Marxism-Leninism and the Heritability of Law

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The growing emphasis in Marxist-socialist countries on the importance and complexity of state organization and law as a means of "steering society" is well known. It has involved the rejection of the earlier view that state and law are by their essence coercive organs of class rule which lose their raison d'être once the division of society into antagonistic classes has been overcome. It has led, irresistibly, to the recognition that neither state nor law has a single unitary essence, or serves just one function. It has also led to ever-increasing emphasis on the necessary technicality of law and administration, the importance of knowledge and training, the impossibility of totally overcoming the division of labor and the specialization of functions in this field. There is now clear, if guarded, recognition of the existence of concepts, techniques and principles, and of objective problems, that must form part of any serious concern with law and administration in modern societies, whether those of socialism or those of the "bourgeois" and developing world. Of course, there are still countervailing trends in contemporary Marxist-Leninist theory: the continued insistence on the class interest of the bourgeoisie as ruling and shaping western societies and seeking, through imperialism and neo-colonialism, to dominate the world; the attack on the abstract and formal character of "bourgeois" law as concealing and facilitating economic subjugation and inequality; the rejection of "idealistic" and "natural law" elevation of justice as an abstract, formal, or moral concept true for all time; the refusal to see or respect law and legal theory as an independent, critical social tradition, with an in-built bias toward freedom, equality, and the clear determination of rights. Nevertheless, Soviet and East European theoreticians of state and law are now anxious to appear at world congresses and do appear there as professional colleagues of western lawyers, rejecting the "juristic nihilism" which they treat as a slanderous distortion of Marxism. Nor do they all any longer put forward the same views—there are differences of substance, as well as of emphasis, on such questions as the extent and impor-
tance of non-class-based elements in the ethics and legal systems of class societies; the relation between form and content in law, and the character and status of the formal; the correct interpretation, in the light of modern developments, of the classical doctrine of the withering away of state and law as society moves from socialism to the final stage of communism. Thus the Czech legal philosopher, Vladimír Kuběš, agrees with the West German liberal social theorist and former Minister of Interior, Professor Werner Maihofer, that the original Marx does not speak of the withering away of state and law at all and insists that replacing the government of men by the administration of things does not mean that one can do without a system of norms for regulating the system of production. Law and the state, he insists, are separate, and while the state may wither away, the law cannot do so as long as human society endures.1 The Hungarian legal philosopher, Csaba Varga, argues similarly that the ideal of simple, rational laws immediately accessible to the population at large, the ideal of the laicizing of law, is a utopian illusion that characterizes the early stages of a revolution and does not survive subsequent development under a revolutionary regime.2

Behind all this, despite the vacillation and ambiguity, and the differences between individual Marxist-Leninist thinkers in the Soviet and East European fold, lies a recognition of administrative imperatives, of general social problems and needs, that cannot be reduced to the classical Marxist analysis of society in terms of class conflict, class morality, and class interests. It is a recognition forced upon revolutionaries who can no longer live off focusing attention on the evils of the past or urging great leaps forward into an uncharted future, but who must pay real and serious attention to the needs of the present as a significant and continuing social reality.

Western students of contemporary China, most of whom have put an enormous emotional investment into mastering a difficult language and a rich and complex intellectual tradition, have always been too ready to see developments in the People's Republic of China as intensely local or national, as sui generis. They have underrated the extent to which Maoist ideology has drawn on Soviet ideology of a different period, and the extent to which the logic of Marxism and the logic of revolutions, with their internal tensions and contradictions, operate in China as they did and do in the Soviet Union. Those who argued some years ago, as we did,3 that the mix and tensions of what, following Tönnies and drawing on Max Weber, we call Gemeinschaft, Gesellschaft, and bureaucratic-administrative conceptions of law were to be found in China as in the Soviet Union, and that the greater Chinese elevation of Gemeinschaft procedures, though traditionally based, was inherently unstable and likely to give way to increasingly bureaucratic-administrative arrangements, have been proved right. The position, of course, is still not stable; the tensions have not been resolved. The geopolitical hostility between China and the USSR grows ever sharper, but the retreat from the mass line since the overthrow of the Gang