

Marx's Practical Thinking Logic of Law

XIA Lu^{[a],*}

^[a]Southwest University, Chongqing, China.
*Corresponding author.

Received 12 February 2014; accepted 28 May 2014
Published online 26 June 2014

Abstract

Marx developed his practical thought by the *Economic and Philosophical Manuscripts in 1844*, *Holy Family* and the *Outline of Feuerbach*, formed a systematic practical thinking logic of law ultimately in the *German Ideology*. Based on the analysis and summarization of the Marx's practical thinking logic of law, we can conclude that Marx's practical thinking logic of law is of abstract and specific; It is also of dialectical, historical and material.

Key words: Practical thinking logic; Law; Thinking logic changes

Xia, L. (2014). Marx's Practical Thinking Logic of Law. *Cross-Cultural Communication*, 10(4), 192-196. Available from: <http://www.cscanada.net/index.php/ccc/article/view/5120>
DOI: <http://dx.doi.org/10.3968/5120>

INTRODUCTION

From three works *Economic and Philosophical Manuscript in 1844*, *Holy Family* and *Outline of Feuerbach*, Marx systematically criticized and inherited Feuerbach's human-oriented thinking logic as well as all those traditional materialism and law thinking logic including Hegel's speculative idealism, and finally formed a systematic practical thinking logic of law in the *German Ideology*, which is a kind of logic that is to understand and analyze all related law problems from the view of practice, and established a systematic law theory of historical materialism in the basis of practical thinking logic of law.

1. THE ESTABLISHMENT OF MARX'S PRACTICAL THINKING LOGIC OF LAW

Although under the influence of Feuerbach's human-oriented thinking logic, Marx had gradually changed his mind from Hegel's speculative idealism towards law to materialism, Feuerbach's humanism thinking logic just simply contributed law to the authenticity and reliability of feeling, which broke away from the actual social conditions; besides, it talked about the essence of human abstractly by taking human as a human with natural attributes without any social relationships, which excluded human's sociality. Therefore, the materialist view of law established on the narrow human-oriented thinking logic was intuitive and limitation, which conflicted with the gradually matured practical thinking and the gradually established historical materialist view of law based on this thinking logic of Marx. Thus, Marx had to criticize the human-oriented thinking logic of Feuerbach.

1.1 *Economic and Philosophical Manuscript in 1844* Promoted the Establishment of Marx's Practical Thinking Logic of Law

1.1.1 Practical Thinking Was Used by Marx in Analyzing the Alienation Phenomenon of Law

In terms of the study of alienation concept, scholars in different times had different interpretations for it, such as the idealist concept of alienation under the speculative thinking logic by Hegel, and the religious concept of alienation under human-oriented thinking logic by Feuerbach and so on. However, analysis of alienation phenomenon by ideologists before Marx is full of ethics, politics, speculative philosophy, and religion without studying from the angle of practice and social economy, which made their development of alienation thought divorce from practice and social material life and just stay on the idealist level in the end. We know that Marx fully understood the importance of "citizens determines

the law”, and he thought law “just some special ways of production and was dominated by the universal rules of production”.¹ Therefore, to study the alienation of law, we should first study the civil society; and what determines the development of the civil society is social economy, so it was the concrete embodiment of employing practical thinking to analyze problems in law that Marx studied alienation in law from the angle of social economy, which left great impact on the formation of practical thinking logic of law by Marx.

1.1.2 The Social Nature of Human Revealed by Marx Was the Embodiment of Practical Thought in Terms of the Relationship Between Human and Society

In the *Economic and Philosophical Manuscript in 1844*, Marx denied the abstract human in nature under the human-oriented thinking logic by Feuerbach, while he attached more importance to human’s mobility in transformed the world. He said, “Human proves that they exist with conscience by the creating object world and changing inorganic world through practice”.² In Marx’s opinion, the social essence of humanity is to create a material world to meet their survival and development by practice, and meanwhile it creates social life that connects each other by practice. He said,

Whatever the change of activities or change of products by humans in production, they are all equal to some kind of activity or kind of spirit since their real, conscious and true existence is social activity and social enjoyment. As the essence of humanity is the real social relations among people, so human creates and produces social relations and social essence in actively realizing their nature.³

Therefore, we can see Marx’s attitude towards the relationship between human and society is not as speculative idealist as Hegel, nor excluded human’s social nature as Feuerbach, instead he put the relationship between human and society into practice and production from the realistic individual and creates human’s social relationship by human’s activities. And that is why Marx’ human social theory established on the practical thinking played a great role in promoting the development of law theory of historical materialism.

