

## **Class Approach to Jurisprudence and International Law: A Prelude**

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Law, enforced by the State, is a manifestation of class relationship. The political power of the ruling class, determined by class relations in conflict within a system of relations of production and exchange, is embodied by the State. In its mystified and enigmatic forms - the content of laws and legal system - law's fetishism cloaks its class base and class bias. The class approach to law gets behind the secret of these pseudo-representations of neutrality and impartiality and exposes their real class content.

### **Law and Relations of Production**

In the Preface to *A Contribution of the Critique of Political Economy*, Marx has outlined the golden thread of his analysis of the foundations of class societies as follows:<sup>1</sup>

In the social production of their existence, men inevitably enter into definite relations, which are independent of their will, namely relations of production appropriate to a given stage in the development of their material forces of production. The totality of these relations of production constitutes the economic structure of society, the real foundation, on which arises a legal and political superstructure and to which correspond definite forms of social consciousness. The mode of production of material life conditions the general process of social, political and intellectual life. It is not the consciousness of men that determines their existence, but their social existence that determines their consciousness.<sup>2</sup>

Marx continues to explain:

At a certain stage of development, the material productive forces of society come into conflict with the existing relations of production or—this merely expresses the same thing in legal terms—with the property relations within the framework of which they have operated hitherto....The changes in the economic foundation lead sooner or later to the transformation of the whole immense superstructure. In studying such transformations, it is always necessary to distinguish between the material transformation of the economic conditions of production, which can be determined with the precision of natural science, and the legal, political, religious, artistic or philosophic—in short, ideological forms in which men become conscious of this conflict and fight it out. Just as one does not judge an individual by what he thinks about himself, so one cannot judge such a period of transformation by its consciousness, but, on the contrary, this consciousness must be

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\* *Attorney-at-Law, The Supreme Court of Sri Lanka*, This piece was written in September 2018 and is dedicated to the memory of the workers who died in the worst industrial fire at Ashulia Industrial Zone North of Dhaka in 2012

<sup>1</sup>Karl Marx, *A Contribution of the Critique of Political Economy*,(1859).

<sup>2</sup>Engels further explains this process: "The materialist conception of history starts from the proposition that the production of the means to support human life and, next to production, the exchange of things produced, is the basis of all social structure; that in every society that has appeared in history, the manner in which wealth is distributed and society divided into classes or orders is dependent upon what is produced, how it is produced, and how the products are exchanged. From this point of view, the final causes of all social changes and political revolutions are to be sought, not in men's brains, not in men's better insights into eternal truth and justice, but in changes in the modes of production and exchange."- F. Engels, *Socialism: Utopian & Scientific* (1880).

explained from the contradictions of material life, from the conflict existing between the social forces of production and the relations of production.<sup>3</sup>

Engels and Marx write in the *Manifesto of the Communist Party* that "the history of all hitherto existing society is the history of class struggles"<sup>4</sup>. The Relations of production and exchange, and therefore the State, exist only in the class society and are class relations determined by class antagonisms. These class antagonisms determine the form and content of law.

As Marx explains, the economic structure of society is the base upon which the legal superstructure is formed, leading to change in the former to transformations in the latter. In the class society, whether feudal or capitalist, the mode of production, that is the economic structure, is essentially a one of exploitation by a propertied class of another class. In the capitalist society, it is the Capitalist who owns the means of production and the worker owns only the labour power to sell in exchange for a wage for his living. The Capitalist accumulates the surplus value as profit in exploitation of the surplus labour extracted from the worker. Thus the economic system - capitalism for instance - that exists in the class society is essentially an exploitative system. Law and the legal system in the class society, therefore has to fundamentally legitimize and legalize this class exploitation, and cloak inherent social injustice and inequality.

Thus, the nature, the character of the class relations, relations of production is determined by the class antagonism, class conflict or class struggle. That is, the nature, the character and content of the law that regulate these class relations are determined by the class struggle. Law is an ideological form in which the classes become conscious of this conflict, expressed in legal terms, between material productive forces of society and the existing relations of production, or the property relations, and fight out this conflict, or negotiate terms. Class antagonism is the fundamental contradiction of interests in the Capitalist society, which derives from the basic contradiction in the Capitalist mode of production between the unfettered private ownership of the means of production and profit on the one part and social production of wealth on the other.

