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A REPLY TO BEIRNE

Mr Beirne and the others (Arthur, Balbus, Blanke, Cain, Kinsey, Shartlet and Warrington) involved in the Pashukanis revival are making a valuable contribution to US socialist legal culture. They look at Soviet jurisprudence to learn and be enriched. This is unlike many earlier US writers who sought mainly to apologize for capitalism. Hazard expressed this approach in 1951:

It is possible to utilize comparative (Soviet) law in the American law schools for the purpose of convincing American law students of the desirability of their system of law...In this way the study of comparative law could become an instrument in the current ideological struggle by which those who protect the system of law, namely the future practitioners, prosecutors and judges, may develop at an early stage in their education an appreciation of the values which their system protects (capitalist theft of surplus value) and a determination to see that these values are maintained. It is a matter of speculation alone, but who can tell whether it might not have been possible for some of the highest standing men in the graduating class of one of America's greatest law schools during the depression of the 1930's to have gained an opinion of what the Soviet system offered without having to go through the apparent ordeal of discovery as the result of membership in the Communist Party.

When justice is finally done, those 1930's Communist Party law students will be honored by their descendents for having identified, successfully struggled and suffered for the highest ideal, communism. The Pashukanis revival is a step in this direction, an attack on the McCarthy quarantine of partisan Marxist scholarship.

Some involved in the Pashukanis revival (Althusser, Edelman, Fraser, Hirst, Mullin, Poulantzas, Sumner) seek to add to and broaden the revival by discovering that which is of value in other Soviet legal theory. Just as Marx only started Marxism, he did not end it, so Pashukanis and his contemporaries did not end Soviet legal theory, but only started it.

Those who restrict study to Pashukanis are mainly sociologists. Western sociology tends to be ahistorical, non-dialectical and static in its world view. This results in pessimism and cynicism about the possibilities and

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worth of working class struggle and worker dominated political parties. By isolating a few elements in Pashukanis, these sociologists turn him into a supporter of their anarchistic politics, which despair of winning significant victories within the legal arena. The British lawyer and Marxist theorist Stephen Sedley ("The Sociology of Law," 21 *Marxism Today* 301 (1977)) explores Beirne's sociology.

Pashukanis was a member of the Communist Party and an ally of Stalin. He was not an anarchist; his scholarship was not dominated by muckraking and apathy. His life as a working class partisan was dedicated to struggle within the political-judicial process. Up until two months before his fall, he was a leading political figure and chief supervisor of the Soviet code revisions. He was purged, Hazard suggests, because it was incorrectly judged that he had taken concrete measures to overthrow the government by non-constitutional means. It was not because of anything to do with his jurisprudence. Those with similar theories were never purged (Korovin) or were soon restored (Amfiteatrov) to their teaching posts.

Soviet legal theory is indebted to and acknowledges the contribution of Pashukanis. The commodity-exchange theory of law is valued by Aleksandrov, Golunskiy, Jawitsch, Mamut and Vyshinsky for its stress on the futility of attempts to consider law without reference to class relationships and the economic conditions of social development. Such theorizing does not exclude studying other aspects of the multi-level, multi-dimensional nature of law. A phenomenon as complicated as law has many definitions, as Lenin put it: "There can be many definitions, for objects have many aspects." Loeber correctly faults those who overly emphasize the existence of some unique "Pashukanis school". Pashukanis did not restrict his theorizing to the single level of commodity-exchange. He also stressed the pedagogical, moral, voluntary, normative and regulative aspects of law.

Vyshinsky

Calling *Law of the Soviet State* "standard" was an attempt to place Tumanov's book in historical perspective. *Law of the Soviet State* can make this claim because, being brought out by a US publisher, it found its way onto the shelves of US law schools and colleges starting in the 1950's. Works brought out by Soviet publishers were less distributed, due to the US iron curtain against Soviet influence. *Law of the Soviet State* has gone through five US printings, most recently by Greenwood Publishers in

1979. Outside the US, it has been translated into a multitude of languages and is familiar to law students in the 14 socialist nations and the third world. It is used by scholars like R W Makepeace who writes (1980):

The chief spokesman in the area of contemporary practice is Vyshinsky, who paralleled the growing emphasis on the importance of the state in the transition to communism by stressing the value of law in this period.

Hazard describes *Law of the Soviet State* in 1968 as being, presently:

A translation of the official Soviet university textbook on the Soviet state. Permits Americans to glimpse Soviet methods of mass indoctrination as well as adds some otherwise unrevealed detail.

In his 1948 "Introduction" to the translation, Hazard writes:

Every Soviet student of government and law reads Vyshinsky's book. Administrators and jurists use it for reference. It is, in a sense, the militant handbook of those engaged in government.

Law of the Soviet State was a composite work by scholars at the Soviet Academy of Science's Institute of Law. Vyshinsky edited it. His critics in the post-Stalin era were the same ones who wrote *Law in the Soviet State*. They attacked him for his role in the administration of justice, for not having observed individual rights, which led to the condemnation of innocent people. They did not attack *Law in the Soviet State*, which they had written and which insisted on legality. Further, what attacks there were on Vyshinsky were short lived. There are only two articles in English that touch the subject.

Hazard's 1948 "Introduction" to *Law in the Soviet State* says that the translation of the 1937 Soviet original even then was dated as to details, but the basic material and theory of law were the same. This is still the case. New works that appear are in agreement with *Law of the Soviet State* on the basics.