, at 92 ["there is one significant difference between the ecological problems in a socialist country and those in a capitalist country; in a socialist country, the problems are rooted not in a productive system of private ownership and profit but in a system of public ownership, and consequently when the public and the state officials are alerted to a problem and arouse to do something about it, solution comes with relative ease."]; *Protecting the environment*, 15 WORLD MARXIST REVIEW (June 1972) ["Only a plan-governed economic system that serves the interests of the whole society can provide fundamental solutions to the problems now confronting the human race. The

attitude to environment is one more area in which socialism is increasingly, and convincingly, demonstrating its superiority."].

32. See *supra* note 1 and accompanying text; B. KOMAROV, *supra* note 2, at 116-117; MINISTRY OF ENVIRONMENT OF THE CZECH REPUBLIC, CZECHOSLOVAK ACADEMY OF SCIENCES, ENVIRONMENT OF THE CZECH REPUBLIC, Part I., 15 (1990) ["According to the official ideology, it held true for a long time that nothing like a polluted environment can exist under socialism. 'Socialism and communism as the most progressive order ... etc.', all of us remember it still quite vividly. Serious environmental damages were kept secret, reporters and critics were pestered and even the case of imprisonment is known."]

33. H. PARSONS, *supra* note 10, at 101; C.E. ZIEGLER, *supra* note 3, at 26.

34. See, e.g., H. PARSONS, *supra* note 10, at 92 ["The Soviet Union does have ecological problems — air pollution, some industrial pollution of inland waters, erosion, and so on; and some of these problems have been long-standing. But there is one significant difference between the ecological problems in a socialist country and those in a capitalist country; in a socialist country, the problems are rooted not in a productive system of private ownership and profit but in a system of public ownership, and consequently when the public and the state officials are alerted to a problem and arouse to do something about it, solution comes with relative ease."]; I.P. GERASIMOV, ED., MAN, SOCIETY AND THE ENVIRONMENT 11 (1975) ["The way environmental problems are handled under socialism is fundamentally different from that under capitalism. Under socialism the absence of private ownership, of class antagonisms, planned economic development in the interest of society provide the key preconditions for preventing the worst environmental hazards to human life and activity."]

35. See H. PARSONS, *supra* note 10, at 91 ["Soviet ecological policy is illustrative of both the problems and achievements in socialist society. During the 1920s and 1930s, the pressure to build a modernized industrial and agricultural base, and to do that speedily so as to meet the demands of the citizens and to strengthen the society against external attack and destruction, was so intense that considerations of the preservation of environmental balance and quality became secondary."]

36. Central planning and its relationship to environmental protection in socialist countries is a topic worthy of more extensive discussion, but it is a topic outside the scope of this paper primarily because there is nothing particularly Marxian about central planning. Marx did not write in detail about it as a tool of socialist economics. On the other hand, central planning is a natural, if not necessary, concomitant of public ownership of natural resources, and it is virtually impossible to conceive of socialism as anything but a centrally-planned economic system; witness the many failed efforts in the 1970s to create so-called "market socialism" as a replacement for or supplement to inefficient central planning. On the failure of these hybrid reforms, which led to the re-entrenchment of central planning, see, e.g., JANOŠ KORNAI, THE SOCIALIST SYSTEM (1992). Suffice it to say that the relationship between central planning and environmental protection continues to be a hotly debated topic. See, e.g., McIntyre and Thornton, *On the Environmental Efficiency of Economic Systems*, 30 SOVIET STUDIES 173 (1978); Ziegler, *Soviet Environmental Policy and Soviet Central Planning: A Reply to McIntyre and Thornton*, 32 SOVIET STUDIES 124 (1980); McIntyre and Thornton, *Environmental Policy Formulation and Current Soviet Management: A Reply to Ziegler*, 33 SOVIET STUDIES 146 (1981); Ziegler, *Centrally-Planned Economies and Environmental Information: A Rejoinder*, 34 SOVIET STUDIES 296 (1982).

37. P.R. PRYDE, ENVIRONMENTAL MANAGEMENT IN THE SOVIET UNION 221-225 (1991).

38. *Id.*

39. K. MARX, *CAPITAL*, VOL. I, *supra* note 12, at 732-33 ["The spoliation of the church's property, the fraudulent alienation, the State domains, the robbery of the common lands, the usurpation of feudal and clan property, and its transformation into modern private property under circumstances of reckless terrorism, were just so many idyllic methods of primitive accumulation."]

40. See C.E. ZIEGLER, *supra* note 3, at 35.

41. Hardin, *The Tragedy of the Commons*, 162 *Science* 1243-48 (1968), excerpted in, B.A. ACKERMAN, ED., *ECONOMIC FOUNDATIONS OF PROPERTY LAW* 2, 4 (1975).

