

## Discussion on Beyond of Marx's Philosophy of Law From the Perspective of the Nature of Law

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### Abstract

Nature of law is the inevitable and important issue for philosophy of law. Idealism law philosopher attributed it as will of deity, will of God and rationality of human which led to mystical and speculative. From the practice perspective, the understanding of nature of law by Marx has been realized double beyond on practical materialism and Practice dialectics, it pushed aside mists of idealism and revealed unification between will and material conditionality of law. Therefore, the law turns into a real science.

**Key words:** Marx's philosophy; Ruling class; Theory; Discussion

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### INTRODUCTION

As a great philosopher, Marx's achievements are universally accepted. However, this great breakthrough in philosophy of law was ignored by educational circle; even get slander by some western philosophical scholars. Colletti, an Italian scholar held the opinion that, "legal theory of Marx repeated what Rousseau had found and no extra information was added." Besides, contemporary Germany law philosopher Arthur Kaufmann spoke bluntly, "what did Marx's legal philosophy theory left

behind, nothing at all." Because of former Soviet Union scholars especially Stalin's mistakes and autocratic rule, Marx's law philosophy was shielded inappropriately, what's more, Habermas, a western Marxist scholar, thought Marxism lacking of satisfied legal tradition, it was one of the most important lesson the Left should keep in mind. Is that true?

### 1. DISPUTE ON EXISTENCE AND NONEXISTENCE

Longing for freedom, Marx was born into a law family and chose law as his major, but he had never written any works about philosophy of law systematically. The question lies in if it equals with that he did not form his own theory of law philosophy without any works of law philosophy. I'm afraid not. Just as Marx had never written any philosophy works specially, but it is universally acknowledged that he is the greatest modern philosopher.

At college, Marx had drafted the outline of law philosophy under the influence of the philosophy thought of Kant and Fichte. He stopped his writing about Kantian law philosophy immediately, because he sharply discovered the metaphysics of Kant and Fichte's thought of law philosophy. Later Marx came into contact with Hegel's law philosophy thought. He was inspired by Hegel's law philosophy's reasonable kernel, which is dialectics. Marx even claimed himself to be Hegelian, however, the conflicts between the reality of Prussian dark and Hegel rational law made Marx feel agonized. Then he composed *Hegel law philosophy critique* (not finished at last). He proposed the famous theory of the civil society deciding the country. Owing to that the definition of civil society is hazy and the fundamental defects exist if discussing the law from the perspective of law, Marx turned to study Economics. By analyzing

political economics to poke into the civil society further, he composed *Economic and Philosophical Manuscripts of 1844* and *Holy Clan*. After that, *German Ideology* he composed marked the formation of Marx neo-world outlook and indicated the finish of the new law philosophy view.

## 2. REVEALING THE NATURE OF LAW

The law, as the important historical phenomenon of human society, attracts the attentions of philosophers since the creation of philosophy. From Socrates and Plato to Aristotle, the ancient philosophers' probe into justice and fairness was just the philosophy reflection of legal phenomenon. To be the reflective subject, philosophy is bound to probe into the legal phenomenon. However, it is not easy to master the nature. Although the nature is embodied by the phenomenon, the philosophers often are shadowed by the superficial phenomenon, and their awareness of the nature of law differed from each other under the influence of the limit of world outlook, methodology and class stand. The school's study of the law nature had great influence, such as the nature law school, the historical law school and the school of judicial realism, and even they are still regarded as mainstream in western society, but their philosophy basis of law nature theory has fundamental mistakes. May who was the only person was aware of the shadow of idealism and revealed the nature of law scientifically. Just as what Professor Ni Zhian of Southwest University said, the creation of Marx philosophy of law declared that the science of law can really become science.