Relations of Production imply class relations. Exchange in its primary form is explicit in the exchange of labour power, which is a special commodity, by the "producer", worker to its buyer, the Capitalist. This relationship of exchange is performed on unfair terms in class society. These relations are regulated by law laid down by the propertied class, the class which owns and controls the means of production and wields political power. This

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<sup>3</sup> Engels highlights Marx's theoretical achievement as follows: "It was Marx who had first discovered the great law of motion of history, the law according to which all historical struggles, whether they proceed in the political, religious, philosophical or some other ideological domain, are in fact only the more or less clear expression of struggles of social classes, and that the existence and thereby the collisions, too, between these classes are in turn conditioned by the degree of development of their economic position, by the mode of their production and of their exchange determined by it. This law, which has the same significance for history as the law of the transformation of energy has for natural science." F. Engels, *Preface to The Eighteenth Brumaire of Louis Bonaparte* (1885).

<sup>4</sup> Karl Marx and Friedrich Engels, *Manifesto of the Communist Party*, (1848). Engels' footnote here refers to class antagonism: "With the dissolution of these primeval communities society begins to be differentiated into separate and finally antagonistic classes." The same is written by Engels in *Anti-Dühring* (1877): "all past history was the history of class struggles; that these warring classes of society are always the products of the modes of production and of exchange."

is where law takes its place in the socio-economic system. The production relations thus determine the nature, the form and content of the law. This could be more appropriately called the Relations of Production or the Class Relations Theory of Law.

The Class Approach to Jurisprudence could be only outlined as above. In the following paragraphs, we will proceed to discuss the related concepts in much detail.

### **Class and Class Antagonisms**

As Marx and Engels affirmed, historically the society of production has been a class society.<sup>5</sup> Lenin defines social classes as follows:

Classes are large groups of people differing from each other by the place they occupy in a historically determined system of social production, by their relation (in most cases fixed and formulated in law) to the means of production, by their role in the social organisation of labour, and, consequently, by the dimensions of the share of social wealth of which they dispose and the mode of acquiring it. Classes are groups of people one of which can appropriate the labour of another owing to the different places they occupy in a definite system of social economy.<sup>6</sup>

The Capitalist society, originated from the ruins of the feudal society has established new classes, new conditions of oppression, new forms of struggle and simplified class antagonisms. The society is split into “two great hostile camps”- Bourgeoisie and Proletariat.<sup>7</sup> Marx explains that these hostile Capitalist relations are ever being reproduced:

Capitalist production, therefore, under its aspect of a continuous connected process, of a process of reproduction, produces not only commodities, not only surplus-value, but it also produces and reproduces the capitalist relation; on the one side the capitalist, on the other the wage labourer.<sup>8</sup>

Classes are within a system of production and exchange. The class society is characterized by conflicting interests, leading to law regulating these interests. The rights and duties of parties derive under these production relations. Law, as it is, arose within the written history of the world and developed through the class society, due to class antagonisms, in the production and exchange process. With the fall of the rate of profit, when the crisis of Capitalism deepens, the class antagonism rises to its peaks.

Law in the Capitalist society is, therefore, fundamentally class based and class biased. Thus, in the best interest of the Capitalist class, law’s essential role is maintaining freedom to exploit and exchange and efficiency in the market.

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<sup>5</sup>Marx in his letter to Weydemeyer (1852) states that it was not he who first discovered the existence of classes in modern society or the struggle between them; he says that long before him bourgeois historians had described the historical development of class struggle and bourgeois economists had explained the economic anatomy of classes. What Marx did, Marx says, was to prove, *inter alia*, that, “the existence of classes is only bound up with the particular, historical phases in the development of production”. In *Grundrisse* (1857), Marx writes, “The population is an abstraction if I leave out, for example, the classes of which it is composed.”

<sup>6</sup> V.I. Lenin, *A Great Beginning: Heroism of the Workers in the Rear “Communist Subbotniks”* (1919).

<sup>7</sup>K. Marx, F. Engels, *Supra* Note 4.

<sup>8</sup>K. Marx, *Capital*, Vol. 1, Part VII (Accumulation of Capital), Marx & Engels Collected Works, Lawrence & Wishart Electric Book Vol 35(2010), p577

### **The role of State in Class Society**

State is a product of class society, so an institution of class rule developed historically to suit the existing mode of production.

