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AND THE LAW. THE YUGOSLAV VIEW

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FOREWORD

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SOCIAL CONDITIONS FOR THE WITHERING AWAY
OF THE STATE AND THE LAW.
THE YUGOSLAV VIEW

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The question of the relationship between society and state and law is one of the most important questions in the theory of state and law. It is limited to the question of whether or not state and law are related to specific social conditions. The solution of a series of other questions and also the question of the withering away of the state and law depend upon the answer to this question.

In order to be able to speak clearly about this question, as with all other problems, we must first clearly define the concepts involved. Law we understand as a system of social standards which are sanctioned by the state; the state is the social organization with a monopoly on physical force. If the state and the law are considered as anything else, then it is quite clear that the solution of this question is changed.

I. The question of the relationship within society, the state and the law has been debated for many years in science, from the time when anarchist teachings on the abolition of the state and law first appeared. The debate became especially violent when Marx and Engels revealed their teachings on the withering away of the state and law with the publication of the Communist Manifesto in 1848. However until the new era, the October Revolution, all discussions were purely theoretical since there was no historical experience (if one neglects the very limited but very important experience of the Paris Commune). The historical experience of building socialism and the withering away of the state and law became sufficiently abundant after the October Revolution and especially after the formation of new socialist states in great numbers after World War II to allow the discussions to rest on a firm basis.

Therefore it is understandable that a discussion of this question today receives new strength. Today at all times this question is the most widely debated one in the theory of state and law of socialist countries. This is especially true in the widescale discussions between the Yugoslav theoreticians and those from the Soviet Union and other socialist countries. However theoretical discussions in other countries also indicate great interest in this question, particularly in the general question of the role and the importance of the state in the world today. It appears that today,

on the basis of all this, it is a great deal easier to arrive at an exact solution of this question on a basis of experience and thus free the discussions of tediousness and a considerable share of its speculative nature.

II. It is well known that dialectic materialism explains the state and law as a class struggle. The state and law are tools of the ruling class for protecting their vital interests, especially for maintaining a given method of production and ownership of the means of production. A class in principle (although in this the followers of dialectic materialism differ) is considered as a social group which exists in relationship with exploitation. Exploitation provokes a class struggle and the state and law maintain the rule of one class over the others. Accordingly, in a classless society there is also no state and no law and none will arise in the future, it is a perfect classless communist society.

The question of the rate of the withering away of the state and law now arises. Should the transition from a class to a classless society, from capitalism to communism be fast, abrupt, direct or a slow evolution, and concerning this, should the disappearance of the state and law be rapid or a long process?

The answer of dialectic materialism to this question is realistic, although with reference to the answer there still exist a series of other complicated questions. This answer is: the transition to a classless society is to be a long process. It lasts an entire social epoch, an epoch of socialism. During this epoch the process of withering away of the state and law is carried out, so that from this viewpoint socialism is nothing more than a general process of withering away of the state and law. Withering away of the state and law, however, cannot proceed faster than the withering away of the classes. And if the elimination of classes takes a long time, then it is clear that the withering away of the state and law will also take a long time.

On the other hand, the prolonged withering away of the state and law gradually transforms it from a true state and law, having all the vital features of its existence, into a condition of statelessness and lawlessness, gradually losing all of their former features. However in the course of this transformation they appear as a kind of mixed phenomenon, a semi-state and semi-law having the features of state and law and the conditions of statelessness and lawlessness.

Thus dialectic materialism based on Marxism differs from anarchism which advocates that the state and law be done away with abruptly by one act and not gradually disappear, it also advocates that in place of such abolished bourgeois states and laws it is not necessary to erect a new socialist state with its corresponding laws.

III. The main question with relation to the withering away of the state and law is the role they play in society, which is based on the more exact question as to the role played by the semi-state and semi-law, which develop in the process of the withering away of the state. What is their role and when will social conditions be such that these roles will completely disappear and with them the state and law? Within the framework of dialectic materialism based on Marxism understood in the broadest sense of the

word, there exist diverse answers and accordingly often the practical activities of the representatives of such diverse answers also differ.