42. *Id.* at 5. Hardin's use of the term "private-enterprisers" can be misleading. Given Hardin's belief in privatization ("or something formally like it") as a solution to the tragedy of the commons, it is highly unlikely that he is using the term "private-enterprisers" as an indictment of capitalism. Presumably, for him, environmental destruction of the commons after privatization would diminish because conservation would then be in the self-interest of the rational private-owner. Of course, at this point, Hardin must account for important differences between perceived and real interests or the potential differentiation of short-term and long-term interests.

43. See, e.g., M.I. GOLDMAN, *supra* note 23, at 74 ["In a socialist society it would seem that it would be more difficult to stimulate preventive action in both the case of public and private social costs. Because private land ownership is prohibited in the USSR, the individual has less of a vested interest in fighting the construction of a new factory in his neighborhood or the mining of some raw material in the area. Except when a state-owned factory finds that its operating costs are substantially and directly affected by another factory's pollution, protest must depend on social consciousness, and not on the actions of private property holders who respond out of the fear of a private loss."]

44. H. PARSONS, *supra* note 10, at 236.

45. *Id.* at 5.

46. See, e.g., F. ENGELS, *DIALECTICS OF NATURE*, *supra* note 10, at 291 ["[T]he animal merely uses external nature, and brings about changes in it simply by his presence; man by his changes makes it serve his ends, *masters* it. This is the final essential distinction between man and other animals, and once again it is labour that brings about this distinction."]

47. K. MARX, *THE ECONOMIC AND PHILOSOPHIC MANUSCRIPTS OF 1844*, *supra* note 27, at 145.

48. Maggs, *Marxism and Soviet Environmental Law*, 23 *COLUM. J. TRANSNAT'L L.* 353, 359 (1985). Of course, Marx was not the first to posit a labor theory of value. See, e.g., Locke, *Second Treatise of Government*, V, 26, 1-12, in P. LASLETT, ED., *LOCKE'S TWO TREATISES OF GOVERNMENT* 315-316 (1963) ["Land which is wholly left to Nature, that hath no improvement of Pasturage, Tillage, or Planting, is called, as indeed it is, *waste*; and we shall find the benefit of it amount to little more than nothing *Labour makes the far greatest part of the value* of things, we enjoy in this World: And the ground which produces the materials is scarce to be reckoned in, as any, or at most, but a very small part of it *Tis Labour . . . which puts the greatest part of Value upon Land.*"]

49. K. MARX, *CAPITAL*, VOL. I, *supra* note 12, at 41-43; see also K. MARX, *GRUNDRISSE* 472 (1973) ["The earth is the great workshop, the arsenal which furnishes both means and material of labour, as well as the seat, the *base* of the community."]

50. K. MARX, *CAPITAL*, VOL. I, *supra* note 12, at 603.

51. K. MARX, CAPITAL, VOL. III 745 (1967)
52. K. MARX, GRUNDRISSE, *supra* note 49, at 706. Marx's preoccupation with *human* labor raises some interesting questions. For example, when a farmer cultivates land using a horse-drawn plough, why does the farmer's labor create value, but not the horse's? According to Marx's theory, the horse merely transfers some of its own value to the land. This example comes from L. KOLAKOWSKI, *supra* note 9, at 329.
53. C.E. ZIEGLER, *supra* note 3, at 10. For Marx, commodities all had equal value (i.e., mere use-value). Any differentiation in social value — e.g., the belief that gold was inherently more valuable than lead — was mere "fetishism." K. MARX, CAPITAL, VOL. I, at 71-75. To some extent, Marx is surely right that social conventions (or "fetishes" to use his word) play a role in determining value, but it is shortsighted to suggest that is all there is to it. For the capitalist, what gives natural resources economic value is (1) their usefulness for production and (2) their scarcity. Scarcity is, in fact, at the very foundation of capitalist economic theory; it is a pre-condition for markets. If gold was not scarce — if there was gold all over the place for anyone simply to pick up off the ground — gold would have no economic value, i.e., no one would be willing to pay for gold, so there would be no market for it. As with all natural resources, what gives gold its economic value in the first place is its scarcity.
54. See C.E. ZIEGLER, *supra* note 3, at 11-13. Thus, Marx repudiated Malthus's concerns with overpopulation. See, e.g., L. KOLAKOWSKI, *supra* note 9, at 413-414. Today, Malthus seems to have much the better of the argument.
55. L.K. CALDWELL, INTERNATIONAL ENVIRONMENTAL POLICY 307 (2d ed. 1990).
56. See, e.g., B. COMMONER, THE CLOSING CIRCLE 144 (1971). The post-Marxian socialist writer Rudolf Bahro concurs: "The technocratic and scientific faith that the progress of industry, science and technique will solve humanity's social problems virtually automatically is one of the illusions of the present age most hostile to life." R. BAHRO, SOCIALISM AND SURVIVAL 19 (1982); accord Raskin and Barrow, *Ecology and Marxism: Are Green and Red Complementary?*, 4 RETHINKING MARXISM 87, 89 (Spring 1991) ["Marxism has held an overly benign view of human intervention in nature, in which the environment is seen as, in effect, limitless and elastic, and where human technological ingenuity can overcome apparent environmental limits to growth."].
57. See, e.g., Maggs, *supra* note 48, at 359-60; Kramer, *Prices and the Conservation of Natural Resources in the U.S.S.R.*, 24 SOVIET STUDIES 364-73 (1973); B. KOMAROV, *supra* note 2, at 40; S. GOMULKA, GROWTH, INNOVATION, AND REFORM IN EASTERN EUROPE 103 (1986).
58. J. DEBARDELEBEN, THE ENVIRONMENT AND MARXISM-LENINISM: THE SOVIET AND EAST GERMAN EXPERIENCE 212-213 (1985).
59. Maggs, *supra* note 48, at 359.
60. C.E. ZIEGLER, *supra* note 3, at 35-36.
61. See, e.g., M.I. GOLDMAN, *supra* note 23, at 110 ["Not only are Soviet (waste) treatment standards low, but very little effort is made to recycle water. This is to be expected as long as water is free or undervalued."]
62. J. DEBARDELEBEN, *supra* note 58, at 269.
63. See, e.g., the following Soviet laws: The Principles of Land Legislation (1968), of Water Legislation (1970), and of Legislation of the USSR and the Union Republics on the