State is there to regulate and maintain order in the class relations, while the class antagonisms remain irreconcilable, till the withering away of the State<sup>9</sup>. The political power of oppression of one class over the other is organized in the form of State<sup>10</sup>. Marx and Engels write that “the executive of the modern state is but a committee for managing the common affairs of the whole bourgeoisie”<sup>11</sup>.

Quoted by Lenin in *State and Revolution*(1917), in his *The Origin of the Family, Private Property and the State*(1884), Engels writes in plain language as follows:

The state is, therefore, by no means a power forced on society from without; just as little is it ‘the reality of the ethical idea’, ‘the image and reality of reason’, as Hegel maintains. Rather, it is a product of society at a certain stage of development; it is the admission that this society has become entangled in an insoluble contradiction with itself, that it has split into irreconcilable antagonisms which it is powerless to dispel. But in order that these antagonisms, these classes with conflicting economic interests, might not consume themselves and society in fruitless struggle, it became necessary to have a power, seemingly standing above society, that would alleviate the conflict and keep it within the bounds of ‘order’; and this power, arisen out of society but placing itself above it, and alienating itself more and more from it, is the state.

In the same seminal piece of wisdom, Lenin explains Marx's perspective as follows:

According to Marx, the state could neither have arisen nor maintained itself had it been possible to reconcile classes...According to Marx the state is an organ of class rule, an organ for the oppression of one class by another; it is the creation of “order”, which legalizes and perpetuates this oppression by moderating the conflict between classes.

In his lecture titled *The State* (1919), Lenin says, “The state is a machine for maintaining the rule of one class over another”. Therefore, equality in its constitutionalized forms in the class society is a mere facade. Lenin is clear and firm on this point: "We reject all the old prejudices about the state meaning universal equality – for that is a fraud: as long as there is exploitation there cannot be equality."<sup>12</sup>

Since early twentieth century, in the capitalist world economy of globalization of production, the productive forces have been so much developed that the nation State and the class society have become a hindrance to the globalised production. This is one of the fundamental contradictions of global Capitalism today, giving rise to imperialist tensions and danger of world war.

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<sup>9</sup>“The state is a product and a manifestation of the irreconcilability of class antagonisms. The state arises where, when and insofar as class antagonism objectively cannot be reconciled. And, conversely, the existence of the state proves that the class antagonisms are irreconcilable.”-V.I. Lenin in *State and Revolution*(1917).In the *Origin of the Family, Private Property, and the State*, (1884), Engels explains how State will be obsolete under Communism: “Society, which will reorganize production on the basis of a free and equal association of the producers, will put the whole machinery of state where it will then belong: into a museum of antiquities, by the side of the spinning-wheel and the bronze axe.”

<sup>10</sup>K. Marx, F. Engels, *Supra* note 4.

<sup>11</sup>K. Marx, F. Engels, *Supra* note 4.

<sup>12</sup> V.I. Lenin, *The State*, A Lecture Delivered at the Sverdlov University(1919)

### **Exchange of Labour Power and Legal Fetishism**

From the very moment of exchange of labour power, a commodity -the primary legalized relation of production - for a wage, the fundamental injustices of the class society are manifested.

Since the working class is placed at a much disadvantaged position, the game of buying and selling of labour power is played on uneven grounds<sup>13</sup>. There arises one of the fundamental legal characteristics of the class society: inequality, which is legal because it is legitimized, legalized and enforced by the class rule of the State. Equality, therefore, from the perspective of majority of the population, the working class, is an ideology, unreal, never realized a facade.

The worker who is compelled to sell his labour power has no option but to sell his labour power for exploitation by the Capitalist. Therefore, from the perspective of the working class, there is no free will to the worker. For him, free will remains an ideology, unreal, never realized, a facade.

In the capitalist mode of production, the working class, from the inception, is deprived of property rights, the right to own means of production. In the same line of logic as above, from the perspective of the working class, the right to own private property, in its original sense, though a constitutionalized right, is never realized and will ever remain a facade, as a tool of deception.

