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Beyond Natural Law and Legal Positivism: Toward a Marxist Materialist Account of Legal Normativity

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Abstract

This article addresses one of the most persistent problems in legal and political philosophy: the question of what gives legal and moral norms their binding force and on what basis they can be critically evaluated. Two dominant traditions have attempted to answer this question. Natural law theory grounds the authority of law in universal moral principles that are assumed to exist independently of social life, whether in divine order, cosmic reason, or the rational capacities of human beings understood as supra-historical. Legal positivism, by contrast, explains legal validity in terms of social facts and institutional recognition, separating the question of what law is from the question of what law ought to be. Despite their apparent opposition, both approaches treat normativity as something that can be analyzed independently of concrete social relations: natural law by appealing to supra-historical moral foundations, legal positivism by reducing authority to formal procedural criteria. Neither adequately accounts for the historical variability of legal norms, the ideological functions of law, or the conditions under which legal authority may be challenged and transformed. This article argues that both traditions share a structural limitation: they abstract legal and moral norms from the material and historical conditions under which they arise, sustain themselves, and enter crisis. Drawing on Marx's historical materialism, the article proposes that normativity cannot be adequately understood without situating law and morality within the relations of production, class conflict, and ideological formation. It is the material production of goods that generates specific social relations, and it is within those relations that legal and moral norms acquire their determinate content, their apparent naturalness, and their capacity to be contested. A historical materialist account of normativity neither reduces law to mere power nor treats it as a transcendent moral order, but locates its force and limits within these historically specific relations of production—and in so doing provides grounds for a critique of existing legal norms that does not rely on appeals to eternal moral truths.

Keywords

historical materialism, social ontology of law, relations of production, super structure, ideology

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Introduction

The philosophical quest for the binding nature of law remains a central, yet perennially unresolved, problem in modern legal thought, characterized by an enduring tension between natural law theory and legal positivism. At the Nuremberg trials of 1945 and 1946, the defendants offered a legally precise and philosophically serious objection to the proceedings against them: They had acted in accordance with the laws of a sovereign state, and no valid legal order existed above that state by whose authority they could be judged (Hart 1958; Paulson 1975). The objection was not frivolous. It rested on the dominant jurisprudential doctrine of the preceding century, legal positivism, which held that the validity of law is determined by its

conformity with the procedures of a recognized legal system, not by its moral content. If law is whatever a sovereign enacts through proper institutional channels, then the laws of the Third Reich were laws, and obedience to them could not in itself constitute a crime. The tribunals rejected this defense, and in doing so brought into sharp relief a problem that has shaped legal and political philosophy ever since: the conditions under which formal legal validity is insufficient to confer genuine authority on a norm, and the question of what additional or alternative ground such authority might require. The Nuremberg judgment was widely read as a vindication of natural law—as evidence that there exists a higher moral order against which positive law can and must be measured, and to which even states are answerable. The postwar period saw a significant revival of natural law thinking, particularly in the work of Lon Fuller (1964) and, later, John Finnis (1980), precisely because the positivist separation of law and morality had seemed, in the most catastrophic way, to leave legal theory without the resources to condemn what everyone agreed must be condemned.

What gives a norm its binding force? When we say that a law ought to be obeyed, or that an unjust law ought to be resisted, we presuppose some standard of evaluation that is neither reducible to the mere fact of legal enactment nor derivable from individual preference. The problem of normativity—explaining why norms have the authority they claim—is among the most persistent in legal and political philosophy, and it remains unresolved. The two traditions that have dominated the field, natural law theory and legal positivism, offer opposing answers, yet both have proved inadequate in instructive ways. Natural law theory holds that the authority of norms derives from a moral order that transcends positive law; legal positivism holds that legal validity is a function of social recognition and institutional procedure, independent of moral content. Each tradition has identified genuine weaknesses in the other, and each has proved unable to resolve the difficulties that its own position generates.

This article argues that natural law theory and legal positivism share a structural limitation that generates their respective failures: both attempt to ground the authority of norms without attending to the material and historical conditions under which those norms are actually produced, sustained, and brought into crisis. Natural law theory abstracts norms from history by grounding them in supra-historical moral foundations—whether divine, rational, or universal human nature. Legal positivism abstracts them from social conflict by reducing legal authority to the formal criteria of institutional recognition. In both cases, the result is a theory of normativity that cannot adequately explain why legal norms take the specific forms they do in specific societies, why those forms change historically, or why they so consistently serve the interests of dominant social groups while presenting themselves as universal and neutral.