Earth's Interior (1975), all of which affirm the right to free use of natural resources. See also, J. DEBARDELEBEN, *supra* note 58, at 244.

64. See, e.g., B. KOMAROV, *supra* note 2, at 40 ["We know that a number of academicians and professors, including Lemeshev, have often tried to persuade the government agencies to abandon the idea of 'cost-free water.' In doing so they cite the experience of socialist Czechoslovakia. But at the level of the Central Committee of the Communist Party they received an abrupt 'no,' since this would 'contradict the principles of a socialist economy,' where cost is determined only by social labor invested, and no one has invested labor in the water of the river and lakes. "But there is no denying the multitude of facts showing that free water is detrimental to the conservation of water resources. Cannot the ideologues recognize that the principles of socialist economics contradict the interests of preserving our environment? . . ."]. Soviet lawyers, for example, argue that "as exclusive government property . . . natural resources cannot be treated as commodities, cannot be bought and sold, therefore they do not have exchange value, and cannot be evaluated in monetary terms." J. DEBARDELEBEN, *supra* note 56, at 249.

65. *Id.* at 244, quoting A.F. Surganov, a leading Party member and Chairman of the Agriculture Committee.

66. See *id.* at 242. However, these fees have proved largely ineffective as economic levers because of the centralized planning system in East Germany, and its failure to make price adjustments to account for changes in supply, demand and marginal costs. *Id.* at 246.

67. B. KOMAROV, *supra* note 2, at 40.

68. See, e.g., Tay and Kamenka, *Marxism, Socialism and the Theory of Law*, 23 COLUM. J. TRANSNAT'L L. 217, 217 (1985) ["Collectivism, A.V. Dicey made evident more than seventy-five years ago in his classic *Law and Public Opinion in England During the Nineteenth Century*, did not enter the world with a theory of law and still has not attained one. Even today, there is not much reason to disagree."]

69. Marx, *Debates on the Freedom of the Press*, KARL MARX AND FRIEDRICH ENGELS, COLLECTED WORKS, VOL. I, 166 (1975).

70. Marx's supporters continue to grapple with the problem of reconciling Marx's early statements about law with his later dismissal of law as a secondary ideological component of the state, determined by economic relations. See, e.g., M. CAIN AND A. HUNT, MARX AND ENGELS ON LAW xiii (1979) ["many of Marx' and Engels' comments on and discussions of law are not capable of an economic determinist reading, despite the fact that their summary statements of their position may give credence to such an interpretation."]

71. K. MARX, A CONTRIBUTION TO THE CRITIQUE OF POLITICAL ECONOMY 20-21 (1970).

72. K. MARX, CAPITAL, VOL. III, *supra* note 15, at 89-90; accord V.I. LENIN, STATE AND REVOLUTION 40 (1932) ["To decide once every few years which member of the ruling class is to repress and oppress the people through parliament — this is the real essence of bourgeois parliamentarianism, not only in parliamentary-constitutional monarchies, but also in the most democratic republics."] and Engels, *The Condition of the Working Class in England*, *supra* note 30, at 514-515 ["True, the law is sacred to the bourgeoisie, for it is his own composition, enacted with his consent, and for his benefit and protection."]. See also Tay and Kamenka, *supra* note 68, at 231.

73. See H. COLLINS, MARXISM AND LAW 139 (1982).

74. Engels, *The State of Germany*, in K. MARX AND F. ENGELS, COLLECTED WORKS, VOL. VI, 29 (1976).

75. J.L. HILDEBRAND, *THE SOCIOLOGY OF SOVIET LAW* 47-48 (1972).

76. Marx, in *The Class Struggles in France* (1850), argued that there were moments when the workers could achieve real, if limited reform through the legal process set up by the bourgeoisie for its own protection. Marx, *The Class Struggle in France*, in K. MARX AND F. ENGELS, SELECTED WORKS, VOL. I, 112, 208 (1969). See also M. CAIN AND A. HUNT, *supra* note 70, at 217; Tay and Kamenka, *supra* note 68, at 232.

