



[Unpublished articles]

The law of private property under the rule of capital: dialectic of appropriation by one's own labor and expropriation

A lei da propriedade privada sob o capital: dialética da apropriação pelo trabalho próprio e da expropriação

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Article received on 07/28/2023 and accepted on 10/08/2023.



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Resumo

O artigo procura compreender o funcionamento da lei de propriedade privada sob a lógica do capital. Sustenta a hipótese de que, embora apareça como norma de apropriação fundada no trabalho próprio e na troca de equivalentes, a produção do mais-valor inverte o sentido da lei, estabelecendo formas de apropriação de trabalho excedente fundadas na exploração. Ao revelar apenas o momento da igualdade, a norma aparece de modo invertido, dando ensejo à falsa percepção de sua realidade, o que resulta em modos ideológicos de compreensão. A conclusão sugere que a lei de propriedade capitalista é, na realidade, uma lei de expropriação. O método utilizado é o dialético-marxiano.

Palavras-chave: Crítica marxista do direito; Propriedade privada e equivalência; Produção de mais-valor e interversão das leis de apropriação; Direito e exploração econômica; Karl Marx e Evgeny Pachukanis.

Abstract

This article aims to investigate how private property law operates under the logic of capital. It supports the hypothesis that, although such law may appear as a norm of appropriation based on one's own labor and the exchange of equivalents, the production of surplus-value reverses its meaning, establishing forms of appropriation of surplus-labor based on exploitation. By revealing only the moment of equality, the norm appears inverted, giving rise to a false perception of its reality, which results in ideological modes of understanding. The conclusion suggests that the capitalist property law is, in reality, a law of expropriation. The method used in this article is the dialectical-Marxian one.

Keywords: Marxist critique of law; Private property and equivalence; Production of surplus-value and interversion of the laws of appropriation; Law and economic exploitation; Karl Marx and Evgeny Pashukanis.



Introduction

Traditional political philosophy has justified private property ties in various ways. The common thread, in general, lies in tracing the private property owner's own labor, the appropriation and legitimate possession of natural objects or the transfer of property on the basis of an equitable and contractual relationship as the foundation of such a bond.

In this sense, John Locke, in his work *Two Treatises of Government*, observes: "Thus labour, in the beginning, gave a right of property, wherever any one was pleased to employ it, upon what was common (...)" (Locke, 1988, p. 289). Kant, for his part, in *Metaphysics of Morals*, explains: "It is possible to have any external object of my will as mine. In other words, a maxim to this effect — were it to become law — that any object on which the will can be exerted must remain objectively in itself without an owner" (Kant, 1887, p. 61). Hegel, finally, in his *Elements of the Philosophy of Right*, states: "In a contract I hold property on the basis of a common will: for it is in the interest of reason that the subjective will becomes universal and rises to this realization" (Hegel, 2022, p. 285, author's translation).

This theoretical perspective for justifying private property played an important role in the transition from feudalism to modernity. Undoubtedly, it was necessary to question the traditional bonds based on vassalage, which only acknowledged wars (preferably religious ones), productive self-sufficiency and hereditary transmission as legitimate means of appropriation. After all, only those chosen by God could be owners (Anderson, 2007, pp. 143-149).

However, as the market economy recovered and became solid, first in the scope of commerce and then in that of the industry, there was a demand for reformulating the notion of property so that it would correspond to the new economic relations, based on the exchange of goods. The revival of Roman law in the transition from the High to the Late Middle Ages is a clear reflection of this situation (Marx; Engels, 2007, p. 76). The paradigms of autonomy of the will, contractual freedom and formal equality, which characterize modern mercantile exchange, were transposed into the orbit of theoretical-legal justification, so that the acquisition and transfer of any goods could be adapted to this logic, including, and especially, land ownership.

Thus, the bourgeois revolutions that politically consolidated the dominance of the new social class set out to legally proclaim private property as a natural, fundamental and



inalienable right. The famous Article 17 of the 1789 *Declaration of the Rights of Man and of the Citizen*, for example, states: "Since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified." (France, 1789). Article 544 of the *French Civil Code*, in force to this day, states: "Property is the right to enjoy and to dispose of things in the most absolute manner provided that one does not make a use of them that is prohibited by laws or regulations". (France, 1804).

The legal positivization of private property and its theoretical justifications have as part of their objectives to ensure the intimate relationship between the good and the person, that is, to guarantee that things are not taken away from their owners, except in very exceptional circumstances and for the so-called "common good". This consolidates a sense of property in which the good is nothing more than an extension of the person who owns it, something like an appendix. Taking away someone's property without their consent can almost be compared to mutilation. In this sense, Hegel observes: "The rational aspect of property is to be found not in the satisfaction of needs but in the superseding of mere subjectivity of personality. Not until he has property does the person exist as reason." (Hegel, 2003, p. 73).

This paradigm, however, involves some contradictions. Did the French revolutionaries not sacrifice the sacredness of feudal property in the name of the sacredness of bourgeois property? Did they not replace one sacred instance for another? Why should hereditary and immovable property be eliminated, while property by appropriation and free exchange be encouraged?

Moreover, how can a conception of property that is based on one's own labor be sustained if those who have nothing must necessarily alienate their labor-power in order to survive? It is true that traditional theory has forged the notion of a wage contract, meaning "Consent to the use of my powers by another for a certain price." (Kant, 1887, p. 123). This notion, however, equates human labor-power with a movable or immovable asset, with the difference that the former can only be alienated for a fixed period of time. People and assets, however, are legally different, as the traditional theory itself emphasizes (Kant, 2019b, p. 72).



The most obvious contradiction, however, seems to lie in the theoretical effort to reconcile a notion of property based on equitable relations with a mode of economic organization guided by the logic of accumulation.

In fact, if the contractual relationship is the quintessential way of operating the transfer of private property in a fair and legitimate manner, and if this relationship presupposes the contracting parties are in fair positions, i.e. they are free, equal and autonomous people, how is it possible to justify, from a legal point of view, the emergence of economic surplus? If the contract in question is of synallagmatic nature, that is, if it is mutual and reciprocal, how can profit, land rent or interest, that each implicitly carry the notion of surplus-value, arise as its legitimate fruits? If the modern and postmodern worlds are defined by the market economy, by liberalism and neoliberalism, and by the utmost levels of autonomy of individual will, fragmentation and liquid relationships (Lyotard, 2009; Bauman, 2000), how can we acknowledge an era in which an ever-increasing portion of wealth lays in the hands of such a small number of people? (Piketty, 2013).

