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Marxism

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Marxist theory of law remains undeveloped compared with Marxist critiques of political economy. One reason for this situation is that Karl Marx (1818–1883) himself never returned to the project of his youth: to complement his critique of political economy with a critique of jurisprudence. There are asides in *Grundrisse* and *Capital* in which Marx provides clues to how his critique of political economy might transpose to jurisprudence. There are political texts in which he develops his practical approach to questions of law. Yet there is no social theory of law ready-made in his works.

Learning from Marx is also difficult by equivocations in Marx's own work. In some passages, he offers a negative criticism of legal rights as “mere forms” and a view of communism as superseding all juridical inhibitions. In others, he shows appreciation of the value of legal forms. Although he speaks of the “positive supersession” of modern law as opposed to its “abstract negation,” he offers no clear-cut explanation of what this means. In *On the Jewish Question*, for instance, Marx appears to criticize civil rights as rights of egoism, but the thrust of his work is to defend the right of Jews to full political emancipation against a radicalism that declared that Jews should not be granted political rights unless and until they abandon Judaism.

The contribution of Marx to understanding law lies in his critique of natural law theory and positivism and his proposal, following Friedrich Hegel (1844–1900), of a *social theory of law*. His theoretical project was to reveal what kind of social relations lie behind legal categories and why these social relations take a legal form. Marx held that the idea of right is neither a property of human beings as such nor a product of sovereign legislation. Rather, it is a social form of the subject that emerges under given historical conditions. If Marx had followed the method of his critique of political economy, he would have traced the development of law from its simplest form of right to the most complex forms of state and international law. He would also have repudiated hatred of law, even when expressed in the name of the people.

The Split of Marxism

Marxist legal theory was torn apart by the three-way splits of Marxism. On the revolutionary side, the Soviet legal theorist Evgeny Pashukanis (1891–1937)

attempted in the 1920s to apply the method of Marx's critique of political economy to jurisprudence. He argued that law is a bourgeois form of power, expressing the rise of competitive relations between subjects interested only in asserting their rights and indifferent to the needs of others.

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Social democratic theorists like Karl Renner (1870–1950) in Austria were interested in giving the legal form a socialist content. For Renner, legality is like a bottle in which one can pour different wines. He [p. 999 ↓] argued that only under socialism could one fully realize the rule of law since under capitalism, private interests corrupt it. He takes socialism to mean the extension of legal regulation into private spheres and the democratization of legislation.

Critical theorists developed an independent Marxism focusing on the historical decline of law under fascism. Franz Neumann (1900–1954), for instance, argued that the disastrous collapse of legality was the result of the transition from competitive to monopoly capitalism: rational law was necessary for market exchanges but not for monopoly capital, in which planning substitutes for exchange. He maintained that capital lost interest in maintaining the rule of law, but its defense was even more necessary for the working class.

Marxism in the 1960s and 1970s

The resurgence of Marxist criticism of law in the 1960s and 1970s, especially in the work of Nicos Poulantzas (1936–1979), led to a renewed focus on the functions of law for the reproduction of capitalist relations of production. These include repression of resistance, legitimation of the existing order, organization of dominant classes, fragmentation of subordinate classes, and depoliticization of social movements. Other Marxists analyzed the role of law for capital accumulation in a more formal mode,

arguing that capitalist relations of production assume economic and juridical forms and that the form of the state—an alienated social power separate from the ruling class—can be derived from the form of capital.

Some have advanced a radical critique of orthodox Marxism in the name of Marxist humanism. The historian Edward Thompson (1924–1993) developed an approach to law resonant with “bloody-minded distrust” of power and dismissive of “authoritarian legalism” that equates law with government. He rejected the orthodox model that isolates law, as part of the superstructure, from the economic base. Referring to eighteenth-century popular struggles, he wrote that law does not keep politely to a “level.” It imbricates itself within productive relations as property rights, as a contribution to the self-identity of rulers and ruled, and as an arena for class struggle within which alternative notions of law are fought out. Thompson argued that it was essential for Marxism to abandon its dismissal of law as a mere instrument of class rule. In the twentieth century, even the most exalted thinker can tell the difference between a state based on the rule of law and one based on extralegal authority.

Current Marxist Influence

Today there is a renewed engagement with Marxism in legal theory. Boaventura de Sousa Santos argues that different forms of law relate to different social locations—household, workplace, marketplace, community, “citizenplace,” and “worldplace”—and that by prioritizing the citizenplace, Western legal thought loses sight of the whole. The restriction of democratic rights to the single site of citizenplace leaves despotic forms of social power in other sites unseen and unhindered.

Antonio Negri argues that law is no longer a living part of the superstructure but has now imploded. The integration of the economic and legal levels has resulted in a “biopolitical” model of disciplinary arrangements that renders living law redundant. In contemporary capitalism, law has lost its normative autonomy. He looks, however, to the construction of a new “constitution of liberty,” which recognizes the right of all citizens to a social wage adequate for their reproduction, legitimates the exercise of “counterpower,” guarantees rights of mobility, and ensures rights of foreigners.

Finally, Jürgen Habermas addresses the connections between legal rights and democracy and the development of global justice. The legacy of Marx is alive in all these investigations, even though it is difficult to demarcate the boundaries of what Marxism is and is not. In recompense, we have a rich engagement between Marxist theories of law and legal philosophy.

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See also

- [Cultural Identities](#)
- [Engels, Friedrich](#)
- [Frankfurt School](#)
- [Ideology, Law and](#)
- [Marx, Karl](#)
- [Pashukanis, Evgeny B.](#)
- [Renner, Karl](#)
- [Socialist Justice](#)
- [State, Government, and Legal Order](#)

Further Readings

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