1965

Soviet Theory of Jurisprudence

Francis G. Homan Jr.

Soviet Theory of Jurisprudence

*Francis G. Homan, Jr.**

ANY EXAMINATION OF MARXIAN THEORY and its embodiment in Soviet jurisprudence must first review its roots in Hegelian philosophy. Bolshevism, Fascism and National Socialism have all relied on Hegelian theory, with tremendous political impact on modern history.

The essence of Hegel's philosophy is its emphasis on history and the historical aspects of all human endeavors as evidenced by the see-saw battle between freedom and tyranny. Perceiving a pattern in historical events which seemed to be capable of prediction, Hegel deduced that all history could be thus categorized. He saw history as a dialectical progression based on the two opposing forces of man and nature and their ultimate realization in the spirit of history. This concept was distilled into the now famous axiom: "thesis—antithesis—equals synthesis." Hegel insisted that all history could be explained on the basis of this principle and his concept of the state was consistent with it.

To Hegel the state was not a part but the very essence, the basic unit of history. He rejected the idea of historical life outside and before the existence of the state. The state is, for Hegel, not representative but the very incarnation of the "spirit of the world."

Thus, Hegel attacked the "natural right" or "social compact" theories extant in his day which held that the state originates in a contract and is bound to certain conditions, to legal and moral considerations. This idea was contrary to what Hegel viewed as the Divine Idea, *i.e.*, the state with its concomitant absolutism, and his rejection of the concept of individual morality as a universal law. Hegel's state acknowledges no abstract rules of good and evil. There is no moral obligation for the state's universal will, only for the individual will. The duty of the state is self preservation and, thus, Hegel favored a state organized in a totalitarian manner which would develop in the highest degree the spirit of history. He did not reject the notion of freedom but maintained that true freedom could only be realized through its

* B.A., M.A., University of Pennsylvania; Teacher, Cleveland Board of Education; Fourth-year student at Cleveland-Marshall Law School of Baldwin-Wallace College.

embodiment in the state. Individual freedom, in Hegel's view, is synonymous with identification with the state and "obedience to the law." Abstractions such as justice and morality have no existence apart from reality (which is identical with reason). The existence of the state is its own justification and its laws are those of self preservation. The citizen's morality is to obey and thus achieve freedom through identification with the state.

Thus, Hegel extolled the truth which lies in power. He declared that men were foolish to forget, in their enthusiasm for individual freedom, the truth which lay in power. That these ideas contain the nucleus of the ruthless and coercive programs of the modern totalitarian state need hardly be explained.

Hegelianism and the liberalism of the Lockean philosophers are diametrically opposed. For Hegel the state is in itself good, its citizens matter only insofar as they minister to the glory of the whole. Liberalism, on the other hand, regards the state as serving the individual needs of its various members. In practical application, the Hegelian view supports intolerance, ruthlessness and tyranny. The liberal philosophy fosters consideration, tolerance and compromise.

Karl Marx, a late contemporary of Hegel, was strongly influenced by Hegel during his university days. After his exile from his homeland, he used Hegelian philosophy as a springboard for the development of his own theories. Marx was similarly preoccupied with the state as the basic unit of history rather than the individual and his theories were directed toward the reformation of the entire political system rather than the correction of individual problems. Marx adopted Hegel's historical view of social development. His approach is connected with the dialectic. Hegel, as we have noted, conceived the course of history as a gradual self-realization of the spirit which strives toward the Absolute. The passions and ambitions of individuals are the material from which the state derives its vital force. This individual spirit is synthesized in the state. Marx substituted the economic motivation of man for Hegel's spirit and the classless society for Hegel's Absolute. A competitive system of production, according to Marx, will in time produce internal tensions between the various social classes that are linked to it. These contradictions, as Marx called them, are resolved into a higher synthesis. The form which the dialectic struggle takes is the class war. The resolution of the struggle is synthesis in the

classless society. Once this has been attained, the conflicts disappear and the dialectic process fades away.

Because Marxist doctrine is Hegelian in method, Marx called his own theory "dialectic materialism."

Marxian theory explains society in terms of the mutual relations into which men enter when engaged in the material means of production. These relationships are conditioned by the forces of economics. The attitude of the individual is formed by his relative position in these socio-economic groups, *i.e.*, his class-status. The general attitude of men toward social problems is based on the relative position of their class in society. Finally, the history of mankind, since the rise of social classes, is explained as a history of class struggle.