In 1845 Engels argued, in contrast to Marx, that the law, as a creation of the bourgeoisie, ultimately benefits only that class: "The middle classes certainly are all in favour of the sanctity of the law. That is not surprising. They have made the law; they approve of it; they are protected by it and they gain advantages from it. The bourgeoisie appreciate that, even although some particular enactment may injure their interests, the whole body of laws protects their interests." And while the proletariat might occasionally, in isolated circumstances, benefit from the law, "the worker . . . knows from long and bitter experience that the law is a rod which the bourgeoisie has in readiness for him. The worker has no confidence in the law and, if at all possible, he avoids it." F. ENGELS, *THE CONDITION OF THE WORKING CLASS IN ENGLAND IN 1844*, *supra* note 30, at 257-258. However, by 1890, Engels seems to have come around to share Marx's view that the law could be a useful, even decisive, tool for the proletariat: "The economic situation is the basis, but the various elements of the superstructure — political forms of the class struggle and its consequences, constitutions established by the victorious class after a successful battle, etc. — forms of law — and then even the reflexes of all these actual struggles in the brains of the combatants, political, legal, philosophical theories, religious ideas and their further development into systems of dogma — also exercise their influence upon the course of the historical struggles and in many cases preponderate in determining their form." Engels, *Letter to J. Bloch*, in K. MARX AND F. ENGELS, SELECTED CORRESPONDENCE 475 (1975).

Contemporary scholars tend to interpret classic Marxism as taking a far more cynical approach to laws that seem to cut against the dominant class. See, e.g., H. COLLINS, *supra* note 73, at 75 ["The contrary suggestion that some legal rules cannot be explained on a class basis at all, for example that laws prohibiting rape and assault further the interests of other kinds of groups or perhaps benefit everyone equally, is often casually dismissed as naive or the product of false consciousness. It is said that the dominant ideology portrays such laws as universally valuable in order to legitimate their authority, while in fact they form part of the general state apparatus for the oppression of the subordinate classes."]

77. Tay and Kamenka, *supra* note 68, at 224.

78. See, e.g., Pashukanis, *The Soviet State and the Revolution in Law*, in H.W. BABB, TRANSL., *SOVIET LEGAL PHILOSOPHY* 237, 270-271 (1951) ["Marx spoke of the transition period from capitalism to communism — from one conception to another — but nowhere is there to be found in Marx a suggestion that this transition period is a special conception The essence of the matter is that the transition period — when the dictatorship of the proletariat is carrying the revolutionary transition from capitalism to communism into effect — cannot be regarded as a special and final social-economic conception, and it is therefore impossible to create for it a special and final system of law"]

79. This concession to bourgeois legality has created a permanent predicament for Marxist legal scholars. If they accept classical Marxism's instrumental view of law as an institution of class antagonism used to maintain the power of the ruling class, then clearly the law can have no place after the communist revolution abolishes all class distinctions.

However, if they reject the instrumental view of law as unacceptably Utopian, as Lenin did, then they admit by implication that the law is, in some important respect, autonomous, i.e., that legal institutions are not merely ideological constructs upon the 'base' of economic relations. As a result, the entire 'base' and 'superstructure' theory of historical materialism would be discredited. See H. COLLINS, *supra* note 73, at 70. Indeed, this philosophical paradox about the law has "been among the factors leading to the intellectual disintegration of Marxism as a coherent system of thought." Tay and Kamenka, *supra* note 68, at 218.

Contemporary Marxist scholars, such as E.P. Thompson and Christine Sypnowich continue the effort construct an acceptable and internally consistent theory of socialist law. See, e.g., E.P. THOMPSON, *WHIGS AND HUNTERS: THE ORIGINS OF THE BLACK ACT* (1975) and C. SYPNOWICH, *THE CONCEPT OF SOCIALIST LAW* (1990). The fact remains, however, that any theory of socialist law that posits law as an autonomous feature of social relations deviates in important respects from classic Marxism. And, after all, this study is not about what legal theories are possible under Marxism, but the theories of law that Marx himself held.

80. H. COLLINS, *supra* note 73, at 91.

81. V.I. LENIN, *STATE AND REVOLUTION* 23 (1932).

82. On Lenin's concept of legality, see Tay and Kamenka, *supra* note 68, at 234, 236-37.

83. Pashukanis, *The Soviet State and the Revolution in Law*, in H.W. BABB, TRANSL., *SOVIET LEGAL PHILOSOPHY* 237, 279 (1951).