On the one hand the social democratic Marxists headed by Kun and Kautsky think that the withering away of the state and law is at least doubtful if not impossible. In every instance this is a question of a very distant future, which present day theory and, even less, practice does not have to take into account. Considering the explicit thoughts of Marx and Engels, Lenin was undoubtedly correct when he proclaimed such a stand to be anti-Marxist. Lenin devoted most of his attention to the question of the withering away of the state and law, attempting to more closely determine the social conditions of this situation. It may be freely stated that Lenin was one of the most important Marxists of that time devoting the greatest attention to this question which is quite justified.

On the other hand, although his basic statement referring to state and law considered them to be a class product, Marx himself changed this statement to a considerable degree, attempting to more closely determine the conditions for the withering away of the state and law. That is to say, it is clear in the strictest sense of the word, when classes are considered as groups related to exploitation, the classes disappear with nationalization and socialization of the means of production. With the disappearance of private property, the existing capitalists, if they wish to live, must themselves begin to work for these socialized means of production. By this the capitalist himself becomes a worker, part of a workers' nation. It is true that at this time there still exist, in a subjective or a broad sense, classes (and also the capital class) but there is a difference in this class conscience, which is especially filled with a different attitude towards the act of socialization. However this difference soon disappears - already great numbers of children of past capitalists no longer possess a capitalistic conscience. This is even more the case with later generations.

However, with the disappearance of classes in the objective and even in the subjective sense, will state and law finally disappear? Marx in his "Critique of the Gotha Programme" gives a negative answer to this.

According to him law, bourgeois law, must exist even under complete socialism when the classes, the capitalist exploiters and the exploited workers, have disappeared and only a working people remain who divide the fruits of their labor according to the degree of participation in production, proportionally. Naturally not all people have the same abilities nor do they have the same needs, therefore such a principle of distribution leads to inequality among people and this inequality must be strengthened by law. Why? Obviously because people will strive to violate this principle to improve their position at someone else's expense, i. e. to receive more than they are entitled to according to this principle.

To this statement of Marx, Lenin added that such a bourgeois law will have to be protected by a bourgeois state. However because such a state and law will be expressing the will of the vast majority of workers, they will not be a real state and law but generally a semi-state and semi-law, a state and law that are withering away. Practically this means

nothing more than the fact that socialist state and law exist through force to a far lesser degree than the state and law of the exploiters.

This change in the basic statement of the class characteristic of the state and law is not, however, a complete change. The truth remains that the true state and law are nothing but class tools. Only the socialist state and law, the semi-state and semi-law which disappear as socialism grows, exist basically as the tools of society or at least as the tools of the vast majority of workers against the minority who are gradually disappearing. But if this change is not complete, the fact remains that it is a change because the fact remains that with the disappearance of classes there are still theremnants of a state and law, the semi-state and semi-law. Accordingly, Marxist and Leninist theory on the class nature of the state and law must be precise in this attitude towards the social nature of the socialist state and law in the process of withering away. The structure of society which is the basis of the socialist state and law is classless, yet within it exists economic inequality.

Defining Marx's basic thought with more precision brought investigations by other Marxist theoreticians in addition to Lenin. The most outstanding one among them is undoubtedly Pashukanis, the most distinguished Marxist law theoretician of the period immediately following the October Revolution. He states, contrary to the precise text of Marx in "Critique of the Gotha Programme", that the state and law exist only as a foundation for financial-commodity economic exchange. Where there is no financial-commodity exchange, there is neither state nor law.

This idea of Pashukanis rests, as can be seen, midway between the pure class theory of state and law wherein they disappear simultaneously with the classes, and the Marxist-Leninist theory wherein they disappear only with the disappearance of economic inequality, and even then this economic inequality is not the result of the financial-commodity exchange, i. e. when these exchanges are abolished and replaced with a direct distribution of products to each according to his work.