Marx regarded the non-socialist states as dependent upon, and serving as a reinforcement of, these fundamental class divisions. Thus, Engels, the alter-ego of Karl Marx, defined the state as the preservation of the status quo. Given the basic antagonisms between classes with conflicting and irreconcilable economic differences, the state's role is to keep them in check. Since the most economically powerful class holds the reins of political power, it uses the law as a means to further exploitation of the oppressed classes. This is true even where the law appears to be adverse to the interests of the individual members of the ruling class and to advance the apparent interests of the oppressed classes. For example, legislation regulating the employment of children in certain industries, by safeguarding the health of the younger generation of workers and by preventing unsound methods of competition between capitalists, really serves the interests of capitalist society.

Thus, as long as there is a class society there is class justice. Judges perform the function of preserving the existing structure of society. In a non-socialist system they must and do interpret all ambiguities in the law in harmony with the concept of preserving the order of the ruling classes.

The state, according to both Marx and Engels, is an instrument of coercion to be ultimately used by the victorious working-classes to expropriate the former ruling class and break the resistance to the formation of the new classless society. When this synthesis of competing economic classes is achieved the coercive power of the state and its concomitant laws become unnecessary. The state is not abolished, it "withers away."

How are these concepts reflected in Soviet Jurisprudence? When the Russian Revolution occurred in 1917 and the initial confusion and chaotic conditions caused by a foreign war and civil strife ended, Lenin temporarily abandoned the doctrinaire principles of Marxism in an effort to put the country back on its feet. The creation of a society of equals living in the midst of abundance failed to materialize, and Lenin permitted a certain amount of private industry and private trade to restock the economic larders. Thus, together with state-owned industries and utilities, Lenin created a mixed system of public and private ownership called the New Economic Policy (N.E.P.). This policy was considered contrary to the spirit of Marxism and eventually the entire economy was recast, with the complete abolition of the profit motive, into an economic plan directed from a single center and applicable to the total territory of the state.

Lenin regarded the state as a mechanism of constraint which subjected people to systematic violence. He went further than Marx when he stated that the essence of the state is its police, army and navy. However, consistent with Marxian ideology, the state to Lenin was only a transient phase. After the complete success of the proletarian revolution, a new era would dawn in which the need for a state apparatus would vanish.

In spite of this totalitarian view, Lenin tolerated semi-independent speculation regarding the nature of law. The first step in attempting to develop a specific Soviet theory of law was P. L. Stuchka's *The Revolutionary Part Played by Law and the State: A General Doctrine of Law,* published in 1921. Stuchka defined law as a system of social relationships corresponding to the interests of the dominant class and safeguarded by its organized force. The salient feature and one which caused its later repudiation was his emphasis on the "social" basis of the law. Stuchka thought that there was a "natural law" growing out of social intercourse. This "natural law" had precedence over "artificial law" consisting of statutes and governmental decrees. The echo of Lockean and non-socialistic views can be seen in these ideas and Stuchka's theory was unacceptable to Marxian dogmatists because it omitted any reference to the class struggle and failed to provide for the ultimate phenomenon of a classless society. It was eventually abandoned as an expression of Soviet law and replaced by a psychological theory of law advanced by M. A. Reisner in *The Theory of Petrazhitskie: Marxism and So-*

cial Ideology. He thought that legal conduct stemmed from the psychological experiences of men and saw its chief sanction not in the application of force but in the "legal consciousness" and instinctive sense of justice in men. The origin of the law was not in any institution devised by men, but sprang from the collective experience of communism and societies. Reisner tried to put a Marxian base under this idea of intuitive law and attempted to find the driving force of Soviet law in the "revolutionary legal consciousness" of the workers inspired by the ideal of universal equality. Reisner's emphasis on the individual conscience had no lasting effect on Soviet legal philosophy.

Chronologically, the next important juridical thinker was E. B. Pashukanis, who in his *General Theory of Law and Marxism,* in 1922, identified law in its most developed form with bourgeois economics and culture. However, he felt that the Soviet state, prior to attainment of full-fledged socialism, could not and should not dispense with bourgeois forms of law. It was his theory that any attempt to develop purely proletarian categories of law in the Soviet Union was an exercise in futility because the achievement of a truly socialist society would result in the dying out of the law as an instrument of social regulation. Pashukanis was convinced that the institution of law reaches its highest and fullest development in a market economy in which isolated and independent producers and owners of commodities exchange their products by means of contracts. The interests of these individuals frequently come into conflict and it is the function of the law to adjust these conflicting interests. Where there is complete unity of social purpose undefiled by the clash of contradictory interests, there would be no place for the law. Thus, a railroad timetable, a hospital directive for treatment of sick persons, or various other regulations designed to achieve a collective purpose, do not operate under the color of law. Therefore, any attempt to devise a socialist or proletarian theory of law is not only futile but unnecessary.

