
HOW MARXISM THEORY INFLUENCES THE SOURCE DOCTRINE

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ABSTRACT

Progressivism in the nineteenth century gave birth to both international law and Marxian thought. Despite Marx's low interest in international law, several elements of his writings are quite important. Where (modern) international law grew secular and centred on nations and human rights, (early) Marxian thought would argue that it had not gone farther in its secularisation. Statehood and individual rights, on the other hand, appear to be types of political theology. Deconstruction takes on part of Marxian dialectics' legacy today. In this paper the author has tried to find the pieces available for the Marxian approach to the sources of international law and interpretation of international law as a whole.

INTRODUCTION

In today's world, International Law bears an unusual position in constructing and congesting inequalities in the system. International law has grown at an accelerating rate in the years following World War II. It is no longer limited to matters of war and peace or negotiations; it now governs the usage of ocean and interplanetary, as well as key components of a country's economic, societal, and cultural development. In recent times, a network of laws has been enacted that aims to provide a legal and institutional framework that is conducive to wealth creation in the globalisation period. In essence, three interrelated characteristics can be identified as defining the evolution of international law over the last twenty years.¹ To begin with, it is the primary tool for extending the authority of personal land in the global economy. Second, it is the way through which multinational capital's interests are protected, for example, by dictating identical worldwide norms in critical sectors such as innovation and overseas investment, while neglecting the reality of unequal growth. Third, it ensures that these standards are followed by providing international organisations with the tools to implement them.²

SOURCES OF INTERNATIONAL LAW AND ITS MARXIST INTERPRETATION

International law is broad in scope, and as a result, it is an integration of multiple sources. There really is no singular system of laws that can comprehend and develop the law, yet international law certainly existed and can be determined. There are a variety of 'sources' out of which international law norms can be taken and examined. According to Lawrence³, if we consider the legal basis that possesses all of the power necessary to confer binding effect, there is only one basis of law in international law, and it is the agreement of countries. This consent can be implicit (customary) or explicit (written) (treaties).⁴

Primary Sources

The complex nature of the main rules of international law distinguishes them. Administrative

¹ Fragmentation of international law: Difficulties arising from the diversification and expansion of International Law, Yearbook of the International Law Commission 2006, Vol. II, Part 2, 175–184 (2014)

² Anthony Carty, Marxism and international law: Perspectives for the American (Twenty-first) century? International Law on the Left, 169–198

³ Draft articles on responsibility of United Nations, https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf (last visited Jan 17, 2022)

⁴ Ulf Linderfalk & On the interpretation of treaties: The modern international law as expressed in the 1969 Vienna Convention on the law of treaties (Springer) (2010)

authorities including customs, treaties, and legal principles are used to create them. The foundation of the formal basis of International law is largely acknowledged as Article 38(1) (a-c) of the Statute of International Court of Justice (ICJ).⁵

Article 38 of ICJ Statute

The very same clause in the legislation of the Permanent Court of International Justice, which functioned under aegis of the League of Nations in 1920⁶, was approved as Article 38(1) (a-c) of ICJ.

The following are the key sources of International law mentioned in this paper:

- **CUSTOM**

The oldest and perhaps most reliable evidence the concept “custom” is being used to characterize the legislation. Since there is no written basis of law, institutional conduct and social behaviours can be used to deduce the presence of customary laws.

Characteristics of Customary Law

Uniform and Broad

State practice must be homogeneous, regular, and universal in order to give rise to binding standards of customary international law, and that it must be accompanied by a sense that the practice is required instead of conventional. The court held in the *Asylum* case⁷ that a customary rule must be applied consistently and consistently through antiquity, as evidenced by state practice.

Duration

A principle of customary law is defined as a pattern of behaviour that is followed on a regular basis. The ICJ stated in the *North Sea Continental Shelf* cases⁸ there is no specific time limit for the practice to exist.

A legal opinion

To gain the rank of customary international law, the norm in consideration should be

⁵ Statute of International Court of Justice 1945, Ar. 28(1) (a-c)

⁶ League of Nations, Statute of the Permanent Court of International Justice, 16 December 1920

⁷ *Asylum (Colombia v Peru)* 1 (<https://www.icj-cij.org/en/case/7>)

⁸ *North Sea Continental Shelf (Federal Republic of Germany/Netherlands)* International Court of Justice <<https://www.icj-cij.org/en/case/52>>

considered as obligatory in legislation by the state, i.e., the states must believe that they are legally bound to follow the practice. The Lotus case established 'Opinio Juris' as a necessary component of customary international law.