The problem is more complex than one might imagine. If these ways of appropriating and transferring property based on the equivalence of positions are explainable and justifiable, it is only because they exist in reality, that is to say, because capitalist society is organized in such a way that economic ties actually symbolize legal meanings of equality. On the other hand, if the economic surplus in the form of profit, land rent and interest also exists, that is, if private property channels surplus-labor and places it in the hands of a group of people, this only happens because the capitalist economy makes it possible to capture labor. In other words, the contradiction is not theoretical: it reproduces the reality that shapes the mode of production dominated by capital (Adorno, 2009, pp. 132-133). It is not a question of denying the existence of either one of the ends of this dichotomy, but of explaining each of them, that is, clarifying how the contradiction operates.

To this end, it seems that the most sophisticated analysis is that developed by Marxism (Gonçalves, 2014). Firstly, because it does not produce theoretical simplifications such as claiming that property is nothing more than a kind of theft. "I contend that neither labor, nor occupation, nor law, can create property; that it is an effect without a cause: am I censurable?" (Proudhon, 2011, p. 87). Well, the concept of theft presupposes that of property; without property, the mere idea of theft is impossible.



If property is theft, this means that it violates another type of property which, in turn, by this logic, also constitutes theft, which then disrespects another form of property, etc. It falls into an infinite regress.

Secondly, because Marxism rejects certain naïve ideas, such as affirming the possibility of a certain social function inherent to property (Renner, 1949). Under capitalism, the function of property is to allow for the socially created economic surplus to be privately produced and extracted. The fact that the class struggle, in each historical moment, interferes in its normative physiognomy in one or another way, minimizing or attenuating its perverse despoiling effects, does not at all alter its essentially capitalist nature (Bercovici, 2005, p. 147).

Thus, this article aims to understand how the law of private property operates under the capitalist mode of production. In other words, it seeks to uncover how property relations move from appropriation and transfer based on one's own labor and standards of equivalence to means of acquiring value and capturing others' labor through labor-power exploitation. This continuous transit is mediated by law and ensured by the political institutions it shapes. The circulation of identical values gives rise to an external, superficial facet of the law as an enabler of equitable contractual relations. These relations are, however, hindered in the subsequent moment of production that, being imperceptible to the naked eye, enables the production and extraction of surplus-value. The fact that the first moment is the one prominently seen creates the appearance that legal norms based on the isonomy of positions are the very foundation of economic relations.

However, performing a critical analysis of the capitalist mode of production will reveal an economic essence that is opposed to the legal appearance. This means that the relations of production, organized as a system of class domination, give rise to longer working hours, so that surplus working time is transformed into surplus-value. The capture of this surplus-value, made possible by the private ownership of the means of production, does not eliminate the relations of equivalence that take place at the moment of circulation. On the contrary, it fixes them as an apparently founding moment of the social order. The issue lies precisely in the way this occurs, that is, the so-called interversion of the laws of property. The phenomenon of interversion is responsible for the superficial projection granted to relations based on the equivalence of values, which are the foundation of equitable legal relations, while at the same time maintaining a mode



of production founded on opposite basis, that is, on the extraction and capture of unpaid surplus-labor.

The law of private property under capitalism is precisely the social norm resulting from the interversion of property relations, that is, the superficial portrayal of relations based on the equivalence of values that keeps the underlying relationship of exploitation unnoticeable, such as the production and capture of surplus-value, which is the founder and shaper of the entire societal structure.

To this end, this article analyzes, in section 1, E. B. Pashukanis' view of private property, set out in *The General Theory of Law and Marxism*. His overwhelming critique of the so-called social function of property certainly places him among the most radical and prominent opponents of the reformist movement in the field of politics and law. Section 2 seeks to integrate Pashukanis' point of view with Karl Marx's masterpiece, *Capital*, in order to understand the consequences of the production of surplus-value in terms of the legal form of private property. Section 3 seeks to consider the importance of the wage-form in terms of erasing the differences between necessary labor and surplus-labor, and the role it plays as the genesis of the legal illusions of society as a whole. In section 4, we analyze the so-called conversion of the laws governing the production of commodities into laws of capitalist appropriation, set out in chapters 21 and 22 of *Capital* Volume I, in order to understand how the bond of private property under capitalism is simultaneously constituted as a relationship of equivalence and exploitation. Finally, section 5 aims to understand the nature of the norm put in place by the state and its role in consolidating the law of capitalist private property, which is inverted in such a way in the continuous flow of the production and reproduction of capital that, in the end, its own functioning is reversed, operating as a law of expropriation, that is, a social norm that affirms private property only to the extent that it denies it.

Finally, the method used in this article is the Marxian dialectic one. This is the method developed by Karl Marx and presented mainly in *Capital*. In his own words (Marx, 2013, pp. 90-91; 1962, p. 27), it is a matter of drawing on the fundamental description of the dialectics general forms of motion, as elaborated by Hegel, but distorting it in order to reach its rational core (Grespan, 2002, pp. 26-47). It can thus be seen that economic relations, which are essential, project legal and political forms that are often not only different from their content, but are decidedly opposed to it. This is one of the main methodological canons used in this work.



I. The critique of private property in Pashukanis

The Marxist critique of law in Brazil has consistently focused on the theory developed by Pashukanis. Traditional readings (Naves, 2000; Naves, 2014; Mascaro, 2003) and more recent ones (Pazello, 2022; Sartori, 2015) have raised questions and pointed out answers that address the problems of the general theory of law quite adequately.

On the specific subject of private property, however, there is room for progress. Pashukanis tackles the issue in chapter 4 of *The General Theory of Law and Marxism*, when he addresses the relationship between merchandise and the subject of rights. Of course, he addresses the issue throughout the entire book, as he does in the preface to the second edition, for example. However, in chapter 4, the author tackles the theme more particularly, while also elaborating a critique of the notion of the social function of property, which was relatively new at the time.

For the Russian author, the concept of the subject of rights is the starting point for a critical analysis of the general theory of law, since the legal form must be deduced from the mercantile form. In other words, in order for an economic relation of commodity exchange to be successful, there must be an agreement of wills between the owners of such commodities. Now, as Marx observes (2013, p. 159; 1962, p. 99) at the beginning of chapter 2 of *Capital* Volume I, legal relations are a reflection of economic relations, that is, the form in which it expresses itself.

In this sense, if the capitalist economy appears as an enormous collection of commodities (Marx, 2013, p. 113; 1962, p. 49), then it must also appear as an uninterrupted chain of legal relations (Pashukanis, 2017, p. 97; 2003, p. 84). These relations are carried out by people endowed with attributes that correspond to market needs: freedom, equality and property. The people to whom Marx refers, from an economic point of view, are, from a legal point of view, the subject of rights.

