

Socialist Law

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Abstract

Socialist law as a legal order was a major legal family with common characteristics. The concept of socialist law expresses the ideological legacy of Marxism-Leninism. It was understood by its proponents as the expression of will of the working class, an instrument of class struggle as well as a means for building a communist society. The article examines the extent to which socialist law fits into any concept of law, in light of the fact that its roots were totalitarian, and it had a purely instrumental legitimacy. The authors also introduce the development, structure, substantive and procedural institutions of socialist law, along with the socialist administration of justice and perception of international law.

Keywords

bourgeois law, Brezhnev doctrine, communism, expropriation, internationalist solidarity, nomenklatura, objective justice, peaceful co-existence, people's assessor, personal ownership, planned economy, Prokuratura, superstructure, totalitarian regime

Socialist law, as an actual legal order, was a major legal family whose members possessed similar characteristics. The common features of the legal systems of the Soviet Union and communist East-Central Europe resulted from the use of socialist law in maintaining communist-party dominance over state and society. Yet the law in the various socialist states differed, too, not only because of modifications in the forms of domination but also because Soviet legal solutions were imposed on diverse cultures and societies.

The ideological legacy of Marxism–Leninism is expressed in the concept of socialist law.

According to Marx, law was the will of the ruling class supported by statutory validity.

Socialist law as the positive legal system in communist countries was understood by its proponents as the expression of the will of the working class (or, when class struggle was less emphasized, of the ‘toilers’), and it was an instrument of class struggle as well as a tool for building communist society. In the early years of the Bolshevik Revolution, workers’ revolutionary legal consciousness was deemed the source of applicable law. Given the totalitarian roots of the legal system, to what extent the norms of the communist state fit into any concept of law remains a fundamental question. If law is a social phenomenon or institution that differs from its environment, is socialist law a law at all?

1 Stages in the Development of Socialist Law

Socialist law changed over time. It served totalitarian regimes whose efforts were not always successful. State socialism was totalitarian in the sense that it attempted to construct all-embracing state control over every sphere of social life in the service of a single goal. In the early years of the socialist revolution and during certain periods of Stalin’s rule, physical control and repression through brute force played the crucial role in this attempt to achieve total social control. In the early phase of socialist legal theory, Pēteris Stuchka emphasised the state power as a ‘powerful weapon in the hands of the revolution’. Stučka promoted the revolutionary model of socialist legality, which, as a continuation of revolution, understands the law not merely historically, but dialectically, with a face toward the future. In this sense state power and proletarian dictatorship are essential for the law to develop in an organized manner. It followed that law as a tool of social management, or one that limits government action in accordance with its own specific logic, could not exist. Law was not a serious consideration for the revolutionary

mindset. This disregard was facilitated by Marx's belief that there was no place for state and law in the classless society. But Marx also believed that the transition leading to the classless society would be long, and he expected that law, in socialism, would contribute to the extension of equality under the law. Lenin argued for a dictatorship of the proletariat 'based directly upon force and unrestricted by any laws.' In the postrevolutionary period, the communist-party position was uncertain regarding the future of law. Yevgeny Pashukanis, the leading authority on communist legal theory, wrote in 1928 that law was a temporary system dictated by commodity relations, thus the legal superstructure reflects the economic organization of the society. Once socialism had eradicated commodity relations, legal forms would also disappear.

In the 1930s, law (not only criminal law) was structured as an unrestrained authorization, and even a command, to intervene in anything and everything. Such calls to uncircumscribed, coercive intervention transgressed the limits of legal forms. The 1930 joint decree of the Central Executive Committee and the Council of People's Commissars of the USSR, which empowered local authorities to 'take all necessary measures ... to fight kulaks,' would hardly satisfy any definition of law. But legal forms continued to exist even after the planned economy was fully developed. And even during the oppressive Stalinist regime, legal forms were employed at least for show-trial and propaganda purposes. Law remained an important internal and external tool of legitimation as exemplified in the Soviet Constitution of 1936 (known as the Stalin Constitution). Law served as a force of total repression in the 1930s, in the sense that it reminded people that they could be brutally handled for no apparent reason and without any protection from other state institutions.

