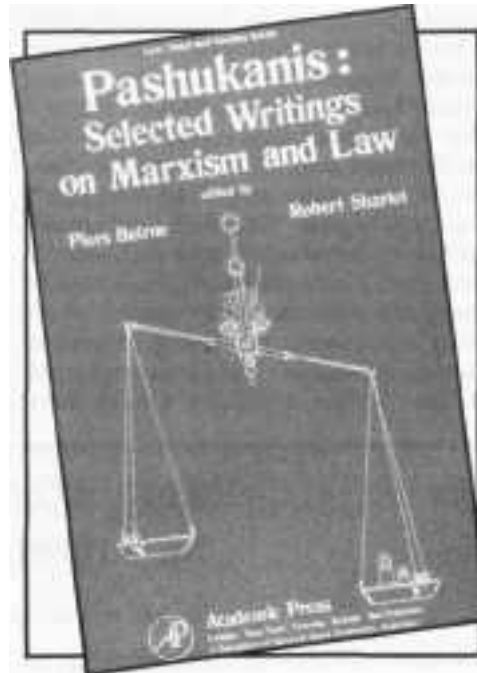


**PASHUKANIS: SELECTED WRITINGS
ON MARXISM AND LAW**

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At first sight it appears strange that anyone other than a specialist should be interested in the writings of an early Soviet legal theorist. Yet the interest in his writings has undergone something of a boom over recent years. This interest is well served by the appearance of this most comprehensive collection of his

writings. The book provides translations of writings covering the period 1924 to 1936 along with a very thorough introduction.

I want to focus attention on the reasons why Pashukanis' writings have a current significance.

But first something of Evgeny Pashukanis. Active as a young man in the revolutionary movement before 1917 he joined the Bolshevik Party and rose to high legal office as a Commissar for Justice. He was throughout the 1920s the most influential Soviet legal theorist. His commitment to the withering away of law under socialism came into conflict with Stalin's thesis (16th Congress 1930) concerning the intensification of the class struggle and the necessity in strengthening of Soviet state and law. In 1937 he was denounced as one of the 'Trotsky-Bukharin fascist agents' by Vigshinsky; he was arrested and disappeared, presumably executed, to be formally rehabilitated in 1956.

Pashukanis has a current relevance because he posed two separate but connected questions: what is it that is distinctive about capitalist law? What is the role, if any, of law in the transition to socialism? I will comment on both of these issues; my focus will not be to give an exhaustive account of his views but to indicate their relevance for current debates.

Pashukanis, like many more recent Marxist theorists, rejects simplistic views which are often passed off as Marxism. He rejects the view that the law, and for that matter the state, can be understood as instruments of the ruling class that can be used at will (restrained only by the active resistance of the working class) to protect their class interests. For Pashukanis the fundamental character of law does not lie in the class content of its rules or of its administration. He argued that it is the *form* of law which indelibly gives it its bourgeois character. It is bourgeois because the form of law has its roots in the form of economic and social relations that stem from the funda-

mental relation of capitalism, the commodity relation.

Pashukanis' 'commodity theory of law' rests on the insistence that law creates the 'legal subject', whether individual citizen or multinational corporation, who are all formally equal and endowed with 'rights'. This is precisely the necessary adjunct to the capitalist commodity exchange in which isolated and competing individuals confront each other as formal equals exchanging equivalents in the market place. The bourgeois form of law is the replica of the commodity relation. Marx insisted that the ideological form is not simply falsity but rather expresses, once it is carefully scrutinised, the objective relationships of capitalist society. Just so did Pashukanis insist that the legal relation of atomised citizens was no accident, but rather revealed the true nature of capitalist social relations.

Without attempting to debate the merits or demerits of the commodity theory of law it is perhaps useful to point out a couple of problems. The first is historical: if law is essentially bourgeois what can be said about the many and varied systems of law that pre-date capitalism? Pashukanis got himself into difficulties, and had eventually to retract the view that pre-capitalist law was not really 'law' at all. The second problem is that his position leads to a considerable difficulty in analysing all those areas of law that are not

directly reducible to exchange relations. Pashukanis went through considerable contortions in grappling with constitutional and administrative law and with criminal law.

A brief comment is necessary on the way in which Pashukanis has been employed in recent debates about law in Britain. His theory is most frequently invoked by those who are concerned to minimise the extent to which law can be an important arena of struggle in which socialists and progressives must intervene. Pashukanis' thesis that law is necessarily bourgeois is invoked to support the contention that nothing more than false hopes can be achieved in looking towards law as a fruitful area of struggle. It is a strange paradox that in his time Pashukanis took on the orthodox Marxist view of law whereas today he is relied upon by the supporters of precisely the same orthodoxy, albeit in more sophisticated guise, with which Pashukanis joined combat.

The second major issue posed by Pashukanis was the relationship between law and socialism. It followed from his argument that law was necessarily bourgeois that law had no enduring part to play in the construction of socialism and communism. He rejected the possibility of 'socialist' or 'proletarian law'; it was this position that was to lead to his disgrace and death. He argued that the continued presence of law in the post-revolutionary period of the transition to

socialism was a result of the incomplete development of socialist economic relations and of the continued presence of elements of capitalist relations.

Pashukanis relied heavily on the important but scattered commitments by Marx to the 'withering away of the state' along the road to communism. It was but a short and logical step to propose the necessity of the withering away of law; he was able to invoke the textual authority of both Marx and Lenin.

The problem with such a line of argument can be posed starkly; what is to replace law? Pashukanis never fully developed his alternative but its basic outlines are clear. Socialist planning and technical rules, embracing a unity of social purpose and goals, replace law. It is the presumption of a necessary unity of interests which is presumed to result from the disappearance of class antagonism. Yet it was precisely the resolution of political differences by administrative means that led to Pashukanis' own death and that of millions of others. It is precisely as a result of the experience of Stalinism that we cannot accept readily a dismissal of the necessity to give long and careful consideration to the problem of 'socialist legality'. So the final paradox haunts Pashukanis: he was himself the victim of the technical administration that in the name of socialism dispensed not only with bourgeois legality but with legality itself.

Alan Hunt