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LEGAL SUBJECT, ABSTRACTION, PRODUCTION. ACTUALITY OF PAŠUKANIS[1]

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Abstract

Pašukanis' theory of law is a sample of critique of political economy rigorously applied to the theory of law. Thanks to the concept of determined abstraction, Pašukanis builds a critique of juridical abstraction avoiding the idea of law as a mere ideological over-structure; but, at the same time, this critique maintains the solid connection between form of law and capitalist relations of production. On one hand, the design of juridical subject allows a conception of juridical relations as a relationship between (formally) autonomous and equal subjects; on the other hand, it bounds the production of juridical subject and relation to the commodity exchange and to the law of value. Nowadays, Pašukanis helps us to reconsider a critique of the juridical subject linked to the critique of political economy inside new modes of production, rethinking the relationship between the critique of juridical abstraction and the social production, seen as production of subjectivity.

Keywords

Pašukanis, abstraction, legal subject, commodity-form theory, production of subjectivity.

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Resumen

La teoría del derecho de Pašukanis es un ejemplo de la aplicación rigurosa de la crítica de la economía política a la crítica del derecho. El concepto de abstracción determinada permite a Pašukanis construir una crítica de la abstracción jurídica que evita considerar el derecho como una mera superestructura ideológica, pero, al mismo tiempo, vincula estrechamente la forma jurídica a las relaciones de producción capitalistas. Por un lado, la formación del sujeto jurídico formal permite construir la relación jurídica como una relación entre sujetos (formalmente) libres e iguales; por otro vincula estrechamente la producción del sujeto y la relación jurídica con el intercambio de bienes y el funcionamiento de la ley del valor. Hoy en día, Pašukanis nos permite reanudar una crítica del sujeto jurídico vinculada a la crítica de la economía política en los nuevos modos de producción y repensar la relación entre la crítica de la abstracción jurídica y la producción social como producción de subjetividad.

Palabras clave

Pašukanis, abstracción, sujeto legal, teoría de la forma mercantil, producción de subjetividad.

Actuality of Pašukanis' Legal Theory

Pašukanis' critique of the law occupies a unique position in the debate on Marxism and law: on the one hand he tries to be rigorously faithful to Marx's methodology, especially to the one of *The Capital* and of the critique of political economy. On the other hand, from this methodological fidelity, referred to Marx rather than to Marxisms, he derives a reading of law that strictly avoids the reduction of society to a mere superstructure. Pašukanis criticizes the vision of law as simple ideology. The law is inseparable from the social relations constituted within the relations of production; it is part of the structure of bourgeois society. Although law is an expression of economic relations, it is not a superstructure that can be entirely solved in the productive structure: there is no concession in Pašukanis to a devaluation of the legal form, no reductionist reading of law (Scalone, 2018, pp. 49-50). The legal form is indeed the truth of modern bourgeois law: it is an historically determined form, and strictly homologous to the relations of production. But the form is determining for the law: the juridical form is the key to understanding the structural conjunction between law and capitalism, much more than the particular contents it incorporates from time to time.

In this way, Pašukanis can develop a critique of legal concepts that recognizes all their constructive force, their specific and determined reality. And at the same time seemingly, he can reconnect this critique to a critique of political economy, bringing them back to the productive logic of capital, without turning them into ghosts or ideological cover-ups. In a rethinking of the history of the juridical subject, its position ends up being very useful, because it takes the formative capacity of this concept seriously, and at the same time it allows the Marxian exercise of descent into the laboratories of production: in this case, despite the fact that this terminology does not belong to the lexicon of Pašukanis, (nevertheless being very close to the kind of problems that its reading raises), we could say that it allows us to descend into the laboratories of the production of subjectivity.

A first reason of interest is certainly the fact that Pašukanis contrasts Marxism which is seen as a denunciation of the deceptions of ideology, with a Marxism of abstraction. Capital is a machine, capable of abstraction; it creates a configuration of social relations that replace real relations, i.e. takes their place; but at the same time, those relations are not simply ideological doubles. Social relations are not false or mere mystifications: they are creations of the Capital, understandable only within the overall reality of the Capitalist social relations.