Against this shared limitation, this article proposes a Marxist materialist approach to legal normativity. The argument develops in three stages. The first examines the problem of normativity and identifies the structural limitation shared by both traditions. The second develops the Marxist materialist account, showing how it overcomes this limitation by situating law within the relations of production, class struggle, and ideological formation. The third considers what this approach makes possible: a form of legal critique that is neither dependent on transcendent moral principles nor confined to the descriptive register of institutional positivism. The aim throughout is not to construct a comprehensive philosophy of law but to show that the Marxist materialist framework provides more adequate resources for addressing the problem of normativity than the two dominant traditions have offered.

A word on method is necessary at the outset. The argument does not proceed by first presenting natural law theory, then legal positivism, and finally proposing a Marxist alternative. Such a structure would suggest that the Marxist account is simply a third position in an existing debate, distinguished from the others by its philosophical commitments. The approach here is different: natural law theory and legal positivism are examined together, through the lens of the problem they both fail to resolve. Their shared limitation—the abstraction of norms from their material conditions of production—is the analytical point of entry. This is, in miniature, the method Marx himself described when he distinguished his critical approach from the procedure of first setting out a theory and then applying it to reality (Marx 1998, 61–62).

1. The Problem of Normativity and the Shared Limitation of the Two Traditions

The problem of normativity arises wherever a distinction is drawn between norms that are merely enacted and norms that genuinely bind. This distinction is practically unavoidable. Legal systems routinely produce rules that are formally valid yet widely regarded as unjust; individuals and groups appeal to standards beyond positive law to condemn such rules and justify resistance to them. The theoretical question is how such appeals are to be understood and on what basis they can claim more than mere subjective preference.

Natural law theory, from its classical formulations in Aquinas through its modern secular versions in Locke, Kant, and Finnis, addresses this problem by positing a moral order that is both prior to and independent of positive legal enactment. For Aquinas, this order is divine and cosmic: natural law is the participation of rational creatures in the eternal law governing all of creation, and positive law derives its validity solely from its conformity with this higher order—*lex iniusta non est lex* (O'Connor 1967, 59–61). Modern versions of the theory aim to preserve this critical function while freeing it from explicit theological foundations. Locke grounds natural law in the equal rational nature of human beings as God's workmanship; Kant grounds the categorical imperative in the self-legislating structure of pure practical reason; Finnis grounds basic human goods in the deliverances of practical reason understood independently of theological commitments (Finnis 1980, 59–99). Despite their differences, all these formulations share a common structure: the authority of norms is secured by reference to a standard that is not itself the product of historical human activity.

Legal positivism, developed most systematically by Austin, Hart, and Kelsen, rejects this move. On the positivist account, the validity of law is a function of its origin within a recognized legal system, not of its conformity with any moral standard. Hart's concept of a rule of recognition—a master rule that specifies the criteria for identifying valid laws within a particular legal order—is designed precisely to show that legal validity is a social and institutional fact, not a moral property (Hart 1961, 79–99). Kelsen's pure theory pursues the same ambition through the hierarchical structure of legal norms grounded in a basic norm (*Grundnorm*), which provides the formal presupposition of the entire legal order without any moral content (Kelsen 1967, 193–205). The gain is clarity and descriptive precision; the cost is the inability to explain why legally valid norms command obedience, and under what conditions their authority may legitimately be refused.

The weaknesses of each position have been extensively documented within the debate itself. Natural law theory, its critics argue, relies on assumptions about universal reason, human nature, or moral order that cannot be sustained without appealing to foundations whose status is uncertain, and whose content has varied so dramatically across historical periods and social formations as to suggest that they are not universal at all. Legal positivism, its critics reply, describes how legal systems operate without being able to explain why their rules bind, or to provide any basis for evaluating the justice of existing arrangements from within its own theoretical resources.

What has been less clearly articulated is that these weaknesses are not independent but derive from a common source. Both natural law theory and legal positivism treat the problem of normativity as a problem to be resolved at the level of abstract philosophical argument, without reference to the social conditions that produce the norms whose authority is at issue. Natural law theory looks upward, to moral principles that transcend history; legal positivism looks inward, to the formal structure of legal institutions. Neither looks at the material and historical processes through which norms are actually generated, stabilized, contested, and transformed. This shared abstraction from the conditions of production is the structural limitation that the Marxist materialist approach identifies and overcomes.