84. H. COLLINS, *supra* note 73, at 139.

85. Typically, governments would undermine environmental regulation by increasing budgetary allocations to compensate noncomplying enterprises for any fines levied. It was a case of taking money from one pocket and putting it back in another. See, e.g. H. FRENCH, *supra* note 8, at 34 ["In the Soviet Union, there is actually an incentive to violate the norms, because enterprises' future budgets are based on past expenses, including natural resources used and fines paid. The higher the total, the greater the future allocations."]. In addition, it was quite easy for offending industries to gain exemptions from environmental standards. See, e.g., THE MINISTRY OF ENVIRONMENT OF THE CZECH REPUBLIC, CZECHOSLOVAK ACADEMY OF SCIENCES, *ENVIRONMENT OF THE CZECH REPUBLIC*, Part I, 23 (1990) ["the water legislation may be considered as a relatively good system of legal norms, which have been, however, often violated. Too many exemptions from the Water Act (§ 23, part 3) were issued by the Government of the CSR (sic), which allowed sewage to be discharged into the streams."]. See *infra* notes 101-102 and accompanying text.

86. B. KOMAROV, *supra* note 2, at 21. As the Soviet Jurist, G.A. Aksenok, wrote in his book *Legal Problems of Environmental Protection in the USSR*, "All these laws are declarative and do not cover the full variety of complex relationships in many spheres of nature conservation. They define neither the content of offenses nor the measures of liability." G.A. AKSEKOV, *LEGAL PROBLEMS OF ENVIRONMENTAL PROTECTION IN THE USSR* [PRAVOVYE PROBLEMY OKHRANY PRIRODNOI SREDDY V SSSR] (1969), quoted in B. KOMAROV, *supra* note 2, at 66.

87. Maggs, *supra* note 48, at 363.

88. Vyshinsky, *Fundamental Tasks of the Science of Soviet Socialist Law*, in H.W. BABB, TRANSL., *SOVIET LEGAL PHILOSOPHY* 303, 336-337 (1951).

89. In reality, the communist parties of Eastern Europe and the Soviet Union never had much in common with the working classes. Consider the Solidarity movement in Poland.

In a country led by the "Polish United Worker's Party," why would the working class ever require an independent union to represent their interests? And whose interests was the Party protecting when it jailed Solidarity's leaders and declared martial law in 1981? In the wake of martial law, even Party officials began to question publicly whether the party could be described as representing the interests of the working class. G. KOLANKIEWICZ AND P.G. LEWIS, *POLAND: POLITICS, ECONOMICS AND SOCIETY* 166 (1988). Even at its height, the communist party of Poland could never claim that it was a party of the workers. By its own estimates, after 1960 at least, workers never made up more than 46% of the Party roster. *Id.* at 69, Table 3.1.

90. C.E. ZIEGLER, *supra* note 3, at 95.

91. It might be argued that the political nature of law in Eastern Europe and the Soviet Union is primarily a function of cultural history, rather than Marxist ideology. True, the pre-revolutionary political systems of several of the eastern european countries, including Russia, lacked a rule of law concept. But this was not true of every Eastern European country. Poland, for example, as early as the sixteenth century, had a well-developed parliamentary system of government, and protected civil and religious liberties that were not protected elsewhere in Europe for another 200-400 years. See, e.g. W.J. Wagner, *Justice for All: Polish Democracy in the Renaissance Period in Historical Perspective*, in S. FIZSMAN, ED., *THE POLISH RENAISSANCE IN ITS EUROPEAN CONTEXT* 137 (1988). Beyond this, the fact remains that even if traditional cultural values did influence conceptions of law in Eastern Europe and the Soviet Union, the instrumental view of law instituted by the socialist governments was designed to be, and was in fact, consonant with the teachings of orthodox Marxism. See *supra* note 88 and accompanying text.

92. B. KOMAROV, *supra* note 2, at 63. Ironically, the moral Wolfson drew from the Vever story is the same lesson that Marx drew in the 1840s from remarkably similar factual situation, when the German Landstag debated a law revoking the peasants' customary right to gather wood in the forests, i.e., that the state and its law should not both be under the control of those in power (or, in Marx's terms, the dominant class). See L. KOLAKOWSKI, *supra* note 9, at 122 (1978).

93. See, e.g., K. POPPER, *THE OPEN SOCIETY AND ITS ENEMIES*, VOL. II, 161-162 (5th ed. 1966). An even less favorable assessment comes from Poland, where I have heard it said that Stalinism is not Marxism gone wrong, but Marxism in its highest form. This position is not so extreme as it might first appear; it is, in fact, based on a logical extension (but not the only logical extension) from Marx's writings. As Leszek Kolakowski has noted, "the abolition of law as a mediating institution between individuals and the state, and the principle of servility in every manifestation of culture, could be regarded as a perfect embodiment of Marxist theory." L. KOLAKOWSKI, *supra* note 9, at 419. Professor Kolakowski's "perfect embodiment" is an apt description of Stalinism.