Considering that Pashukanis' theory is directly opposed to the position assumed by Marx and also to the apparent historical material, it was sharply and justly criticised. As a result of this criticism, Pashukanis later gave up his stand. But if Pashukanis' attitude cannot be considered exact, his attempt was important as such because he clearly indicated the path that must be traveled to discover the concrete economic reasons which provoke the need for the existence of the socialist state and law.

Undoubtedly the most significant contribution to this viewpoint is that of the Soviet Union, which stresses that the main economic reason provoking the need for the existence of the socialist state and law is basically the socialist economic planning. The Soviet theory considers that socialist planning must necessarily be done by the state, i. e. by force, although it has not sufficiently entered into a concrete analysis of the reasons which make it so. This theory may undoubtedly be supplemented with certain results obtained by our theoreticians and primarily by the experience we have obtained in this field in the practice of planning.

Namely, it has been shown that planning to a certain extent must be done by the state, but to a far lesser extent than that advocated especially by the classical Stalinist Soviet theory. In other words, planning can be carried out to a considerable extent by society. Its state-law character, however, is derived from certain conflicts of interest within the socialist society. These conflicts, in reality, are not class struggles and therefore are not as irreconcilable, but they are such that they must be resolved with state force, but in a milder form.

IV. In addition to these economic reasons, socialist theory has shown that there are non-economic reasons which lead to a need for a socialist state and law, even after the classes have disappeared. This theory is comprised of these reasons and the other reasons which actually exist and are in reality contributions to the existence of socialist state and laws.

Here we must first quote Engels who clearly stated that the socialist state has an important external function - the defence of the socialist society from attack by the outside world. This was further developed especially by Stalin in his famous thesis on capitalist encirclement. He stated that as long as this encirclement existed there must also exist state and law even under communism as protection against outside attack. However as our critics of this thesis have shown, Stalin erroneously extended his thesis to state that keeping the state and law because of its external function also must include maintaining its internal functions in their entirety. On the contrary the internal functions may wither away even though the external functions are still needed.

It is also necessary to quote the important attempt made by Lenin to elaborate on a thought which was otherwise clearly stated again earlier by Engels. Engels explained the continued existence of state and law also as a necessary consequence of the division into workers and administrators. The state is an administrative organization of people who specialize in administration. Being a first class organizer and having a clear concept of all the practical functions of an organization, Lenin distinctly felt that the state cannot be conceived as just an organization of the ruling class but also as a special organization consisting of specialists in administration carrying out certain necessary functions of society. This is how he elaborated on this thought of Engels. He emphasized that this administrative work demands a certain relatively high degree of specialization, which the common working man in a system of strict social division of labor cannot achieve. In reference to this Lenin pointed out a very real problem of bureaucracy in the socialist state which jeopardizes its socialist character. In order for state and law to completely disappear it is necessary for the mass of the common working people to be raised to a level of specialists in administration; it is necessary that everyone become bureaucratic to some degree to prevent anyone from becoming completely bureaucratic. Increasing the productivity of labor under socialism and thereby increasing the free time of the workers to be used for furthering their education will result in drawing the mass of workers into conducting the affairs of society which are now executed by the state.

The process of this socialization of administration is one side of the process of the withering away of the state and law so that they will completely disappear when administration passes entirely into the hands of the toiling masses.

Lenin's concept can be correctly understood only if the thought about the necessary conflict of interests and the unsatisfactory understanding which exists to a certain degree between administrative specialists, bureaucrats and the toiling masses in socialism is kept in mind. If such a conflict or misunderstanding exists then this organization of administrative specialists must apply force to execute their decrees, which means that only then and to that degree does there exist a state and a law in the proper sense of the word. Until force is applied, it is only a special social organization of administrative specialists, and not a state and as such its decrees are not considered legal standards.

V. The Marxist concept of the withering away of the state and law received sharp criticism from the non-Marxists. It is even possible to say that this concept was criticised more sharply than any other Marxist concept. From all sides it was stated that this was naive and utopian. To evaluate this criticism it is necessary to use two criteria. First it is necessary to examine the internal value of the criticism. Then it is necessary to see if the criticism is confirmed by the experience of socialist countries.