1.2 From the *Holy Family* to the *Outline of Feuerbach*, They All Laid Foundations to Marx’s Practical Thinking Logic of Law

1.2.1 The Basic Law Problems Such As Human Rights and Freedom Are Historically Analyzed By Employing

¹ The compiling bureau of the works from Marx, Engels, Lenin, and Stalin in the CPC Central Committee.(2002). *The complete works of Marx and Engels* (Vol. 3, p.298).Beijing: People’s Publishing House.

² The compiling bureau of the works from Marx, Engels, Lenin, and Stalin in the CPC central committee.(2002). *The complete works of Marx and Engels* (vol. 3, p.273). Beijing: People’s Publishing House.

³ The compiling bureau of the works from Marx, Engels, Lenin, and Stalin in the CPC central committee.(1949). *The complete works of Marx and Engels* (Volume 42, p.24). Beijing, People’s Publishing House.

Practical Thought

When analyzing the problems of human rights and freedom in the *Holy Family*, Marx had always adhered to the historical practice attitude and spirit. A typical example is that Marx inherited Hegel’s criticize in classical natural law when he criticized the “god-given right” theory. He said, “Hegel once said that human’s right was not inborn, it was produced historically. And there was no opinion more critical than Hegel’s regarding human rights.”⁴ Besides, Marx also historically analyzed the different experiences of the two big groups---Jacobins and Napoleon in the French revolution in resolving human rights and freedom by using practical thought. First he analyzed the reason for Jacobins’ failure

on the one hand, they had to admit and approve the modern bourgeois society in the form of human rights, which was an industrial and anarchic society full of universal competition as well as natural and spiritual personality with self-alienation, in which people aim to pursue personal benefits freely; on the other hand, they wanted to cancel the various lives in this society by a single person afterwards and also they wanted to set a political leader of this society by imitating ancient times.⁵

This act would be definitely abandoned by history since it just simply established an abstract theory of human right while going against the economic development relationship as well as objective social movement law of bourgeois society. Later he analyzed the reason why Napoleon could succeed.

He had already known the essence of modern society and he knew that unimpeded development of bourgeois society and free movement of private interest and so were the foundations of this state, so he decided to admit and protect these foundations.⁶

That is to say, Napoleon conformed to the historical developing rules and grasped the economic development relationships of bourgeois society and economic movement of capitalist class. And he made this economic development relationship systematic and legal by formulating *Napoleonic Code* appropriately. Obviously, by the historical comparison and analysis, Marx declared that revolution could only be successful by grasping the developing rules of social economy as well as objective law and making them systematic from the angle of practice. It was obvious that Marx had already historically analyzed some relatively basic law problems based on practical thought. However, Marx further abstracted this historical practical thought and employed it to analyze and criticize the old materialism of Feuerbach. For instance, in the *Outline of Feuerbach*, Marx criticized Feuerbach’s old materialism that he regarded human’s nature as “class”, while Marx stressed that the essence of humanity was

⁴ The compiling bureau of the works from Marx, Engels, Lenin, and Stalin in the CPC central committee. (1957).*The complete works of Marx and Engels* (Volume 2,p.146). Beijing, People’s Publishing House.

⁵ ditto 156

⁶ ditto 157

sociality. Human is the sum of all social relations, and humanity's social life is practical in nature. Therefore, the social practical nature that human always possesses in a certain social relation indicates that social life of human and human-beings should be understood from the angle of historical practice.

1.2.2 To Study the Criminal Phenomenon Speculatively by Employing Practical Thinking

In the *Holy Family*, Marx speculatively analyzed the social origin of criminal phenomenon by employing practical thinking and proposed the view of criminality that "we should not punish the criminal behaviors of individuals; instead we should eliminate the anti-social origin of criminal behaviors."⁷ In Marx's opinion,

since human's personality is caused by environment, then we should make the environment conform to humanity. And since human is born a creature of the society, he can only develop his nature in the society. We should judge his nature by the power of the whole society rather than by his single individual strength.⁸

Obviously, Marx analyzed the relationship between human's personality and environment speculatively based on practice, and then led to the conclusion that individual's anti-society criminal behavior was caused by certain environment; meanwhile, we should improve such kind of social environment to agree with humanity so that the nervous relationship between human and society embodied from the criminal phenomenon can be ended, and harmony between human and society can be reached. Similarly, Marx had abstracted this practical thinking of speculatively analyzing criminal phenomenon and concretely employed it to the one-sided mechanical materialism in the *Outline of Feuerbach*, criticizing the old materialism that just put forward "human is the outcome of environment and education". He thought this materialism could not see that the environment was changed by human and educator himself was surely educated. Therefore, Marx insisted that the change of environment and human's activities were interactive and coherent. He regarded and understood this coherency as revolutionary practice reasonably.