The great methodological usefulness of Pašukanis' thought lies in the ability of using this method to build a constitutive relationship between the abstraction of the Capital and legal abstraction. The echo between the abstraction of capital and that of law is a valuable tool in dealing with the study of the legal subject. Indeed, abstraction is, a key element in the construction of the legal subject as stated in the experience of legal modernity. The juridical subject is constituted by abstraction: it is a juridical construction whose strength is precisely that of being constituted by that abstraction which is filtered from all the particularities, from the concreteness of individual lives and individual positions. The juridical subject imposes itself precisely because of this capacity to constitute itself as a mask. The Chapter XVI of Hobbes' *Leviathan* recalls this capacity in a paradigmatic way throughout modern experience: the natural person is itself a mask, an *artificial construction*[2]. For Pašukanis, a juridical concept such as that of *subject* is certainly an abstract form, like all juridical concepts. Indeed, the relationship between abstract legal subjects is the very definition of law: the very definition of the legal system is the relationship between subjects. And yet, it is common knowledge that abstraction cannot be traced back to the juridical science. It is true that the juridical phenomenon is essentially form, and form, for its part, is the relationship between subjects: a definition that brings Pašukanis closer to the many approaches that see law as a relational or institutional phenomenon, and that tend to detach law from the form of the law and state production. However, according to Pašukanis, this investigation of form must be conducted with the Marxian method: the formal abstraction of law can only be explained as long as it is related to the corresponding capacity of capitalism to produce exchange value separate and abstract from the value of use. If the juridical form is abstraction, the meaning of that form must be sought, for Pašukanis, in the process of producing goods: just as the labor employed to produce a commodity appears in the commodity form as an abstract exchange value in relation to the labor employed to produce it. So, the juridical form presents itself as a form of regulation in relation to its content and the acts of will necessary to produce it. Pašukanis (2002) considers this homology between legal form and commodity, to have its precise root in the capitalist system of production. Legal form and commodity form are homologous precisely because the legal form, the relationship between legal entities, is conceivable only within the capitalist system.

2. On the relationship between the theme of the mask in Hobbes and Marxian abstraction, in particular with reference to the *öconomischen Charaktermasken* of the First Book of *Capital*, with reference to the theme of the person in Pašukanis, see comments in Mezzadra (2014).

> Law in its general definitions, law as form, does not exist in the heads and the theories of learned jurists. It has a parallel, real history which unfolds not as a set of ideas, but as a specific set of relations which men enter into not by conscious choice, but because the relations of production compel them to do so. (p. 68)

Following the method of the critique of political economy, abstraction is exclusively given within the specific mode of capitalist production and would not be conceivable without that mode of production. The *abstract labour* is precisely the product of abstraction as related to all the particular forms of labour, and yet only the capitalist production via its industrial phase, allows to conceive the concept of abstract labour. The abstraction of the concept comes as a result of that process that enables abstraction, while simultaneously indicating the trend of that development: from concrete labour, precisely, towards abstract labour.

On the basis of these methodological premises, the classic abstraction of the modern juridical subject, is claimed by Pushakanis to be able to be both fully accepted, without relegating it to ideological falsification, and closely related to capitalist production. The subject is the production of capital: nevertheless, capitalist production is fully expressed in legal conceptuality, starting from the subject of law. The particular labour produces the abstract exchange value of the commodity: but in the realm of exchange value, labour becomes abstract and generally considered. Within this transformation, the concreteness of the subjects is transformed into the abstraction of the legal subject, into its impersonality: Pašukanis significantly insists on the fact that this happens according to the logic dictated by the law of value. Indeed, juridical form and commodity form are reflected, it is precisely because they are both part of the process of valorization: "Man becomes a legal subject by virtue of the same necessity which transforms the product of nature into a commodity complete with the enigmatic property of value" (Pašukanis, 2002, p.68).

The juridical form is the guarantee of the valorization process: only the presence of free individuals legally capable of contracting can ensure capitalist valorization; in the same way, only within capitalist production that certain process of abstraction is produced, from which the juridical subject rises, because only within the production of goods and within the world of exchange value is the abstract juridical subject imaginable. The fetishism of the law, Pašukanis may say that of the commodity.