### 2.1 The Public Will or the Will of the Ruling Class

Will reflects person's pursuit of value. It is undeniable that the creation of law is to satisfy person's need. The creation of law is bound to be related with person's need and will; therefore, the law can embody person's will, especially the will of lawmaker. The characteristics of law can be embodied by the form of law. The lawmaking purpose, lawmaking motivation and lawmaking effect cannot exist without the will involvement. Meanwhile, in the historical origins of law, such as moral emotion and religious regulations, the will also embodied the value pursuit during a certain period. Therefore, western philosophers consistently put the nature of law down the will of the God, the will of the divine and the will of the heaven, which reflected the limit of people's knowledge. The law was covered by a mysterious veil. When Protagoras proposed that human being was the measure of everything, the necessity and the legitimacy of law are deserved to be judged by human being's will. The modern philosophers, especially the philosophers of the bourgeoisie, regarded the nature of law as the people's public will, comparing with the will of the God and the

will of the divine, which is undoubtedly great historical progress. However, can the law embody public will?

According to Marx, "if the issues such as free will, human being's responsibility and the relationship between freedom and necessity were not discussed, the issues of morality and law could not be well discussed."<sup>1</sup> Marx did not deny the will of law. However, they have fundamental differences in nature.

Firstly, from the perspective of the will subject that the law bears, the capitalist society flaunted the theory of everyone being equal before the law, democratic system and representative system, which made capitalist society make great achievements. So the philosophers of the bourgeoisie believed that the will subjects of law were the public, which showed the law beyond the class. On the contrary, Marx thought the law reflected the will of the governing class. In the society of class antagonism, the law became the important tool to maintain the social order and protect the interest of the governing class.

The value itself is the outcome of the bourgeoisie's ownership relation and life relationship, just as the law regarded as the law is only the will of this class. While the content of the will be determined by the material living condition of your class.<sup>2</sup>

In such case, the will be free and casual superficially, but in essence it is bound to be related to the essential desire and requirement of the governing class. The nature of law is regarded as public will. On the one hand, it is the need of bourgeois revolution. The advertisement of public will can gather more class and stratum to overthrow the feudalism rule. On the other hand, it acts fraudulently, which can decrease the rebellion of the ruled class. The theory of modern law philosophers reflects their noble desires. In fact, from the viewpoint of application, the law should be the embodiment of public will. The appearance of nation and law is to make everyone live and develop better. After all, the savage and out-of-order would result in everyone in danger.

Secondly, from the explicit expression form of the law, the will of ruling class appears as state will. The so-called state will reflects and show the will of the governing class in the name of nation. Of course, all the law is enacted in the name of nation, such as *The Constitution of the United States*. They will never declare the law reflects the will of the governing class nakedly, which can decrease the obstructions in the implementation to some degree. The law is set up base on the thing. It advertises that everyone is equal before the law. Even the members of the governing class who

<sup>1</sup> Works. (2009). The CPC Central Committee Marx Engels Lenin Stalin Book Compilation and Translation Bureau. *Collected works of Marx and Engels* (Volume nine, p.119). Beijing: People's Publishing House.

<sup>2</sup> Works. (2009). The CPC Central Committee Marx Engels Lenin Stalin Book Compilation and Translation Bureau. *Collected works of Marx and Engels* (Volume two, p.48). Beijing: People's Publishing House.

breaks the law will receive the legal sanction, which makes the ruled class feel equal. In the book of *The German Ideology* written by Marx and Engels, they pointed out that the dominant governing class must endow themselves the general form that the nation will determine by certain relations is the law in certain social and economical relations. That shows that the rulers provide basis for dominating the nation not only by dominating the nation in the form of nation, but also reflecting the class desire and will in the general form of law. While they can be achieved by making the law. The transformation from class will to the nation will can not only make the governing class convey their will in the form of general will and national will officially, but also make the implement authorized by relying on the coercive force of the state. In fact, if the ruling class is regardless of the basic condition of social development and ignores to manage social public affairs, naturally the ruling could not continue.

