



# What is now left of Marxism on the withering away of the State and Law?

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## Abstract

One of the areas that attracted publicity to Marxist theory was its general principles on the notion of the withering away of the State and Law yet scarcely dealt with in detail by Marx and Engels. Profound ideological, academic and philosophical debates were engaged in the space. Several decades after these debates, it was now necessary to look back at them and see what was left. This work which adopted the doctrinal method shall critically review the philosophies of Marxism on the question of the State and law and determine whether they are still relevant and impactful in modern society and academic studies.

**Keywords:** Marxism, Marx, Engels, Lenin, Withering Away of State and Law

## Introduction

The emergence, nature and the role of the State and law have engrossed the attention of many philosophers, jurists, political scientists, sociologists, historians and laymen, yet, they are often seen from diametrically opposed angles. While Hobbes (cited in Understanding Society, 1972 p. 38), Aparo (1982, p. 1) <sup>[3]</sup>, Hume, Bodin, Augustine, Aquinas (cited in Lloyd, 1964 pp. 15, 17 and 21) and Maude eulogize them as the bulwark of society from the anarchic, 'brutish nasty and short' state of nature where the Shastran 'logic of the fish' of 'might makes rights' would reign supreme; Hegel expound them as the foundations of civil society. And while Rousseau (cited in Plamenatz, 1973 p. 45) <sup>[47]</sup>, Plato (cited in Lloyd, 1964 p. 11), Tolstoy, Godwin (cited in Woodcock, 1977 p. 117 – 124), Kropotkin (cited in Apter and Joll, 1971 p. 20) <sup>[4]</sup>, Proudhon (cited in Krimerian and Perry, 1966) <sup>[27]</sup> and Bakunin (cited in Vizetelly, 1972 p. 21 -39 and Lloyd, 1964 p. 19) <sup>[56]</sup> disdain them as the weirdest and greatest 'engine of despotism and oppression', indeed the taproot of all social evils plaguing humanity. But Marxists, appealing to the 'immanent forces of history' (d'Entreves, 1967 p. 51) <sup>[13]</sup> conceive them as products of society at certain stages of evolution which will wither away in a future communist society; as thus, they debunk their roles, see in them the bane of human society and fetter to the transition of society to post-history.

The withering away of the state and law is the culmination of Marxist political thought. Synonymous with the theory of the State, it has bred naturally, and particularly, passionate controversies. Indeed as Lefebvre (cited in d'Entreves) notes, 'no other aspect of Marxist thought has been so greatly blurred, distorted and befogged' and as Bukharin (1953 pp. 65 -66) <sup>[6]</sup> puts it, 'in no sphere of social science has so much idealistic and even mystical fog gathered than in the doctrine of the State that "citadel of the concentrated power" of the ruling classes.' The notion of its, 'eternity... obligatory character universality and extra-historical nature' have been and still are prevalent

dogmas in bourgeois state theories today' (Korstantinov, *et al* 1979 p. 295) <sup>[26]</sup>.

## Statement of the Problem

After the disintegration of the USSR, is there anything left of the philosophies of Karl Marx? The aching problem in this research is to determine whether Marxists notion on the withering away of the State and law still has any relevance in the modern world. The purpose of this study therefore, is to trace the origin, nature and stages of the development of the Marxist conception of the principles of the State and law and to attempt a critical evaluation of the theoretical and practical validity of the concept vis-à-vis contemporary social reality bearing in mind that 'Marxism's golden value is shown by the research it stimulates and the problems it solves' (Bottomore, 1979 p. 40) <sup>[5]</sup>.

