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## Socialist Justice

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A longing for justice fueled both the rise and the collapse of socialism: justice for the proletarians of all countries, for wage earners without property or power, and for ordinary men and women. But although their battle hymn, *The Internationale*, sang of law and human rights, early socialists did not see law as a useful instrument for producing justice. Formal legal rules could ensure the reciprocity of market exchanges and the equal treatment of disembodied and fictitious participants in an abstract legal process, they thought. However, because real people differ greatly in wealth, abilities, and powers, their equal treatment under formal rules would produce great inequality in practice. Moreover, because every ruling class controls the writing of the statute books and thus can fashion legislation to advance its interests, law—seemingly universal and impartial—in fact helps to cover up the exploitation of the weak by the powerful.

## The Withering of Law

Early socialists, therefore, believed that they would need law and the repression it legitimated only long enough to wrest power from the bourgeoisie and to establish a classless society in which private property and the market would be replaced by public ownership and planning. Goods would not go to the highest bidder, but would be centrally allocated to that recipient most likely to use them best. Absent a market, society would no longer need law to coordinate exchanges between selfish maximizers. Under socialism, the tit for tat of capitalist self-interest would be replaced by collective solidarity. Citizens would contribute to society what they could (not what their employment contracts specified) and receive from society what they individually required (not what they could pay for). Unlike bourgeois justice, which niggardly measures individual deserts by formal rules to dole out punishments and rewards accordingly, socialist justice would discard all calculations of equivalence and freely give to ensure each individual's welfare. The satisfaction of needs would replace the vindication of rights. Law could wither away and would not be missed.

The hopes for justice in the early years of socialism envisaged a society resembling the family, governed not by abstract rules but by concrete and brotherly solicitude among its members. Early socialists presupposed both an abundance of goods (which Marxists thought would follow once the “fetters” of private ownership were removed from the

economy) and the transformation of human nature. When, in the wake of economic chaos, civil war, and famine, neither of these preconditions came about, socialists quickly returned to the use of law as an important tool of government. In 1928, contracts were reintroduced in the Soviet Union as a means of coordinating exchanges in a planned economy. Criminal law moved from a flexible and therapeutic “social danger” doctrine to the rigid and vindictive punishment of individual guilt. Under Joseph Stalin (1879–1953), law became an increasingly repressive instrument of state control.

## Satisfaction of Social Needs

Nevertheless, socialists did not abandon their criticism of the abstract formalism of bourgeois law. Socialist justice continued to emphasize the satisfaction of social needs rather than the vindication of individual rights. The law was not supposed to shore up individual autonomy but to safeguard social welfare. It did so by promising substantive (or, as socialists [p. 1399 ↓ ] called it, “material”) justice to its citizens, a state of affairs in which they would be provided with the practical necessities of daily life such as work, health care, and housing.

Procedure, so essential to the rule of law, played only a secondary role in the socialist pursuit of justice. Capitalist due process implies suspicion of public decision makers, uncertainty about desired outcomes, and the conviction that individuals can and should look out themselves for the protection of their rights. Such implications had to clash with the self-image of a parental legal system and with the political fears of a totalitarian government unable to tolerate dissociation and dissent. With few and insignificant exceptions, socialist citizens could not sue the state in its sovereign capacity. In particular, no procedures enforced their constitutional rights. Instead, socialist constitutions offered “material guarantees” for the enjoyment of the long lists of fundamental rights they usually contained: state stipends to protect the right to education, access to paper and printing presses to protect free speech, and the use of public buildings to protect the freedom of assembly. Socialist constitutions took seriously the view that obtaining justice should not depend on a claimant's individual wealth and position in society. Their writers totally ignored the possibility that the state itself, as the provider of justice, might also be the source of its violation.

In socialist practice, material guarantees were reasonably effective when the state itself was interested in providing its citizens with the promised goods, such as full employment. Material guarantees were less successful in ensuring services of a quality that an impoverished state could ill afford, such as more than the most basic housing or health care. They were useless for protecting the political freedoms that lie at the heart of bourgeois constitutions and that allow a citizen to challenge the state and to prevent it from interfering with individual choices. Access to printing presses and to stocks of paper (as set forth in article 125 of the Soviet Constitution of 1977) allowed a citizen to publish praise for the government at state expense. However, it could never safeguard the publication of underground journals such as the Russian *Chronicle of Current Events*.