Marx states the sphere of simple circulation or of exchange of commodities “within whose boundaries the sale and purchase of labour power goes on, is in fact a very Eden of the innate rights of man. There alone rule Freedom, Equality, Property [and Bentham]. Freedom, because both buyer and seller of a commodity, say of labour power, are constrained only by their own free will. They contract as free agents, and the agreement they come to, is but the form in which they give legal expression to their common will. Equality, because each enters into relation with the other, as with a simple owner of commodities, and they exchange equivalent for equivalent. Property, because each disposes only of what is his own. [And Bentham, because each looks only to himself].”<sup>14</sup>

But, since labour power “both reproduces the equivalent of its own value, and also produces an excess, a surplus value,” which “is the difference between the value of the product and the value of the elements consumed in the formation of that product, in other words, of the means of production and the labour power,”<sup>15</sup> then, “the rate of surplus value is therefore an exact expression for the degree of exploitation of labour power by capital, or of the labourer by the capitalist.<sup>16</sup> In these circumstances, the labour power is exchanged country to or “against [our] contract and the law of exchanges”<sup>17</sup> mentioned

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<sup>13</sup> K. Marx, Capital, Vol. 1, Marx & Engels Collected Works, Lawrence & Wishart Electric Book Vol 35(2010), Buying and Selling of Labour Power, p177.

<sup>14</sup> K. Marx, *ibid*, p186

<sup>15</sup> K. Marx, *supra* 13, p219

<sup>16</sup> K. Marx, *supra* 13, p227

<sup>17</sup> K. Marx, *supra* 13, p242

above. Therefore, in respect to exchange of labour power within the class society, the said innate rights of man are *ab initio* actually non-existent.

The above analysis of the origin and status of the concepts of equality, free will and right to private property is valid and applicable from the very inception of class society. Where human labour was forcefully extracted under slavery and feudalism, which were fetters on the development of productive forces, including science and technology, these injustices were rather more apparent.

### **A Return to the Factory**

The foregoing analysis should be distinguished from that of the most prominent Soviet jurist Evgeny Pashukanis. In his *The General Theory of Law and Marxism* (1927), Pashukanis concentrated on the exchange of commodities in the market place, instead of the work place, and found equality, free will and property rights and therefore all source of law in the bourgeois law originating therefrom. Since bourgeois law is determined by class antagonisms, it does not just represent the bourgeois whims and fancies. Therefore, to argue that equality, free will and right to property originated unrelated to their exact opposites, which have been objective facts, is rather non-Marxist.

### **Legal Fetishism**

But, then, how is that this unreal has been presented as real, masking the real? While this is significantly because all precautions have been taken by the bourgeois State to present itself as based on legal ideals of democracy, equality and freedom, it is also because, historically, the intellectual contributions by jurists, academics, and judges have given law its mystified, enigmatic form.

The ideological forms of the superstructure have a dialectical relationship with the economic base. Therefore, law, as an autonomous ideological form founded on the economic base, converted and concentrated historically into mystified and enigmatic forms, could exercise upon economic base, in turn, to modify it. Engels explained this dialectical relationship as follows:

The reflection of economic relations as legal principles is necessarily also a topsy turvy one: it happens without the person who is acting being conscious of it; the jurist imagines that he is operating from a priori principles, whereas they are really only economic reflexes; so everything is upside down. And it seems to me obvious that this inversion, which, so long as it remains unrecognised, forms what we call ideological conception, reacts in its turn upon the economic basis and may, within certain limits, modify it.<sup>18</sup>

In the same manner, law, in its autonomous form, also influences class struggle. Such is the power of ideological forms.<sup>19</sup> In analogy to commodity fetishism, this phenomenon could be best described as legal fetishism.<sup>20</sup>

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<sup>18</sup> F. Engels, Letter to Conrad Schmidt, 27 October 1890.

<sup>19</sup> "[T]he various elements of the superstructure – political forms of the class struggle and its results, such as constitutions established by the victorious class after a successful battle, etc., juridical forms, and especially the reflections of all these real struggles in the brains of the participants, political, legal, philosophical theories, religious views and their further development into systems of dogmas – also exercise their influence upon the course of the historical struggles and in many cases determine their form in particular" - F.Engels, Letter to J. Bloch, 21 September 1890.

Thus, Pashukanis was correct when he identified “the principle of legal subjectivity (which we take to mean the formal principle of freedom and equality, the autonomy of the personality, and so forth) is...an instrument of deceit and a product of the hypocrisy of the bourgeoisie,” to counter proletarian struggle to abolish class society.<sup>21</sup>

### **Class Approach to International Law (CAIL)**

International agreements binding upon the nation States which are the signatories thereto and customary rules based on state practices primarily consist of the modern international law, developed since late nineteenth Century.<sup>22</sup> This epoch overlaps the growth of global Capitalism to its highest stage, Imperialism,<sup>23</sup> alongside the rise of international financial capital. The theoretical foundations of the relationship between these two phenomenal developments from a class approach are briefly considered here.