As communist-party oppression neared anarchy, unlimited power turned against the elite and their supporters. Totalitarian disregard for the specific needs of the economy and other areas of

social activities drifted into dysfunction. Stalin himself ‘brought law back in.’ But the promised legal stability had ‘nothing to do with the legal restraint on power, and it coincided with the period of greatest repression.’ The system moved ‘from lawless repression to repressive law’ (Krygier 1994). Officially, socialist law was proclaimed (by socialist leaders) to be the most developed form of law in history, as it served the most developed social formation (communism). It provided socialist legality, a qualitatively superior alternative to bourgeois rule of law. The typical differences between socialist law and bourgeois law, according to socialist lawyers, were the dominantly economic perception and educational function of socialist law as well as its aforementioned underlying purpose, the establishment of communism. From this point of view, bourgeois law is based on a defective capitalist economic system, which by itself precludes the very morality it seeks to create. In addition, because bourgeois law did not rest on the achievement of a grand objective, socialist lawyers considered the efforts of bourgeois law to create order to be a blind endeavor. In reality, however, socialist legality often served show-trial and other propaganda purposes only, as exemplified by the Stalin Constitution.

Laws enabled the direct repression of Stalin’s Great Terror, although the mass-scale extermination (the purges, the gulag, etc.) was based on action that presupposed a disregard of promulgated legal norms (trial-procedure rules, evidence). This is not to claim that the ‘disregard’ was not officially sanctioned and ordered: disregard of the then-existing official law was a systemic component of the totalitarian use of power. The resulting destruction of social and individual resistance to communist authority, the irrevocable stamp of fear in almost every citizen, served in the remaining half of the twentieth century as the foundation of the repressive order, which could afford to make use of less coercive laws.

After Stalin's death, in 1953 the communist elite reverted to a certain level of legal formalism, by and large for their own protection. This was achieved by a duplication of sorts of the normative system. The legal authorities had strictly observed secret rules regarding actions affecting members of the communist *nomenklatura* (the system of patronage within politics and administration in Communist countries): to proceed against one of its members required authorization from the proper body within the *nomenklatura*. The *nomenklatura* followed its own 'rule of law', which did not include the right to a hearing of the concerned. The legalistic turn had a certain spillover effect on the rest of the population. Increasingly, law became less directly coercive and punitive and, at least in some of the satellite states, in matters of secondary importance it no longer depended fully on politics. On the other hand, law was recognized as a system that provided structure to a bureaucratic state capable of economic centralization. [The copying of Soviet solutions resulted in less damage to legal forms in the East-Central European states than in the Soviet Union because the use of brute, Stalinist force lasted for shorter periods in these states and because Western legal traditions existed in some of them.]

Beginning in the 1970s, the relative autonomy of law was officially recognized. For reasons of regime legitimation, it was overemphasized to disguise a poorer reality of limited autonomy. Nevertheless, the formal characteristics of modern law (abstractness, general nature of commands, etc.) survived, although in simplified and distorted forms. The instrumental use of law served a bureaucratically ossified institutional politics. The official doctrine emphasized that the autonomy of law could be relative only vis-à-vis the economy, which determined all forms of social life. 'Legislation, whether political or civil, never does more than proclaim, express in words, the will of economic relations' (Marx 1976). In reality neither the economy nor other social relations were respected, and only specific concerns of power and domination mattered, as

understood by the communist leadership. Law remained a tool of the planned economy, and it served the deliberate changes of the planning system.

Law was declared the engineering device that helped organize people in their building of communism. The composition of courts also promoted the educational function of socialist law, for citizens, as people's assessors, could experience the justness of both socialist law and judicial activity through direct participation in the administration of justice. Furthermore, the institution of people's assessors could be regarded as a step taken towards the ultimate disappearance of law. Revolutionary law, though an instrument of class struggle, had an element of internal legitimacy, as it served social (class) justice (through murderous revenge, expropriation, and redistribution). In the instrumental understanding of socialist law, moral considerations became irrelevant. Instrumentalism was also distorted, however, as 'relative autonomy' allowed only very limited respect for the characteristics of the tool. Legal dogmatics or consistency requirements were easily skirted. Yet there were actual elements of independence in law simply because the political system could not generate a unified will. There was competition within the communist political elite, which contributed to at least superficial respect for legal forms. Moreover, law-enforcement organizations had a vested interest in legalism, and to the limited extent that they played a role in party politics, law became a point of consideration. To the extent that the communists needed efficient state machinery, they needed law as an instrument of control over the state bureaucracy (see Sect. 4). Law was important insofar as centralization required uniformity and unity of action.