At last, from the perspective of the content of the will of the law in nature, it is the manifestation of the governing class's overall will. The overall will is not the simple will be the combination of each governing class member. The governing class, the need and desire of them are in general agreement, but the condition difference of the individuals inevitably presents particular difference. Therefore, when the individual will be departs from the general will, the individual himself must abnegate to some degree. Even the ruler himself cannot place his will over the general will, or else he will be replaced by other members of his class. "The ultimate outcome always comes from the conflict between the individuals. While the individual will come into being based upon their particular life condition. By this way, numerous crossed forces form into one force."<sup>3</sup>

Significantly, the statement such as the law being the manifest of the general will of the governing class, the law being the nation will of the governing class and so, are questioned in various ways at present. Does the law embody the will of the ruled class? Must the law have the class character? According to some person, can the Capitalist Law and the Socialist Law be distinguished from Traffic Safety Law, Environment Protection Law and Food Safety Law? Do these laws have class character? The author thought the law is characterized by the unifying the class nature with sociality. The law therefore not only functions to maintain the governing class, but also manage the society. We can neither deny the law's class nature because of the law's sociality, nor deny the law's sociality because of its class nature. To any kind of society, the achievement of basic society

management is the basis of the continuing of class rule. As for the point that the law is the manifestation of the governing class' will, actually some lawmaking itself is to maintain the interest of the governing class, but the ruled class can also benefit from it. For instance, the law can maintain good social orders, it is not only beneficial to the ruling class, but also to the ruled class. In the sharp period of class struggle, the governing class will make a concession to move forward. The law even reflects the will of the governing class partly, but ultimately it aims to maintain their own interest, or else, the class rule will collapse in the sharp class struggle.

## 2.2 The Condition of the Will: Reason, Jus Natural or Material Life Conditions

The nature of law lies in its will. Kant, German classical philosophy, thought the superficial characteristics of the law is characterized by freedom, the nature of law lies in protecting people's freedom, not limiting people's freedom. However, the will is never at one's pleasure that means the governing class cannot act at their pleasure. According to the Western philosophers including Hegel, the will need to be limited by reason. The nation is the highest reason. The law is enacted by the nation. As the outcome of reason, it is not real law to depart from the reason. While the school of natural law thought the natural law exists ageless based on the basis of human law, which means the human law must accord with the natural law, if the human law is to turn into real law. Simply speaking, the governing class must accord with natural law. Natural law means justice and fairness. The scholars of natural law school undoubtedly show the common good desire of law philosophers. The law is the embodiment of justice and fairness. The idea can hold the evil law of the governing class. The evil law violates the natural law. It inevitably loses validity of law. The school of natural law has great influence; it even revived in the Western society after World-War II. It is the common thing of the world culture that the law is related with justice and fairness. In the western countries, the Themis holding the balance symbolizes the law, while in China, the unicorn, Xiezhì, is regarded as the symbolization of law. The moral of them is no doubt the same.

In the work of *The Draft Law on Divorce* written by Marx, he pointed out that the society was not based upon the law, which was the illusion of the jurisconsults. On the contrary, the law should be the basis of the society. The law should be the common manifest of the interest and need arisen by certain material lifestyle, not the individual's private will. Only the person who was unaware of the history didn't know the kings had to obey the economic conditions at any times. And they never issue orders to the economic conditions. Lawmaking of the politics or the lawmaking of the citizens just conveyed the requirement of recording economic relations. From here we see the

<sup>3</sup> Works. (2009). The CPC Central Committee Marx Engels Lenin Stalin Book Compilation and Translation Bureau. *Collected works of Marx and Engels* (Volume ten, p.592). Beijing: People's Publishing House.

law, as the manifestation of the governing class' will, is characterized by the material control. The lawmaking should accord with the requirement of the objective economic conditions and economical laws. For instance, it is not coincidence that the law of different capitalist countries considers inviolability of private property and freedom of contract as the common law, which exactly shows that the governing class's will be limited by the materials.

Significantly, Marx' theory that the nature of law is limited by the material life conditions is interpreted to be economic determinism by the Western philosophers, even the social philosophers. Economic base seems to be the only factor which determining the law, it obviously misunderstands Marx' works. For instance, both Britain and German are capitalist countries. The capitalist private ownership economy is advocated in the two countries from the perspective of economic base. However, the laws of the two countries differ from each other. Britain is case law-oriented country, while German is statute law and statute book-oriented country. British proceeding emphasizes the neutralism of the judge (adversary system of the parties), while German insists judge centralism. That means the material living condition is not the only factor affecting the law. The law, as the complicated social phenomenon, also would be influenced by the national cultural tradition, historical origin and even the geographical factors. From the viewpoint of materialist conception of history, the law is part of the superstructure. The material living condition is part of economic base. The economic base determines the superstructure. That implies that the law is determined by the material living condition. But that still does not deny the influence the other factors attach to the law, such as personal qualities and psychology of the subject. In one word, the material control of the law nature is from the perspective of the basis.