## Scope and Methodology

As Marx and Engels viewed their work as an 'approach to further understanding' (Makepeace, 1979 p. 40), 'as no more than approximation, which would necessarily be modified in the light of future research' (Law, 1978 p. 40) than a 'dogmatic theory' intended to substitute detailed work of empirical research (O'Malley, 1917 p. 45) <sup>[43]</sup>, the scope of this study is not to discover what Marx rather than Engels, Lenin etc, said (Miliband, 1979 p. 128) <sup>[39]</sup> or what Marx and Engels rather than Lenin, etc said (Macfarlane, 1975 p. 167) <sup>[32]</sup>. But to have a coherent view of the concept in its original and later versions, at its philosophical and sociological levels, squared on contemporary 'concrete political and socio-economic trends to provide a key for anticipating prospective development' (Marcus, 1958 p. 9) <sup>[37]</sup> and better basis for appraisal as 'nothing is so sacred that could not be out-stripped and improved' upon (Stanisic, 1987 p. 11) <sup>[54]</sup>. As Stalin (cited in De George, 1967 p. 197 and Zinn, 1971 p. 36 -48) <sup>[59, 14]</sup> puts it, Marxism is not 'a collection of dogmas which never change

regardless of the changes in the condition of development of society... Marxism as a science cannot stand still...' Thus to follow Corrigan and Sayer (1981, 21) <sup>[11]</sup> closely, 'we start, but do not stop, with Marx's work'.

This is not to suggest, however, that Marx's and Engel's views shall be seen mainly 'through the prism of later interpretations and adaptations' (Miliband) for contrary to Lichtheim's (cited in Mosse, 1977 p. 4) <sup>[41]</sup> static analysis, Marx was not a man of one but all seasons. But that as far as possible the differences between the parental theory and later variations shall not receive undue magnifications thereby hindering basis of appraisal. Furthermore, Marxist views shall not be treated in isolation but compared and contrasted with those of non-Marxists contemporary or not. Within the mainstream of Marxism, a 'mystifying catchword' to O'Malley and a rouser of 'complicated problems' for Shapiro (1977, p. 95) it may be improper to presuppose that opinions always tally. Where they do not, they shall juxtaposed and stand taken where necessary. Given the peculiar nature of the concept we have set out to evaluate, it might be unrevealing to be purely restricted to politico-legal forms for they have their immanent historical origin in socio-economic forms and substance. It is thus suggested that a better understanding and appraisal of the concept shall be inexorably tied up with frequent perusal of the socio-economic foundations of given epochs upon which arises the 'legal and political superstructure and to which correspond definite forms of social consciousness' (Fried and Sanders, 1964 p. 29) <sup>[19]</sup>.

Although Marxist theory of State and law is not comprehensive (Makepeace, p. 20) for the obvious fact that they are not distinct social phenomena (Ilumoka, 1986 p. 2) <sup>[23]</sup> within the social bound, squatting outside of civil society – and not because they are just instruments of domination 'to be done away with, not developed and elaborated' upon as Dias (1980 p. 399) <sup>[15]</sup> claims, or because they are of 'little account' as Harris (1980 p. 251) <sup>[21]</sup> claims, or because Marx was an amateurish political thinker as Tucker (1969 p. 4) claims – its analysis of law is always subordinated to that of the State and class struggle and the scattered reference to law corroborates this (Opolot, 1981 p. 112) <sup>[45]</sup>. To a great extent, therefore, 'the approach to law has to be deduced from or subsumed under that to the State' (Makepeace). And as law is inalienable not only from its socio-economic but political background, it cannot be analyzed scientifically without studying it together with politics. This, no doubt, has created organizational problems in this work (Opolot, p. 101). However the confidence with which both categories is treated in this study, gained impetus and inspiration from Makepeace's analysis in similar ways.

## Literature Review

### Conceptual clarifications

#### Definition of the State and Law

Though never well expounded in a systematic form (Miliband, p. 128) nor was the proposed plan on the modern state carried out (Duncan, 1973 p. 139) <sup>[16]</sup> Marxist political theory 'has acquired a certain notoriety' of the new breed of social theories

which broke away from the traditional, classical political philosophy in the 19<sup>th</sup> century (Harris, 1980 p. 251) <sup>[21]</sup> and ranks among the most widely accepted today (Tucker, 1969 p. 54). Indeed if Marx had not been more than a mere purveyor of phraseology, he would have been dead by now (Shumpeter, 1970 p. 5). What causes difficulty, however, is the attempt at defining and analyzing Marxist basic concepts. Croce, 1979 p. 142) <sup>[12]</sup> comments: Marx more 'eager for knowledge of things...attached title weight to discussion of concepts'. Duncan observes that 'by their works, rather than their definitions should they be judged'. Marx himself asserts, 'De prime abord I do not start from concepts' (cited in Corrigan *et al*, 1978 p. 16). However, Marx and Engels were critical of the bourgeois state and law (Carter, 1972 p. 100). Accordingly, these pages shall not find comfort in theories associating the State with 'theological and metaphysical essence' (Bukharin, 1979 p. 31) <sup>[7]</sup> nor shall recourse be had to notions that cloth the law with universal and sacral qualities.

