

# History of legal systems in communist states history essay



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In most communist states the official name of legal system been used is called socialist law. It is well known to be said in that way, basically it is based on the system of civil law with a lot of changes and addition from the ideology of Marxist-Leninist. In Marxist terms, a socialist state is said a state that has abolished capitalism and going towards communism. But Vladimir Lenin on the other hand argued that as socialism is replaced by communism. Besides that Fredrick Engels argued the state in socialism is not a “government of people, but the administration of things”. Other Pre-Marxist socialists such as Henri de Saint-Simon, understand that socialism will change the nature of the state from of that political rule (via compulsion) over people and change into a scientific administration of things and a path of processes of production where the state would turn out to be a coordinating economic body. Early Marxist conception of a socialist state one of the most leading modern visions of a socialist state was based on the Paris community, where the city of Paris been taken over by workers and poor people in 1871. Karl Marx described the Paris community as the model for a radical government of the future, “ the form at last discovered” for the liberation of the waged people. Friedrich Engels noted that “ all officials doesn’t matter high or low, were paid only the pay which received by other workers. In this way an efficient fence to place-hunting and careerism was laid down up”. Engels continued “ From the birth the Commune was compelled to recognize that once working class come to power could not manage with the old state mechanism”. Once having conquered power In order not to be overthrown. Engels argues that working class “ must, on the one hand, do away with all the old suppressive system previously used against it itself and at the same time safeguard itself against its own

deputies and officials, by declaring them all without exclusion, matter to recall at any time.” That type of state would be a temporary affair he said. Engels continued that a new generation brought up in “ new and free social situation”, will be able to “ throw the whole load of the state on the scrap-heap.” in 1917 These thoughts were adopted by Vladimir Lenin just prior to the October Revolution in Russia and published in *The State and revolution* a vital text for many Marxists. Socialists recognize social welfare states with modern social democratic policies like the one in Sweden, to be capitalist states. Few social democratic Reformist Marxists, such as the Minister of Health in the first post-war Labour government, Aneurin Bevan who introduced the UK National Health Service, also came up with an observation that welfare programs, such as health care which at the point of use for all its free of charge, are concessions forced on capitalism by the struggles of the working class and a “ pure Socialism” embryo of the new socialist people gestating within capitalist society. Basically this example shows that such conceptions lead the taxation to pay for these services is planned to be in use mostly if not completely from the capitalist group, through a tax on corporation earnings. Those who earn less than £50, 000 in today’s money (£500 then) only paid 5. 3% in tax from the year after the service was introduced in the UK in 1948. These Marxists take the view that welfare programs should be safeguarded and enhanced with further nationalizations . After Lenin’s death and the collapse of the worldwide revolution envisaged by Lenin and Trotsky, these ideas were neglected. Few states from the past and present have claimed following some form of Marxist ideology, generally Marxism-Leninism. They call themselves as socialist states

DEVELOPMENT The Soviet Union was the earliest to call itself

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a “ socialist state” in its 1936 Constitution and a following 1977 one. Beside that another famous example is the People’s Republic of China, which claims that, a “ socialist state” in its Constitution of the People’s Republic of China 1982. That kind of states in west are usually known as “ communist states” although they do not refer them self using this term. There are some other countries use the term “ socialist” in their official name or constitution without following communism or any of its derivatives which known as non-communist countries. In that kind of scenario, the proposed meaning of “ socialism” can differ broadly, and at times the constitutional references to socialism comes from previous time of the country’s history and it been just followed. Examples of countries which using the word “ socialist” in that type of non-communist sense is the Democratic Socialist Republic of Sri Lanka and the Great Socialist People’s Libyan Arab Jamahiriya. Differ from the Countries with non-communist use to socialism in their constitutions such as India and Portugal. In the post-war period, the post -war European countries when nationalization was fairly widespread, it was something common for commentators to call some European countries as socialist states. There is argument as to whether socialist law ever had constituted a different legal system or not. If yes, preceding to the end of the Cold War, Socialist Law would be ranked as one of the the major legal systems of the world. Many current observers no longer see that to be in that way, due to similarities with the civil law system and the truth that it is no longer in broad use following the dismantling of most communist states. as civil law systems have habitually put great trouble in defining the idea of private property, how then it will be acquired, transferred, or missing, socialist law systems supply for most property to be owned by the state or agricultural cooperative