This is the context in which Pashukanis situates the analysis of private property, starting from the elementary, organic relationship between the production and appropriation of goods, which exists in any social formation. Undoubtedly, as Marx states in his 1857 Introduction to *A Contribution to the Critique of Political Economy*, "production in general is an abstraction, but a reasonable abstraction, in that it effectively singles out and fixates a common element, thus saving us from repetition" (Marx, 2011, p. 41). In this respect, the author notes:



Thus the appropriation of a product within a given social formation and thanks to the forces at work within it is a basic fact or, if you like, a basic law. But this relation of private property assumes legal form only at a certain stage of development of the productive forces and of the corresponding division of labour. Razumovsky thinks that by basing my analysis on the concept of the subject, I am eliminating the relationship of dominance and subservience from my investigation, whereas, of course, possession and property are inextricably bound up with this relationship. It would not occur to me to dispute this link. I merely maintain that property becomes the basis of the legal form only when it becomes something which can be freely disposed of in the market. The category of the subject serves precisely as the most general expression of this freedom. (Pashukanis, 2003a, pp. 109-110; 2003b, idem)

It should be noted that Pashukanis, based on Marx, points to the existence of a fundamental law of production and appropriation of goods, which corresponds to the way in which the productive forces are organized and their respective social division of labor. This law may or may not take the form of private property. Once it does, it may or may not take on a legal form, depending on the peculiarities of each mode of production.

Thus, it is necessary to distinguish between the production and appropriation of goods, which takes place in any community with a social division of labor; private property as a mode of distribution of products, which occurs from the moment society is divided into social classes and; finally, the legal form of property, which occurs in communities whose production and circulation of goods revolves around the commodity and, consequently, the rights-holder.

In an indigenous community, for example, there is a social division of labor, but there is no private property, since there are no social classes, because goods are produced and distributed equally among the group, according to individual needs and criteria such as gender, age, social role, etc. ; in the feudal mode of production, there is a social division of labor and private property, since there are social classes (feudal lords and serfs), but property does not take on a legal form, since merchandise does not figure as a central element of social life and, therefore, the subject of rights is not a predominant element; finally, in the capitalist economy, there is a social division of labor, social classes and private property, which takes on a legal form, since the economy becomes of mercantile nature and the subject of rights is the cornerstone for the generalized exchange of merchandise.

It is through these lenses that the legal quality of private property in capitalism must be understood. This means that the productive forces and the social division of labor are organized in such a way that the distribution of goods abide by a specific logic resulting



from the mercantile organization of production. Commodity exchange lends its form and social character to the entire mode of production and distribution of goods, giving rise to the driving figure of the subject of rights. The latter's prerogative to freedom and equality, content exclusive to the legal form, also qualifies the bond of private property.

It is absolutely not a question of considering private property as the result of a legal norm, as traditional theory of law puts it. Both norms and private property are legal because they are embedded in an economic system organized around the production and circulation of goods. In fact, Kelsen himself recognizes that when he speaks of "law" to qualify the norms he understands as "juridical", he is using a language artifice. Laws, in the genuine sense of the term, express events in the "world of being", which are therefore governed by causality, such as the law of gravity. On the other hand, norms, which for him are "juridical", express meanings from the "world of is-ought", that is, they are described with the help of the principle of imputation. In this sense, he observes:

Just as natural law is a descriptive statement or enunciation of nature, and not the object to be described, so legal law is a descriptive statement or enunciation of Law, that is, of the legal proposition formulated by the science of Law, and not the object to be described, that is, Law, the legal norm. The latter - although, when it has a general character, it is referred to as "law" - is not a law, that is, it is not something that, by any kind of analogy with natural law, can be referred to as "law". It is not, in fact, a statement describing a connection of facts, a functional connection. It is not even a statement, but the meaning of an act by which something is prescribed and thus creates the connection between facts, the functional connection that is described by the legal proposition, as legal law (Kelsen, 1995, p. 90, author's translation).

Because every society is founded upon a specific mode of production, they are each governed by laws that stem from the organization of the production, distribution, and circulation of goods, that can be described with the help of what Kelsen called the principle of causality. From a Marxist point of view, these are natural-social laws, that is, events that are logically linked due to the social division of labor and the resulting relations of production. These laws do not depend at all on human will, which only adheres to these normative patterns, reproducing them automatically.

In this way, to understand the law of private property under capitalism means to understand how the production and circulation of goods is organized in a specific economic system, and how they are distributed between social classes according to a norm of the "world of being", a norm that arises from the mode of production itself. On the other hand, the norms that traditional theory calls "juridical", such as the statements



"is-ought" that aim to discipline social relations, including private property, derive from this natural-social law and have their meanings determined by it.

Thus, for Pashukanis, modern private property develops in the specific context of the emergence, affirmation and predominance of the capitalist mode of production, as a result of the development of economic relations linked to merchandise and value and, consequently, the arising of the concept of the subject of rights and the respective state apparatuses necessary to preserve this economic-legal movement:

The increasing division of labour, improvements in communications, and the resulting development of exchange, made value an economic category, that is to say, the embodiment of supra-individual social relations of production. For this to occur, separate casual acts of exchange must be transformed into expanded, systematic commodity circulation. (...) In the same way, there are real conditions necessary for man to be transformed from a zoological individual into an abstract, impersonal subject of rights, into the legal person. These real conditions are the consolidation of social ties and the growing force of social organisation, that is, of organisation into classes, which culminates in the "well-ordered" bourgeois state. (...) As a result, bourgeois-capitalist property ceases to be unstable, precarious, purely factual property which may at any moment be contested and have to be defended, weapon in hand. It is transformed into an absolute, fixed right which follows the object wherever chance may take it, and which, ever since bourgeois civilisation extended its rule to encompass the whole globe, has been protected the world over by laws, police and lawcourts. (Pashukanis, 2003a, pp. 114-115; 2003b, p. 115, *passim*).

The transition from possession to ownership depends on the development of a consistent and permanent exchange market, in which value ceases to be a mere individual perception of the quantity of goods that must be exchanged sporadically between people and begins to function as a general economic norm that disciplines exchange relations in their entirety, regardless of the individual appreciation of this or that possessor (Jappe, 2006, pp. 23-83, *passim*).

At the same time, the guardians of goods cease to be mere individuals, with their own peculiarities, such as geographical origin, social status or a certain religion, and become people in general, that is, subject of rights with common attributes, namely freedom, equality and property. At the same time, the dominant social class's organizational power increases, which, in capitalism, takes the form of the state, a domination structure whose origins trace back to when value and the legal universal nature of the subject of rights became economically generalized.

So that private property may be conceived as the permanent protection of possession, an absolute and inalienable right, and may be inscribed in declarations of



fundamental rights and protected by oral and written constitutions, it needs to rely on certain social constructs. These constructs involve having an economic systems organized around market exchange and value relations; disseminating the idea of the subject of rights, which now encompasses individuals in general; installing a new political organization of social class, which appears to be situated above and beyond classes, while acting to safeguard the interests of capital (the state).

