HEGELIAN ANCESTRY OF MARXISM –

G.W.F Hegel is acclaimed as the logical precursor of Marxism. He paved the way for the founders of Marxism (Marx and Engels) through

1. His dialectal method of philosophy adopted by Marx and Engels which became central core of communism
2. His philosophy which deified the state and regarded the state as superior to the law

Hegel’s logical dialectics –

- everything has an opposite but two contradictory propositions may not cancel each other out but instead produce a synthesis which is a solution of the problem on a higher plane. (Thesis – Antithesis – Synthesis)
- process of resolving thesis and antithesis into synthesis is an indefinite process resolving contradictions into higher states of understanding until the realization of a philosophical absolute
- the philosophical absolute is the only complete reality – all other concepts are merely moments in the process of conceiving the absolute…
- history is a process of development leading through stages of social thesis, antithesis and synthesis towards the ultimate fulfilment of the human condition
- every historical era takes elements from the cumulative development of previous ones but destroys the prior forms in favour of new conditions established by it. This process of development is extremely important
- each historical era is significant only to the extent it contributes to the process of future development
- each individual is important to the extent he/she plays a role in the state which is the collective entity
God, humanity and nature (the transcendental unity), is the world’s spirit arrived at by
the evolutionary and dialectic process and all states will in course of time be absorbed
in this unity.

Presently the greatest attainable synthesis is the state

The individual is of no value by himself, but is absorbed into the family and the
family is absorbed into the state which is the real substance and individuals are
accidents of the state

**The State** is the prime vehicle of social development

The state is greater than the sum of its parts both in the present state and in the
continuum

The development of the state is the principal the means of social existence

Freedom is the performance by the individual of his role within the framework of the
state as his social destiny

Hegel’s theory inspired the theory of communism as propounded by Karl Marx and Friedrich
Engels and was popular in Germany which led in the contention that Hegel was a panegyrist
of the power state and a philosophical progenitor of modern fascist totalitarianism

**MARXIST THEORY OF LAW**

The three basic assumptions of the Marxist theory are

1. Law is a product of evolving economic forces
2. Law is a tool used by the ruling class to maintain its power over the lower classes
3. In the communist society of the future, law as an instrument of social control will wither
   away and finally disappear

**Dialectal materialism of Marx and Engels -summary**

- Historical evolution takes place through the resolution of contradictions in society
- Conflict of class interest is the most important (bourgeois v proletariat)
- The institutions of private property and the institution of state are mere tools in the hands
  of the bourgeois for the exploitation of the proletariat
- The political, social, religious and cultural order of any time is determined by the existing
  system of production
- The political, social, religious and cultural order of any time forms a superstructure erected
  on the economic base of the existing system of production
- Law is a part of this superstructure of the political, social, religious and cultural order, and
  its form, content and conceptual apparatus constitute reflexion of economic development
- In other words, law is a reflection of economic conditions
- Economic class relationships within society and the nature of participation in the processes
  of production and exchange are the mechanism of social development and not the state
- Economic relationships precede and determine the form of social beliefs, institutions, and
  development which are all based entirely on economic relationships
• Social and political order must sooner or later change its form as the social fundamentals of production and exchange alter since the Social and political order derive from the social fundamentals of production and exchange
• Social form is always behind the development of economic reality
• Through the medium of revolution there is periodic synchronization of social form and economic reality
• Marxism is grounded in the analysis of material economic relationships in the processes of production and exchanges rather than in analysis of unverifiable and “unreal” ideal hypotheses. This is why it is “materialist”
• Understanding which ideological moulds perception of economic and social reality
• The ideological perception in any era is originally that of the dominant class
• A subordinate class may in time develop a contrary ideology which produces the thesis/antithesis conflict which will be eventually resolved by revolutionary change in societal forms
• Marxist dialectic – is a form of social catastrophic theory in which form and perceived reality change at different rates as a result of which the form is periodically pushed abruptly into a new state reflecting a changed reality
• Class conflict is the medium for the changed reality and the consequential changed form
• Society is clearly divided into classes defined by common economic interests and rules in the processes of production and exchange
• The opposed interests of these classes produce conflict
• Social forms develop through a process of ideological appreciation of material economic relationships punctuated by revolutionary changes in social structure as formerly subordinate classes successively seize the dominant role
• Law as a part of the social superstructure, represents the interest of the dominant class, and is an instrument of class repression.
• Law is an especially prominent feature of ‘bourgeois’ phase of development though it plays some role in all phases of class dominance
• To depict the superficial nature of law as described above, Marx states that law arises from concepts of private property which generate class distinctions and antagonisms
• Legal relations and forms of the state are rooted in the material conditions of life - The change of the economic condition more or less rapidly transforms the entire superstructure – “Legal relations as well as forms of the state could neither be understood by themselves nor explained by the so-called progress of the human mind but they are rooted in the material conditions of life – with the change of the economic foundation the entire immense superstructure is more or less rapidly transformed”
• Law is not an autonomous system of rules but a reflection of economic relations.
• In the absence of economic relations, law is wholly devoid of life or point
• Bourgeois law is no more than a device whereby a spurious cloak of legality will be lent to the behaviours of those in control of the means of production in organizing society in a manner most advantageous to their interest
• The bourgeoisie or the property-owning class are expropriators, who had seized control of the public property including the means of production
• Having seized control of public property, the bourgeoisie proceeded to **construct and impose the edifice of law to safeguard their position**. Thus, the Marxist contempt for western law (the jurist imagines that he is operating with a priori principles whereas they are only economic reflexes – Friedrich Engels)

• The founders of Marxism predicted a **class warfare** and the **overthrow of the bourgeoisie by the proletariat** which is historically inevitable

• Following the **class warfare**, the **institution of private property** will disappear - expropriation of the bourgeoisie expropriators will occur – **control of the means of production** will return to the people.

