



[Dossier: Pashukanis, insurgencies and praxis: 100 years of *General Theory of Law and Marxism* – Volume 2]

Evgeny Bronislavovich Pashukanis, an entry

Evguiéni Bronislávovitch Pachukanis, um verbete

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Article received on 09/11/2024 and accepted on 10/16/2024.



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Rev. Direito e Práx., Rio de Janeiro, Vol. 15, N. 4, 2024, p. 1-9.

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<https://doi.org/10.1590/2179-8966/2024/88376i> | ISSN: 2179-8966 | e88376i

Abstract

This is an entry published by Bjarne Melkevik about Evgeny Bronislavovich Pachukanis in the *Encyclopedia of the Philosophy of Law and Social Philosophy*, organized by the International Association for Philosophy of Law and Social Philosophy (IVR), containing bio-bibliographical elements of the Russian jurist, an evaluation of his most celebrated work - *The General Theory of Law and Marxism* - and an assessment of its repercussions and subsequent changes.

Keywords: Pachukanis; *The General Theory of Law and Marxism*; Soviet Legal Philosophy.

Resumo

Trata-se de verbete publicado por Bjarne Melkevik sobre Evguiéni Bronislávovitch Pachukanis na *Enciclopédia de Filosofia do Direito e Filosofia Social*, organizada pela Associação Internacional para Filosofia do Direito e Filosofia Social (IVR), contendo elementos bio-bibliográficos do jurista russo, uma avaliação de sua obra mais festejada - *Teoria geral do direito e marxismo* - e um balanço de suas repercussões e alterações posteriores.

Palavras-chave: Pachukanis; *Teoria geral do direito e marxismo*; Filosofia jurídica soviética



Introduction

Evgeny Bronislavovich Pashukanis (1891-1937) — in Russian, Евгений Брониславович Пашуканис — and his theoretical writings have gained an important place in the history of legal philosophy, the critical theory of law, and the Marxist philosophy of law. His emblematic book, *The General Theory of Law and Marxism. Attempt of a Critique of the Basic Legal Concepts* (1st edition 1924, 2nd 1926, 3rd 1927, and German translation/adaptation in 1929), continues to spark admiration and praise as well as debates and controversies to this day.

Pashukanis was born on February 11, 1891, in the town of Staritsa, Tver province, in a bourgeois family. His father, Bronislav Frantsevich, was a practicing medical doctor, born in Lithuania, and his mother, Sofiya Pavlovna, was a Russian from Saint Petersburg. In 1906, the Pashukanis family moved to St. Petersburg where his father became professor of medicine at the State University of Saint Petersburg. His mother became a member of the Russian Social Democratic Labour Party (RSDLP) in 1903. The mother's brother was Martyn Lyadov, a professional revolutionary who also became a member of RSDLP in 1903 and was said to have been a close collaborator to Lenin.

At the age of 17, Pashukanis became a member of RSDLP too and was soon elected as a delegate to the Central Committee of the Social-Democratic Workers' and Students' Youth in Saint Petersburg. After graduating from the Lentovsky Gymnasium, in 1909, Pashukanis entered the Faculty of Law (Jurisprudence) of Saint Petersburg State University. But he soon had to emigrate to Germany, as he came under police supervision as a participant in the anti-tsarist student movement. He continued his studies in 1910 at the Ludwig Maximilian University of Munich where he devoted his time to study law and political economy. More importantly, he studied Marx and Western-Marxism away from what Marxism had become in Russia. The years spend in Germany had a profound influence on the intellectual development of Pashukanis, as he became acquainted with Western legal philosophy. In 1914, he defended his doctoral dissertation, "Statistics of Law Violations Related to Labour Protection."

Pashukanis then returned to Russia and worked until 1918 as a freelance translator of books from German to Russian, at the same time as he was publishing his own articles. He is said to have joined the Russian Communist Party (founded 1912) Bolshevik faction of the



Douma in a protest in 1914 against World War I. From 1914 to 1918, however, Pashukanis was closer to the Mensheviks, and, in 1917, more specifically to the Menshevik-Internationalists. He only joined the Russian Communist Party (Bolshevik)—RKP(B)—in 1918. He then began working as a “popular judge” in Moscow, and he was a member of the Cassation Tribunal at the All-Russian Central Executive Committee. In 1919-1920, he was the head of the department of justice of the Donispolkom.