2 The Structure of Socialist Law

Socialist law was understood as an ideological superstructure, and its provisions were subject to ideological scrutiny. Law (its provisions and understanding) had to be politically correct, as

understood by whatever ideological line the communist party touted. The ideological roots and functions of socialist law led many commentators to the conclusion that it was a mutation of natural law. It was argued that it originated in a set of doctrines or expectations that were above the law. Even the vulgar Marxist claims that law as superstructure reflects economic realities might have been interpreted as being in the natural-law tradition: it was the mystical economy with its 'objective law' that determined law. Socialistic traditions of social justice also show structural elements of natural law. Max Weber criticized these socialistic tendencies to material justice as detrimental to the formal, rational qualities of law.

Socialist legal systems, as they existed in state-socialist regimes, were positivistic and functioned as positive legal orders. According to the prevailing definition, law was the hierarchically-structured, sum-total of state-made norms. The profound departure from promulgated norms and principles occurred not because of the observance of some kind of higher law. On the contrary, the departure was the result of changing secret orders, commands, and expectations emanating from the communist-party leadership and secret services. Of course, once such external political intervention becomes routine or even institutionalized, one can argue that there is no more law in the sense of normative, predictable expectations; hence socialist law (at its worst) does not fit into any notion of law.

Socialist legal systems, in principle, were strictly hierarchic. Statutes (parliamentary enactments) were of absolute supremacy, while constitutions offered only guiding perspective and basic rules of state organization. Law had to originate from the people's representatives; therefore, judicial lawmaking was ruled out as ideologically unacceptable, after the early revolutionary period.

Statutes were supreme because they were enacted by parliament, which was held to be the supreme state body. The rigid position on legal origins reflected the dominant nineteenth century

German and French views and a simplification of Rousseau. Each socialist regime institutionalized some kind of small and reliable body within parliament (often called a presidium). The presidium had full power to act on behalf of parliament, which convened infrequently. The presidium had the power to amend existing laws. Decrees were subordinated to statutes. In theory, decrees were to serve exclusively for the execution of statutes. But in reality, substantive issues were often determined at the level of executive decrees. Officially courts were restricted to pure application of the law; they could not and did not engage in either judicial law-making or the adjustment of existing norms to the prevailing circumstances. Lenin described the socialist court as ‘an organ of state power’. Judges were subject to the law and were not allowed to have an indifferent attitude towards the policy of the government. Courts had to endeavor to administer justice in conformity with the directives of the government, bearing in mind the principles of socialism and the socialist sense of justice. However, a number of practical issues were determined by guiding principles of supreme courts, on the basis of ‘the laws in force’. These guiding principles determined the application of particular enactments or at times filled the gaps in law. *Stare decisis* (the doctrine of precedent) and the binding force of precedent were unknown doctrines in this system; lower courts were, however, bound to follow interpretations of higher courts in the name of socialist legality. This was imperative given the informal control over the judiciary (see Sect. 4).

3 Substantive and Procedural Institutions

The centralized socialist management of the economy and social life was suspicious of any expression of autonomy. The priority of ‘social interests’ (or ‘society’s interests’) defined the legal system. No autonomy (in the sense of self-determination) was permitted, and legal structures enabling or protecting autonomy were pruned even from private law. The traditional

continental divide between public and private law was refuted as bourgeois legality. As Lenin stressed: 'We acknowledge nothing as "private." For us *everything* in the province of economics is in the domain of *public law* and not of private law Hence our task is ... to broaden the right of the state to abrogate "private" contracts.' In practical terms this meant not only the denial of privacy and sanctity of contract but also the primacy and special protection of state property. The other reason for giving public law prominence was that, as socialist law aimed to create a new social order, any violation of law affected, beyond that of the actual victim, the state as well as public interests.

Depending on the period, private property and private initiative were either prosecuted, prohibited, or greatly restricted, at best. Private ownership was recast as personal ownership in order to allude that it must only be used for the satisfaction of personal needs and for the purpose for which it was intended, and this property cannot be utilized for gaining profit. Property consisting of the 'means of production' was restricted even where it was permitted (as in the German Democratic Republic (GDR), or, as far as land was concerned, in Poland). 'Social interests,' determined by the state, were favored above all other claims. Restrictions on personal freedom went beyond statist concerns. Freedom of movement and residence were limited, and, at least in the Soviet Union, where the czarist tradition survived, freedom of internal movement was subject to administrative approval.