In this sense, for Pashukanis, the main trait of private property in capitalism is its free transferability, which means that the attributes of the mercantile form somehow shape the relationship between individuals and things:

If, then, development began from appropriation, as the organic, "natural" relationship between people and things, this relation was transformed into a legal one as a result of needs created by the circulation of goods, primarily, that is, by buying and selling. (...) The establishment of permanent markets created the necessity for settling the question of right of disposal over commodities, and hence for property law. (...) In the act of alienation, abstract property right materialises as a reality. Any other employment of an object is related to some concrete form of its utilisation as a means of production or consumption. If, however, the object has a function as an exchange value, it becomes an impersonal object, a purely legal object, and the subject disposing of it becomes a purely subject of rights. (Pashukanis, 2003a, pp. 122-123; 2003b, idem).

The production and consumption of goods takes place in all societies. Thus, man's relationship with things is "organic" because the survival of the human species depends on it. It is necessary to interact with nature to extract the substances needed to maintain life. After all, as Marx observes in the *Economic and Philosophic Manuscripts*, nature is man's inorganic body: To say "men live off nature means: nature is their body, with which they must engage with in a continuous process if he is not to die" (Marx, 2004, p. 84).

Whether an individual-object relationship is qualified as legal depends on the socio-productive context within which it is inserted. It is necessary for the production of commodities to be consolidated in order for the man or woman to relate to it legally. This means that the social characteristics of the commodity adhere to the mode of production, distribution and maintenance of goods within the community. In other words, the commodity establishes the legal nature of property.

Such legal nature is closely related to the aspects that shape the product of labor into a commodity form: use-value and exchange-value. Both aspects appear in the general property clause which, in Brazil, can be found in art. 1.228 of the Civil Code: "The owner has the right to use, enjoy and dispose of the thing, and the right to recover it from anyone



who unjustly possesses or detains it" (Brasil, 2002). As you can see, the first part of the legal provision (to use and enjoy) refers to use-value; whilst the second (to dispose of and recover) relates to exchange-value.

The concept of use-value concerns the usefulness of the thing, or its ability to satisfy concrete human needs. These needs are linked to subsistence or productive consumption, in other words, whether the substance of the thing is modified for the sake of maintaining life or producing other objects. This aspect is common to all modes of production and does not allow us to uncover the historical character of the society in question. After all, as Marx points out in chapter 6 of *Capital* Volume I, the taste of wheat does not reveal how it was produced, because "what differentiates economic epochs is not 'what' is produced, but 'how', 'with what means of labor'" (Marx, 2015, p. 128; 1962, pp. 194-195).

What gives property its eminently legal character, however, is the exchange-value of the commodity. This refers to the possibility of freely exchanging the thing, that is, transferring it from the hands of one individual to the hands of another, leaving its concrete characteristics, linked to utility, in the background.

Exchange-value points to the quantitative aspect of the relationship, namely how much of one product must be exchanged for how much of another. This perspective renders social relations a kind of real abstraction, so that the attributes that emerge from them are only apprehended according to the quantity involved and not according to quality. Marx observes: "As use-values, commodities are above all of different quality; as exchange-values, they can only be of different quantity, without therefore containing any atom of use-value" (Marx, 2015, p. 28; 1962, p. 52).

Two different things, take for example a coat and a pair of boots, apprehended as exchange-values, express a relationship of equivalence, of formal equality, and therefore display a social identity. This identity is crucial to qualifying property as legal, because it refers to the fundamental core of the mercantile relationship, the principle of equivalence.

Thus, although the two sides of a mercantile relationship are different use-values, they are identical exchange-values. This identity is projected onto the bearers of the goods, the people, who, despite being different individuals, are equal in such relationship and are therefore identical in attributes, i.e. subject of rights.



This double aspect of the relationship, which qualifies products and people, adheres to the mode of production and distribution of goods within the community, characterizing the relationship between subject and thing as a specific bond of private property, whose nature is eminently juridical.

In this sense, private property in capitalism takes on a juridical character insofar as the relationship between individual and thing is a relationship between person and commodity, in other words, a relationship in which individuals and things are simultaneously different and identical. From the point of view of use-value, they are concretely different men and women, as much as they are products of different utilities; from the point of view of exchange-values, they are subjects of law with identical attributes, as much as they are marketable things of identical value.

This identity is what makes the free exchange of goods possible, without any kind of moral, ethical, religious, or political restrictions. To be more precise, it is morals, ethics, religion, and politics that must adjust to this specific mode of production and circulation. Now, since exchange-value takes precedence over use-value, exchanging one object for another means that, from a quantitative point of view, nobody loses and nobody gains, in other words, both remain just as much owners before and after the deal.

This is why, as Pashukanis observes, the fundamental characteristic of capitalist private property, that is, its specifically juridical character, lies in the free disposal of the good, whatever its nature. Even land, whose ownership remained immobilized during the centuries in which the feudal mode of production took place, becomes an object of free disposal and acquisition. In the preface to the second edition of *The General Theory of Law and Marxism*, Pashukanis notes:

This is the way it is, for instance, with private property: only the aspect of free alienation fully reveals the fundamental nature of this institution, although property as appropriation undoubtedly existed earlier than, not just the developed form, but also the most embryonic forms of exchange. Property as appropriation is the natural consequence of every mode of production; but only within a particular social formation does property take on its logically simplest and most universal form as private property, determined by the simple precondition of the uninterrupted circulation of value according to the formula C-M-C. (Pashukanis, 2003a, pp. 42-43; 2003b, pp. 44-45).

The problem, however, is that the capitalist economic system is not just a mode of production of value, but of surplus-value. That is to say, the commodities produced in this particular productive system must not only represent exchange-values of identical magnitudes, but must also carry with them a surplus-value.



This surplus-value introduces an important question regarding the specific nature of capitalist private property: how can we produce not just value, but surplus-value, whilst maintaining relations of equivalence? In other words: what does the question of exploitation look like in the context of capitalist private property?

2. Private property and the production of surplus-value

The capitalist mode of production is one based on the production of surplus-value. This means that it is organized around the production of commodities that are related to each other on the basis of equivalent values, but also in the extraction of more value from this relationship than was initially released in the production cycle.

In this sense, the circulation of goods is only the starting point from which capital must drive the system. By kickstarting the mercantile circuit with money (M), the capitalist induces the production of surplus-value (M'), since he gives rise to the circulation of money as capital, known as the formula M-C-M'. Since the exchange of commodities does not enable the extraction of surplus-value, because, as we have seen, commodities are exchanged for equivalent values, the M-C-M' circulation requires the integration of production into the logic of the market.

