

Law

(1) In modern society, law is the written, authentic, public system of rights and sanctions enforceable by the state. In earlier forms of society, law was not written, and the enforcing institution was not the state. (2) In science, law is the expression of regularity in phenomena.

(1) Giving a formally correct definition of law faces the difficulty that when a law or system of law is seriously called into question, the matter is resolved by social conflict and violence or threat of violence, but law invariably explicitly excludes such a possibility. Thus law can only codify rights embedded in the existing state and in particular the interests of the ruling class in society. By *codifying* rights reflecting the balance of brute force, the appearance is given of authority standing *above* society and social interests and violence.

“In civil law the existing property relationships are declared to be the result of the general will.” [German Ideology]

Nevertheless, law is far from just being some kind of fraud perpetrated by the powers that be; class rule entails the creation of objective forms which predominate over the caprice of individual will, and for 99 per cent of the time law indeed acts as an objective force; at least it does so in a developed and mature social formation.

Further, what gets codified in law, as a result of actions by legislators and judges can only give a determinate form to the real social practice, either as it is, or as it becoming. A law that is out of line with reality “on the ground” is, as the saying goes, “an ass”, and deserves to be flouted.

“Whenever, through the development of industry and commerce, *new* forms of intercourse have been evolved, the law has always been compelled to admit them.” [German Ideology]

While above we have explained the content of law, it is also necessary to explain the form of law. Leading Marxist thinker Evgeny Pashukanis espoused that law is created when the class system begins, and that the rule of capitalist law will largely carry itself over into Socialism; that there *is no such thing as*

workers' law, only the *dismantling* of capitalist law, as society moves from capitalism to socialism, and from socialism into communism.

Naturally, it was on this basis that Pashukanis was attacked by the Stalinists, who believed in *increasing* the power of the state (and thus the rule of law), and in building up a gigantic bureaucracy around a myriad of rules and regulations. The Stalinists attempted to argue that law is an instrument of class rule, and as a result that workers' should use it just as any other class has in the past -- completely misunderstanding that the [essence of workers' rule](#) is the destruction of the state, and thus, that by enforcing and building up the power of the state, the rule of workers is crushed. Pashukanis emphasised that *the rule of law is not neutral*, that law is tied to political economy, and that just as exploitation cannot be class neutral, nor can law -- both institutions must be abolished during the Socialist transformation.

The Stalinists would often quote Lenin piecemeal and out of context, showing him supporting the suppression of capitalists as a necessity for workers' power, neglecting to quote more than sentence fragments. In the following passage, Lenin re-iterates what Marx laid out in the [Critique of the Gotha Programme](#):

In its first phase, or first stage, communism cannot as yet be fully mature economically and entirely free from traditions or vestiges of capitalism. Hence the interesting phenomenon that communism in its first phase retains "the narrow horizon of bourgeois law". Of course, bourgeois law in regard to the distribution of consumer goods inevitably presupposes the existence of the bourgeois state, for law is nothing without an apparatus capable of enforcing the observance of the rules of law.

It follows that under communism there remains for a time not only bourgeois law, but even the bourgeois state, without the bourgeoisie! This may sound like a paradox or simply a dialectical conundrum of which Marxism is often accused by people who have not taken the slightest trouble to study its extraordinarily profound content. But in fact, remnants of the old, surviving in the new, confront us in life at every step, both in nature and in society. And Marx did not arbitrarily insert a scrap of "bourgeois" law into communism, but indicated what is economically and politically inevitable in a society emerging out of the womb of capitalism.

[Lenin; State and Revolution, Chapter 5](#)

Right

Right is the system of socially regulated freedoms (rights) having its origin in pre-capitalist societies, reflecting the developing relations between individuals, social classes and the whole community.

Right is actualised as written and enforceable law, but has its origins in the social relations of production, and right *exists* even where it has not yet attained legal form. Furthermore, right is never an altogether settled question, but is contested and in change.

Historical Development: The nature of right develops historically. In ancient and tribal society, the concept of right would be meaningless because personal interest has not yet developed as something distinct from communal interest; as Aristotle observed: “*Where people are in Friendship Justice is not required*” (*Ethics*, Book VIII).

As feudal society developed, rights adhered to this or that person only in accordance to their station, and was expressed in systems of titles and obligations defining the place of each individual in society as a whole:

“For feudalism ... the elements of civil life such as property, the family, the mode and manner of work, for example, were raised into elements of political life in the form of landlordism, estates and corporations. In this form they determined the relation of the particular individual to the state as a whole, that is, his political relation, his separation and exclusion from other parts of society. ...” [From [On the Jewish Question](#), Marx 1843]

From the time of the Magna Carta, there began to emerge concepts of “Rights of Man”. [Denis Diderot](#), in the decades leading up to the French Revolution, elaborated the idea of “natural rights” that were subsequently enshrined in the Constitution of the French Revolution; [Thomas Paine](#) was instrumental in bringing forward the **Rights of Man** in the American Revolution, eternal, “inalienable” rights, which were subsequently incorporated in the drafting of the Constitution of the French Republic.

The Right established by the French Revolution did not live up to expectations though:

“Formerly, the feudal vices had openly stalked about in broad daylight; though not eradicated, they were now at any rate thrust into the background. In their stead, the bourgeois vices, hitherto practiced in secret, began to blossom all the more luxuriantly. Trade became to a greater and greater extent cheating. The “fraternity” of the revolutionary motto was realised in the chicanery and rivalries of the battle of competition. Oppression by force was replaced by corruption; the sword, as the first social lever, by gold. The right of the first night was transferred from the feudal lords to the bourgeois manufacturers. Marriage itself remained, as before, the legally recognised form, the official cloak of prostitution, and, moreover, was supplemented by rich crops of adultery.

