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Marxist Legal Theory

Karl Marx (1818 – 1883)

- **Historicism** – social evolution can be explained in terms of its influenced social forces
- **Justice & Modes of Production**
 - Marx rejects any absolute concept of justice
 - Justice is contingent & dependent upon the modes of production
- **Dialectical materialism** – the process of history is materially determined
- **Relations of Production** – humans enter into relations of production in order to exploit natural resources by whatever technologies are available at any given time in history
- **Productive forces** are the combination of the relations of production & the technological knowledge of any particular time
- **Class conflict** – different interactions between relations of production & productive forces give rise to different classes which are constantly in conflict (historically inevitable)
- 2 classes are predicted to have only existed to determine the entirety of society
 - **Capitalists** are those who hold the capital
 - **Proletariat** is the working class that sells its own labour to survive
- This inevitably leads to a future **dictatorship of the proletariat** which is an inevitable stage to another society that will follow the dictatorship of the proletariat & will be entirely class-less & will be determined (so no classes will exist) in the society that will follow the dictatorship which Marx defined as a communist society (**communism**)
- This understanding of the conflict of 2 classes determined by Marx as dialectical materialism is necessary to understanding how Marx's legal theories to date see law
- What is fundamental in any means or mode of production is the distinction btw **infrastructure and superstructure (and law)**
 - An infrastructure is the material base of any society - society cannot exist without it
 - Superstructure determines the way in which the infrastructure will work
- **Dominant ideology** – if ideas are the result of economic conditions & social experiences of production, then law is just 1 tool of the dominant class to maintain & represent the interest of the dominant class
- **Ideological hegemony** – the idea that a particular ideology as hegemonic is established to a variety of social institutions in order to ensure that a dominant set of values prevail
- **Law in a classless society** - if law is just a tool of the dominant class & a vehicle of class oppression in a classless society, there is no need for law anymore
 - So a communist society will exist without any law
- The influence that Marx's theory has had on soviet legal theory & on socialist family legal systems is immense
- Marx's legal theory is very alive today & it is very different from the 1 that influenced the soviet union & the rest of the world up to the 20th C

Critical Race Theory

Background

- Began in 1970s – 1980s
- Law professors & activists became disillusioned with the results of the civil rights movement because it was evident that whites still had disproportionate power & superior standards of living
- CRT uses postmodernism theory to uncover what they define as imbedded racism
- Focuses on discrimination & 'otherness'

Arguments

- Law is the reflection of a **privileged elite** (historically white male)
- 3 concepts that were used & fundamental to uncovering the work of privileged elite:-
 1. **Race** & racism are used to explain the social & cultural roots of discrimination – race (as a construct) justifies & normalises the position of power
 - These natural explanations of differences btw races have been used to historically allow oppressive & discriminatory political actions (eg. White Australia Policy in Oz)
 2. **Colonialism & post-colonialism**
 - The concept of **colonialism** is directly derived from the European/non-European dichotomy whereby all non-Euro others were objects of colonial practices that were not historically moral, political or legal agents (colonialism has influenced the world for centuries)
 - **Post-colonialism** was initially used to describe all those societies where colonial rule ended but the concept extended to the study of continuing effects on groups affected by colonialism
 3. **The West** or 'Western legal theory' is a concept used to uncover & identify dominant privilege (v.abstract concept originating in response to the cultural construct of the Orient)
- **Whiteness** is historically linked to differences in skintones whereby colonial powers & practices were carried out by ppl with similar skin tone & relatively similar historical legacies/genealities (eg. US from 790-1962 – only free white persons could be naturalized as citizens)
- The concept of whiteness has moved beyond colour differences & is rather used as an indicator of dominant racial identity

Critiques

- The ideas of the West & whiteness are imprecise markers of privilege – **they are simplified categories** - there is a much more complex network of privilege (tendency toward essentialism)
- The emphasis of race or whiteness or any similar concept as the indicator of discrimination **obscures other forms of discrimination** (eg. Gender)
- CRT fails to discuss non-Western concepts of law (eg. Comparative law & anthropology)
- It emphasises privilege as an oppressive form of power (in a Foucauldian sense)
 - Power & privilege are used to impose disciplinary power through institutions