94. See generally K. MARX AND F. ENGELS, *THE COMMUNIST MANIFESTO* (1955); also Marx, *Critique of the Gotha Programme*, in K. MARX AND F. ENGELS, *SELECTED WORKS*, VOL. III 26 (1970) ["Between capitalist and communist society lies the period of the revolutionary transformation of the one into the other. Corresponding to this is also a political transition period in which the state can be nothing but *the revolutionary dictatorship of the proletariat.*"] Marx never defined his use of the term "dictatorship." It is entirely possible that he did not mean to overthrow the principles of representative democracy along with the tyranny of the bourgeoisie; it has often been suggested, by Kautsky among others, that Marx had in mind only the repression of the class-based power system. However, as Professor Kolakowski has pointed out, whether or not Marx intended the imposition of

socialism to be despotic, despotic socialism was a logical outcome (if not the only possible logical outcome) of his writings. L. KOŁAKOWSKI, *supra* note 9, at 419.

95. See, e.g., Art. 3, *Konstytucja Polskiej Rzeczypospolitej Ludowej, uchwalona przez sejm ustawodawczy w dniu 22 lipca 1952 r., jednolity tekst z dnia 10 lutego 1976 r., Dziennik Ustaw z dnia 16 lutego 1976 r.*, No. 7, item 36.

96. Mikhail Bakunin, *Statism and Anarchy*, in SAM DOLGOFF, ED., *BAKUNIN ON ANARCHY* 331 (1971). Professor Kołakowski credits Bakunin for being the first to infer Leninism from Marxism. L. KOŁAKOWSKI, *supra* note 9, at 256. The implication is that even if Marx did not imagine socialism as a despotic system, despotism was nonetheless a natural and predictable consequence of revolutionary dictatorship.

97. See, e.g., THE MINISTRY OF ENVIRONMENT OF THE CZECH REPUBLIC, CZECHOSLOVAK ACADEMY OF SCIENCES, *ENVIRONMENT OF THE CZECH REPUBLIC*, Part I, 13 (1990) ["The primary goal of the CPC (Communist Party of Czechoslovakia), unambiguously superior to all others (sic) goals, was, since the beginning, to build up and consolidate the totalitarian power."]

By way of illustration, consider the case of Maciej Szczepański, head of the Polish national television and radio stations under the Gierek administration of the late 1970s. Somehow, in a socialist country with a per capita g.n.p. of \$4662 (1989 US) in 1979, Szczepański "managed to acquire ten lavishly appointed residences, a hunting lodge with antiques valued at more than one million dollars, a sheep farm of some thirty-two acres (immense by Polish standards), a forty-room mansion in Warsaw, a sauna and swimming pool in his office, a rather nice looking masseuse, a splendid yacht, a villa in Kenya, and around 900 pornographic video-cassettes." J. CLARK AND A. WILDAVSKY, *THE MORAL COLLAPSE OF COMMUNISM: POLAND AS A CAUTIONARY TALE* 168 (1990); the g.n.p. figure comes from CENTRAL INTELLIGENCE AGENCY, *EASTERN EUROPE: LONG ROAD AHEAD TO ECONOMIC WELL-BEING*, REP. TO THE SUBCOMM. ON TECH. AND NAT'L SECURITY OF THE JOINT ECON. COMM. OF CONG., May 16, 1990, Table C-14.

98. B. KOMAROV, *supra* note 2, at 108.

99. See B. JANCAR, *ENVIRONMENTAL MANAGEMENT IN THE SOVIET UNION AND YUGOSLAVIA: STRUCTURE AND REGULATION IN FEDERAL COMMUNIST STATES* 123 (1987) ["The whole concept of the leading role of the party rests on the premise that the party knows best how to increase material abundance in preparation for the eventual advent of communism."]

100. This explains why, for example, environmental problems were completely ignored at Party Congresses during planning discussions. See Trojan, *Environmental Policy in Eastern Europe*, in W. GRODZINSKI, E.B. COWLING, AND A.I. BREYMEYER, EDs., *ECOLOGICAL RISKS: PERSPECTIVES FROM POLAND AND THE UNITED STATES* 333, 335 (1990).

101. See L. COHEN-TANUGI, *LE DROIT SANS L'ÉTAT: SUR LA DÉMOCRATIE EN FRANCE ET EN AMÉRIQUE* (Law without the state: democracy in France and in America) 141-143 (1985); also B. JANCAR, *supra* note 98, at 310-311.

102. See, e.g., B. JANCAR, *supra* note 98, at 55-56; also *supra* note 85.

103. See, e.g., Taga, *Externalities in a Command Society* in, F. SINGLETON, ED., *ENVIRONMENTAL MISUSE IN THE SOVIET UNION* 75 (1976); also *supra* note 85.