“In a word, compared with the splendid promises of the philosophers, the social and political institutions born of the “triumph of reason” were bitterly disappointing caricatures.” [[Socialism, Utopian & Scientific](#)]

In the seventeenth century, a [civil society](#) had grown up between the kinship and state relations of traditional society, a society whose rights [Thomas Hobbes](#) described as “[the war of all against all](#)”. All the rights pertaining in civil, or bourgeois society, are derived from what Hegel calls “abstract right”, the right of [property](#). The ethical system expressed by this abstract right was systematised by [Jeremy Bentham](#) and [John Stuart Mill](#) as [Utilitarianism](#).

Civil Rights and Human Rights: Despite the overlay of *political rights*, it is this system of abstract rights which is the dominant form of right in bourgeois society to this day. Marx drew attention to the distinction held between *rights of citizens* (civil or *political rights*) and:

“the so-called *rights of man* ... are only the rights of the member of civil society, that is, of egoistic man, man separated from other men and from the community.

“Liberty is thus the right to do and perform anything that does not harm others. The limits within which each can act without harming others is determined by law ... This is the liberty of man viewed as an isolated monad, with drawn into himself. ... liberty as a right of man is not based on the association of man with man but rather on the separation of man from man. It is the right of this separation, the right of the limited individual limited to himself. The practical application of the right of liberty is the right of property. ... the right of self-interest. It lets every man find in

other men not the realisation but rather the limitation of his own freedom. ... Thus none of the so-called rights of man goes beyond the egoistic man, the man withdrawn into himself, his private interest and his private choice, and separated from the community as a member of civil society ... The only bond between men is natural necessity, need and private interest, the maintenance of their property and egoistic persons.” [From **On the Jewish Question**, Marx 1843]

Although it has a 300-year-long history, “Human rights” is a phrase which has become more and more prominent since the mid-1970s, mainly in international relations, in relation to governments which resist **free trade**. The distinction made by Marx between “human rights” and “political rights” can be summarised as follows:

- *Human rights* – the right to property, freedom of religion, etc., the rights which guarantee the *concrete*, real human being in their occupation, their beliefs, etc. – but founded on the *separation* of man from man, not on the relations or *community* of people, – the *foundation of bourgeois political economy*.
- *Political rights*, – equality before the law, universal suffrage, etc. – can only be the rights of *abstract* human beings, rights which abstract from the real differences in wealth, privilege, education, occupation, kinship etc.

The foundation of the bourgeois state on *political rights equalised* between *abstract* human beings, is the basis of a situation where the *real* differences and relations in social power, founded in civil society, dominate political life, despite formal equality. Consequently, civil life – global, universal, free competition and exchange – dominates political life. There can be no real *political* emancipation without real *human* emancipation.

Workers’ Rights: In its struggle which develops within capitalism, the **proletariat** also brings forward its own distinctive “workers’ rights”. The needs of the class of people who must sell their **labour power** in order to live, are different from the needs of those who live off the proceeds of their property. Property rights are of little use to those who have no property. Workers need first and foremost the *right to organise*

and form combinations, and the various rights which contribute to this such as legal protection for union funds, and so on, and the right to satisfaction of *basic human needs* – food, shelter, clothing, health, education – access to which the bourgeoisie can purchase with money. These are the distinctive workers' rights, over and above those fought for by the progressive bourgeoisie, rights that are denied in bourgeois society except insofar as workers secure them through struggle and protect them with legal instruments and the constant threat of class struggle.

Rights Under Socialism: In Critique of the Gotha Program, Marx sketched the development of right under socialism:

“Within the cooperative society based on common ownership of the means of production, the producers do not exchange their products; just as little does the labour employed on the products appear here at the value of these products, as a material quality possessed by them, since now, in contrast to capitalist society, individual labour no longer exists in an indirect fashion, but directly as a component part of the total labour. ...”

“in a communist society ... as it emerges from capitalist society ... equal right here is still in principle – bourgeois right, although principle and practice are no longer at loggerheads ... equal right is still constantly stigmatised by bourgeois limitation. The right of the producers is proportional to the labour they supply; the equality consists in the fact that measurement is made by an equal standard, labour.

“But one person is superior to another physically or mentally, and so supplies more labour in the same time, ... This equal right is an unequal right for unequal labour ...It is therefore a right of inequality, in its content, like every right. Right by its nature can consist only in the application of an equal standard; but unequal individuals ... are measurable only by an equal standard in so far as they are brought under an equal point of view, are taken from one definite side only, for instance, in the present case, are regarded only as workers, and nothing more is seen in them, everything else is ignored .. To avoid all these defects, right instead of being equal would have to be unequal.

“But these defects are inevitable in the first phase of communist society as it is when it has just emerged after prolonged birth pangs from capitalist society. Right can never be higher than the economic structure of society and the cultural development conditioned by it.

“In the higher phase of communist society, ... after labour has become not only a means of life but life’s prime want; after the productive forces have also increased ... only then can the narrow horizons of bourgeois right be crossed in its entirety and society inscribe on its banners: *‘From each according to her ability, to each according to her needs!’* “