Capitalism is rooted in the nation State system, so too the private property and the Capitalists, while production and exchange are globalised. As production is globalised, the working class is internationally subjected to exploitation by both national and foreign capitalist classes. The interests of the capitalist class, especially in the advanced capitalist States, are protected internationally by their State apparatus. Therefore, the capitalist class in each nation State is posited against their rivals in other nation States in gaining monopoly over markets, cheap labour and resources to increase profits. Imperialism has its roots in this predatory capitalist drive for competitive profits.

In *Imperialism, the Highest Stage of Capitalism* (1916), Lenin explains how under-developed countries are placed in a disadvantaged position in the global capitalist system. Due to this, “uneven development and a semi-starvation level of existence of the masses are fundamental and inevitable conditions and constitute premises” of the capitalist mode of production. “As long as capitalism remains what it is, surplus capital will be utilised not for the purpose of raising the standard of living of the masses in a given country, for this would mean a decline in profits for the capitalists, but for the purpose of increasing profits by exporting capital abroad to the backward countries. In these backward countries profits are usually high, for capital is scarce, the price of land is relatively low, wages are low and raw materials are cheap.”

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<sup>20</sup> Marx's analogy to this is in the religious world where, “the productions of the human brain appear as independent beings endowed with life, and entering into relation both with one another and the human race” - K. Marx, *Capital*, Vol. 1, Marx & Engels Collected Works, Lawrence & Wishart Electric Book Vol 35, (2010) p84.

<sup>21</sup>E. Pashukanis, *General Theory of Law and Marxism*(1927)

<sup>22</sup> Malcolm N.Shaw, *International Law*, 8<sup>th</sup> Ed. (Cambridge University Press) (2017) p 5.

<sup>23</sup>Capitalism has throughout been international: “The bourgeoisie has through its exploitation of the world market given a cosmopolitan character to production and consumption”- K. Marx, F. Engels, *Supra Note 4*. “Capitalism only became capitalist imperialism at a definite and very high stage of its development, when certain of its fundamental characteristics began to change into their opposites... Economically, the main thing in this process is the displacement of capitalist free competition by capitalist monopoly. Free competition is the basic feature of capitalism, and of commodity production generally; monopoly is the exact opposite of free competition...Imperialism is the monopoly stage of capitalism”- V.I.Lenin, *Imperialism, the Highest Stage of Capitalism*(1916)

Leon Trotsky showed that “the coercive imperialism of advanced nations is able to exist only because backward nations, oppressed nationalities, colonial and semi-colonial countries, remain on our planet.”<sup>24</sup> Propagating falsehood, “imperialism camouflages its own peculiar aims – seizure of colonies, markets, sources of raw material, spheres of influence – with such ideas as ‘safeguarding peace against the aggressors,’ ‘defence of the fatherland,’ ‘defence of democracy,’ etc.”<sup>25</sup> and, during the past quarter plus Century, with “war on terrorism”, “humanitarian intervention”, human rights and “responsibility to protect”.

Accordingly, the parameters that shape the character, scope and form of International Law are rooted in rival interests of nation States within the global capitalist economic system. International Law, including the United Nations(UN) Treaty system, functions of UN Security Council and of the International Monetary Fund, the World Bank, World Trade Organization etc and numerous global and regional trade, security, environmental, nuclear, scientific etc., treaties and conventions are to be analysed in the light of these theoretical considerations about the world capitalist system.

#### **What does CAJIL do?**

Class Approach to Jurisprudence and International Law (CAJIL) is the jurisprudential approach, based on what could be called the Relations of Production Theory of Law that lifts the cloak of delusion and expose the real class character of laws, legislations, international instruments and judicial pronouncements, from the perspective of the working class. Class Approach to Jurisprudence (CAJ) and Class Approach to International Law (CAIL) are placed against the other presumably alternative approaches, which are fundamentally based on identity politics, regionalism, post-modernism, post-Marxism and other revisionist tendencies. Based on the method of Marxist historical materialist analysis, this approach will free legal scholarship from its fetters of bourgeoisie mainstream jurisprudence and incite class conscious academics and legal practitioners to develop revolutionary knowledge for the emancipation of the international working class and the oppressed masses.

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<sup>24</sup> L. Trotsky, Lenin on Imperialism (1939)

<sup>25</sup> *ibid*