Evgeni Pashukanis was a Russian legal theorist, active in the 1920s and first half of the 1930s, who made an important attempt to collate and develop Marx's critique of law. His major work on Law and Marxism was published in 1924 as a contribution to the rich theoretical discussions on law and the state held in the early years of the Bolshevik revolution.

The strength of Pashukanis's work is that he sought to derive a Marxist theory of law, not from Marx's occasional comments on the law, but systematically from the method which Marx developed in his critique of political economy. Just as Marx analysed money and capital as the historical expression of definite social relations of production, Pashukanis argued that law is a historical form of regulation expressing the emergence of definite social relations between individuals and not a generic category valid for all societies. He criticised the tendency in legal theory to universalise law, either through idealising it as the essential requisite of social order or through technicising it as a mere instrument of domination. In both cases he saw an instance of a bourgeois ideology which naturalises the conditions of bourgeois life.

The political significance of Pashukanis's theory lay in his rejection of economism, in the sense that he conceived of the transition from capitalism to communism as a transformation not only of economic relations, but also of relations of authority/ power/ control/ domination. His radical claim was that legal forms of domination have definite characteristics which render them unsuitable for communist society and that new forms of domination,
which he called `technical regulation', should and would replace the law. He therefore rejected the concept of `proletarian law' as a self-contradiction.

Pashukanis saw law as a fetishistic form of domination which abstracted individuals, as legal subjects, from their real social existence. The law, he argued, reproduced inequality and dependency under the umbrella of merely formal freedom and equality before the law. It elevated the rights of subjects at the expense of indifference toward the needs of the exploited and the sins of the exploiters. It reflected the conflict of private interests, mutual indifference and all-round competition characteristic of capitalist society rather than the co-operation, comradeship and collectivity which was the hallmark of communist relations. It developed into a seemingly transcendent force, mystifying the domination of one class by another in the form of a mutual subordination to an impersonal authority. Finally, it legitimised a state power whose real nature lay in the exercise of brute force on behalf of the economically dominant class.

Pashukanis saw the foundation of law as lying in the exchange of commodities. He argued that, just as value (the fundamental category of economics) is the fetishistic expression of the products of human labour when they are taken to market as commodities, so too the legal subject (the fundamental category of law) is the fetishistic form of the guardians or owners of commodities as they exchange their goods on the market place and then contract one with the other.

In the context of the Soviet Union in the 1920s Pashukanis promoted a gradual `withering away of law', as commodity exchange was replaced by state ownership of production and state planning of distribution. As an important legal official in the latter half of the 1920s, Pashukanis did his best
to encourage the 'de-juridification' of legal education, personnel and procedure.

Pashukanis analysed the 'technical form of regulation', which he saw as replacing law under Communism, as having roots within capitalist society - in the relations between doctor and patient, in the internal organisation of the workplace, in the co-ordination of trains and perhaps in the administration of the state. He defined technical regulation as a form of regulation appropriate to a situation in which all parties are seeking the same goals in a non-antagonistic and co-operative fashion.

Pashukanis seems to have believed that this form of regulation was becoming stronger in the Soviet Union in the 1920s with the growth of the state sector and the state bureaucracy. In 1929 he accepted Stalin's pronouncement that communism was being achieved with the introduction of the First Five-Year Plan and then with the assault against the peasantry. Pashukanis drew the naive conclusion that 'the role of the pure juridical super-structure, the role of law, is now diminishing and from this one can infer the general rule that technical regulation becomes more effective as the role of law becomes weaker and less significant'. In the 1930s, however, the tide turned against Pashukanis as the consolidated stalinist regime turned toward the celebration of what it called 'socialist legality'. Pashukanis was viciously attacked by leading stalinist officials, notably Vishinsky, for his doctrine of the 'withering away of law'. Finally in 1937 it seems that Pashukanis was murdered by the stalinists without even the legal formality of a show-trial.

Pashukanis's theory suffered from a superficial and one-sided critique of the fetishism of law. Tracing the roots of law to exchange rather than
production, he saw only the negative side of exchange (private interest, indifference, competition) and ignored its positive side (independence, freedom, equality, etc.). He ignored the different production relations which underly exchange and the different form and content assumed by the law as production relations change. In his critique of legal formalism, he saw nothing of the democratic advance represented by the historical development of law in bourgeois society nor of the democratic functions of law in socialism. In his celebration of technical regulation, he substituted one fetish for another, technicism for law, thereby legitimating the subsumption of law to the bureaucratic arm of the state. By positing the withering away of law before the withering away of the state, he opened up a Pandora’s Box of authoritarian statism.

In short, in spite of his brilliant and lasting theoretical insights into the social character of law, Pashukanis combined an over-critical theory of law with an uncritical theory of bureaucracy, a truly unfortunate mixture in the context of the transition from revolutionary bolshevism to stalinism.

Select Bibliography

There was a considerable revival of interest in the writings of Pashukanis in the late 1970s and the early 1980s. To many contemporary marxists his republication represented the recovery of an authentic marxist tradition of juridic critique (see Arthur 1983). This revival was in turn criticised by legal theorists and historians who argued that the rule of law and the defence of rights, though perhaps born under capitalism, are the necessary preconditions of any democratic society (see Kelsen 1955 and Sharlet 1974). Finally, there have been attempts to develop - in more dialectical fashion
than Pashukanis - the rational kernel of marxist critiques of law (see Fine 1984 and Holloway and Picciotto 1978).

**Primary Materials**


**Secondary Debates**