104. Cohen-Tanugi's thesis also helps to explain why nuclear and other industrial accidents that affect the environment receive more open public scrutiny in countries like the United States, where nuclear and other industrial plants are privately owned, than in

countries, such as the former Soviet Union, France and England, where nuclear power plants and other large industrial concerns are owned and operated by the government. See, e.g., Z.A. MEDVEDEV, *THE LEGACY OF CHERNOBYL* 264-265 ["The largest number of nuclear accidents and operational mishaps which have been described in the literature have occurred in the United States. This is because the United States is the country that is most open about nuclear-related accidents. Its nuclear energy stations are privately owned but supervised by a government body, the Nuclear Regulatory Commission (NRC). This supervision and the many anti-nuclear, consumer and environmental groups make it difficult to cover up even minor mishaps. British nuclear power plants are fully controlled by the government and this makes them far less open to public scrutiny. However, the British press is free to discuss accidents. France depends more on nuclear energy (up to 70 per cent of its total requirement) than Britain or the United States. The French government tends to treat nuclear energy matters as highly classified information and there has never been a public enquiry into nuclear safety in France. Most other countries fall between the two extremes of France and the United States. The situation in the United States can, therefore, justifiably be taken as the best possible case."]

105. Marx, *Debates on Freedom of the Press*, *supra* note 69, at 158-159 (1975).

106. Marx, *Comments on the Latest Prussian Censorship Instruction*, in KARL MARX AND FRIEDRICH ENGELS, *COMPLETE WORKS*, VOL. I, 120 (1975) ["The moral state assumes its members to have the *frame of mind of the state*, even if they act in *opposition to an organ of the state*, against the government."]

107. *Id.* at 120-121.

108. Marx, *Debates on Freedom of the Press*, *supra* note 69, at 159. It's not clear whether Engels shared Marx's concern for a free press; his writings display ambivalence. On the one hand, in *The State of Germany* (1845-46) Engels wrote, "the liberty of the press is, of itself, a middle-class privilege, because printing requires *money*, and buyers for the printed productions, which buyers must have money again." Engels, *The State of Germany*, *supra* note 74, at 28-29 (1976). On the other hand, twenty years later, in *The Prussian Military Question* (1865), Engels explicitly recognized that freedom of the press was indispensable for the workers' movement. Engels, *The Prussian Military Question*, in K. MARX, *THE FIRST INTERNATIONAL AND AFTER* 260-261 (1974).

109. See, e.g., Marx, *Critique of the Gotha Programme*, *supra* note 94, at 26; also see *supra* Note 94.

110. B. KOMAROV, *supra* note 2, at 17.

111. B. JANCAR, *supra* note 98, at 259, 270. As late as 1989, the Soviet press complained about limitations on its access to information concerning accidents affecting the environment: "Amongst others, we still cannot find out information about accidents and fires at energy and building installations at the Ministry of Energy of the USSR, about equipment being put out of action when this entails material losses, human victims or even non-catastrophic contamination of the environment." *Izvestiya*, April 26, 1989, *quoted in* Z.A. MEDVEDEV, *supra* note 103, at 288.

112. Z.A. MEDVEDEV, *supra* note 103, at 64.

113. *Id.* at 56.

114. *Id.* at 57, 65, 289.

115. *Id.* at 66.

116. See, e.g., G. MEDVEDEV, *THE TRUTH ABOUT CHERNOBYL* 101 (1991).

117. Z.A. MEDVEDEV, *supra* note 103, at 52.
118. *Id.* at 59, 67.
119. *Pravda*, May 15, 1986, *quoted in* Z.A. Medvedev, *supra* note 103, at 70.
120. *Radio Free Europe Criticized for 'Lies'*, FBIS-E.Eu., Nov. 10, 1986.
121. *Uncensored Polish News Bulletin*, No. 16 (August 8, 1985), 5. The *Trybuna Ludu* article reported that 35% of Poland's population lived in exceptionally bad environmental conditions and predicted that it would take at least 25 years to correct the situation. *See also* J. RENSENBRINK, POLAND CHALLENGES A DIVIDED WORLD 168 (1988).
 About a month after the *Trybuna Ludu* article appeared, the Polish daily *Życie Warszawy* published an article reporting on a new study by the official Polish Chemical Society, under direction from the Polish Academy of Sciences' committee on chemical sciences. The article summarized some of the findings of the study, including the fact that "Poland leads Europe in atmospheric pollution." At a press conference the following day, Jerzy Urban, attacked the Polish Chemical Society's report, calling it "alarmist and exaggerated." *Id.* at 167-168. Urban argued that, contrary to the report's findings, Poland was not an environmental disaster area; other countries including, by implication, some from Western Europe and North America suffered from more severe environmental problems than Poland; and the Polish government had taken "widespread actions" to improve environmental protection. *Urban Gives Weekly Press Conference 10 Sep: Election Boycott Call, Ecology*, FBIS-E.Eu., Sept. 11, 1985. The very next day, France's AFP news agency reported on a new study by Poland's own Academy of Sciences which "confirmed that Poland's industries were the worst cause of pollution in Europe The academy's report said that an 'ecological disaster' had been reached in Poland's three main industrial areas — the Silesian coal basin, the steel complex at Nowa Huta and the Gulf of Gdańsk — with a total area of 37,000 square kms (14,230 square miles) with 11 million inhabitants." *Report Says PPR Facing 'Ecological Disaster'*, FBIS-E.Eu., Sept. 12, 1985.
122. As of this writing, communist parties remain in power in Romania and Yugoslavia (as it is presently comprised), but their authority today is diminished thanks to democratic reforms. The current situations of the countries of the former Soviet Union are more difficult to read. Some republics remain clearly under the control of the communist party, while others — notably the Baltics, Russia, Belarus, and Ukraine, *appear* to have become independent and democratic states.
123. Throughout Eastern Europe, environmental problems and the rise of strong, independent environmental interest groups played significant roles in the 1989 revolutions. In Bulgaria, for example, Ecoglasnost was the first independent organization ever tolerated by the totalitarian regime of Todor Zhivkov. Eventually, it helped to oust Zhivkov, and the Green Party it spawned today holds 32 seats in the Bulgarian parliament. *See* H. FRENCH, *supra* note 8, at 33.
124. B. KOMAROV, *supra* note 2, at 69-70.
125. *Id.* at 70.
126. On the debate over the merits of central economic planning, *see supra* note 36.
127. RUDOLF BAHRO, SOCIALISM AND SURVIVAL 19 (1982).
128. *Id.* at 42-43.
129. *Id.* at 45.
130. *Id.*