### **3. THE NATURE OF LAW REVEALS THE SURPASS OF PRACTICAL MATERIALISM**

When Marx explored the unity of opposites between the material control of the law nature and the class will, that undoubtedly proved the falsity and fraudulence of philosophy. But why did the philosophers fall into the cognitive mistakes for thousands of years? Marx is the only person who surpassed the history and uncovered the new chapter of law philosophy. And then under the guide of Marx law philosophy, would be the science of law develop in a scientific way? It is universally acknowledged that Marx upgraded the idealism of Hegel law philosophy. He adopted his theory of law philosophy into the basis of materialism. Marx law philosophy is divided from the idealism and materialism of western law philosophy, which shows marked difference of them.

However, only from the above point, that will cover the basic reason why Marx philosophy surpasses.

The philosophy of idealism exaggerates person's consciousness and the will's nature to regard the law nature as the outcome of some kind of will, maybe the God's will, the will of the devil, the public will or the nation will. Or the subjective initiative is overemphasized partly. Based upon the fact that human beings are reasoning creatures, the nature of law is therefore the outcome of reason. From the perspective of idealism, the law philosophy inevitably results in mysticism. To satisfy the need of the governing class, it will be interpreted at random. With the guide of the philosophy of idealism, the science of law becomes the slave of theology and the pseudoscience under the cloak of science.

The confirmation of materialism makes the law philosophy's surpassing become possible, however, the law philosophy can not really surpass in the limit of traditional materialism philosophy. Traditional materialism philosophy is still the philosophy of resource-oriented. The world is not related with the human beings. The native materialism and mechanical materialism are typical naturalism and material humanism. What they pay attention is the objective world and the logos of the nature. They even regard human beings as objects, which cause the absence of the human being in the field of philosophy. That is inhuman and evil philosophy. Even if Feuerbach's materialism of humanism is aware of the person's subjective initiative, but the person in Feuerbach's theory are abstract. The cognition is considered as intuitive one. The ontology can be only theory, rather than realistic humanitarianism. Actually Marx' philosophy objects material ontology. That is because the material ontology focuses on the world non-related with human being. To Marx, the pure world is futile. The logos of the nature should be the research aim of specific science. The world Marx' philosophy focuses on belongs to the world of human beings who are the socialized persons of humanized nature and human society. Inevitably the world of human beings can not boil down to objective reality, but the unity of subjective initiative and objective reality, the object and the subject, purposiveness and regularity. It cannot be ignored that the old materialism, including Feuerbach humanistic materialism, falls into the confusion of idealism in the field of social history. As for this historical phenomenon of human society, that cannot be revealed scientifically.

The law is the important phenomenon of human society and the important part of human civilization. The nature of Marx' inquiry method neither sticks the opposition between the matter and the consciousness, nor insists who is the primacy between matter and consciousness. Marx first set about from the relationship between civil society and the nation. He proposed the theory that the civil society determines the nation. The further analysis of the civil society makes him sharply



focus on the fundamental role of material life practice. How the law comes into being, develops and dies away is determined by material life practice. During the period of primitive society, there were no residual products because of low material production level. In such case, private interest could not exist. And the conflict between the individuals, between private interest and public interest did not exist. Therefore, the law did not exist. With the development of material production level, residual products exist and the polarization of wealth is aggravated. The shadowy concept of nation appears. To maintain the social orders, the law in the name of nation will appear. With the development of material production practice, the productivity is rather developed. The compromise between the private interests and the unity between the private interest and public interest makes the law disappear based on the coercive force of the state. It is the confirmation of practical materialism that made Marx find the objectivity of the nature of law and reveal the nature of law lies in the unity of opposites between consciousness and material control, which means the unity of opposites between the objectivity and the subjectivity, between the purposiveness and the regularity. It can be predicted that if Marx fell into materialism based on the matter, he obviously was only aware of the conditionality of objective regularity, regardless of the people's purposiveness and subjective initiative. The law is conditioned by the material living conditions, but it still conveys the purpose and motivation of lawmaking. Therefore, Marx exactly started from practicing and revealed the nature of law based on the practice scientifically.