Through the analysis above, we can see that although the practical thinking of Marx had been somewhat embodied in the *Economic and Philosophic Manuscripts in 1844*, it still was not able to analyze all the relative law problems by using practical thinking, nor make this practical thinking systematic either. And understanding of practice still contributed to the thought of human's "class" nature. While in the *Holy Family*, under the guidance of gradually matured practical thinking, Marx had analyzed relative law problems historically and speculatively. Later

⁷ The Compiling Bureau of the Works from Marx, Engels, Lenin, and Stalin in the CPC Central Committee. (1957). *The complete works of Marx and Engels* (Volume 2, p.167). Beijing, People's Publishing House.

⁸ ditto. 167

Marx blended the previous historical and speculative practical thinking in the *Outline of Feuerbach*, and he analyzed and criticized the intuition and limitation of the old materialism concretely including Feuerbach's so that he established a comparable complete and scientific practical view and came up with his own philosophic practical thinking logic systematically. Just based on the philosophic practical thinking logic, Marx employed this thinking to study the law problems systematically in the *German Ideology* so as to form a systematic practical thinking logic of law, and under this practical thinking logic of law, he further accomplished a grand historical materialist theoretical system of law.

2. THE BASIC RULES OF MARX'S PRACTICAL THINKING LOGIC OF LAW

According to Marx's employment of practical thinking logic in analyzing law problems systematically in his several works, especially in the *German Ideology*, we can conclude the basic rules of his practical thinking logic of law as the following parts.

2.1 Abstraction and Concreteness Are Inter-Convertible in the Practical Thinking Rules of Law

The practical thinking rules that abstraction and concreteness are inter-convertible means that we should abstract and form the real and reliable nature from the concrete experience materials of legal practice which can embody legal phenomenon, which are the concept, judge, scope, principle of law. And then we should turn this abstract thinking into concrete thinking with certain practical methods and principles so as to form an internal coherent logic and concrete theoretical system of law by employing this thinking abstract. We can see all the transformation is so full of practicality. Materials without law practice cannot be analyzed empirically, and surely no reliability and truth can be reached; the theoretical system of law established without practical foundation will be divorced from reality and then it cannot resolve problems in reality. The importance of practice determines the conformance of practice before and after should be maintained when analyzing law problems by employing the thinking logic rule that abstraction and concreteness are inter-convertible. And this practicality requires that materialist logic thinking should be maintained in the whole transformation. Due to this reason, we can see it is different from Hegel's when Marx analyzing law problems by using the logical thinking rule that abstraction and concreteness are inter-convertible. From the view of materialism, Marx always stressed that thinking abstractions such as the concept, proposition, and principle of law should be abstracted from empirical materials that we achieved from objective existing relationships and concrete social conditions by the law practice. We should not consider the phenomenon of law as something that

divorces from social material life and realistic economic foundation. Based on this, Marx concluded the extremely important materialist law proposition from the aspect of materialist practice that “civil society determines the state and law”. While Hegel started from the “existing” but he was dominated by the “absolute idea” of objective idealism. Thus he split the object and subject, and reversed the relationship between civil society as well as law and state, so he could only conclude the idealist legal proposition that “state and law determine civil society”.

2.2 The Speculative Practical Thinking Rules of Law

The existence of law embodies humanity’s perfection of himself by participating in nature transformation and social activities, during which humanity deals with the relationship between nature and society. So law contains a multiple relationship with plural subjects. The complexity of law requires a comprehensive, universally connected, opposite and unified speculative thinking logic when studying the law. When Marx studied the law, he had always been speculative and materialist with taking practice as the basis rather than just from the idealist, spirit and volition angle as Hegel did. Moreover, these practical speculative rules can be further divided into three regular patterns—they are unity and opposite rule of law practice, inter-conversion rule of qualitative change and quantitative change of law practice, and the negative rule of denying the practice of law. The unity and opposite rule of law practice means that contradictions are contained among law’s internal affairs as well as law and its external things. The two sides of the contradiction are both opposite and unified, and this unity and opposite are caused by human in law practice which leads to unity and opposite of different subjects or the same subject or different relationships. Therefore this kind of opposite and unity cannot be without practice, otherwise it will result in an opposite and unity of no actual meaning, such as law rights and law obligations. Human can only act in law practice with certain law rights, and meanwhile he should assume some law obligations. Besides, law rights and law obligations can only be realized in law practice, or it will lead to empty rights and duties without any actual contents. The inter-conversion rule of qualitative change and quantitative change of law practice means that there will be inter-conversion process of quantitative change and qualitative change in the movement and change of law, while this process will be done in the law practice. The movement and change of law are not as spontaneous and automatic as other natural existence which is a process from quantitative change to qualitative change and then another new quantitative change; but law is formulated by human and it embodies human’s activities. Thus the inter-conversion rule of qualitative and quantitative change in the movement and change of law is definitely to be finished in the law practice since