131. *Id.* at 62.
132. *Id.* at 125 (emphasis added).
133. *Id.* at 129-30.
134. *Id.* at 59 (emphasis added).
135. Andrew McLaughlin, *Ecology, Capitalism, and Socialism*, 10 SOCIALISM AND DEMOCRACY 69, at 95 (Spring/Summer 1990).
136. *Id.*
137. Raskin and Barnow, *supra* note 56, at 90.
138. *Accord* Raskin and Barnow, *supra* note 56, at 90-91 ["For social ecology, Marxism has become obsolete. Too narrow in its theoretical framework, too committed to the primacy of class relations, and too imbued with nineteenth-century imagery of progress through the technological domination of nature, conventional Marxism has become irrelevant, at best. At worst, it is seen, along with capitalism, as promoting dangerous modes of development around the globe."]
139. *Accord* Raskin and Bernow, *supra* note 56, at 92 ["Marxism has been deficient in understanding and acting on fundamental environmental questions. However, this deficiency can be traced to the nineteenth-century context in which Marx worked."]
140. *See, e.g.*, Raskin and Bernow, *supra* note 56, at 91 ["Marxism has shared with capitalism a commitment to centralized industrialism and the production of ever more material goods."]
141. *See supra* note 16 and accompanying text.
142. *See* J. DEBARDELEBEN, *supra* note 58, at 80.
143. K. POPPER, *supra* note 93, at 140.
144. *See, e.g.*, MILTON FRIEDMAN, FREE TO CHOOSE 214 (1980) ["The preservation of the environment and the avoidance of undue pollution are real problems and they are problems concerning which the government has an important role to play"]. Friedman, among others, correctly perceives that properly designed environmental protection regulations do not unreasonably interfere with the efficient operations of the marketplace; on the contrary, they "introduce market discipline" in situations where the market fails to properly allocate environmental costs and benefits. *Id.* at 217.
145. *Id.* at 187, 335 n.9.
146. *See infra* note 150 and accompanying text.
147. *See* K. POPPER, *supra* note 93, at 205.
148. For example, the quest continues for a coherent and internally consistent socialist conception of law. *See, e.g.* E.P THOMPSON, *supra* note 79; C. SYPNOWICH, *supra* note 79.
149. *See, e.g., supra* notes 66-67 and accompanying text.
150. My biblical allusion is not novel. Toynbee described Marx's theory of historical materialism with a biblical metaphor: "Marx has taken the Goddess 'Historical Necessity' in place of Yahweh for his deity, and the internal proletariat of the Western World in place of Jewry for his chosen people, and his Messianic Kingdom is conceived of as a Dictatorship of the Proletariat" A.J. TOYNBEE, A STUDY OF HISTORY, VOL. I, 400 (1946). However, Professor Kofakowski maintains that the comparison of Marxism and religious faith is "apt only in part":

The way in which it operated in minds might indeed have been similar to that of religion: It demanded blind obedience to the actual verdicts of the ideological authority and it was immune to falsification, but all the time it boasted of being a rationally grounded, scientific theory. This made it a parody of religion rather than a religion proper, and its self-contradictory characteristic 'scientific blind faith,' was one of the reasons it was exposed to rational criticism.

Leszek Kołakowski, *Mind and Body: Ideology and Economy in the Collapse of Communism*, in KAZIMIERZ POZNAŃKI, ED., *CONSTRUCTING CAPITALISM: THE REEMERGENCE OF CIVIL SOCIETY AND LIBERAL ECONOMY IN THE POST-COMMUNIST WORLD* 9, 13 (1992).

151. LESZEK KOŁAKOWSKI, *supra* note 9, at 3.