The private subject

The legal entity which Pašukanis speaks about is, more precisely, the legal entity of private law, the one that characterizes the specific contractual exchange relationship. For Pašukanis, if the law is conceivable only within the creation of capitalist value, it can only be a relationship of exchange between the "carriers" of goods, as Marx shows in the first book of *Capital*. Only the free man can exchange his labor force: and only property provides the basis of the free trade relationship which is responsible for the creation of goods. The production of the subject is therefore, stated by for Pašukanis, to be entirely immersed in the relationship of exchange: private law is indeed the only true law, as it is inevitable, giving the fact that law is essentially the form of the relationship of exchange.

However, isn't this insistence on the legal subject as a private subject an ideological act, undertaking precisely in the form of concealment and disguise? Doesn't it presuppose, as Hans Kelsen pointed out, a coincidence between the consideration of the juridical form as a whole and a specific ideological content, (the capitalist-bourgeois one)? The hither point of discourse is that Pašukanis considers the distinction between legal form and its ideological content senseless. It is not this or that ideologically determined content of the norms that is an expression of the capitalist mode of production: what is intrinsically linked to capital is precisely the legal form as such. The juridical form of capital is the one that guarantees and expresses the process of valorization: the juridical form within which the creation of goods and capitalist valorization is given is precisely that of the contractual exchange between abstract juridical subjects.

The objections of the kind raised by Kelsen have always seen within Pašukanis' insistence on the private form of the contract and on the relationship between subjects as the "essential" nucleus of law, an underestimation of the forming moment of the public subject, and ultimately of the State, in the construction of the modern legal project. The suspicion, for these interpreters, is that it ends up preventing a real critique of power, underestimating the moment of politics, decision making and its public monopoly, in constructing the conditions of exploitation. After all, Pašukanis seems to contribute to the concealment of the exploitation itself, making the moment of imposition, force and violence secondary in favor of an entirely relational and horizontal representation of bourgeois law. In short, he seems to take too seriously the 'liberal' self-representation of bourgeois jurists. In some way, as Kelsen argues, it is precisely Pašukanis who appears to accept in a completely ideological way the historical presuppositions of a particular

modality of the juridical relationship, the bourgeois-proprietarian one, elevating it to the essence of law (Kelsen, 1948)[3].

Clearly, what is at stake here is profoundly important in the contemporary debate. Can a definition of law centered on private law, which recognizes the nature of the autonomy of private individuals as 'primary' and not derived from the public, on subjects and their capacity to produce norms (the autonomy of negotiation and contract), constitute a critique of liberal law, which reveals its measure of exploitation? Or perhaps a critique of the law can primarily be but a critique of public law, of the state apparatus? but should it then be primarily focused on the productive and fundamental nature of the "sovereign" command and the primary role of the state?

Let us move the discourse point on the method in order to understand Pašukanis' position. Legal concepts are defined abstractions: constructions that have their own "reality", which on its part cannot be separated from the relations of production within which the operation of abstraction becomes possible. Ideology, mystification, consists not in a presumed ideological essence of the concepts themselves, (which perform a very precise and concrete function both in the method and in the construction of the reality of social relations) but in the concealment of the relationship between the abstractive construction and the social and productive dynamics (Loiseau, 2018, pp. 217-230).

In this framework, the construction of the legal entity of private law is central, as it allows to deliver the framework of legal relations that innervates / stimulates the entire merchant society. It is necessary to begin with the private law, not because one wants to adhere to a 'relational' and pacifying image of law, but precisely because it is in the construction of that subject and the relationship of exchange that the 'secret' of the construction of the relationship of capital is built. Bourgeois law, in this sense, does not mystify, on the contrary it reveals this relationship. The subject is constructed as free, and the relationship as contractual, precisely to enable the construction of mercantile exchange and therefore of the inherent exploitation. In this sense, a critique must necessarily be founded on the constitution of the private subject and its autonomy, grasping the decisive centrality of this process, and robbing private autonomy as a mere ideological coverage of the relationship of domination: it is precisely according to the mode through which that "free" subject is formed, or rather in the construction of its