Material reality, comprising all forms of human society and culture, is considered a historical phenomenon by Marxism. Humans are framed by their circumstances, and as a result, they have the ability to affect social change through the use of material, knowledge, and opportunities within certain historical contexts. Capitalist society, according to Marxists, may best be defined historically and physically as social relations of production based on labor-power and capitalist private ownership of the means of production. Materialism, the importance of historical conjunctures, labour and social class, ideologies refracting social connections, and social change arising from conflicting social and political interests are all present in most Marxist interpretations of culture.⁹

- **CONVENTIONS**

Treaties and conventions are among the most important sources of international law. These arrangements could be bilateral or multilateral. Multilateral conventions are accords that establish the legislation's worldwide broad scope. Bilateral accords, but from the other front, are those that have been formed purely by two countries to address a specific topic that both of them are concerned about.

Non-signatories cannot be bound by these because they are elective; however, there are a few outliers, like when regulation is a component of said Jus Cogens rule because it is part of the established international norms, as well as every state, has a peremptory liability not to infringe it due to its erga omnes obligations. Treaties give states a centralized source of rights and obligations, codifying the prior legal system.¹⁰

- **GENERAL PRINCIPLES OF INTERNATIONAL LAW**

In International law, there seem to be fewer resolved decisions than in municipal law, and there is no mechanism of enacting to give norms to regulate unfamiliar challenges. The clause of the general principles of law acknowledged by civilized nations was placed into Article 38 as a

⁹ Lee Artz, Marxist traditions in cultural studies, Oxford Research Encyclopaedia of Communication (2018)

¹⁰ Promoting human rights - good governance, the rule of law and democracy The Australian Human Rights Commission, <https://humanrights.gov.au/about/news/speeches/promoting-human-rights-good-governance-rule-law-and-democracy> (last visited Jan 17, 2022)

source of international law for this purpose.¹¹ Inasmuch as they apply to interstate relations, the greatest contemporary jurists accept overall principles of the legal framework as universal to all domestic legal systems.

1. The principle of *res judicata*, which was upheld by the court in the case of *Genocide Convention Bosnia¹² and Herzegovina v. Serbia and Montenegro¹³*, is an example of a basic principle.
2. The *pacta sunt servanda* rules have been applied.
3. Damage produced by the mistake must be compensated for.
4. Individuals have the right to self-defence against attacks on their person, household, or society in the face of a direct threat; no one could be a judge for their own case, and the judge should listen to both sides.

Secondary Sources: Evidence of International law

The substantive basis of International law, commonly referred to as the secondary source, includes Article 38(1)(d).¹⁴ It claims that court rulings and the theories of the world's best publicists help develop international law, but that they should be merely advisory instead of mandatory.

The topological metaphor of the producing “base” consisting of the forces and relations of production, and the matching “superstructure” of the political and legal forms through which it would be reflected, was the prevailing approach to law and the state there. “Orthodox” Marxism has been criticized for limiting the political and legal realms to secondary ideological representations of these core social forces by emphasizing the historical and technical evolution of society's material productive forces and their related production relations¹⁵. Furthermore, the form that class fights took was frequently defined by constitutions and legal frameworks. “Law must not only correspond to the general economic condition and be its expression, but must also be an internally coherent expression,” Engels wrote, allowing jurisprudence to

¹¹ H. C. Gutteridge, *The Meaning and Scope of Article 38 (1) (c) of the Statute of the International Court of Justice.*, 38 *Transactions of the Grotius Society*, Cambridge University Press (1952), <http://www.jstor.org/stable/743162>

¹² STATHIS PALASSIS, *Application of the Convention on The Prevention And Punishment Of The Crime Of Genocide (Bosnia And Herzegovina v Serbia And Montenegro)*, 31 *UNSW Law Journal* (2008)

¹³ *Bosnia and Herzegovina v Serbia and Montenegro*, International Court of Justice (ICJ)

¹⁴ Article 38 of the Statute of the International Court of Justice: A Complete Reference Point for the sources of international law? | *The New Jurist*, <https://newjurist.com/article-38-of-the-statute-of-the-international-court-of-justice.html> (last visited Jan 17, 2022)

¹⁵ Marxist legal theory: The State Critical Legal Thinking, <https://criticallegalthinking.com/2020/06/29/marxist-legal-theory-the-state/> (last visited Jan 17, 2022)

develop as a new “independent sphere” of social practise and preventing the law from becoming the “blank, undiluted, unadulterated expression of a class's dominance”.