The point can be sharpened by considering what a satisfactory account of normativity would need to provide. It would need to explain, first, why norms have the specific content they do—why property rights, contractual obligations, and criminal prohibitions take the particular

forms they take in a given society at a given historical moment. Second, it would need to explain the binding force of norms—why people comply with legal rules, and whether that compliance involves genuine recognition of authority or some other mechanism. Third, it would need to provide a basis for evaluating existing norms—for distinguishing between norms whose authority is well-founded and those whose claim to authority is ideological mystification. Natural law theory addresses the third question but only at the cost of a metaphysical foundation that cannot support the first. Legal positivism addresses the second question in a limited way but surrenders the third entirely. Neither addresses the first at all. The Marxist account, as the following section argues, addresses all three.

2. A Marxist Materialist Account of Legal Normativity

The starting point of the Marxist materialist approach is the claim that norms do not descend from a supra-historical moral order, nor are they adequately explained by the formal structure of legal institutions. They are produced within specific historical conditions of material life, shaped by the relations of production that characterize a given social formation, and they serve—though not mechanically or without contradiction—to reproduce those relations. This claim is not a reduction of law to economics or a denial of the relative autonomy of legal institutions. It is a methodological principle: that to understand why norms have the authority they claim, we must examine the material conditions that generate them. As Marx states in *The German Ideology*: "The production of ideas, of conceptions, of consciousness, is at first directly interwoven with the material activity and the material intercourse of men" (Marx 1998, 42). Legal and moral norms are part of this ideational production; they cannot be understood in abstraction from it.

This claim has an immediate consequence for the problem of normativity. If legal norms are produced within specific relations of production, then their content is not arbitrary, but neither is it universal. The rights of property, the freedom of contract, the formal equality of legal persons before the law—these are not expressions of eternal moral truths, nor are they mere institutional conventions that could have been otherwise without remainder. They are historically specific forms that express and reproduce the relations of production of capitalist society. This is why natural law theories that invoke universal human nature or universal practical reason to explain the authority of such norms produce conclusions that systematically favor the interests of dominant social classes: they present as naturally given or rationally necessary what is in fact the legal form appropriate to a specific mode of production.

The concept of ideology is central to this analysis. For Marx, ideology is not simply error or deliberate deception; it is a systematically distorted representation of social reality that serves to reproduce existing social relations by presenting them as natural, inevitable, or just (Marx 1998, 64–67). Legal ideology operates in a specific way: it represents the relations of production—which are relations of domination, exploitation, and class power—in the form of relations between free and equal legal subjects. The formal equality of persons before the law—the idea that all are equally bound by and protected by the same legal rules—is both a genuine historical achievement, won through centuries of political struggle, and an ideological form that conceals the substantive economic inequalities that the legal order simultaneously sustains. This duality is not a contradiction to be resolved but a structural feature of bourgeois law that any adequate theory of legal normativity must account for.

The question of binding force—why people comply with legal norms—receives a different answer on the materialist account than on either of the dominant theories. People do not comply primarily because they recognize the conformity of law with universal moral principles, nor simply because they accept the formal validity of legally enacted rules. They comply because legal authority is embedded in the material practices, social relations, and institutional structures through which everyday life is organized and reproduced. The law is not an external constraint imposed on pre-formed social subjects; it is constitutive of the social relations within which subjects are formed. As Pashukanis argued in his materialist theory of law, the legal

form—the form of the right-bearing individual subject—corresponds to and is produced by the commodity form of social relations characteristic of capitalist production (1978, 63–79). The binding force of law is not a philosophical property to be explained by reference to moral truth or institutional recognition; it is a social fact grounded in the material organization of production and exchange.

This account also provides a materialist explanation of the relative autonomy of law. Legal systems are not simply instruments of class power that mechanically express and enforce the interests of the dominant class. They are shaped by the outcomes of class struggles, by the requirements of social reproduction, and by the accumulated traditions of legal practice. Working classes have historically succeeded in inscribing their interests in legal forms—in labor legislation, in social rights, in procedural protections against arbitrary state power. These gains are real, and a materialist analysis must account for them. Callinicos, drawing on Marx's own historical analyses, argues that structures are best understood not only as constraints on action but as frameworks that enable certain possibilities, including the possibility of transforming the structures themselves (1988, 275). Legal structures both constrain and enable: they define the terms within which social conflict is conducted, but they do not determine its outcomes. The history of legal reform is, in significant part, a history of struggles in which subordinate classes have used the legal terrain to advance their interests and challenge their conditions of subordination. However, as Ziyad Husami argues, this materialist grounding does not preclude a moral critique of capitalism. Husami challenges the view that Marx lacks a concept of justice, asserting instead that Marx evaluates capitalism from the perspective of a higher, post-capitalist distributive principle. According to Husami, "under capitalism, the producer is treated unjustly because his labor is exploited" and he is denied the full fruits of his productive activity (1978, 30–32). This suggests that the materialist account of normativity inherently contains an ethical dimension that condemns the systematic extraction of surplus value as a form of distributive injustice.