3. Parallel to the reduction to theory of the legal relationship that Kelsen makes, is on the side of economic relations, the one moved by Korsch (Korsch, 2002): for Korsch, in Pašukanis the focus is on distribution and not on production. Even this critique confuses the reconstruction that Pašukanis offers of abstraction —which actually builds bourgeois society as a society of exchange between equals— with the capitalist valorization that marks its functioning: it is the reference to value that produces the descent into the laboratories of production.

abstraction, that the "concrete" exploitation is revealed. The juridical ideology mystifies all this, not because it pretends to be a contract between autonomous subjects, where instead there would be pure overpowering and domination: the "juridical project" of the merchant society builds its abstract subject, and at the same time, its free will, immediately translating it into freedom to contract. The mystification consists, instead, in hiding the link between the construction of the subject and the relations of production through which the abstract subject constitutes the form. Pašukanis continually insists on this: the construction of the juridical subject cannot be separated from the relationship of capital. It is the law of value that is at the heart of the legal construction, as there the formalism of the private legal construction breaks down. Pašukanis' constantly refers to the first book of the *Capital*: the separation of the value of use and the value of exchange is the constitutive component of legal abstraction, and the construction of the juridical subject. The law of value marks the whole field of legal construction, which can only conceal exploitation because it hides its being an integral part of the process of valorization. The law of value is at the heart of the legal norm itself: the generality and (legal) abstractness of the law is not comprehensible outside the (capitalist) abstraction that constructs the goods, the subjects (owners) and the relationships (of exchange):

> Only when bourgeois relations are fully developed does law become abstract in character. Every person becomes man in the abstract, all labor becomes socially useful labor in the abstract, every subject becomes an abstract legal subject. At the same time, the norm takes on the logically perfected form of abstract universal law. The legal subject is thus an abstract owner of commodities raised to the heavens. (Pašukanis 2002, 120-121)

The priority of the private law over the public law does not therefore conceal exploitation: instead, it draws attention to its logic. Within the contemporary debate, this insistence on private law and its forms, starting from the legal subject/legal shop nexus, is evidently a valuable starting point; this is precisely because by insisting on the formal construction, the private law and its forms allow the reopening of the link between the legal form and the relations of production. Pašukanis' commodity form theory of law[4] enables to start a critique of the legal subject, bringing its abstraction to the dimension of production, precisely to the production of goods. The construction of the abstract

4. This denomination, like the similar expression *commodity exchange theory of law*, through which Pašukanis' theory of law is commonly referred to in the Anglo-Saxon debate, is not reflected in Pašukanis' work (Koen, 2011, p. 115, 27).

legal subject is understandable only within the transformation of the value of use, the value of exchange: in the laboratory of the subject, this process corresponds, and Pašukanis insists very clearly with it, to the transformation of the labor force within the legal code of ownership. The owner subject inserts the labor force into the game of bargaining between free and equal: and it is precisely the construction of a plan of subjects endowed with formal equality and freedom to contract that constitutes, for Pašukanis, the heart of exploitation.

Critique of the law, in this way, evidently conquers a central ground: as it invests the heart of the construction of legal subjectivity, in its close relationship with property. The construction of the abstract subject is the construction of the owner subject: the *proprium* is, in modern law, even before the centrality of the relationship between subject and thing, the constitution of the subject itself, the form of its subjectivity, the legal transformation of the labor force into an object of exchange, and, in other words, into a labor that is exchangeable and separate from the living body of the subject. Once again, the fetishism of goods finds its completion in the fetishism of legal concepts, beginning with the legal subject, which is representative and bearer of the goods. Once this starting point is fully explained, the critique of the law can act as a continuous opening of the legal form to relations of production. In this context, Pašukanis points out that the critique should focus on the processes through which this relationship between the production of the subject and the production of goods is mystified. The ideology of the subject, derived from natural law can evidently be a starting point: on the one hand, natural law says the truth about the functioning of the mercantile society, presenting its structure as a contract between free and equal subjects. On the other hand, it produces legal ideology and mystification, as it separates the determined abstraction of the juridical subject from its material conditions of production; in so doing it presents the abstract juridical subject as the moral foundation of human rights, cutting away its relationship with the functioning of the law of value. This, in Pašukanis' language, is his impersonal mysticism of valorization.

