

Pashukanis theory essay



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Pashukanis reiterated criticisms through his General Theory; 1 including his Marxist analysis of the commodity exchange theory² evidently demonstrating that Pashukanis represented a genuine Marxist analysis of law.

During the 1937 Stalinist purges, Pashukanis continued to persist that the law should wither away in an attempt towards socialism. This was inconsistent with the Stalinist regime because Stalin insisted that the state and the law be strengthened in the movement towards socialism. As a result, his thesis that the law would wither away became increasingly unacceptable and led to his demise³. Although Pashukanis became a victim of the Stalinist purge his powerful theoretic contributions remain to have a contemporary resonance. This essay will seek to outline the extent to which Pashukanis represented a genuine Marxist analysis of law; why his interpretation initially served and then became incompatible with the needs of the Stalinist regime and the contemporary relevance of Pashukanis' work.

Pashukanis asserts that law is simply the form taken by the exchange relation of isolated individuals just as exchange value was for Marx, simply the form taken by value. Law is some specific social relationship and can be understood in the same sense as that in which Marx termed capital a social relationship. Pashukanis also illustrates how commodity fetishism complements legal fetishism. Fuller praised Pashukanis' work because it extended and strengthened the influence of the commodity exchange school of law on Marxist jurisprudence⁴. Marx begins his analysis with isolated individuals involved in simple commodity exchange, the antithesis of planned, collective exchange of goods based on need. Similarly, Pashukanis

insisted that the law creates isolated ' legal subjects' (whether they are individual citizens or multinational corporations).

This then becomes the necessary adjunct to capitalist commodity exchange, as he observes that in order for such exchange to take place, individuals necessarily develop a commitment to certain rights. Therefore Pashukanis perceives the bourgeois form of law as a replica of the commodity relation because he believed that the legal relations of atomised citizens revealed the true nature of capitalist relations⁵. However, Warrington criticised Pashukanis due to his over-emphasis of commodity exchange and ignoring the process of production⁶. Warrington implements that " capitalism is the process of production, and exchange is merely a part of that process" ⁷.

From this it is evident that Pashukanis represented a relatively genuine Marxist analysis of law because Pashukanis suggested that the ideological form of commodity exchange expresses the objective relationships of capitalist society⁸. Pashukanis utilised Marx suggestion that the state must be withered away in order to attain socialism as a short and logical stepping stone towards his thesis of the withering away of law⁹. He declared that the law and the state will wither away in the development of revolutionary qualitative changes towards communism as a result of the disappearance of societies division of classes. Pashukanis went on to determine that law would be replaced by socialist planning, technical guides to administrative discretion and embracing a unity of social purpose and goals.

This may be critiqued as a ' necessary unity of interests' would be difficult, if not impossible to achieve because individual interest (as a part of human

innate nature) will strive to compete against collective interests in order to achieve self-betterment¹⁰. Therefore, it is evident that Pashukanis represents an adequately genuine Marxist analysis of law as he relied heavily on the important Marxist commitments in regards to the withering away of the state. Pashukanis demonstrated that he could modify his behaviour to survive, so that he was not perceived as a counter-revolutionist¹¹. In 1927, Pashukanis abandoned his identification of Soviet law as residual bourgeois law and accepted that it could serve socialist purposes in the transitional period to communism¹².

This is a contradiction to his theory that law should wither away. Soon after, Stalin claimed that the state apparatus must be strengthened in order to facilitate socialism. Pashukanis accepted this proposition because he thought that it would clear the way for the eventual withering away of law. It was not until the years following 1928 that Pashukanis' theory became increasingly incompatible with the new political and economic priorities of the first Five Year Plan as his support for Stalin's perversions of Marxism decreased.

Pashukanis' interpretation initially served as he became the principal orator for the Stalinist conception of the Soviet state. Whilst in this position, Pashukanis was relentlessly striving to maintain his political alignment to the concept of the withering away of law, alternative approaches in social organisations as well as the outlook on crime¹³. Further corrections were made to his theory in 1930, 1934 and 1936, however, the Stalinist bureaucracy still perceived the theory as unacceptable. From this, it is evident that Pashukanis was influenced by the requirements of the New Economic Policy¹⁴. Once Stalin's 'revolution from above' collapsed,

combined with the critical completion of collectivisation and the demand for a new legal policy of stabilisation, the “intrinsic ambivalence of Pashukanis dual commitment to the respective Marxisms of Stalin and Marx became apparent”.⁵ As a result, it is evident that this contributed to his downfall as Pashukanis’ interpretation became incompatible with the needs of the Stalinist regime because Stalin rejected Pashukanis’ ‘legal nihilism’ and the inauguration of ‘Soviet state and law’.