It is therefore at the productive moment that concrete labor comes into play, modifying the forms of nature and adapting them to human needs. At the same time, abstract labor generates the value represented in commodities. The more abstract labor time added, the greater the value. Thus, as Marx observes, the amount of labor deposited into each commodity is the defining issue, because this will determine whether the system produces value only, or whether it also produces surplus-value:

If we now compare the two processes of producing value and of creating surplus-value, we see that the latter is nothing but the continuation of the former beyond a definite point. If on the one hand the process be not carried beyond the point, where the value paid by the capitalist for the labour-power is replaced by an exact equivalent, it is simply a process of producing value; if, on the other hand, it be continued beyond that point, it becomes a process of creating surplus-value. (...) The process of production, considered on the one hand as the unity of the labour-process and the process of creating value, is production of commodities; considered on the other hand as the unity of the labour-process and the process of producing surplus-value, it is the capitalist process of production, or capitalist production of commodities. (Marx, 2015, pp. 136-137; 1962, pp. 209-211, *passim*).



We must therefore bear in mind the differences between the process of value production and the process of surplus-value production. In the first case, a quantum of labor is deposited in certain substances extracted from nature, giving rise to a product that may be exchanged, such as a coat, for example. In this process of value production, it is assumed that the owner of the good has invested their own labor into it, without anyone else's help. Of course, the bond of private property established between the person and the thing is crystal clear: what they have produced whilst working their finger to the bone belongs to them "by right".

The process of surplus-value production, on the other hand, imposes a different dynamic. Valuing the good requires that labor be integrated into production. However, it is not the labor of the owner of the means of production being invested, but that of a third party. In other words, natural substances must be modified by labor activity that is not carried out by the person who initiated the production process, but by a third party, hired on a free market. It soon becomes clear that the link to private property will have to be altered in this case, as the person who works will not own the goods resulting from their labor activity.

A very special commodity must be added to the production process, whose use-value is the value-creating activity itself: labor (in its concrete and, above all, abstract aspects). This commodity is labor-power. As Marx says, by labor-power or labor capacity "By labour-power or capacity for labour is to be understood the aggregate of those mental and physical capabilities existing in a human being, which he exercises whenever he produces a use-value of any description." (Marx, 2015, p. 119; 1962, p. 181).

It should be noted that the concept of labor-power is initially linked to the notion of use-value. This means that labor-power may or may not qualify as a commodity: it is a commodity if it is sold and bought; it is not a commodity if it escapes the processes of buying and selling. In slavery, the workforce was not a commodity, because the enslaved individual himself, his physical body, was bought and sold. Men and women were commodities themselves. In capitalism, the workforce becomes a commodity, because the worker does not sell his body, but only his capacity to work, that is, his physical and intellectual capacity to work, and for a limited period of time, pre-established by contract and labor legislation.

The process of creating surplus-value, which specifically characterizes the capitalist mode of production, entails a process of commodity production within which



the labor-power of others is added, that is, those who do not own the means of production, also known as wage workers.

It is important to understand that, in this case, a shift is imposed onto the ownership bond, as the means of production belong to the person who will not be carrying out the productive work, namely the capitalist. The capitalist owns the means of production, the raw materials and the labor-power of others, but he does not work, sparing his physical and intellectual energy on the process of creating goods.

In order for the labor process to create value and, consequently, surplus-value, the labor-power itself must have a value on its own, meaning one must be able to exchange it for a specific amount of money. As Marx notes, "the value of labor-power is the value of the means of subsistence necessary for the maintenance of its possessor" (Marx, 2013, p. 245; 1962, p. 185). Thus, a human being's labor-power corresponds to the sum of the values of the objects necessary for their survival, such as clothing, food, shelter, etc. This sum of values, measured in money, is called a wage.

It is therefore a question of acquiring goods for their value, selling them for their value and still obtaining surplus-value. One must thus acquire the means of production (machines, equipment), raw materials (fabrics, leather, paint) and the labor-powers of workers for their value, set the work process in motion, sell the resulting goods for their value and still obtain surplus-value.

This is only possible if, between the buying and selling of market objects, there is a change in the value of the goods brought into the sphere of production, because, as we know, the exchange of goods itself does not produce value. We also know that changing the magnitude of value is only possible through abstract labor and that the use-value of labor-power consists of labor itself, that is, the physical-intellectual activity that creates products endowed with value, known as commodities.

All of the elements of the equation are thus in place: means of production, raw materials and value-creating labor-power.

It is then necessary to ensure that the period of time dedicated to producing goods exceeds the period of time that merely replenishes the value of the raw materials and the labor-power integrated into production. If the work time dedicated to production merely replicates the values of the raw materials and labor-power invested, resulting in the production of an equivalent, there is value being produced, but not surplus-value. For



the latter to emerge, the worker must be socially constrained to work for a period of time that exceeds that which replenishes the values of their own labor power. Marx explains:

Let us examine the matter more closely. The value of a day's labour-power amounts to 3 shillings, because on our assumption half a day's labour is embodied in that quantity of labour-power, i.e., because the means of subsistence that are daily required for the production of labour-power, cost half a day's labour. But the past labour that is embodied in the labour-power, and the living labour that it can call into action; the daily cost of maintaining it, and its daily expenditure in work, are two totally different things. The former determines the exchange-value of the labour-power, the latter is its use-value. The fact that half a day's labour is necessary to keep the labourer alive during 24 hours, does not in any way prevent him from working a whole day. Therefore, the value of labour-power, and the value which that labour-power creates in the labour-process, are two entirely different magnitudes; and this difference of the two values was what the capitalist had in view, when he was purchasing the labour-power. The useful qualities that labour-power possesses, and by virtue of which it makes yarn or boots, were to him nothing more than a *conditio sine qua non*; for in order to create value, labour must be expended in a useful manner. What really influenced him was the specific use-value which this commodity possesses of being a source not only of value, but of more value than it has itself. This is the special service that the capitalist expects from labour power, and in this transaction he acts in accordance with the "eternal laws" of the exchange of commodities. The seller of labour-power, like the seller of any other commodity, realises its exchange-value, and parts with its use-value. He cannot take the one without giving the other. The use-value of labour-power, or in other words, labour, belongs just as little to its seller, as the use value of oil after it has been sold belongs to the dealer who has sold it. The owner of the money has paid the value of a day's labour-power; his, therefore, is the use of it for a day; a day's labour belongs to him. The circumstance, that on the one hand the daily sustenance of labour-power costs only half a day's labour, while on the other hand the very same labour-power can work during a whole day, that consequently the value which its use during one day creates, is double what he pays for that use, this circumstance is, without doubt, a piece of good luck for the buyer, but by no means an injury to the seller. (Marx, 2015, pp. 135-136; 1962, pp. 207-208).

Marx unveils the secret: the worker is hired to work for an entire working day (eight hours a day, for example), but their labor-power is worth the equivalent of the work done during half a working day (four hours a day). This difference between necessary labor (which corresponds to the value of labor-power) and surplus-labor (the four spare hours) is the core of capitalist production, since this surplus-labor is represented in the commodities to be sold, at the end of the process, as surplus-value.