There is no proletarian law: the critique of the public subject and the state

The primary focus on the legal construction of the subject of private law clearly relativizes the role of the state as the center of bourgeois legal production. If, however, one wishes to trace a genealogy of the legal form that reopens the relationship between legal

abstraction and production, norm and value, the form of the legal subject and the form of the commodity, then the relativization of the role of the state and state sovereignty in the construction of the legal project is inevitable. The legal structure is founded upon the construction of the subject and the constitutive link between subject and property, between legal and formal conception of legal equality and the market. Pašukanis (2002) justly deduces a non-constitutive role of the state subject: the state guarantees the legal-formal structure of the merchant society, but does not constitute it.

> It is readily evident that the logic of juridical concepts corresponds to the logic of the social relations of a commodity-producing society. It is precisely in these relations – and not in the permission of authority – that the roots of the system of private law should be sought. Yet the logic of the relations of dominance and subservience can only be partially accommodated within the system of juridical concepts. That is way the juridical conception of the state can never become a theory, but remains always an ideological distortion of the facts. (p. 96)

Above all, the state always remains in a dissymmetrical position in relation to this structure. Contrary to the assertions made by many commentators, Pašukanis' approach cannot be confused with a simple theoretical putting in brackets of the role of the Public and of statehood. In fact, Pašukanis insists on presence of the state. The state responds to imbalances, dysfunctions and conflicts within the structure of mercantile society and bourgeois law. Pašukanis does not ignore the role of progressive socialization of property which sees the state as the protagonist. On the contrary, he insists that the project of legal abstraction takes place within the state, which is called upon to ensure the functioning of the law of value. The hither inconsistency is, however, that the role of the state remains that of ensuring public coercion. Although it is involved in the processes of socialization (of labor and capital), the state remains irreducibly in control. And here Pašukanis reveals the radicality of the choice of starting the process with the structure of private law: the coercive intervention of the state, although perfectly understandable within the processes of valorization, remains external to the contractual structure and relationship of legal abstraction. Its intervention is required and imposed by conflicts and struggles: but, in intervening, the state far from signaling the progressive integration and socialization of the bourgeois juridical project, it in fact indicates precisely the irreducibility of violence to every progressive absorption in the processes of socialization. Thus, the history of the rule of law traced by Pašukanis becomes not one

of a progressive transformation from the liberal rule of law to the welfare state, rather the history of a dynamic of conflict. The more the class struggle forces the state to intervene to transform the proprietary legal structure, the more its externality reveals itself as an "imperative" element that cannot be harmonized in that structure. Showing how that structure is crossed by conflicts that cannot be resolved through some progressive rationalization by public power:

> The state as a power factor in internal and foreign policy - that is the correction which the bourgeoisie was forced to make to the theory and practice of its 'constitutional state'. The more the hegemony of the bourgeoisie was shattered, the more compromising these corrections became, the more quickly the 'constitutional state' was transformed into a disembodied shadow, until finally the extraordinary sharpening of the class struggle forced the bourgeoisie to discard the mask of the constitutional state altogether, revealing the nature of state power as the organized power of one class over the other. (Pašukanis, 2002, p. 150)

Against the imperative theories but also against Kelsenian normativism -or at least against a somewhat simplified image that Pašukanis offers of that normativism- Pašukanis puts the state and legal structure, command and abstraction into tension: this tension, however, is politically productive, because it continually reopens the conflict within the legal structure, and between legal structure and class struggle, instead of bringing the history of law back to a linear and progressive integration of social drives. The state is not dissolvable in law, it intervenes in it because the process of valorization continually requires the intervention of public coercion and command: but it is an intervention required not by virtue of a superior public synthesis of the conflict generated within the relations of production. The impossibility of a peaceful translation of the labor force into contracted goods does not find a solution in the progressive socialization of property within the state: the conflict calls the state, but the state's response to class pressure contains an element of imperative violence which, far from integrating itself into the fabric of the norms, continually questions its formal coherence.