From 1920 to 1923, Pashukanis worked in the People’s Commissariat for Foreign Affairs as deputy head of the economic and legal department. He was there Chairman of the Commission on the Deprivation of Russian Citizenship of Persons Living Abroad, which oversaw a mass deprivation of citizenship. According to some estimates, about two million people were deprived of their citizenship based on their political activity against the regime. Pashukanis was also sent as an adviser to the Soviet embassy in Berlin and participated in the preparation of the Rapallo Treaty, concluded between the RSFSR and Germany in April 1922. In 1922, along with the well-known lawyer, legal theoretician, and professor, Peter Stuchka (Pyotr Ivanovich Stučka; 1865-1932), Pashukanis organized a section of the general theory of law and the state of the Communist Academy. In collaboration with Stuchka and Vladimir Adoratsky, he edited the first Marxist “Encyclopedia of State and Law” in three volumes in 1925-1927.

Afterward, his career could be said to be more political, though Pashukanis never left the academic world. He was a member of the editorial boards of many legal and political journals, such as “Revolution of Law”, “Soviet Law”, “Bulletin of the Communist Academy”, “World Economy and World Politics”, and he was the editor of the review, “The Soviet State”. He authored more than 100 intellectual works on the general theory of law, state and international law, history of law, and political doctrines.

In 1927, Pashukanis became a full member of the Communist Academy and a member of its presidium – later one its vice-president. In 1936, he was appointed Deputy People’s Commissar of Justice (vice-minister) of the USSR, and he headed the scientific and methodological council under the People’s Commissariat of the USSR. He was also a very influential member of the group of editors writing the Soviet Constitution of December 5, 1936 – also called the “Stalinist Constitution”, which reinforced the repression and the despotism in the USSR.



Pashukanis was arrested on January 20, 1937 by The People's Commissariat for Internal Affairs (NKVD) and held in jail for 7 and a half months. On September 4, 1937, when he was 46 years old, he was sentenced to death by The Military Collegium of the Supreme Court of the USSR (VKVS) on invented charges of "participating in a counter-revolutionary terrorist organization". The verdict was carried out on the same day, and he was reportedly shot in the neck in the cellar of the NKVD headquarters Lubyanka (Moscow). His remains were transported to the New Donskoy cemetery the same day. On March 31, 1956, Pashukanis was officially rehabilitated by the VKVS, the same institution that sentenced him in 1937.

1924 and "*The General Theory of Law and Marxism*"

Pashukanis's main work, *The General Theory of Law and Marxism*, published in 1924, is a masterpiece of legal philosophy. Pashukanis began the drafting of this work in 1920 and 1921 in Berlin. This book can be situated inside Western Marxism, as Party-Marxism and State-Marxism are totally absent.

In this book, Pashukanis announces that he wants to do for "law" what Karl Marx has done for political economy in writing *The Capital*. As Marx criticized the basic concepts of political economy, Pashukanis criticizes basic legal concepts like "legal subjects", "legal norms", or "legal relations". In the same way as Marx with his analysis of political economy pretended to say something about society and social reality, Pashukanis intends to say something about law as social relations and the material reality of law. In Marxian terms, the mentioned legal concepts belong to the material reality of society and are attached to the "production" and "reproduction" of society. Where Marx writes about "commodity fetishism", Pashukanis writes about "legal fetishism". In other words, as political economy fetishizes "the commodity", legal theory (and any ideological or political conception of the law) fetishizes "the law". The signification is that the "law" as an element of the material reality of society presents itself as independent and autonomous in necessary social relations. To believe that law is or relates primarily to ideology (F. Engels) or form an object of political will (Lenin) is thus a form of "fetishism", argues Pashukanis.



There is for Pashukanis no doubt that political economy studies something which really exists, and that the Marxist theory of law should equally study law as something existing. Therefore, his theory defends that all abstractions of the law should be studied to expose the real social forces taken place by them. He understands the study of law as an examination of what is happening in the existing social relations and in the social conditions of ordinary people. Pashukanis also defends that if you really want to change anything in a society, you can only do so by letting the people themselves change their social relations and their social conditions. Nobody else can do it for them.