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and by having particular courts and laws for state enterprises. Many scholars argue that socialist law is not separate legal categorization, although the recent economy approach of the communist states tells that property could not be owned, the Soviet Union always come with their civil code, courts that interpreted this code and a civil law approach to legal reasoning largely same to the French or German civil code system. Legal systems in all socialist states potted formal criteria of Romano-Germanic civil law, because of this reason; law theorists in post-socialist states usually believe the Socialist law as a particular case of the Romano-Germanic civil law. Cases of growth of common law into Socialist law are unknown because of inappropriateness of basic values of these two systems where common law usually presumes influential rule-making role of courts while courts in socialist states usually play a dependent role. According to Karl Marx and other socialist thinkers they believe socialism and law are unable to get along. It has been argued that the aspects of socialist law came from Stalinism are actually found somewhere else in the world in other jurisdictions and so it's not truly socialist. Soviet law showed many special characteristics that brought from the socialist character of the Soviet state and reflected Marxist-Leninist ideology. Lenin accepted the Marxist outset of the law and the state as instruments of coercion in the hands of the bourgeoisie and postulated the creation of popular, informal tribunals to administer revolutionary justice. One of the main theoreticians of Soviet socialist legality in this early phase was PÄ“ teris StuaÄka. Alongside this utopian trend was one of the critical concepts of “proletarian justice”, represented by Evgeny Pashukanis. A dictatorial trend developed that teaches the use of law and legal institutions to restrain all opposition to the

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government. This trend reached its peak under Stalin with the dominance of Andrey Vyshinsky, when the administration of justice was carried out mainly by the security police in special tribunals. During the de-Stalinization of the Khrushchev era, a new trend developed, based on socialist legality, which stressed the need to protect the procedural and rights of citizens, while still calling for admiration to the state. Although socialist legality continued to be in force after 1960, the dictatorial and utopian style continued to interfere the legal process. Harassment of political and religious dissenters continual, but at the same time there was a tendency to make legal offenses lesser by giving them over to people's courts and administrative agencies and dealing with them by education rather than by confinement. By late 1986, the Gorbachev era was pushing about individual rights in relation to the state and criticizing those who go against procedural law in implementing Soviet justice. This brought socialist legality as the one of main trend. It should be noted, that socialist legality itself still lacked features compared with Western jurisprudence. In particular, the vital control of the legal system is in the hand of the party's leadership, which was not democratically elected by and so they are not responsible to public at large

Characteristic traits

Socialist law is similar to common law or civil law but with a very much increased public law sector and decreased private law sector.

CHARACTERISTIC One of the main characteristic is that partial or total exclusion of the former ruling classes from the public life at very early stages of existence of each socialist state but however, in all socialist states this policy slowly changed into the policy of "one socialist nation without classes". Other than that diversity of political views directly forbidden or condemned by legislation and moving on the ruling Communist party was

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known as above the law system where in many cases party functionaries were not subject to criminal prosecution but rather to disciplinary measures, private property was measured as remainder of the society and as such been harmful this resulted in high degree of collectivization and nationalization of property. Another characteristic is that low respect for privacy, wide control of the party over private life low respect for academic property, unless owned by the state. Widespread social warrants of the state the rights to a job and free education as example in return for a high degree of social recruitment and a low degree of human rights. And one of the last is that the judicial process lacks adversary character where public prosecution is seen as “ provider of justice.” A specific institution characteristic to Socialist law was the so-called bur law court which decided on minor offence. IN PRACTISE when the Labour Party is in power in the UK, some commentator claims that Britain is run by a socialist government and argues that Britain is a socialist state while under that government. These countries were led at times by parties associated to the 2nd International which are at times termed as social democratic parties. Some of the commentator argued that states which support a policy of welfare state provision or practice partial state involvement into financial activity are socialist states or republics. Some other term the 2008 bail-out of the banks “ Socialism” telling that USA and UK have become socialist but these clarion call remarks are dismissed by government spokespersons as for the bailouts are more analytic of protectionism. In February 2009, Republican politician and political critic from the Fox News channel Mike Huckabee where he was one of the Republican candidate in the Primaries of the USA presidential appointment campaigns of 2008 argued that, “ The Union of Soviet Socialist Republics

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maybe dead but the Union of American Socialist Republics is being born.”