If the investigation of the subject of law sheds light on the close connection between subjectivity, property and value, the critique of imperativism and the underlining of the measure of externality (and violence) that the state preserves with respect to the juridical construction of the relations of exchange, it shows how the progressive socialization of property, and the publicizing of the relations of exchange, incorporates the thrust

of the class struggle, which continuously forces the state to transform the proprietary structure of the rule of law: this transformation intervenes within the process of valorization, but does not overcome nor tame it. On the contrary, it reveals its conflictual dynamic and brings back to the surface the elements of clash and domination: those elements that permanently recall the original accumulation that prepared the construction of legal subjectivity and the society of exchange. The externality of the state repeats in some form the original cut, the one which, by separating labor force and means of production, prepared the construction of labor force as a commodity and its 'representative' as an abstract subject, which ultimately is recalled by Pašukanis to be 'commodity form'. The state then cannot be a place of synthesis, nor a place for regulating the process of valorization. Consequently, the appearing of the private subject, the "social" functionalization of property, the socializing transformation of the rule of law, cannot constitute a horizon of overcoming exploitation.

The extinction of the law. Critique of the subject and new institutions

There is, therefore, no legal socialism. For Pašukanis, this is the decisive line against Stalinism. Pašukanis obviously does not deny the need for a legal structure in organizing the transition, as stated by the true interpreters, who attributes to him a simplistic, "proudhonian" if not anarchist, underestimation of the state. The transition is indeed its fundamental problem: the point is that the mediation of public intervention cannot be confused with a socialist transformation of the legal structure. For Pašukanis there is no law out the bourgeois law. That is why even the intervention of the institutions of the Revolution cannot be, as long as they use the juridical form, anything other than the production of bourgeois law, even though in tension and contradiction.

Pašukanis' theory of law aims to bring out precisely this tension. If the socialization of property in public law is impossible, and if it is just a mistake derived from the imperativist and normativist belief that the law is an empty box for any content, therefore even socialist content, it is necessary to maintain the tension between the legal forms - the use of which, even in transition, in any case cannot be avoided - and the organization of the labour force, which remains disconnected from the legal form. If on abstraction Pašukanis proclaims his loyalty to the Contribution to the Critique of Political Economy and to the first book of *The Capital*, here 'his' textbook is the

Critique of the Gotha Programme. His critical objective is exactly the same of the Marxian intervention: the ideological illusion that the State could be an instrument for a regulation different from the bourgeois laws. Pašukanis does not deny the need for a public regulation or coercion, even during the revolutionary transition: but, like Marx in the *Critique of the Gotha Programme*, he insists that the elements of equality implied by this regulation, even if applied in order to transform the bourgeois laws, cannot subvert the form of the bourgeois laws. And, as we know, for Pašukanis this form is the key. Every law is a bourgeois law. There is no such thing as a proletarian law.

That means the legal instruments will be applied during the transition, but the revolutionary transformation will not take place thanks to the law. The key for the transformation will be only the organization of productive forces. At the same time, the organization of productive forces will replace the juridical form of regulation with other ones:

> The transition period – as Marx showed in his Critique of the Gotha Programme – is characterized by the fact that social relations will, for a time, necessarily continue to be constrained by the 'narrow horizon of bourgeois right'. (…) Nevertheless, Marx says, even when the market and market exchange have been completely abolished, the new communist society will of necessity be 'in every respect, economically, morally and intellectually still stamped with the birth marks of the old society from whose womb it emerges. (Pašukanis, 2002, p. 62)

The transformations of production relationships are always crucial: "The withering away of law, and with it, of the state, ensues, in Marx's view, only after 'labour has become not only a means of life but life's prime want', when the productive forces grow together with the all-round development of the individual" (Pašukanis 2002, p. 63). The task of the critique of law then lies in breaking the abstractness of legal forms, refusing to eternalize it, even if the intention is to fulfil it with a socialist content. The aim is to gradually elaborate modes of administration adapted to this flowering. A multiform human bloom: against the formal 'equality' that characterizes the construction of the abstract subject.