Speech and press freedoms were permitted only in the interest of workers, which resulted in institutionalized or informal but total censorship. Personal choices and alternatives were limited or prohibited (including choices about education, health, profession, sexual identity, and the like). State control over the individual was extended to the intimate, private sphere. Decisions

regarding family relations were subject to intervention by the *Prokuratura* (State Attorney's Office). Abortion was not an issue of self-determination but a matter of demographic or workforce politics, although certain social compromises were observed in this context. In Hungary, the nearly unlimited access to state-funded abortion was the result of an official repudiation of coerced demographic policies. In other countries, like the Soviet Union, abortion as the primary form of family planning derived from a total disregard for human dignity. The legal restrictions imposed on the general population went hand in hand with the award of privileges for supporters of the regime, although only certain privileges were codified (e.g., access to higher education for family members of committed regime supporters). Privileges were not absolute. They were the reward for loyalty to the system. But the ordinary, loyal citizen (contrary to the *nomenklatura*) had no title or claim to privileges, which, when bestowed, were an act of grace and goodwill. The discretionary distributive powers of the public administration were used to favor the politically loyal (or, at least, to punish the suspect). This was the case, for instance, in the assignment of public housing. During the less-dictatorial periods of state socialism, these discretionary methods of allocating goods and services were the primary tools of social control. Social control through the discretionary application of law put society in a condition of permanent dependence.

4 Administration of Justice

The contribution of the administration of justice to the restriction of liberty varied historically. During the Stalinist terror, courts served as theaters of repression and injustice. In less dramatic times, the administration of justice promoted etatism and protected the interests of the communist party. Most administrative decisions could not be appealed in court, although in

Hungary and Poland, as a rule, there was the possibility of appeal against administrative decisions, except those involving the more sensitive issues of military and police administration. As to judges, in the formative revolutionary years of socialist power, the legally trained personnel of the previous regime were replaced with incompetent but politically trustworthy laymen. The basis of revolutionary justice was the revolutionary consciousness of worker-judges. After World War II, in the Soviet-dominated satellite states the 'democratic attitude' of lay assessors played a role in politically charged procedures. In more settled times, judges received formal legal training but worked in personal and organizational dependence on court presidents. Courts were technically under the control of the minister of justice. These courts were not structured to be independent, and the existing political control further increased the likelihood of 'telephone justice'.

Socialist legal theory emphasized the key role of the *Prokuratura* in the administration of justice. The organizational design of the Soviet *Prokuratura* was inherited from the czarist administration. It was a select, centralized body; procurators served in total subordination to their superiors, in what was a quasimilitary organization. They were much better paid than judges. The *Prokuratura* was in charge of criminal prosecution, representing the state in court, but it also routinely supervised the activities of the state administration. Lenin considered the *Prokuratura* the bulwark of socialist legality. He knew that a centralized state power could not afford any particularism, and all local, particular normative systems represented serious deviance. Normative particularism was especially dangerous if it originated in state bodies. As Lenin wrote to Stalin, 'legality cannot be legality of Kaluga or the legality of Kazan but must be one single all-Russian legality.' Thus the task of the *Prokuratura* was to 'see to the establishment of a truly uniform understanding of legality.' The supervisory powers of the *Prokuratura* included the

authority to ask for ordinary and extraordinary review of court decisions, even when it was not a party in the case it sought to review. Ironically, the fear of localism resulted in minimal protection for the population: the central bodies had an interest in mobilizing local populations against local authorities, and they encouraged denunciation of local (nonpolitical) abuses to the extent that they deviated from centrally authorized injustice. The dependence of citizens on local services was attenuated in the name of central law. Rules of procedure aimed to protect the material and political interests of the state, and allowed for paternalistic intervention in private litigation. The procedures followed simplified continental models that had traditionally existed in the given country. The inquisitorial nature of the traditional continental criminal procedure was further aggravated by Soviet solutions regarding the admissibility of police-gathered evidence. In civil matters judges were required to establish 'objective justice' and were not bound by parties' motions. The paternalistic nature of continental civil procedure dramatically increased, resulting in further dependence, as far as the parties were concerned. On the other hand, the simplifications and limited access to court yielded cheap and relatively swift administration of justice (where courts were available at all). Civil litigation rates were stable, and the most common type of litigation was divorce related. Criminal litigation (except when criminal justice was used as a tool of class struggle, in the 1930s and 1950s) stabilized at a low level. Criminal behavior was limited because of the efficient social control exercised by the oppressive state mechanism.