Not so long after that Fox News critic argued that Obama had accomplished

“ something that I never thought any American president can do. He’s

literally taken us out from a capitalist economy to socialism. “ In May 2009

Although support for socialism has risen in the USA, Obama “ claimed

impeccable free market credentials” when questioned, and continued in June

2009 the Director of the White House’s National Economic Council for the US

President, Lawrence Summers on the other hand while protecting state

interference to control speculators’ activities tell the reporters that US was

not in danger of shifting to a socialist state. Economic liberal and socialist

opponents of the claim that improving welfare payback or rising state

regulation of financial activity make a state “ socialist” argued that the

continual process of capitalist economics in free market states such as the

USA shows that, state with welfare reforms is still a capitalist state where its

showing to various type of welfare state capitalism such as the social market

economy, Rhine capitalism and Keynesian economics. Because most

socialists do not claim that welfare provision will make a state socialist,

socialists nevertheless hold up welfare provision in the capitalist state.

**ADVANTAGES AND DISADVANTAGES** There are few Advantages in my

personal view for this legal system such as in this kind of Participatory

government, Socialism is predicated on democratic power devolving to

individual councils of ordered labor. Besides that lower rates of crime will

take place because when people are not put into desperate circumstances,

they are less likely to commit acts of violence . Higher overall standard of

living and quality of life. There are also few disadvantages can be seen such



as less incentive for structural and technological, fewer chances for technological innovation. Unless accompanied by a political program directed at the eventual dismantling of the state, Socialism represents the growth of the state and, potentially, more all-encompassing state interruption into the lives of individuals. COUNTRIES APPLYING IT TODAY

Examples of countries currently known as communist states are such as People's Republic of China (since October 1, 1949), Republic of Cuba (since January 1, 1959), North Korea – Democratic People's Republic of Korea (since September 9, 1948), Laos – Lao People's Democratic Republic (since December 2, 1975), declared themselves to be socialist states under the Marxist-Leninist definition (in the west known as, " Communist states")

Afghanistan Democratic Republic of Afghanistan (April 27, 1978 – April 28, 1992) and Albania Socialist People's Republic of Albani. Among the left over communist governments, most notably is the People's Republic of China where have added extensive modifications to their legal systems. In common, this is a result of their market-concentrated economic changes. However, some communist influence yet can be seen. For example, in Chinese real estate law there is no united concept of real property the state owns all land but usually not the structures that sit on that land. A rather complicated ad hoc system of use rights to land property has developed, and these use rights are the things being formally traded rather than the property itself, for example in the case of urban residential property, the system fallout in something which resembles real property dealings in other legal systems. Move on in other cases, the Chinese system results in something different. For example, it is a common fallacy that reforms under Deng Xiaoping resulted in the privatization of agricultural land and a

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formation of a land tenure system looks same to those found in Western countries. In reality, the village committee owns the land and the right to use this land to individual farmers who may use it to make money from agriculture. Hence the rights that are normally combined in Western economies are broken between the individual farmer and the village group. This has a number of penalties. One of them is that because the farmer don't have an absolute right to change the land, he cannot lend against his use rights. On the other hand, there are some insurance against risk in this system where the farmer can return his land to the village committee if he made his mind that he going to other business and stop farming and if this business don't work, he can get a new contract with the village committee and return to do farming back. The fact that the land is redistributable by the village committee also ensures that no one is left to be landless hence this creates a form of social benefit. There are a lot proposal been made to change this system and they have tended to be in the direction of fully privatizing rural land for the assumed idea of increasing effectiveness. These proposals did not get any major support, largely because the current system is famous among the farmers themselves. There is little risk that the village committee will try to enforce a bad contract on the farmers, since this would lessen the amount of money the village committee getting. At the same time, the farmer has some flexibility to decide whether they want to continue farming or leave and get into others business or to come back again for farming as well. IN TODAY'S CONTENT AND REPUTATION one of the great examples will be China, A correct request of the joint contact of morals and law is a powerful instrument for improving the construction of modern socialism. By developing socialist democracy China has strengthened the