For various interpreters, the idea of the progressive extinction of law, and its replacement with forms of administration and regulation not based on abstract subjects, property and contractual exchange, is a kind of 'sansimonism', a confidence in the ability of the administration of things to definitively replace juridical mediation: a project of the

deterioration of law in technique, a bad positivistic utopia that would block the critical force of Pašukanis' thought (Cossutta, 1992).

It is hard to deny that the issue of the development of productive forces and planning, at the time, could easily falling back into a unilateral confidence in technical development and the growth of an administrative regulatory apparatus: especially if we remember the front against the Stalinist statization, on which Pašukanis was deeply, and in the end tragically, committed.

However, if we resume the sense of the relationship between legal form, subject and capitalist valorisation, we can see another sense in his insistence on the extinction of the law, beyond an allegedly too 'simple' and naive opposition between state command and technical administration. If the juridical form and its subject are not neutral, but historically and theoretically linked to capitalist valorisation, juridical abstraction cannot be considered just an instrument that can be oriented indefinitely to any purpose. The point concerns the concepts of law, legal entity and autonomy. Pašukanis' theses remain an important warning about the limits of the use of legal instruments in an anti-ownership function. Legal abstraction produces its subject: using the law, both public and private, against the centrality of ownership and exploitation, we must be aware of the non-neutrality of the legal form itself; in particular, we must be aware of the non-neutrality of its "neutral" and abstract subject. In the contemporary debate on the possibility of new forms of regulation, Pašukanis warns us on the futility to fight the property with strategies based on some resurrection of the pure and simple centrality of the State or public law resurrection – implausible at least. The key to exploitation is already in the construction of subject ownership, and without its radical transformation, the call for State regulation will end up exclusively in replicating the path of a nationalization of property, leaving its centrality unchanged, and with it the mechanisms of value extraction. However, the most interesting point today is probably the second one: even outside the neo-statualist proposals, the use of private legal instruments, for example the use of private autonomy and the contract for the creation of forms of post-national regulation, must in any case come to terms with the form of the legal subject. Pašukanis' thesis contains a strong theoretical warning also for the contemporary debate: the organization of non-proprietary forms must be able to criticize the juridical subject, and to break the juridical abstraction by going down into the laboratories of production, connecting the theme of regulation forms directly to the forms of productive forces organization. It is clear that productive forces today accumulated a very different force of socialization from the one Pašukanis was

used to: above all, today production goes directly through the field of subjectivity. Legal experiment, first of all the experiments of creation and inventions of non-state institutions, cannot think the use of law without a confrontation with the field of production, in particular the field of production of subjectivity. The abstraction of the legal subject is, as Pašukanis pointed out, the secret of capitalist exchange. Faced with the extractive forms of financial capitalism, the production of experimentation in the field of law has before it the task of 'inventing' new forms of regulation and also new forms of abstraction, which invent forms worthy of the production of contemporary subjectivity[5]. Today, the production of subjectivity, the "production of man for man", entirely charge the field of the subject, subverting the logic of legal abstraction, and bringing again the materiality of bodies, differences and affections to the core. The contemporary centrality of intersectional conflicts, simultaneously on the line of gender, race and class, tell us the end of the centrality of the abstract legal subject, and, at the same time, brings out the complexity, but also the strength, of the new subjective composition of 'productive forces'. Any discussion on the production of institutions, on new forms of regulation, on possible uses of law in an anti-proprietary sense, must go through the critique of the formal legal subject and, at the same time, recognize the link between that model of subject, 'its' autonomy, 'its' freedom and capitalist extraction. Only through this critical work, which breaks the juridical subject and its centrality, and places itself at the height of the new productive forces, namely the production of contemporary subjectivity, can the juridical instruments of autonomy, contract and institution also find an innovative use. Pašukanis' warning that every law is always bourgeois law, and that the development horizon of productive forces is only the extinction of that law, not the reproduction of that form of abstraction and its subject, is still very useful as a guideline in the debate on the creation of new forms of regulation and institutions that are not 'nationalistic, not sovereign and not proprietary.

Translated by Carmelo Nigro

5. In this direction, Negri (2017) insists on the link between extractivism and abstraction, and on that between property, subject and legal form, as moments of topicality and political usefulness of Pašukanis. He recently returned on this point, with a new postscript on his important essay written in 1973.

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