human’s activities are of practicality. The negative rule of denying law practice means that the development of law is a corkscrewed process from positive to negative, and then from negative to a new positive again (denying of negation). Since human can only achieve this process from positive to negative and to new positive by constant practice, so the advancement of law is surely to be caused and accomplished by the law practice. The three speculative rules revealed the relationships between the internal subjects and external objects of law from different practical thinking logic and they also revealed the relationship between law itself and other things so that it is easy for people to master the essential relationship between law and the world.

2.3 The Practical Thinking Rules of Law Combining History and Reality

As for law, reality and history are unified. The law in reality is just the result that human beings constantly change themselves and the social environment so as to improve and develop historical law. The historical law can realize its value only if it relies on the real law, while the real law can only be constantly improved by taking historical law as comparison. Besides, the unity of history and real law is not abstract and elegant, it is practical instead. The unity of history and real in practice requires us to inspect the social basic contradictions, to explore the historical origin of law, to study the different social formations breeding law as well as the historical developing types if we want to study the law so as to find the general rules of law motion, and then we can inspect the reality law by the observed rules. Thus we can find the essence and the developing orientation of the reality law so that methods and countermeasures of improving the reality law can be further obtained. Therefore, it was just the unity of history and reality in practice that made Marx’s practical thinking logic of law different from Kant’s free and idealist thinking logic, Hegel’s speculative thinking logic, and Feuerbach’s human-oriented thinking logic. Marx revealed the general historical rules of law motion that is, “contradiction between productivity and contact forms”⁹, by employing this practical thinking logic, so as to point that the false freedom that “material relationship” dominates individual in the capitalist world embodied in the capitalist law should be replaced by the real freedom that “as a person with personality” embodied in the social proletarian law.

CONCLUSION

Through the analysis above, we can see that although the practical thinking of Marx had been somewhat embodied

⁹ The compiling bureau of the works from Marx, Engels, Lenin, and Stalin in the CPC Central Committee.(1960). *The complete works of Marx and Engels* (Volume 3, P.83). Beijing, People’s Publishing House.

in the *Economic and Philosophic Manuscripts in 1844*, it still was not able to analyze all the relative law problems by using practical thinking, nor make this practical thinking systematic either. And understanding of practice still contributed to the thought of human's "class" nature. While in the *Holy Family*, under the guidance of gradually matured practical thinking, Marx had analyzed relative law problems historically and speculatively. Later Marx blended the previous historical and speculative practical thinking in the *Outline of Feuerbach*, and he analyzed and criticized the intuition and limitation of the old materialism concretely including Feuerbach's so that he established a comparable complete and scientific practical view and came up with his own philosophic practical thinking logic systematically. Just based on the philosophic practical thinking logic, Marx employed this thinking to study the law problems systematically in the *German Ideology* so as to form a systematic practical thinking logic of law, and under this practical thinking logic of law, he further accomplished a grand historical materialist theoretical system of law. We also can conclude that Marx's practical

thinking logic of law is of abstract and specific; it is also of dialectical, historical and material.

REFERENCES

- The compiling bureau of the works from Marx, Engels, Lenin, and Stalin in the CPC Central Committee. (2002). *The complete works of Marx and Engels (Vol. 3)*. Beijing: People's Publishing House.
- The compiling bureau of the works from Marx, Engels, Lenin, and Stalin in the CPC central committee. (1949). *The complete works of Marx and Engels (Vol. 42)*. Beijing, People's Publishing House.
- The compiling bureau of the works from Marx, Engels, Lenin, and Stalin in the CPC central committee. (1957). *The complete works of Marx and Engels (Vol. 2)*. Beijing, People's Publishing House.
- The compiling bureau of the works from Marx, Engels, Lenin, and Stalin in the CPC Central Committee.(1960). *The complete works of Marx and Engels (Vol. 3)*. Beijing, People's Publishing House.