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legal system developed and perfected the system of representation of the people in assembly, and recognized a sequence of important laws and acts. As a result, there are laws to which one can option in a variety of aspects of national and social life, the legitimacy of law been ensured and the socialist democracy is obsessed of a systematic legal value. Everyone is equal before the law and the law is not to be changed by the flat-off of the heads of the country. This legal spirit has become obvious in such different aspects of social life as to maintain the social order, building a sturdy economy, opening the door to the exterior world, securing legitimate civil rights and establish an sincere management. It is essential not only to resort to law, but also to impose it strictly. At the same time the decision-making function of the people's representative assembly as regards government and authority should be strengthened as should public direction over state officials according to a norm of law. This practice shows the mutual checks and balances of powers which are in line with the interests of the entire people and are one of a main feature in the building of the legal system necessary to modern socialism. Socialist political democracy has allowed the Chinese people, who consist one fifth of the world's population to be masters of their own country and society, and have the benefit of wide democratic rights. This is a great input for the growth of the political civilization of mankind. China's socialist political democracy accords with the national circumstances ensure that the people give full play to their eagerness, initiative and creativity in structure and managing the state as masters of the country and society, and uphold China's economic development and social development in an all angles. In spite of the marvelous achievements scored in

constructing a socialist political democracy, the CPC and the Chinese people  
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are conscious of the many problems which yet to be overcome. One of the main problems are that The democratic system is not yet perfect besides the people's right to manage state and social affairs, economic and cultural undertakings as owners of the country in a socialist market economy are not realized fully. Other than that, laws that have already been enacted are at times not completely been observed or enforced hence the violations of the law go unpunished sometimes. Bureaucracy and dishonesty still exist and increase in some departments and locality and the mechanism of self-control and supervision over the use of power needs to be improved. Other than this the idea of democracy and legal consciousness of the entire society needs to be further improved and the political involvement of society in an orderly way should be extended. The socialist system has been introduced and used in China for only a few decades which is a short time when compared with other social systems adopted in the history of mankind. To keep civilizing and developing socialist political democracy to allow the people to fully enjoy and use their rights as the owner of the country has been always the solid goal of all the enterprise of the CPC and Chinese people. At current and for a time to come, the CPC and the Chinese government will actively and progressively push advance the reform of the system attach to and develop the socialist democratic system, reinforce and improve the socialist legal system, reform and progress the method of leadership and law of the CPC, reform and improve the government's decision making process, promote the reform of the system of administrative organization, improve the reform of the judicial system, expand the reform of the cadre and persons system, reinforce the restraint and care over power, go all-out to sustain social stability, and encourage economic development and social progress in all

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angles. The huge achievements of the structure of the socialism with Chinese personality have made the CPC and the Chinese people full of confidence in moving on the road of political growth chosen by them. In line with the economic development and social evolution, China's socialist political democracy will be further perfected, and with its huge advantages and strong energy, fully established. In the future, the Chinese people will surely enjoy more and more extensive fruits of their political society although they have a poor reputation last time.

SUMMARY The history and reality of human political civilization have showed that there is no one single and absolute democratic mode in the world that is universally useable. whether a political system is democratic or not, depends on the will of the overpowering majority of the people is completely reflected, whether their rights as masters of the country are fully seen, and whether their legitimate rights and interests are fully ensured, to conclude its not about the system overall but rather how the system been applied because all system have some minus and plus points, with some modification and good leaders it will work.