It is impossible to set forth all the criticisms of this Marxist statement. We shall confine ourselves to one of them which is probably the one that is the most popular, most authoritative and most often arrived at and which is to some degree a synthesis and view of the other critics. This is the criticism of the well known lawyer Hans Kelzen, undoubtedly one of the most outstanding names in contemporary legal sciences in bourgeois countries.

Kelzen primarily in the course of all his work dedicated himself to criticism of the Marxist concept of the withering away of the state and law. The most important of his works range from "Socialism and the State" published shortly after the October Revolution, the article "The General Theory of Law in Light of the Materialistic Concept of History" (in the journal Archiv fur Sozialwissenschaft und Sozialpolitik) to the work "Political Theory of Bolshevism" published after World War II and "Communist Legal Theory" published recently. Although he concerned himself with these questions over the course of many years, the essence of Kelzen's criticism remains the same and new works do not reveal any changes in his views.

In essence it is reduced to a statement that there exists an obvious and profound contradiction between the Marxist theory and the theory of the withering away of the state and law, which according to Kelzen is purely utopian. According to Kelzen, Marxism considers that the future communist economy will be planned. However, planning necessarily must be centralized and forced, i. e. the state must plan and its plan put into effect by force. Accordingly, if Marxism adheres to its economic, planned theory, it must require a maintenance of the state and law and not its withering away. By taking this stand he himself falls into a contradiction: the economic theory is to him centralization and statism, the theory of state and law, decentralization and anarchism.

It is understandable that Kelzen realizes that as people will not voluntarily carry out the plan, he must find the reasons for his statement. It is true, he states, Marxism claims that under communism there will not be any conflicts of economic interest because on the one hand the supply will be so large that it will satisfy all the demands of all the people and on the other hand work will become the natural requirement of every person. All shall work voluntarily according to his needs. Kelzen however doubts this. On the one hand he does not accept the probability that the supply will increase to a degree that would satisfy all of the people's demands; and on the other hand he especially thinks that human nature will remain unchanged; there will never be a person who will voluntarily work and there will always be people who will want to live by exploiting foreign labor. Accordingly both the state and law will exist forever.

In addition Kelzen also cites other causes which will make the state and law necessary. Even if the beliefs of Marxism concerning the disappearance of the economic conflicts in communism are accepted, he says, there will always remain the non-economic conflicts, resulting from human nature which is unchangable, such as conflicts in the area of relation of the sexes etc. Furthermore, since economic conflicts exist today, they are undoubtedly the strongest, so strong that they overshadow all others. However, if they disappear this will cause a strengthening of non-economic conflicts the regulation of which will demand a strong state and law such as these that exist today.

The value of Kelzen's criticism does not appear to be very great. Actually it is easy to spot obvious contradictions in it. Kelzen recognizes that today's state and law as every state and law are tools of the ruling class by means of which they protect their interests, which are primarily economic and which are in conflict with the interests of the oppressed class. This he explicitly says, for the most part. If he wished to be consistent, Kelzen would have to say in accordance with the Marxists that the state and law will disappear with classes and exploitation. However, he does not do this. He tries to find reasons for the perpetual existence of the state and law. These reasons are unconvincing. No one denies that in the communist state there will be also non-economic conflicts, if only in the beginning or perhaps always. But to say that a gigantic institution of state and law will be necessary for their regulation is obviously an overestimation of their importance. Kelzen himself felt this and therefore stated that actually these non-economic conflicts are not very large today, but with the disappearance of economic conflicts their growth will be such that the existence of the state and law will be necessary. However it is obvious and much more probably that with regard to the general development of man and humanity, these conflicts in the future will grow weaker.