The perception of the role of advocates was also peculiar, as they had to seek co-operation in the course of their activities with the judge and the prosecutor, and reveal the matter before the court in all its aspects, even at the expense of proving the guilt of their clients. Hence advocates were considered as servants of socialist legality, who contributed to justice and put the interests of

society before that of the pleaded individual. In the Soviet Union, the objectiveness of advocates was fostered by a collective organization of advocates. Individuals had to contact such groups of lawyers, which in turn designated their advocate and determined the amount of fee to be paid.

5 Perception of International Law

A coherent theory on international law cannot be encountered in Marxist ideology. Economic considerations, however, made both the conducting of international trade and the development of international relations inevitable. The gaining of a public law character by socialist law also affected international law. In the wake of the realization that an international trade monopoly existed in socialist states, the state almost always appeared as a subject of treaties concluded with other states or their citizens or legal persons. Public and private international law intertwined, and the regulation of international economic relations became increasingly a matter of public international law. Similarly to domestic law, international law was considered class law.

According to certain scholars, such as Evgeny A. Korovin, the international law of socialist states stood in opposition to the international law of bourgeois states. The doctrine of ‘internationalist solidarity’, which was followed by socialist states and expressed the necessity of conformity to the Soviet Union, constituted the cornerstone of both the foreign policy-making and regional co-operation of these states, and served to put into effect the policy formulated and directed by the Soviet Union.

This separate conception of international law, however, did not reckon with the fact that socialist states and capitalist states co-operated in their economic and other international relations and to maintain and ensure peace. Once the socialist bloc declared the peaceful co-existence of capitalist and socialist states, it had an impact on the development of international law. The

principle continued to exist in the form of the principle of duty of states to co-operate, according to which states 'have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems ...' (G.A. Res. 2625, 25 U.N. GAOR Supp. No. 28. (A/5217), 121 (1970)). While socialist international law recognized the principle of sovereign equality and territorial integrity of states and the prohibition of intervention in the domestic affairs of states, in reality these principles were observed in their breach.

Socialist states generally considered both theories describing the relationship of international law and domestic law, that is, monism and dualism, equally acceptable. However, within the framework of monism they only recognized the primacy of domestic law over international law, and rejected the primacy of international law claiming that this idea was contrary to the sovereignty of states.

The so-called Brezhnev doctrine, according to which socialist states must take into consideration the dictates of socialism and the fundamental interests of other socialist states in the course of making decisions, was likewise meant to restrict the political independence of members of the socialist bloc. The doctrine sought to reconcile its content with the respect for sovereignty by arguing that the sovereignty of individual socialist states could not be in opposition to the interests of the socialist world or the worldwide revolutionary movement, and as such, the observance of interests of other socialist states could not be labelled as a limitation of sovereignty.

The 'absolutization of sovereignty' (Kovács 2007) can also be observed in the determination of matters falling in the exclusive domestic jurisdiction, or *domaine réservé*, of states. Individuals were generally deprived of their citizenship, if they emigrated to a bourgeois state, mainly on the basis that they 'gravely violated the requirement of alliance of citizens'. At times the property of

such individuals was confiscated in part or in whole, and they were not even allowed to return until the political transition, after which many of them were repatriated. The socialist conception of human rights, furthermore, demonstrates the socialist perception of the relationship of the individual and the state by differentiating human rights from the rights of the citizen, and by overemphasizing the duties of citizens.

In conclusion, although the prevailing definition of socialist law emphasized a hierarchically structured sum total of state-made norms, in reality a fundamental disregard of the promulgated law prevailed. Substantive and procedural institutions like the public prosecutor's office, political control over the courts, denial of access to court, and restrictions on fundamental rights, as well as institutionalized politically biased discretionary powers of the administration, undermined the rule of law.

Cross References:

Law and Society; Sociolegal Studies; Marxism/Leninism; Marxist Social Thought, History of; Socialism; Socialism: Historical Aspects; Class and Law; Classification of Legal Systems

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