A tripartite definition can be identified: Intrinsic or normative; descriptive or coercive and functional definitions. Marx, in 'The Critique of the Gotha Program' (cited in Tucker, p. 56) defines the State intrinsically as 'the government machine, or the State in so far as it forms a special organism separated from society through the division of labour'. In the 'Communist Manifesto' (cited in Carr, 1970 p. 78) Marx defines law intrinsically: 'your law is only the will of your made into law for all, a will whose essential character and direction are determined by the economic conditions of life of your class'. This agrees with Davies (cited in Oyeboode, p. 15) who opines that the constitution and the law of a people are expression of the social consciousness of their leadership. The State and law can only be understood as social phenomenon (Bukharin) rooted in given modes of production in society which become sterile when divorced from their social milieu (Elias, 1972 p. 117) <sup>[17]</sup>.

### Complementarities of the State and Law

The legal conception of the State in terms of the law and vice versa is a vicious circle. It lacks sociological foundation and it is suspended in mid air (Bukharin). The State as such does not exist; its existence stands for a group of particular institutions that constitute its reality (Miliband, p. 149). These are the army, police, court, legislature, sovereign, prison, bureaucracy etc. The law is one of such institutions. The complementarities of the State and law are beyond imagination. A State devoid of law ceases to be properly so-called. For Marxists, 'law is the cutting edge of the State' and 'clearly inseparable' from it (Opolot, p. 109). The court, Lenin (cited in Rene, 1978 p. 199), asserts 'is an organ of State power. The Liberals sometimes forget this. For Marxists, it is a sin to do so'. Moreover, such principles as separation of powers are, to Marxists, arrant bourgeois theoretical fetish for in reality there is concentration of power (Rene, p. 168).

Laws, such as the Factory Act and the Ten Hour Bill, are products of civil society and not the niceties of parliamentary draughtsman-ship and fancy (Evans, 1956, p. 178) <sup>[18]</sup>. They

receive their official proclamation by the State as the result of long teething class struggle (Corrigan and Sayers, p. 24) and must operate in the interest of the State (Duncan, p. 32) whose interest in turn, are those of the economically dominant class in society (Bukharin, p. 32). It must be firmly and forcefully stated that although history has thrown up situations where 'the institutions of state power were not all in the tight grip of one class' (Onyeoziri, 1987 p. 13) 'state power is not like yam that can be cut into pieces and distributed around. A class either controls it in full or does not at all'. It 'goes beyond ... mere presence in parliament or control of government. It includes crucially, the control of all coercive institutions' which, according to Marx, 'are the ears, eyes, arms and legs enabling owners of property to act' (Madunagu, 1978 p. 8 and Adelakun, 1988 p. 6) <sup>[1]</sup>. However, Wittfogel (1957 p. 239) in 'Oriental Despotism' termed Marx, Madunagu and Adelakun proposition a 'political myth'.

### Statements on withering away of the State and Law

The three main currents which, according to Churchward (1968, pp. 88-89), run through the fabric of Marxist political theory are that the State is a mediator in class struggle, and as it mediates, it does so as an organ of the dominant class, and when, at a stage in the class conflict, classes disappear or coagulate into the proletariat, the State will wither away. Regarding the third tier of this proposition, Marx, in 'The Alleged Splits in the International' (cited in Mclellan, 1971 p. 194) states: '... as soon as the goal of the proletariat movement, the abolition of classes, shall have been reached, the power of the State ... will disappear and governmental functions will be transformed into simple administrative functions'.