Also unacceptable is Kelzen's reason based on the planned nature of the future communist economy. Kelzen was guided by the special experience of the Soviet Union which under known conditions has put into effect strict, rigid centralized state enforced planning. However, our own and finally

also the Soviet experience and that of other countries, clearly shows that such planning is not necessarily always in accord with the advancement of favorable social and political conditions; it can be to a far greater extent decentralized, elastic voluntary and relatively autonomous. The unionized producers by means of their free unions can freely plan so that such planning will not be of a forced nature and still less statelike in nature.

With reference to this it is necessary to always take into account the fact that Marxism does not refute the need for the existence of a centralized social organization even after the state and law have withered away. However this organization will not be a state because it will not have physical force at its disposal. And it will be able to plan and execute other social functions.

But with reference to planning and in general economics, it is necessary to examine more closely the basic reasons cited by Kelzen to support his statement, which boils down to the existence of economic conflicts of interest under communism. It must be stated that his reasons against the Marxist concept concerning the disappearance of economic conflicts are very serious. In other words, if the existence of sharp class conflicts causes the existence of states and laws, which Kelzen accepts, and if the disappearance of classes therefore means the disappearance of state and law in the narrowest sense, Marxism, which as we have seen, considers that after that there will exist a certain state and law through the whole course of socialism and a certain type of mild, not class, economic conflicts which disappear completely under communism along with the state and the law. Precisely this Kelzen denies. According to him it is doubtful that supply will grow so much that it will satisfy all the demands of all the people. This reason is very popular especially since a new development in production always brings about new needs.

This reason is very serious. Until now, the demands have always exceeded the supply. But the new growth of production strength seems to us to be confirming this viewpoint. The technical conditions for the further increase in supply can already be noticed and the question is only how to insure the social conditions. On the other hand, when we speak about satisfying all the demands of all the people, we must consider that these are, if only in the beginning, demands which is not vital are so important for people that conflicts over goods which could satisfy them will be quite sharp. It is not necessary to literally understand these demands to mean all demands even the most insignificant. Thus even if those insignificant demands should remain unsatisfied, they will not cause conflicts that can be regulated only by the existence of a state and law.

Other reasons given by Kelzen also appear to be very important. The question is actually asked, will work become a human requirement even though man will not be forced to work. It seems difficult to absolutely confidently state that it will be so. But contemporary development in production seems here to destroy all our present concepts and presents the question in quite a different manner. That is today it seems that the basic question of the future will not be how to make people work voluntarily but how to achieve high development of production, but the opposite will be

true since production is developing in a manner that makes human work completely unnecessary. For work will still be necessary although not for production but for keeping man human, since only work can do this. But this question leaves the realm of consideration concerning the withering away of the state and law.

According to this, the question of work will not be presented in accord with the ideas of Kelzen, i. e. work will not be necessary for production, it will practically be narrowed down to such a small amount that it will be possible for it to be completely voluntary and the state and law will not be necessary to force labor.

VI. Concerning the practical experiences of the socialist states concerning the withering away of the state and law, it is necessary to point out that they are not the same everywhere and that there are especially large theoretical differences concerning their importance and meaning. However it seems to us that careful study of both the practice and theory designed to explain it, makes it possible to arrive at certain undeniable conclusions about this question.

The conclusion is: since the socialist revolutions took place generally in underdeveloped countries, the role of the state and law after the revolution must be far larger than was conceived of before the revolution. First it was necessary to establish the economic basis for socialism and this was not possible without considerable use of state power against capitalists. On the other hand, a strong alien capitalist world set against the socialist countries conditioned a considerable reinforcement of the external function of these countries which necessarily led to a strengthening of some of their internal functions. Thus in this phase of establishing the first foundations of socialism and the battle to maintain its existence against attack by capitalism, it was not possible to even speak of the withering away of the state and law. On the contrary they were reinforced.

In the second phase however, when internal bourgeois opposition was overcome, and the capitalist world basically recognized the existence of socialism, it was possible to think about beginning the process of withering away of the state and law. But this process was largely slowed down by the low cultural level of the toiling masses. If production was increased at a relatively rapid pace, the intellect of the masses was not raised at the same pace and the masses were not able to sufficiently qualify for taking upon themselves the administration of social affairs from the hands of the administrative specialist and bureaucrat concentrated in the state. Thus it was necessary to strengthen the bureaucracy and its influence, which, as a rule, sought to hinder or at least slow down the process of withering away.