The third requirement of an adequate theory of normativity—a basis for evaluating existing norms—is met by the materialist approach in a distinctive way. The evaluation of norms does not require appeal to supra-historical moral principles or to the internal logic of legal systems. It requires an analysis of the social relations that norms sustain, and an assessment of whether those relations enable or obstruct the development of human capacities within the historical conditions in which they operate. This is not relativism: it does not hold that any norm is as valid as any other, or that the norms of one historical period cannot be judged by those of another. It holds, rather, that the criteria of judgment are themselves historical and material—grounded in the conditions of human life and productive activity rather than in a moral order that stands above history.

Blackburn's observation that relativism is untenable when it comes to questions of justice—that we cannot simply hold that each culture's norms are equally valid—identifies a real constraint on any adequate theory of normativity (2005, xiv–xvi). The materialist approach meets this constraint without reverting to the supra-historical foundations that natural law theory requires. The grounds for evaluating norms are not derived from a pre-social moral order but from the conditions required for human beings to live and develop their capacities within specific historical forms of social cooperation. A legal order that systematically forecloses such development—by institutionalizing exploitation, by concentrating power in ways that prevent effective participation in collective life, by criminalizing resistance to domination—can be condemned on grounds that are neither merely subjective nor dependent on any appeal to eternal moral truth. The condemnation is grounded in an analysis of what that legal order actually does to the human beings who live under it.

It is at this point that the materialist account most clearly surpasses both natural law theory and legal positivism. Natural law theory can condemn unjust laws, but only by invoking foundations whose content has historically tracked the interests of dominant social classes and whose universality cannot be established. Legal positivism can describe unjust laws with precision, but cannot condemn them as lacking authority without stepping outside its own

theoretical framework. The materialist approach provides a basis for condemnation that is internal to the analysis of social relations—it does not require a step outside the theory—and that is genuinely critical rather than apologetic, because it examines the social conditions that norms sustain rather than the formal properties that make them legally valid.

The argument can be brought into focus by considering the relationship between legal equality and social inequality, which is the central ideological problem of bourgeois law. Natural law theory, in its modern liberal forms, tends to treat formal legal equality as an approximation to or instantiation of a genuinely universal moral principle: all persons are equal in dignity, and the law expresses this equality. Legal positivism describes formal legal equality as a feature of valid legal systems in certain societies, without committing itself to any evaluation of it. The materialist account, by contrast, analyses formal legal equality as a specific historical form that is both the product of real struggles for emancipation and an ideological mechanism that conceals substantive social inequality. It explains why formal legal equality coexists with systematic economic inequality: because the legal form of equality corresponds to the social form of exchange, in which formally equal parties exchange commodities—including the commodity of labor power—under conditions that are materially unequal (Marx 1978a, 270–80; Pashukanis 1978, 71–79). This analysis does not dismiss the achievement of formal legal equality but situates it within the social formation that produces it and thereby explains its limits. Marx further elaborates this critique in his "Critique of the Gotha Program," where he famously argues that "right can never be higher than the economic structure of society and its cultural development conditioned thereby" (Marx 1978b 531). This work provides a crucial bridge between the critique of legal form and the possibility of a future social organization where the "narrow horizon of bourgeois right" is finally crossed (Marx 1978b, 531).

3. Objections and Clarifications

Three objections to the materialist account of legal normativity deserve consideration. The first concerns the charge of reductionism: that the materialist account, despite its disclaimers, ultimately reduces law to an expression of economic interest and thereby cannot explain the relative autonomy of legal institutions, the genuine gains that working classes have achieved through legal struggle, or the fact that law sometimes operates against the immediate interests of the economically dominant class. The second concerns the charge of determinism: that the materialist account, by locating the ground of normativity in relations of production, makes the content of norms the product of structural forces that leave no room for genuine agency, critique, or transformation. The third concerns the question of normative status: that the materialist account can explain the social functions of norms but cannot itself make normative claims—it can describe the ideological character of existing legal norms but cannot say why the social relations they sustain are unjust.