Practical materialism predicts the form of science of historical view, especially the confirmation of practical historical view. The law, as the historical phenomenon of human society, is pushed forward and developed by the practice of the people. Look at the history and the world from practicing means the change from interpreting the world to transform the world of philosophy function. The law, as the important code of adjusting the interest relations, on one hand, is determined by the economic base. On the other hand, it has great reaction to the economic base. For instance, the law system of developing capitalist countries is the factor of maintaining, guaranteeing and promoting rapid economical development. To be simple, the law, as the manifest ationof spiritual civilization, is bound to be the important power of transforming the world. At present, if losing the guide and the restrain of the law, we can not imagine the development of human practice.

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#### **4. THE SURPASSING OF PRACTICE DIALECTICS REVEALED BY THE NATURE OF LAW**

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The scientificity and tolerance of Marx' theory of law of nature are based on the philosophical base of

Marxism. Its incisiveness and generality exactly are the crystallization of practice dialectics on the knowledge of law phenomenon. The academic world has formed consensus that the dialectics of Marx philosophy comes from Hegel's speculative dialectics. One mainstream idea insists that Marx achieved the overthrow of Hegel's dialectics from idealism from materialism.

Hegel's dialectics undoubtedly has great implying significance to the form of Marx philosophy. The question lies in that if the difference of them is just the up-down. If so simple, why can not be the other philosophy achieve the up-down of dialectics from idealism to materialism? Professor Xiaoming Wu from Fudan University pointed out that Hegel's dialectics is metaphysical. Hegel was aware of the general exist of contradiction (the contradiction of concept and thinking), but at last tried to make contradiction unify into absolute idea. The dialectics was put in metaphysics. The surpassing of Marx' dialectics lies in looking on the relationship between the things and unity of opposites from the perspective of practice. Any practice is based on the previous practice. Therefore, from the perspective of history, the generation of practice belong to human being is developing. From the perspectives of synchronicity, the society exists generating from practical development exist between relations. That shows the general relations of the world of reality.

According to the historical view, the law belongs to superstructure which is determined by economic base. The key internal contradiction of economic base is the opposition between the productivity and the relations of production. The productivity is exactly the practice ability of transforming the world. The relations of production are the organization form of human being's production practice. With the development of productivity, the relations of production can not tolerate and satisfy the need for productivity. The economic base is bound to change, and then the superstructure will change with it. The law, as the constituent part of superstructure will change. In such case, the nature of law can not be revealed scientifically if the practical ontology, thinking way and thinking logics are ignored.

The dialectics of practice is based on the practice to reveal the science of developing general regularity and the varying of developing the world generated by the practice. It does not reveal the nature evolution of pure world, but put into the human being's will, purpose and motivation of development regularity of the world belonging to human being under the interaction of human being's practice. If the dialectics lacks the surpassing of practice, the fundamental motivation will be limited in the contradiction of the world non-related with human being. Then the dialectic will descend to naive dialectics. In fact, on one hand, only does the contradiction of the world become the contradiction of practice existence through practice, then it will be understood by human

being. On the other hand, the contradiction that human beings master is the contradiction being of significance to practice. In one word, the fundamental motivation of developing is the internal contradiction of practice. Those are purposiveness and regularity, subject and object, limited and unlimited. No doubt, the law itself is the outcome of human beings' practice, rather than the antecedence existence of the nature. Therefore, the human beings' thinking must follow the practical dialectics.

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## REFERENCES

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- He, B. S. (2004). The rethinking of the law's class will. *Law Philosophy*, 5.
- Hu, Y. H. (2006). *The narration of Marx' Essentialism. Learning and Exploration*, 3.
- Ni, Z. (2007). *The study into the method theory of Marx' philosophy* (p.6). Beijing: People's Publishing House.
- Ni, Z. (2010). *The new probe into Marx doctrine* (p.9). Beijing: People's Publishing House.
- The collected works of Marx and Engel by compilation and translation bureau of the CPC central committee* (2009, Volume I). Beijing: People's Publishing House.