The fundamental point to consider when specifically thinking about capitalist private property is to understand that the commodities resulting from the labor process are the property of the capitalist and not the workers. Although the workers are the ones who have actually worked, that is, they have employed their physical-intellectual labor



energy for a period of time that exceeds the value of their labor-power, the products resulting from this effort do not belong to them.

The ownership of the money that initiates the M-C-M' circulation means that the goods resulting from the production process, i.e. the commodities, also belong to the capitalist. Thus, there is a kind of split between work and the product of work, since the activity carried out by wage workers generates goods that do not belong to them, either in fact or in law. Money acts as a wedge that separates work from its product and the worker from the result of their labor activity.

The extension of the working day for a period that exceeds that in which the workforce simply replenishes its value, i.e. the production of absolute surplus-value, means that capitalism maintains, albeit in an altered form, the relationship of exploitation of one class by another, i.e. the social mechanism through which the surplus-labor developed by one segment of individuals is drained to another, as occurs in any society in which social classes exist.

After all, as Marx observes in *Capital* Volume I: "The essential difference between the various economic forms of society, between, for instance, a society based on slave-labour, and one based on wage-labour, lies only in the mode in which this surplus labour is in each case extracted from the actual producer, the labourer." (Marx, 2015, p. 153; 1962, p. 231). He goes on to say:

Since, on the one hand, the values of the variable capital and of the labour-power purchased by that capital are equal, and the value of this labour-power determines the necessary portion of the working day; and since, on the other hand, the surplus-value is determined by the surplus portion of the working day, it follows that surplus-value bears the same ratio to variable capital, that surplus labour does to necessary labour, or in other words, the rate of surplus-value, $s/v = (\text{surplus labour})/(\text{necessary labour})$. Both ratios, s/v and $(\text{surplus labour})/(\text{necessary labour})$, express the same thing in different ways; in the one case by reference to materialised, incorporated labour, in the other by reference to living, fluent labour. The rate of surplus-value is therefore an exact expression for the degree of exploitation of labour-power by capital, or of the labourer by the capitalist. (Marx, 2015, p. 153; 1962, pp. 231-232).

From a legal point of view, the problem lies in the fact that capital drains the surplus-labor created by the working class through the legal form. Since surplus-labor is represented in surplus-value, and this, in turn, is achieved through the exchange of commodities, it is through mercantile exchange that profit, interest or land rent, i.e. the concrete forms of surplus-value, are accessed by capitalists.



We also know that the legal form is the way in which the economic relations of buying and selling goods are expressed. In this way, the law guides all the decisive moments in the production of capital: the acquisition of the means of production, raw materials and labor-power, which takes the legal form of the sale and purchase contract; the sale of the commodities resulting from the production process, in whose structure the surplus-value is represented, which takes the legal form of the sale and purchase contract.

Law, therefore, acts as a mediator through which the working class can be exploited. Pashukanis was aware of this issue. In a passage from chapter 4 of *The General Theory of Law and Marxism*, he notes:

Capitalist property is basically the freedom to transform capital from one form to another, the transfer of capital from one sphere to another for the purpose of gaining the highest possible unearned income. This freedom of disposition inherent in capitalist property is inconceivable without the existence of propertyless individuals, in other words, of proletarians. The legal form of property is not at all incompatible with the fact of the expropriation of *a large number of citizens*, for the capacity to be a subject of rights is a purely formal capacity. It qualifies all people as being equally 'eligible for property', but in no way makes property-owners of them. Marx's *Capital* illustrates this dialectic of capitalist property brilliantly, both when it is absorbed by 'fixed' legal forms, and when it explodes these forms by the direct use of violence (in the period of primitive accumulation). (Pashukanis, 2003a, p. 127; 2003b, *idem*, my emphasis).

In light of this passage, it is necessary to draw attention to a kind of misunderstanding on the part of Pashukanis regarding the method developed by Marx.

Pashukanis observes that the legal form of property is not in contradiction with the expropriation of a large number of people when, in fact, the exact opposite is true. It must be said: the legal form of property is in fact contradictory to the expropriation of a large number of people, and this is the essential hallmark of capitalist private property. Marxist critique of the law must play its role precisely in showing this contradiction; in presenting it clearly, not in denying it.

In fact, if there were no contradiction, the exploitation of labor by capital would appear clearly as what it is, i.e., as a relationship of expropriation.

It is precisely because there is a contradiction, that is, because the mode of appearance of reality does not coincide with its essence, that capitalist exploitation can seem like a legal relationship made up of formally equal and free parties. In other words, the standard of equivalence that governs commodity exchange and, consequently, gives



rise to the legal form, is the external and contradictory result of a production that is based precisely on the negation of equivalence and the extraction of surplus-labor.

This does not mean, of course, that market exchanges of equivalent values and the respective legal forms that portray the notion of formally free and legally equal subject of rightss are mere illusions or figurations produced by human consciousness. They are real forms, produced by the capitalist economic organization, but they appear inverted, that is, they reveal only part of the aspects that define deeper relations that are imperceptible to the naked eye.

So, when Pashukanis points out that the dialectic of capitalist property is exquisitely described by Marx in *Capital*, he is entirely correct. However, he should take this statement seriously in order to understand that the dialectical method requires us to work through contradictions, acknowledging them. Precisely because capitalist production is based on the expropriation of one class by another, it may on the surface appear as the absolute guardian of private property. This opposition is driven precisely by its essential contradiction.

It is therefore a question of understanding how this contradiction unfolds, i.e. how it transits between relations of circulation based on the equivalence of values and their respective legal forms, to relations of exploitation based on the extraction of surplus-labor in the form of surplus-value and the political struggle of the social classes. To do this, we need to go back to Section VI of *Capital* Volume I in order to properly understand the decisive importance of the wage-form in this context.

3. The appropriation of one's own labor, wage-form and legal illusion

On the surface of capitalist society, the norm by which private property is constituted appears as legal law, that is, as a norm based on relations of mercantile equivalence driven by subject of rightss, that is, people endowed with formal equality and freedom, as well as autonomy of their will.

Primarily, such law qualifies only those who own commodities, which are things, that is, objects resulting from human labor, brought to the market to be exchanged for other objects or for money. The assumption underlying the exchange of goods, at this



point, is that these use-values are the result of the work carried out by the owner of the good.