But the danger of bureaucracy was foreseen by Marx and Engels and strongly emphasized by Lenin. Whether quickly or slowly, all socialist states recognized the existence of this danger and undertook various measures for its suppression with varying degrees of success. Therefore the democratization of the socialist state progressed all the more in all of them, but at various rates and in various forms. This democratization, however, completely differs from the general concept of democratization

because it actually means one form and means of withering away of the state. That is, general democracy is achieved by identifying the will of the state with the will of the people, thus the state apparatus executes the will of the people. Democracy in the socialist countries strives to identify the state with the people. This means that the working people themselves enter more and more into state organs to become "bureaucrats" but never ceasing to be workers in order to specialize in administration. In other words, through the state apparatus the workers govern themselves, they are autonomous. Thus the state and with it the law wither away because the state becomes progressively more identified with the people, and society is immersed in it and disappears in it.

Finally the third phase is undoubtedly the withering away in all socialist states in one manner or other. This is achieved by the transfer of state functions to a non-state, free social organization. At first these organizations rely upon the state and can be considered as a semi-state organs, but they gradually become autonomous and exist in a purely social status, which means that they regulate social relations by completely free voluntary acceptable standards and not by law.

Undoubtedly this process of withering away has progressed the farthest among us. To cite an example of the identification of the state with the workers, it is necessary to mention the council of producers' - a member of this council may only be a direct producer, i. e. a common worker. Also the transfer of present state functions to free social organizations has progressed greatly among us. Although the state still maintains an important part of the economic control, yet the most important part of it is undoubtedly transferred to the free producers' cooperatives. This also applies to a wide area of the social public services. This contributes to a broad development in local autonomy. Our opstinas strive more and more to cease being organs of the state and become free social economic communities.

Similar, although initial, steps can also be noticed in all other socialist countries, especially the Soviet Union. This is the best indication that the withering away of the state and law is confirmed by the practice of all socialist countries and not some sort of utopia. Truthfully the speed of the withering away is far slower than was previously predicted, but that is not important - what is important is that this very phenomenon does exist and is developing.

VII. It is felt that in socialist countries the theories, although their interpretations differ among theoreticians, do not diverge as much as they seem to at first glance. Often there are not actual differences but only certain misunderstandings which arise primarily due to different terminology. If, however, they are actual differences, they are primarily reflections corresponding to the different practices of the respective countries and primarily differences in the speed of the withering away process. The greatest real difference is that the theoreticians of the eastern countries think that the process of withering away must progress very slowly, while our theoreticians in conjunction with our practical experience think that it can progress much more rapidly. But this is not a fundamental difference since all agree that the final aim of socialism

is a complete withering away of state and law.

It is only a misunderstanding when some theoreticians from other socialist states accuse us of wanting to immediately abolish the state and of being against all centralization of social organizations under communism.

It is also a misunderstanding in terminology when our theoreticians accept the term democratization of the state as a means for its withering away, while the majority of Soviet and other eastern theoreticians consider democratization as a means of strengthening the state. We fully understand this to mean that the state is identified with the workers and submerged within them, and they understand this to mean that the workers voluntarily fulfill the desires of the state. The essence of the idea is the same in both camps.

This misunderstanding is due to an improper recognition of our real position when these theoreticians accuse us of being for the withering away of the state in the area of its external functions as well in spite of the capitalist encirclement. On the contrary, our theoreticians are also for the strengthening of the state in this area as long as an external danger exists, but in addition to this they feel that it may be weakened in certain of its internal functions.

On the basis of what has been said, it may be concluded that both practical experience and theory confirm that in a socialist society the conditions which demand the withering away of the state and law do exist on the one hand, but on the other the state and law must wither away in the course of socialism in order for them to finally wither away completely into communism.