When economic developments in the Soviet Union indicated that the state was not going to "wither away," a reaction against Pashukanis' theory resulted in his denunciation and he was forced into a partial recantation. However, he continued to insist that it was unnecessary for the Soviet Union to devise a specific form of proletarian law since, with the socialization of production, the disappearance of the law would begin immedi-

ately. He disappeared from sight and may have been liquidated during the great purges of the Thirties.

After 1930 there was a shift in Soviet legal thinking which manifested itself in five ways:

(1) The economic concept of law, based on class, was replaced by a primarily normative idea of law, directed toward the individual. (2) An attempt was made to dilute the class element in the Marxian view of the law by equating the interests of the dominant class in the Soviet Union with the will of all the people. (3) Consistent with the Marxian theory that law is an instrument to support the ruling class, after the revolution and the achievement of a classless society, law was pictured as a stabilizer of the social order rather than an innovating force. (4) Socialist law was proclaimed as a new and distinct form of law and (5) the withering away of the law was postponed indefinitely.

In short, where Marx had explained law in terms of the relations between competing classes as the basic unit of the state there was now a return to the Hegelian view of the state as the basic unit of history since the class struggle had theoretically ceased to exist. In either case, it should be noted that the individual remains subordinate to the state.

In 1938 a new definition of the law was formulated by A. Y. Vyshinsky in *The Law of the Soviet State*. Vyshinsky's view was that Soviet law was the aggregate of rules of conduct embodied in statutes by the workers' government and reflecting their will. These rules are enforced by the coercive power of the Soviet state and are designed to strengthen the relationships between the workers and to destroy any vestiges of capitalism in economic and social life in order to build a true communist society.

The law still serves the economically dominant group which is now the Soviet workers. Constraint is prominently featured under Vyshinsky's theory as it was under Lenin who observed that the law was nothing without a mechanism to enforce obedience. Thus, law is regarded, as it was by Marx, as an institution designed to safeguard and perpetuate the interests of the ruling class. However, this class has been expanded and broadened so as to include the entire toiling mass.

Law is today viewed as a stabilizing force in Soviet society. The concept of judges as policy makers is strongly rejected. Their work is subordinate to statute. The courts are expected to

play an important part in maintaining a sense of collective unity and purpose in society.

Their task is conceived in terms of the education of the people—the litigating parties, the spectators and indeed all of society. Soviet judicial opinions tend to reflect a rather mechanical mode of reasoning and the law is conceived as a body of rather rigid rules which, when applied to the citizenry, makes them ready and willing to carry out the collective spirit of Marxism.

It may seem that the attempts of Soviet legal scholars to build a philosophy of jurisprudence is an exercise in hypocrisy to mask a brutal tyranny in which the personal rights of the citizens are ruthlessly trampled by a totalitarian regime. But Soviet law is not as oppressive as we have often been led to believe. That there are abuses, especially in the field of political crimes, there can be no doubt, but otherwise the average individual, if he is reasonably careful, does not live in constant terror of being shipped off to a corrective labor camp in Siberia. The Soviet law is often described as parental. The children—*viz.*, the citizenry—have no "legal" control of the state. There are no means of expressing effective opposition to the power of the state. In contrast, our political-legal system embodying the concept of individual rights as well as effective opposing political forces, provides checks on governmental power. The Soviet state is not bound by public opinion; it may recognize opinion but it can and has ignored the wishes of the masses if it feels that another goal is more important. This is consistent with the Hegelian and Marxist view of the individual as subordinate to the state.

Nevertheless, the parental character of Soviet laws does not limit it to arbitrary state action. Large numbers of prosecutions are brought against officials for gross negligence of their duties, and state organizations can be and are sued by individuals for injuries to person or property and for breach of contract.

There are many contradictions in Soviet jurisprudence. How, for example, does one reconcile the Marxian concept of law as an "exploiter" of the toiling masses (the tool of the ruling class) with any theory of Socialist law? Vyshinsky attempts to reconcile this conflict by explaining that the new law is now the tool of the general will and is the expression of a classless Marxian society. There is no ruling class and the coercive power of

the state is directed toward the non-conforming individual rather than an exploited class. Yet, every society has contradictions. The political absolutism of the Soviets does not destroy an otherwise sound legal system. An illustration of our own country's contradictions is to be found in the fact that in some places, in spite of 100 years of guaranteed constitutional equality, Negroes still are systematically deprived of the franchise, denied fair trial, and are often the victims of unpunished violence. This does not mean that law is non-existent in those areas. It simply means that force and violence is tolerated in certain types of situations. This may have a deleterious effect on the legal system as a whole, but it does not destroy it.