• Following the class warfare, the state will also dis-appear

• Following the class warfare, the law will likewise disappear since the law existed only to uphold these spurious institutions

**DIFFERENCE BETWEEN MARXIST AND SOVIET THEORY OF LAW**

- Marx posited the idea that the **state and the law** were the instrument of oppression set up for the purpose of facilitating the exploitation of one class by another and **both institution will wither away** on achievement of a classless society and the socialization of means of production but Lenin who is representative of the Soviet theory of law stated that the state and the law will **remain in existence for a fairly long transitional period of socialism** which will eventually give way to **communism**

- Lenin’s view is that during this transitional period, laws and the state will continue to be necessary

- Socialist law will represent the economic interest of the dominant class

- The dominant class will now be the majority and not the minority bourgeoisie class

- There will be an era of socialist legality – the dictatorship of the proletariat

- The idea was later modified to accept that the transitional period was likely going to be of a longer duration in view of the anti-revolutionary activities of neighbouring states and of dissident anti-socialist rebels at home

- During the era of Stalin, another representative of the Soviet theory of law, the idea was accepted that the withering away of the state might come about only by the paradoxical intensification of the authority of the state

- The law was regarded as temporary and thus in the years following the Revolution, no articulate system of law was formulated – judicial measures were seen in same light as administrative measures and could be exercised in same ad-hoc manner – according to the needs of the community.

- With the realization that socialist law will exist for a long time, construction of an articulate system of law started. For example, Soviet Constitution of 1936 provided for protection of state interest as well as the protection of certain private rights

- Article 1 of the Fundamentals of Criminal Legislation for the USSR 1948 provided for protection of the soviet social and state systems, socialist property, person and rights of citizen and socialist law and order from criminal acts, in language that did not suggest the protection was a temporary one (which we would expect in a system where the law and state were in a transition stage and passing away swiftly).

- Thus, idea of an autonomous legal system became gradually accepted in Soviet Russia
- V. Gsovski in 1948 differentiates the earlier Soviet jurists who depreciated the importance of law as an independent factor which is merely a by-product of economic conditions from the Soviet environment in which it was the Soviet law that will change the economic conditions of the society and not vice versa (thus showing the change in the Soviet environment as to the relative importance of the law viz-a-viz economic condition from the pure Marxist position)
- The proclamation issued under NIKITA KRUSCHEV that the Soviet State had become the state of all the people and should no longer be viewed as a proletarian dictatorship further gave new impetus to this evolution of legal autonomy and relative loss of the temporary nature of law
- This proclamation under KRUSCHEV marked a turn-around in Soviet legal ideology and it was then declared that Soviet law had merged with the general will of the people as a whole.
- This turn-around has very little support in orthodox Marxism but is rather traced back to Jean Jacques Rousseau
- This turn around had also been attacked by governing circles in the Peoples Republic of China as a form of revisionism incompatible with genuine Marxist doctrine of law and the state

WESTERN LAW AND SOVIET LEGAL PRACTICE

- Individualistic western states see law as superior to the state and having the function among other functions of arbitrating between the citizens and the state but in the Soviet Union, law is simply an aspect of government, an instrument of social control used to regulate lives of people in accordance with the needs of society as interpreted by the government
- The state is always right and there can be little question of adjudication between the citizen and the state in the Soviet state of affairs. Being totalitarian, the rule of law is an impossibility
- Three major spheres of law developed in the Soviet Union according to Professor Friedman are
  1. Laws that govern economic and property relations between the state and state enterprises in industry, farming, fishing, etc.
  2. Laws that govern relations between the citizens and the state in matters such as the right and duty to work and guarantee of minimum standard of living, of social security etc.
  3. Laws governing relations among citizens inter se for example marriage, divorce, contract, wills, etc.
- As regards laws governing relations between the state and citizens in the Soviet sphere, socialist constitutions provide no protection or method of enforcement through legal procedure unlike western type constitutions
- Constitutional provisions governing relations between the state and citizens in the Soviet sphere stipulate the basis for law rather than the law itself
- It is only in respect of laws governing relations among citizens inter se (3 above), that professor Friedman believes there is a possibility of harmony and similarity between the laws of the Soviet Union and those of western states
- However, laws governing relations among citizens inter se are of smaller or less relative importance in socialist society compared to a capitalist state because the conduct of a major part of the economic life of the nation is removed from it.

RAPPROACHMENT OF THE SOCIALIST AND WESTERN SYSTEMS OF LAW

Being both products of European culture, the similarities of the socialist and western systems of law may be identified thus;

1. Totalitarianism is not found only in states with Marxist philosophies but there have been totalitarian states with little or no safeguards for individual liberties in western states – e.g. Pinochet’s Chile, Franco’s Spain, Salazaar’s Portugal etc
2. Public ownership of means of production is not peculiar to Marxist states
3. There is a tendency towards collectivism with subsequent increase in state power in both socialist and western law

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