In 'Anti Duhring' can be found the celebrated dictum where Engels states: 'The interference of the state power in social relations becomes superfluous in one sphere after another and then ceases of itself. The government of persons is replaced by the administration of things and the direction of the processes of production. The State is not "abolished" it withers away'. In the 'State and Revolution' (cited in Fried and Sanders, 1964 p. 479) Lenin states: '... from the moment all members of society ... have learned to administer the State themselves ... from this moment the need for government of any kind begins to disappear altogether...'

The vision of a stateless society where the coercive and exploitative aspects of political power will be non-existent dates back to ancient times (Avrich, 1973 p. 9) and particularly traceable to early French and Utopian socialism (Berki, 1975 chap. 3). What marks Marxism, the unquestionable leading ideology and political force that gave socialism its stature in a world-wide context and not a theory 'dug out of a half-forgotten limbo of past philosophies' from those early periods is, its scientific character (Fried and Sanders). Marxist conception of the withering away of the State and law is one reached after a scientific analysis of what existed is existing and shall based on the existing exist. As Berki puts it forcefully, it is 'a mighty colossal "synthesis", an imposing unification of

diverse elements' – the synthetic combination of French socialism, English political economy and German idealism; a 'culmination of seven different trends of thoughts and social movements'. More so, it does not embrace imaginative visions of future society but allows it to depend on economic and historical circumstances while engaging in 'uncompromising critical evaluation of all that exists' (Madunagu, 1980 p. v) <sup>[33]</sup>.

### Critique of the Concept

The concept of the withering away of the State and law being the political departure of Marxism has however remained controversial as ever. The debate has not been the preserve of Marxists but non-Marxists alike. In 'The International', Marxists debated polemically with the Anarchists on what the State was to become after the revolution. Indeed Marxist statements were mainly dialogues refuting Anarchism which turned Marxism inside out. Anarchism saw the root of all evils in the State which must be abolished in all its meaning (Tucker, p. 89) while Marxism saw it more in civil society than the State whose immediate abolition meant the destruction of the only organism – the 'principal spoil' – of proletarian rule to hold down the bourgeois and carry out economic revolution of the society (Tucker, p. 88).

Although Lloyd (1964, p. 41) points out that the dictatorship of the proletariat is a 'paradox' so abhorrent to the Anarchists he seeks to see Marxism as synonymous with 'modern Anarchism'; and to Plamenatz (p. 41) and by some extension Joll (1971, p. 221) <sup>[25]</sup>, the doctrine of the withering away of state is 'essentially anarchists; it is the anarchist ingredient' and moment in Marxism. Unflagging welter of authorities confute Lloyd, Plamenatz and Joll. Hobsbawn (1973, pp. 57 – 58) <sup>[22]</sup> and MacDonald (1962, p. 362) <sup>[31]</sup> are subtle in demonstrating that although Marxists and Anarchists aim at libertarian socialism, Anarchists do not believe in 'any transitory apparatus' and are for decentralization, nonparticipation in 'formal political processes' against Marxian democratic centralism. Corrigan and Sayer, Churchward, and Mclellan affirm that Marxism does only mean that 'political power' will lose its political class character and not the 'disappearance of any public power'.

As Makepeace (p. 26) observes, 'Adamiak, following Bloom (who have both written on the withering away of State) considered the relative positions of Marx and Engels on this matter and concluded that they were similar' and consequently, that they were not Anarchists nor neo-Anarchists, and they envisioned 'that the State was to play a very important part in future society'. Lenin (cited in Shub, 1965 p. 445) puts it succinctly thus: 'If we are not anarchists, we must admit that the State, i.e. coercion, is necessary for the transition from capitalism to socialism' but 'opportunists keep saying that the proletariat needs a state but they forget to add that the proletariat only needs a dying state, that is, a state that immediately beings to wither away and cannot help withering away' (cited in Melotti, 1977 p. 144). Ensuing from these authorities, there will be 'public power' minus 'political power' in communism.