The biggest handicap to any more elastic form of Soviet jurisprudence lies in its apparent necessity to base everything on Marxian philosophy which has become a sacred dogma invulnerable to criticism. The leaders have become the captives of their own dogma and cannot abandon their whole "raison d'etat" without imperiling their own authority and prestige. In any event, any changes in Soviet jurisprudence will have to come about through political developments, rather than through any radical and innovating philosophy based more on a concept of individual freedom and less on deterministic philosophy.

BIBLIOGRAPHY

Books

1. Engels, F., *Anti-Duhring* (New York, 1938).
2. Engels, F., *Origin of the Family, Private Property and the State* (London, 1928).
3. Hegel, F., *Phenomenology of the Mind,* Eng. trans. by J. B. Baille (New York, 1931).
4. Hegel, F., *Lectures on the Philosophy of History,* Eng. trans. by J. Sibree (London, 1900).
5. Marx, K., *Kapital* (London, 1929).
6. Marx, K. & Engels, F., *Manifesto of the Communist Party* (London, 1929).
7. Berman, H. J., *Justice in Russia* (Cambridge, Mass., 1950).
8. Bober, M. M., *Karl Marx's Interpretation of History* (New York, 1948).
9. Cassirer, E., *The Myth of the State* (New York, 1955).
10. Cooper, R., *The Logical Influence of Hegel on Marx,* Publications in the Social Sciences, vol. 2 (Univ. of Wash. 1948).

11. Fromm, E., *Marx's Concept of Man* (New York, 1959).
12. Harper, S. & Thompson, R., *The Government of the Soviet Union* (New York, 1949).
13. Hazard, J., Introduction to *Soviet Legal Philosophy* by V. J. Lenin, P. J. Stuchka, M. A. Reisner, E. B. Pashukanis, J. V. Stalin, A. Y. Vyshinsky, et al, trans. by Hugh W. Babb.
14. Hazard, J. & Shapiro, I., *The Soviet State and its Citizens, Part 1* (New York, 1962).
15. Nelsen, H., *The Communist Theory of Law* (New York, 1955).
16. Meyer, A. G., *Leninism* (Cambridge, Mass., 1957).
17. Moore, R. B. Jr., *Soviet Politics: The Dilemma of Power* (Cambridge, Mass., 1957).
18. Russell, B., *The Wisdom of the West* (New York, 1960).
19. Schlesinger, R., *Soviet Legal Theory* (London, 1954).
20. Towster, J., *Political Power in the U. S. S. R.* (Oxford, 1948).

Articles

1. Berman, H. J., "Comparison of Soviet and American Law," 34 Indiana L. J. 559-570 (1959).
2. Berman, H. J., "Soviet Law and Government," 21 Mod. L. Rev. 19-26 (1958).
3. Berman, H. J., "The Challenge of Soviet Law," 62 Harv. L. Rev. 220-265, 449-466 (1948-1949).
4. Bodenheimer, E., "The Impasse of Soviet Legal Philosophy," 38 Cornell L. Q. 51-72 (1952).
5. Dobrin, S., "Soviet Jurisprudence and Socialism," 52 L. Q. Rev. 402-424 (1936).
6. Fuller, L. L., "Pashukanis and Vyshinsky": A Study in the Development of Marxian Legal Theory, 47 Mich. L. Rev. 1157-1166 (1949).
7. Lsovski, V., "The Soviet Concept of Law," 7 Ford. L. Rev. 1-44 (1938).
8. Hampsch, G. H., "Marxist Jurisprudence in the Soviet Union," 35 Notre Dame Law. 525-536 (1960).
9. Hazard, J. N., "Soviet Law, an Introduction," 36 Col. L. Rev. 1236-1266 (1936).
10. Mackey, M. C., "Some Basic Consideration of Soviet Law and Socialist Legality," Ala. L. Rev. 254-270 (1959).
11. Schlesinger, R., "Justice in Russia," 60 Yale L. J. 976-985 (1951).
12. Timasheff, "Soviet Law," 38 Va. L. Rev. 871-885 (1952).
13. Towster, J., "Law and Government in the U. S. S. R.," 11 Hastings L. J. 231-245 (1960).