- **JUDICIAL PRECEDENCE**

The court is permitted to apply previous court rulings, that are also recognised as substantiation of International law; even so, this really is applicable to an exception set forth in Article 59¹⁶ of the statutory provision, that also indicates that a preceding court’s ruling can only serve as a guide to the judge and is not enforceable in the courts.

Throughout its advisory case laws, advisory opinions, and judge’s rule, the ICJ plays a significant influence in the legislation process. One of the most notable examples is the concept of the ban against the use of any coercion action, which was established by the honourable court in the infamous case of Nicaragua vs. United States¹⁷ and is now regarded element of customary international law. The court’s legal decision includes international arbitral awards and court's judgements. For example, Alabama Claims arbitration signalled the watershed moment in the harmonious implementation of disputes, in which court and arbitration systems were progressively used to settle disputes.

Marxism Marx, Engels, and Lenin, as well as other classical writers, paid close attention to court activity, and their writings were replete with judicial theories. Classical literature saw judges as true law interpreters, trial independence as a necessary feature of judicial activities, “ordinary people’s participation in the judicial trial process” as an effective method of judicial democracy, and judicial activities as pursuing substantial justice.¹⁸

- **JURISTIC WRITINGS**

The ideas of extremely competent writers including Gentili, Grotius, and Vattel, who have been regarded as the best authorities of contemporary international law during the sixteenth to eighteenth centuries, are also included unequivocally in the source.

Materials have been used to learn about the legislation on some kind of relevant theme rather than as a repository of official regulations, yet only the most recognized international lawyers’ publications could indeed make laws. Because they describe and recognize international

¹⁶ Statute of International Court of Justice 1945, Ar. 59

¹⁷ Nicaragua v United States of America, International Court of Justice (ICJ)

¹⁸ Brief review on marxism classical writers' judicial concept-- 《theory horizon》 2016, https://en.cnki.com.cn/Article_en/CJFDTotol-LLJJ201608006.htm (last visited Jan 17, 2022)

concepts, these would have been considered verifiable sources of law. They are useful because they plug in voids in international law wherever treaties or traditions do not exist.

KARL MARX THEORY AND THE SOURCES OF INTERNATIONAL LAW

The Marxist legacy, which is both politico-economic and philosophical in broad perspective, is vital for illuminating the origins and implications of historical phenomena, rather than being blind to them. Romanticizing the notion of liability as illuminative of liminal space or ruptures moments of drastic ambiguity abjectly at odds with the wider social settings wherein they register the threat of reducing the occurrences under consideration to the condition of interdependently associated accidents, to be praised or chastised in exclusion or loose affiliation.¹⁹ A Marxist explanation of International law, on the other hand, offers an explanatory model inside which eventualities may be understood since it is aware of the fundamental links among class power and juridical authority. Marxism offers the framework for a systematic analysis of a particular event's causes and repercussions, rather than promoting enthralment with its unexpectedness.²⁰

Marx's own works show that perhaps the Marxist legacy has historically stated the fact of wrestling with unpredictability, and that this is strongly linked to its involvement with the issue of legal battle. The assert of such confirmation, in my opinion, is Chapter 10 of the first book. Marx examines the battle of the working class and labour union movement for greater legal protections in nineteenth-century Britain in this volume of *Capital*.²¹

Marx examines the movement in nineteenth-century Britain to establish new and stricter workplace legislation. Marx's main goal is to show that the duration of the labour day was a source of class conflict. Workers fought back *via* radical intervention and, in a moderated manner, *via* trade unions and other representative bodies. It also expressed itself in fights over law, rights, and governmental power, which was vital.²² The operating day, according to Marx, encapsulates a sequential and systemic difference that enlightens the centre of the capitalist relationship the struggle among those who soak up surplus labour in order to adequate excess

¹⁹ ROBERT KNOX, Marxism, international law, and political strategy, 22 *Leiden Journal of International Law*, 413–436 (2009)

²⁰ The Law and Marxism Series - Centre for Law and Society in a Global Context, <https://www.qmul.ac.uk/clsgc/events/law-with-marxism-series/> (last visited Jan 17, 2022)

²¹ Akbar Rasulov, A Marxism for international law: A new agenda, 29 *European Journal of International Law*, 631–655 (2018)

²² Anthony Carty (n 3)

profits as well as those who generate excess profits after being forced to sell their labour power.