### Critique of the Philosophers

A second pernicious phenomenon has been the knack for a 'radical differentiation of Marx from Engels' by a 'busy cottage industry of critics' making a 'scapegoat' of Engels as the fount of positivist heresy in Marxism (Gouldner, 1980 p. 251; Seliger, 1977 p. ix and Mosse, 1977 p. 4) <sup>[41, 20, 51]</sup>. Engels, the cotton miller, who won no college degree, is held to be naïve and gauche and according to Lichtheim (cited in Gouldner), the arch-father-figure of pro-reformism that finds its hallmark in Kautskyism. A manufacturer's son, who enjoyed music, wine and women, it is argued, 'is not a congenial figure to revolutionary or academic ascetics. Thus, according to Colletti (cited in Gouldner) there is 'a gulf between the vigor and complexity... of Marx and the popular vulgarization... dilettantism of Engels'. These, according to Gouldner are 'historically dubious and unjust'. He submits emphatically with Trotsky, who won no college degree also that Engels, the man at the centre of the class divide, is undoubtedly one of the finest, best integrated... personalities in the gallery of men'. A "theoretical genius" according to Althusser (cited in Gouldner)!

Yet, this cottage industry of personality calumny has dovetailed into the question of the State. Aviner (cited in Duncan pp. 145 – 146) followed by Schapiro (1972, pp. 82 – 83) <sup>[49]</sup> has conjectured a divergence of Marx and Engels terminologies on the withering away of the State and law. They argue that while 'a philosophically profound Hegelian Marx used "abolition" and transcendence – philosophical terms with dialectical overtones (Makepeace) – agreeable with the natural sciences, 'a more vulgar and shallow Engels' (Duncan) used 'withering away' and 'dies out' (MacLellan) 'biological simile' (Makepeace) – agreeable with the 'social sciences'. Thus, as Duncan puts it freeing 'Marx from the incubus of Engels'. The disingenuousness of this debate is clear. To Duncan, Avineri sharpens the contrast too much while to Marfarlane (1975, p. 167), Marx and Engels, having 'collaborated so closely' could not have had different views of the State or 'theories without noticing' them. But in this drab debate lies the essence of Marxist analysis. While 'abolition' means the abolition of the bourgeois state in socialism, 'transcendence' and 'withering away' means the dying and disappearance of the proletarian state in communism.

As MacDonald (p.427) and Lefebvre (p. 171) in consonance with Harris (p. 256) opine, the dictatorship of the proletariat 'points to the period of transition between the destruction (abolition) of the existing State and the setting up of the State that will wither away'. Althusser (p. 135) was close to this when he asserted that 'the proletariat must seize State power in order to destroy (abolish) the existing bourgeois state apparatus ... then in later phases, set in motion a radical process, that of the destruction (withering away) of the State'. Lenin was explicit: '...withering away' refers to 'the remnants of the proletarian state after the social revolution' and, to Macfarlane (p. 167) and James (p. 121) after the bourgeois state has been smashed.

In the 'State and Revolution' (cited in Fried and Sanders, p. 473) can be found the exact expression of this argument: 'the expression "the State withers away" is very well chosen for it indicates the gradual and the spontaneous nature of the process'. The spontaneity is the abolition of the bourgeois state while the gradualism is the withering away of the socialist state. The abolition of the state has meaning only for communists as the necessary result of the abolition of classes, with which the necessity of the organized force of one class for the oppression of another falls away of itself (Makepeace, p. 27).

### Finding

The concept of the withering away of state and law in Marxist political thought is significant. Though disingenuously termed an 'obscure Marxist concept' (Hazard, 1957, p. 5), it is centrally important, yet complex: For by 'transforming capitalism into socialism' writes Lenin, 'the proletariat creates the possibility of abolishing national oppression; the possibility becoming reality ... with the establishment of full democracy... And this will serve as a basis for developing the practical elimination of national mistrust for an accelerated fusion of nations that will be completed when the state withers away'.

### Conclusion

The origin of the concept of a classless and stateless society and the conception of the withering away of the State and law in such a society is as old as the concepts of socialism and communism. Like in class analysis, Marxists did not discover it, but proved scientifically, the way to it through the framework of class structure of society, class struggle and the dictatorship of the proletariat. Rather than being an 'obscure' Marxist concept, the withering away of the State and law is clearly the apex of Marxist political probe of society with cogent preconditions outlined before its achievement. Far from being anarchistic or utopian, administration and regulatory rules will replace the State and law in the future society.

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