Pashukanis uses the term “legal form” as an expression of how social actors themselves create their “equality” and how other actors cannot intervene to create “equality” for them. The “legal form” is created as a social relation, analogue to commodity exchange, and located in the relationships between commodity owners. It is a form of equivalence that reflects the historical, economic, and political conditions where exchanges of legal positions take place. “Once the form of equivalent relationship exists, this means that the form of law exists, that the form of the public, i.e. state authority exists, which therefore remains for a period even when classes no longer exists” (1924: p. 47). In this way, Pashukanis identifies the “legal form” as built on equality between free and autonomous actors, and if the principle of equivalence is not respected, there is no law anymore. The withering away of state and law, as defended by Marx, can only take place “in reality” and is not object for political volition. If Pashukanis rebuts the view that law is capable of being manipulated by some dominant social classes, like the Bolsheviks, he also believes that planification and economic policy is more an economic strategy than a legal relation.

The Shift of Pashukanis's Theory and the Development of Stalinism

To “do as Marx did” has nothing to do with what Marxism became after the death of Marx (1883). Party-Marxism and State-Marxism had nothing to do with what Marx defended. Pashukanis introduced himself in 1924 as a Marxian trouble-shooter. We do not have any proof that he had read György Lukács's (1885-1971) “History and Class Consciousness” (1923), nor



Karl Korsch's (1886-1961) "Marxism and Philosophy" (1923). But the philosophy of Pashukanis quickly took a different path. From 1925 to 1929, he repeatedly retracted from his 1924 position, and from 1929 to his death in 1937 he showed his fidelity to an orthodox Stalinist conception of party control of the law.

The second edition of *The General Theory of Law and Marxism* (1926), without the original subtitle, and the article "Lenin and Problems of Law" (1925), are good examples of this change. In the book, Pashukanis added a preface and changed many parts of the text to praise Party-Marxism and its ideological approach to law. In the Lenin article, he argued for an approach to law loyal to the Party.

The ways that Pashukanis characterized the Party-takeover of Russia is a good illustration of his growing adherence to an ideology-conception of law. In 1924, Pashukanis writes that Russia is a non-capitalist society and that the Bolsheviks agents are working to change it into a capitalist one. In 1925, he says that Russia is a society under "cultural re-education". In 1926, Russia is rather a society trying to develop a new type of society. In 1927, he defends that Russia is constructing a "socialist ideology", and, the same year, that Russia is engaged in a "revolutionary ideological period". Gradually, Pashukanis abandoned his materialistic understanding of law for an ideology-conception where the outcome is the rise of a "proletarian law" in the hand of the new oligarchy.

Joseph Stalin took power in the USSR after the death of Lenin in 1924. In 1928 and 1929, all powers were in his hands. The political and legal conditions then changed radically and Pashukanis followed the stream. He was an active promoter for cleaning universities of unwanted professors. For legal philosophy and for legal theory, the consequence of the Stalin period was submission. Pashukanis was one of those theorizing this submission under two central concepts: *zakonnost* (fidelity to State-law) and *partijnost* (fidelity to the Party). Legal theories, including his own, he argued, should be understood and promoted within the scope of these two concepts.

Pashukanis became a champion of planning legislation and State-law – in other words, he defended a *zakonnost* philosophy of law. The requirement of *partijnost* in legal philosophical matters became particularly important to him. The fidelity to the Party (and to Stalin and the Stalinist autocracy) was a political and moral obligation, and no writing on legal philosophical



matter divergent from this could or should be permitted. All of Pashukanis's writings from this time mirror this submission.

After Pashukanis

Nobody cried when Pashukanis disappeared in 1937. Many legal scholars in the USSR even felt a huge relief. His books disappeared from the bookshelf and the libraries in the USSR, and his name was forgotten. It is in the West, beginning in the 1960s, that Pashukanis made his comeback. The third edition of his main book was translated in many languages, and later the original edition was also translated to English.

Pashukanis became a precursor to critical legal theory. Many contributions to critical legal theory from that time made a reference to Pashukanis. Between 1970 and 1990, in the effort to renew the Marxists theory of law, Pashukanis and P. Stuchka became philosophical pioneers of that movement.

Today, Russian legal philosophers are reclaiming the history of legal philosophy of their country and are revaluating Pashukanis as one of their "great legal philosophers".

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Cross references

Friedrich Engels; Vladimir I. Lenin, Karl Marx; Pyotr Ivanovich Stučka.

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Revista Direito e Práxis

vol. 15, no. 4, e88376, 2024

Universidade do Estado do Rio de Janeiro,

ISSN-E: 2179-8966

DOI: <https://doi.org/10.1590/2179-8966/2024/88376>