The conflict among workers and capitalists is ‘essential’ in the view that it presupposes and hence reinforces commodity production and supply, as well as the wider process of creating and seizing excess profits. It’s ‘dependent’ in the notion that the dominance configuration outcome of a particular conflict, or group of contests, could result in a range of various time and effort allocations, some of which may be institutionalized in distinct legal rules.²³ The overthrow of capitalism may well be the lengthy strategic goal of class struggle, but strategic conflicts in the languages of legislation, rights, and the institution are almost always crucial.

In International law, a similar claim might be made. If legislation serves to formalise the capital-relation by wrapping social relations within capitalism in separate sources of leadership and legality, the same can be said of international law. The World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights focuses money in the hands of copyright, trademark, and patent owners, supporting the global spread of a largely Euro-American private law framework with a dispute-resolution mechanism. No human rights law, not even the much-heralded and cultural, social, economic, and cultural freedoms, puts stringent legal responsibilities on governments to limit income or combat income disparity. International law, like national legislation, provides legal validity to the idea of capital-labour divide at every step. However, avoiding involvement with international law would obviate the need for both justification and political meddling. Because there is no intuitively clear reason why capitalist dominance should show itself in the particular form of the (supposedly contemporary, democratic, and representational) state, the bourgeoisie's dependence on state power to perpetuate its dominance demands explanation.

There is no obvious explanation why a set of legal structures legitimizing relations among states as well as other “international persons” should be anticipated to do the heavy work in this regard. And this isn't even close to being an “academic” activity. Knowing that International law has a measure of intellectual and organizational independence and that its foundations reflect earlier manifestations of the capital-relation, is essential to understanding how to fight effectively in its unique force-field.²⁴

The problem with international law isn't that it lacks adequately strong enforcement powers or

²³ B. S. Chimni, ‘Marxism and International Law: A Contemporary Analysis’ (1999) 34(6) EPW

²⁴ Akbar Rasulov (n 22)

that it hasn't yet developed the technical capability and doctrinal depth of domestic law, both of which are typical and overdrawn liberal criticisms. Since 1945, the United Nations General Assembly has passed thousands of decisions praising sovereign equality, emphasising the benefits of self-determination emphasising necessity global security, and encouraging cooperative relations. Not these mechanisms, nor the myriad treaties and traditions that intersect the societal realm of international law, alter the basic parameters of capitalist mode of production and functioning.

In recent times, the Marxist school has generated a variety of approaches to the topic of international law's legitimacy and utility. On questions of first-order relevance, some people disagree passionately. However, the majority of such answers have attempted to convey the ambiguity of real fights waged in the guise of law, justice, the state, or international order.

CONCLUSION

Marxism is interpreted as a non-deductive, mechanical science based on the assumption that the Actual is the Rational and that the 'foundation' must always come before the 'superstructure'. Instead, Marxism is better defined as a technique of understanding the massive structural circumstances that allow for apparently unusual changes in the first instance, restricting the variety of viable paths and conclusions in just about any given social situation. The concept of sheer coincidence is the concept of an incomprehensible rupture. As a historical concept, Marxism's mission is to accurately elucidate such puzzles, not to relish in them. Conjuncture is encoded into Marxism, just as the structure is. Long-term trends are taken into account, while short-term events are taken into account. On the one side, tying international law to class conflict, to institutionally restricted cultural contests among those who control as well as those who sell their labor-power, such a method allows us to understand why certain (but not all) claims become commonly acknowledged as 'legal rules', why certain (but not all) assertions become acknowledged as legitimate and morally justifiable, why some (but not all) actors become bestowed with 'international legal personality', and why some (but not all) actors become bestowed with 'international space' why certain (but not all) UN bodies have the authority to issue legally enforceable decisions rather than merely advisory ones. For example, a Marxist perspective would describe the evolution of international human rights law so over the past seven decades neither as a gradual unfolding of certain inexorable logic nor as a pyramid of standards of the sort embodied by the United Nations. Since we are sincere in comprehending how international law is what it is currently, we should be aware of the social

underpinnings of the efforts that have molded and changed it all over time, albeit inadvertently. Far off from disregarding history's vicissitudes, a Marxist line of thought of these conflicts is uniquely qualified to understand them.