The first objection mistakes a methodological principle for a reductive claim. The materialist account does not hold that legal norms simply mirror the economic interests of the dominant class. It holds that legal forms are produced within specific relations of production and that understanding those forms requires examining their material conditions of production. This is compatible with recognizing that legal systems have a relative autonomy from the immediate interests of dominant classes, that they are shaped by the outcomes of class struggles, and that they can both constrain and express class power. Engels explicitly addressed this point in his correspondence on historical materialism, noting that the economic structure of society is not the only determining factor: "Political, juridical, philosophical, religious, literary, artistic, etc., development is based on the economic development. But all these react upon one another and also upon the economic base" (Engels [1890] 1975, 394). The relative autonomy of law is not a refutation of the materialist account; it is a feature of social formations that the account must and can explain.

The second objection, the charge of determinism, is met by the account of structures as enabling as well as constraining that was introduced above. Marx's own formulation in *The*

Eighteenth Brumaire is instructive: "Men make their own history, but they do not make it as they please; they do not make it under self-selected circumstances, but under circumstances existing already, given and transmitted from the past" (1978c, 595). The materialist account does not deny human agency; it insists that agency is exercised within conditions that are not of the agent's choosing, and that understanding those conditions is a prerequisite for effective action. Applied to law, this means that legal struggle—the effort to reform, expand, or transform legal institutions—is both possible and meaningful, but that it is conducted within and against the constraints imposed by the legal form itself. The history of labor law, of civil rights legislation, of international human rights instruments, is a history of such struggles, and the materialist account can explain both their possibilities and their limits.

The third objection—that the materialist account cannot itself make normative claims—is in one sense correct and in another sense misconceived. It is correct that the materialist account does not ground its normative claims in a philosophical first principle or a pre-social moral order. But it does not follow that it cannot make normative claims. The claim that a legal order which systematically forecloses the development of human capacities—through exploitation, domination, and ideological mystification—is unjust is a normative claim. It is grounded not in an appeal to supra-historical moral truth but in an analysis of what that legal order does to the human beings who live under it. The criteria of evaluation are historical and material, but they are criteria nonetheless, and they do not reduce to mere preference or cultural convention. In this context, Marx's discussion of "equal right" in the "Critique of the Gotha Program" is particularly instructive. He shows that even when the law attempts to apply an equal standard to all, it remains a "right of inequality" in its substantive content because it applies a universal measure to individuals with unequal capacities and needs (Marx 1978b, 530–531). This analysis allows for a normative critique that is grounded in the material reality of human difference rather than abstract legal identity.

4. Conclusion

The problem of normativity—what gives legal and moral norms their binding force, and on what basis they can be critically evaluated—has not been resolved by the two traditions that have most seriously engaged it. Natural law theory provides a basis for criticizing unjust laws but does so by appealing to supra-historical foundations whose universality cannot be established and whose content has systematically tracked the interests of dominant social classes. Legal positivism provides a rigorous description of legal systems but cannot account for the binding force of norms or provide any basis for evaluating existing legal arrangements from within its own theoretical resources. Both traditions share a structural limitation: the abstraction of norms from the material and historical conditions that produce them.

A Marxist materialist approach to legal normativity overcomes this limitation by situating law within the relations of production, class struggle, and ideological formation. It explains the content of legal norms by reference to the mode of production that generates them; it explains their binding force by reference to the embeddedness of legal authority in the material practices and social relations of everyday life; and it provides a basis for evaluating existing norms by examining the social relations they sustain and the extent to which those relations enable or obstruct the development of human capacities. This approach does not reduce law to economics, deny the relative autonomy of legal institutions, or eliminate the possibility of legal struggle and reform. It explains why such a struggle is both possible and limited, and what it would mean for it to succeed.

The superiority of the materialist account over its rivals does not lie in its philosophical elegance or its consistency with some prior theoretical commitment. It lies in its greater explanatory power: its ability to address questions that the dominant traditions cannot answer, and to do so without invoking foundations whose status is uncertain or criteria whose content is ideologically determined. The question of what gives norms their binding force is not a purely philosophical question; it is a question about the organization of social life. Any adequate answer must begin there.

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