Accordingly, this period depicts the divorce between Marxist legal theory and the Stalinist regime as Pashukanis became partially subservient to Stalin¹⁶. In the early 1980’s, Pashukanis was invoked to support debates regarding law in Britain. His thesis of law necessarily being bourgeois was employed to “support the contention that nothing more than false hopes can be achieved in looking towards law as a fruitful area of struggle”¹⁷. Hence, those that argue to minimise the extent of law as a significant arena of struggle (which must be intervened by socialists and progressives) will employ Pashukanis’ thesis. As a result, this demonstrates the relevance of Pashukanis in a moderately contemporary debate.

Thus, just as Pashukanis harnessed the Marxist view of law, contemporary supporters will often rely on the same orthodoxy in a more sophisticated guise¹⁸. Pashukanis argued that individuals have responsibility and free choice to engage in crime and that punishment was a deprivation of freedom indicated by court judgements¹⁹. Pashukanis argued for a more effective and non-judicial approach. The gap between Pashukanis’ approach and the inefficiencies of punishment in contemporary capitalism is evident in current

statistics. As at 30 June 2005 there were 25, 353 prisoners in Australian prisons, an increase of 5% (1, 182 prisoners) since 30 June 2004.

From 1995 the prisoner population increased by 45%²⁰. These results demonstrate the ever rising incarceration rates due to the inadequacies of the capitalist system and that punishment is not necessarily a deterrent to crime. However, Indigenous incarceration rates are especially disturbing. The number of Indigenous prisoners has increased by 12%, from 5, 048 at 30 June 2004 to 5, 656 at 30 June 2005. Moreover, Indigenous prisoners represent 22% of the total prisoner population and had the largest annual increase since 1999²¹.

It is evident that Indigenous Australians suffer from disproportionate rates of incarceration. An egalitarian society that provided genuine democracy may reduce crime rates as individuals do not need to engage in crime in order to survive the harsh realities of unequal education, health care, housing and welfare, the coercion of the state and class struggles²². Therefore it is apparent that Pashukanis has a contemporary resonance as his theory of guilt, crime and punishment can be utilised to examine these issues in a contemporary context. In terms of law and regulation, Pashukanis' General Theory²³ outlines the dominance of commodity exchange over legal form, which would eventually wither away and be replaced by social production and distribution driven by collective interests. This may be criticised as a utopian ideal because issues of individual interests competing against collective interests is contentious²⁴. In Australia the lowest income earners had 3.

8% of the income share, whilst the highest earners had 48.5% between 1999 and 2002²⁵. This clearly demonstrates the gap between the 'rich' and the 'poor' that is ever growing. It is obvious that Pashukanis' work still resonates in contemporary society as his theory can be utilised to understand modern capitalist conditions and how these could be addressed.

Pashukanis represents a reasonably genuine Marxist analysis of law due to the emphasis on the socio-economic foundations of law and commitment to the withering away of the law and state. Fuller described Pashukanis' work as being an intelligent development of the Marxist theory of commodity exchange and that his work was in the finest tradition of Marxism. As a result, it is clear that Pashukanis provided profound insights into jurisprudence and was a genuine Marxist, regardless of the fact that there were several basic confusions. The rise of Pashukanis can be attributed to his self-alignment with Stalin's faction against the Left and Joint Oppositions. In doing so however, he abandoned several of his theoretical positions in a series of 'self-corrections' as an effort to tailor his Marxist foundations to suit the Kremlin hierarchy. Pashukanis (as well as Lenin and Trotsky) continued to advocate that society would have to use bourgeois law, which was in opposition with Stalin's socialism.

As a result, Pashukanis' corrections were no longer accepted under the Stalin regime and it ultimately led to his downfall. Although Pashukanis was executed in the name of Stalin's social legality, his work nevertheless has a contemporary resonance. Since the 2001 'war on terror', there has been a rise in executive power, a growth in law, order, political and legal measures and traditional civil liberties have been overturned as democratic rights have

been abused. As a result, Pashukanis' theory can be utilised to shed light on such issues that ultimately produce inequalities within a capitalist system.