When they meet on the market, the owners of commodities acknowledge each other as private, free and equal owners, assuming that the respective products are the result of each person's personal effort. In a text called *Fragment of the early version of Contribution to the Critique of Political Economy*, written between August and November 1858, Marx explains:

The agents of the exchange process present themselves first and foremost as owners of commodities. Now, on the basis of simple circulation, there is only one method of coming into possession of a commodity, and that is by supplying a new equivalent; therefore, the ownership of the commodity prior to exchange, that is, the possession of a commodity which we do not appropriate through circulation, but which, on the contrary, must still be brought into circulation, has its origin directly in the work of the individual who owns it, and work will thus be the primitive mode of appropriation. (...) But since it is only thanks to circulation, and thus the alienation of the equivalent that one possesses, that it becomes possible to acquire another, this acquisition necessarily presupposes the individual's own labor as the initial process of appropriation, and circulation in fact appears as a simple reciprocal exchange of labor, embodied in multiple products. Labor and ownership of the result of one's own labor are thus the fundamental condition, without which secondary appropriation through circulation would not take place. Ownership based on personal labor is therefore, in the context of circulation, the basis for the appropriation of other people's labor. (...) And since, from this point of view, they can only acquire other people's merchandise, and therefore other people's labor, through the alienation of their own labor, the process of appropriation of merchandise, prior to circulation, necessarily appears, from this point of view, as an appropriation carried out thanks to labor. (...) This is why all modern economists make personal labor the original title of property, whether they emphasize the economic aspect or the legal point of view; and they make property the result of personal labor the fundamental condition of bourgeois society (Marx, 2003, pp. 309-312, *passim*).

Identifying someone possesses a commodity results in the presumption that its ownership is legitimate; which, in turn, leads to the presumption that the production of the thing involved the owner's own labor. Thus, the direct exchange of goods (C-C) or simple circulation (C-M-C) establishes the assumption that, indirectly, there is an exchange of private labor for private labor, so that the members of society work reciprocally for the common good.

Since it is assumed that the thing belonging to the guardian was produced by him, that is, by his own work, there is nothing strange about the assumption that the work itself belongs to the individual and can therefore be freely alienated, as if it were any other



thing. If it is possible to exchange goods produced by human labor, one can of course directly exchange the labor activity itself, as long as there is a very clear distinction between the alienation of the activity, on the one hand, and the alienation of the individual capable of labor, on the other. In the latter case, the man or woman would qualify as a slave, a thing-individual, which is alien to capitalist production. In the former, they are wage workers, that is, free exchangers of their labor capacities, which is not only welcome, but absolutely necessary for the formation of the capitalist market.

In this sense, in his *Metaphysics of Morals*, Kant deals with the wage contract (*locatio operae*), i.e. "the granting of the use of my strength to another for a certain price (*merces*). According to this contract, the worker is the wage laborer (*mercennarius*)" "Consent to the use of my powers by another for a certain price (*merces*) The worker under this contract is a hired servant (*mercenarius*)." (Kant, 1887, p. 123). Hegel, for his part, notes: "Wages contract (*locatio operae*); alienation of my output [*Produzierens*] or services (i.e. in so far as these are alienable) for a limited time or with some other limiting condition." (Hegel, 2003, p. 112). In earlier writings, the philosopher went further and equated the alienation of the thing to the alienation of the labor activity, stressing, however, that the totality of both cannot be alienated, under penalty of transmitting one's own personality to another, which means slavery:

I can alienate individual products of my particular physical and mental [*geistigen*] skills and active capabilities to someone else and allow him to use them for a limited period, because, provided they are subject to this limitation, they acquire an external relationship to my totality and universality. By alienating the whole of my time, as made concrete through work, and the totality of my production, I would be making the substantial quality of the latter, i.e. my universal activity and actuality or my personality itself, into someone else's property. (Hegel, 2003, p. 97).

Equating the alienation of labor activity with the alienation of the thing, in other words, the free exchange of both the objects of labor and labor itself, is fundamental not only to the constitution of capitalist society, but also to its theoretical and philosophical justification.

In the first case, because labor is the substance of the value of commodities, and therefore the source of not only concrete, but also abstract wealth. Thus, productive activity, which used to be the responsibility of slaves or serfs, is elevated to a new status, worthy of those who are free, equal and owners. Secondly, because it allows workers



without any property to participate equally in the generalized exchange market, insofar as they can directly sell their work force. Those who own things are equated with those who only have the capacity to work, who formally become equals.

From a legal point of view, workers take on the status of persons or subject of rights, that is, custodians of goods endowed with freedom, equality and autonomy of will, able to alienate their labor-power to anyone, for whatever price they like, as long as they do so for a limited period of time.

This quality persists even in the contract with the capitalist, i.e. the owner of the means of production. Both wage workers and owners of capital appear as subject of rights, legally equal people, contracting on equal terms. The former own their labor capacity; the latter own money, i.e. the starting point of the M-C-M' circulation which, in turn, brings about production of capital. Marx observes:

The exchange of commodities of itself implies no other relations of dependence than those which result from its own nature. On this assumption, labour-power can appear upon the market as a commodity, only if, and so far as, its possessor, the individual whose labour-power it is, offers it for sale, or sells it, as a commodity. In order that he may be able to do this, he must have it at his disposal, must be the untrammelled owner of his capacity for labour, i.e., of his person." He and the owner of money meet in the market, and deal with each other as on the basis of equal rights, with this difference alone, that one is buyer, the other seller; both, *therefore, equal in the eyes of the law*. The continuance of this relation demands that the owner of the labour-power should sell it only for a definite period, for if he were to sell it rump and stump, once for all, he would be selling himself, converting himself from a free man into a slave, from an owner of a commodity into a commodity. He must constantly look upon his labour-power as his own property, his own commodity, and this he can only do by placing it at the disposal of the buyer temporarily, for a definite period of time. By this means alone can he avoid renouncing his rights of ownership over it." (Marx, 2015, p. 119; 1962, pp. 181-182, my emphasis).

If, on the one hand, traditional theory equates the exchange of labor for money with any other contract, considering it to be just one modality among many others, the critique of political economy developed by Marx makes a point of differentiating between them.

For the former, the purchase and sale of labor is equivalent to the purchase and sale of anything, which can be consumed as soon as ownership has been transferred. Precisely for this reason, the traditional theory maintains that the object of the employment contract is the service provided by the worker, and not their capacity to work. For the Marxian critique, the acquisition of labor-power transfers to the capitalist



the ability to consume a very special commodity, the only one capable of creating value and, more importantly, more value than it itself has.

The contradictory nature of the commodity, i.e. the opposition between use-value and value, takes on a special form in the commodity of labor-power. In the latter, the value corresponds to the amount of work needed to maintain it, which, expressed in monetary terms, is called the wage. Use-value, on the other hand, refers to the nature of the needs it meets. In the case of labor-power, its use-value lies in the work itself, in other words, in the physical-intellectual capacity of human beings to act on nature by modifying its substances to meet human needs.

However, in the mercantile production system, human labor is broken down into concrete labor, represented in the use-value of goods, and abstract labor, represented in the values of market objects. This means that by acquiring labor-power on the market, the capitalist buys not only the capacity to produce concrete use-values, i.e. objects that meet human needs, but also, and above all, the capacity to produce exchange-value, i.e. marketable things that have value and can be exchanged for money.

Even more importantly, the value of labor-power does not have to coincide with the value it produces over the course of an entire working day.