## Substantive Law

Nevertheless, the notion took root in Eastern Europe that justice requires more than legal weapons to fight for it oneself. Socialist citizens received enough substantive benefits from their state to believe in their entitlement to do so. Especially those constitutional rights that were shored up by protective statutory legislation—such as the right to work or to housing, which were reinforced by provisions of the civil or the labor code—were seen as an ordinary man's or woman's due. The fact that these rights could be litigated against the state as landlord or employer helped, but litigation was not seen as a crucial component of justice and—by comparison with Western countries—was relatively rarely relied on to protect a person's rights. Instead of going to court (even in those instances where they could), socialist citizens preferred to pursue their rights by lodging complaints. Complaints were costless and informal, requiring no attorney. They could be submitted, often simultaneously, to numerous authorities: the administration, the procuracy, various monitoring agencies, newspaper complaint desks, and, of course, the Party. Complaints were also toothless. Unlike a successful plaintiff in court, a complainant could not enforce a claim through the machinery of justice but instead had to rely on the goodwill of the office complained about. The supplicant's position corresponded to ordinary citizens' experience of justice under socialism: not only because it reflected their dependence on the state but also because appeals to official warmth and solicitude (rather than to cold and divisive law) squared

well with the parental and familial vision of justice that had survived from the early days of socialism.

As economic stagnation and decay seemed to settle down for good in socialist societies, the vision of a solicitous and supportive state became increasingly implausible. East European citizens suspected that they were not better but worse off than most citizens under capitalism. Some particularly drastic reductions in consumer welfare led to civil unrest, such as the East German rebellion of 1953, sparked by raising work norms, or the Polish strikes of 1970 and 1980 that followed steep increases in meat prices. These were revolts not just over the withdrawal of creature [p. 1400 ↓ ] comforts, but also over the denial of justice. The socialist state had breached the pact under which, in return for their trust and compliance, it would take good care of its citizens.

## Procedural Law

Disappointment with a socialist utopia led, in turn, to the revival of procedural concerns in Eastern Europe. Procedure had seemed uninteresting to socialists as long as they were certain of which goals to follow. As their political faith declined, however, socialists' faith increased in the usefulness of rules to settle questions to which the answer seemed no longer obvious. In 1980, Poland was the first socialist country to establish an administrative court with real judicial power; a constitutional tribunal followed in 1985. In the Soviet Union, the Supreme Court campaigned for greater "exactitude" in criminal prosecutions and convictions. East German lawyers began to worry over such issues as excessive arrest warrants and involuntary confessions. By 1987, the Soviet Union finally passed a statute on the judicial review of administrative decisions (announced in the 1977 constitution); the German Democratic Republic followed suit in late 1988. By then, the Hungarian parliament debated the creation of a special court to review the constitutionality of legislation. Like ivy in the cracks of a crumbling wall, the rule of law grew its first shoots before the collapse of socialism.

When it finally happened, the post-1989 liberalization of their legal systems did not persuade the citizens of Eastern Europe that they had exchanged an unjust for a just regime. The famous complaint ascribed to the East German activist Bärbel Bohley

—“We hoped for justice, but we got the rule of law”—reflects the disappointment of people whose sense of justice had been nurtured by promises of a better life, not only a better law.

Postsocialist legislatures seem to share this view. All of the new East European constitutions preserve among their list of basic rights such social rights as the right to housing or to health care. The new East European constitutional courts have protected these rights against cuts that are too drastic, often at great financial cost and against the protests of their own governments and the warnings of such international money givers as the International Monetary Fund or the World Bank. The courts have based their decisions in these cases on principles that reflect both rule of law and socialist convictions such as the dignity of man (which can be interpreted to protect both individual autonomy and welfare) or the need for legal certainty (a prerequisite of both citizens' capacity to use law as an individual weapon and their trust in the benevolence and fairness of the welfare state). Some courts have relied on their own countries' pre-1989 legislation and convictions to support their current welfare case law. The Polish Constitutional Tribunal, for instance, has cited the principle of social justice contained in both the 1976 and 1989 amendments to the Polish Constitution of 1952. Other courts, such as the Hungarian Constitutional Court, have drawn on Western inspirations such as Charles Reich's concept of the “new property” or the German Constitutional Court's case law on welfare rights.

The multiplicity of sources sympathetic to socialism's substantive justice goals suggests that Western legal systems learned from socialism even before its fall. Redistributive justice is a goal of every modern welfare state. In fact, it seems likely that socialism could not have collapsed as dramatically and completely as it did, had the West not long ago accepted and incorporated some of its most important insights and convictions.

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*See also*

- [Communitarianism](#)
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- [Marxism](#)
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### Further Readings

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