The wage-form, that is, the amount of money that the worker receives in return for the alienation of his or her capacity to work, corresponds to the value of this, of the labor-power, but it is equivalent to only part of the working day and not the entire working day. In other words, the worker is hired to work a full working day (eight hours a day, for example), but the wage they receive only corresponds to half a working day (four hours a day).

This means that the remaining four hours are used to produce use-value that represents exchange-value which, in turn, will be appropriated by the capitalist when the commodities are sold.

By putting the goods that have resulted from the production process into circulation, the entrepreneur seizes the exceeding value produced by the labor-power, called surplus-value by Marx. He does so because he owns the means of production, and he does so without violating any economic or legal law dictated by the world of commodities, because he has paid the worker precisely the wage previously set in the contract, neither above nor below the amount normally paid on the market.



The key to understanding the specific nature of the economic exploitation that takes place within capitalist production therefore lies in the wage-form, i.e. the amount received by the wage-earner in return for the sale of their labor-power.

The wage appears as remuneration for the time spent by the employee working; however, it actually corresponds to the value of the labor-power, i.e. the set of goods necessary for its maintenance. Marx explains:

On the surface of bourgeois society the wage of the labourer appears as the price of labour, a certain quantity of money that is paid for a certain quantity of labour. Thus people speak of the value of labour and call its expression in money its necessary or natural price. (...) That which comes directly face to face with the possessor of money on the market, is in fact not labour, but the labourer. What the latter sells is his labour-power. As soon as his labour actually begins, it has already ceased to belong to him; it can therefore no longer be sold by him. Labour is the substance, and the immanent measure of value, but has itself no value. (...) Hence, we may understand the decisive importance of the transformation of value and price of labour-power into the form of wages, or into the value and price of labour itself. This phenomenal form, which makes the actual relation invisible, and, indeed, shows the direct opposite of that relation, forms the basis of all the juridical notions of both labourer and capitalist, of all the mystifications of the capitalistic mode of production, of all its illusions as to liberty, of all the apologetic shifts of the vulgar economists. (Marx, 2015, pp. 377/379; 1962, pp. 557/559/562, *passim*).

Labor is the substance and measure of values, but it itself has no value. Labor-power is a commodity and therefore has value. Its value corresponds to the value of the goods necessary for the worker's subsistence. On the other hand, the use-value of labor-power is work, i.e. the activity that creates value. By working, the employee produces value.

By making a contract with the capitalist, the worker sells his or her labor-power, i.e. receives, in return, a value corresponding to it (the wage). Once the labor-power is integrated into the means of production and put in contact with raw materials, it will be consumed, i.e. the man or woman must work. In doing so, they maintain the values that are incorporated into the goods needed to produce a new commodity and, furthermore, they add value, i.e. they add value to that which already exists through their labor activity.

The amount of value created by the employee corresponds to the length of time they work for. If they work for half a working day, then they produce value that corresponds to the value of their labor-power, i.e. they only replace the wage paid by the capitalist. If, however, they work for an entire working day, then they produce the value corresponding to their wages and an exceeding value, in other words, surplus-value. This



surplus-value is appropriated by the capitalist for the sole reason that he owns the means of production and has kickstarted the production cycle by initiating the M-C-M' movement.

The difference between the value of labor-power and the value produced by labor is fundamental to understanding the specific nature of the relation of exploitation under capitalism, and also to discovering how the law of private property is constituted within the capitalist mode of production. In fact, a detailed analysis of the wage-form in the light of the dialectical materialist method and in the context of Marx's categorical presentation in *Capital* makes it possible to understand its decisive importance as a moment in the "system". In this sense, Helmut Reichelt observes:

The "wage" category is the most difficult to decipher, but at the same Marx points to its demystification as being the presupposition for a full conceptual understanding of the global process (...). The Marxian characterization of labor in capitalism as wage slavery should by no means be seen only as a cynical allusion to the relations existing in the immediate process of production, but refers, much more, to the point of coupling of the system, the point of junction, in which the sphere of appearance is mediated with the sphere of essence: in the passage from the sphere of simple circulation to capital, which Marx understands, in the *Manuscripts*, in close connection with the Hegelian formulation in the higher logic (Reichelt, 2013, pp. 97-98, passim, author's translation).

Since the worker, when contracting with the capitalist, receives the exact value of his or her labor-power (the wage), this occasions a relationship that, in principle, qualifies as legal, since there is an exchange of equivalents. Considering, moreover, that the wage does not appear as the value of the labor-power, but as the value of the work itself, the economic relationship produces the socially objective appearance that the wage remunerates the entire working day, that is, that it corresponds to the entire period in which the employee remains at work.

Thus, the economic employment relationship appears as an authentic legal relationship and there is no denying its authenticity from the point of view of common sense. For this reason, both the worker and the capitalist interpret and act within it as true subject of rights, in other words, people endowed with freedom, equality and autonomy of will.

Furthermore, it can be seen that the surplus-value captured by the capitalist does not appear as such. In other words, the surplus-labor that is represented as surplus-value is not clearly visible, since the wage seems to correspond to the entire working day and not just part of it. This sets up a mechanism whereby the entrepreneur drains away more



labor under the guise of an equivalent relationship, and therefore obtains surplus-value under the guise of a value relationship.

This is the fundamental quandary from which the law of private property under capitalism can be clarified.

Pashukanis approached the intimate nature of this problem decisively. Like the head of Janus, he looks at the slave system and feudal modes of production, and at the foundations of socialism, which were then taking shape in the USSR, to conclude that, under capitalism, private property operates by enabling the free exchange of goods and, at the same time, the private appropriation of the economic surplus in the form of profit, interest and land rent, mediated by the relationship of exploitation. In the preface to the second edition of *The General Theory of Law and Marxism*, he observes:

Exactly the same is true of the relation of exploitation. This relation is of course in no way bound to the exchange relation, and is conceivable in a natural economy as well. But only in bourgeois capitalist society, where the proletarian figures as a subject disposing of his labour power as a commodity, is the economic relation of exploitation mediated legally, in the form of a contract. This is linked precisely with the fact that in bourgeois society, in contrast to societies based on slavery or serfdom, the legal form attains universal significance, legal ideology becomes the ideology par excellence, and defending the class interest of the exploiters appears with ever increasing success as the defence of the abstract principle of subject of rightsivity. (Pashukanis, 2003a, p. 43; 2003b, p. 45).

What is missing in the *General Theory of Law and Marxism* is a deeper dive into the dialectics of capitalist private property, as presented by Marx in *Capital*.

It is not enough to point out that the free exchange of market goods in capitalism is structured on the basis of the exploitation of the working class. It is also insufficient to say that the employee appears as a subject of rights and that the extraction of surplus-value is mediated by the contract. We need to go further and show how the law of private property in capitalism is a law of expropriation, in other words, the negation of private property. To do this, we need to go into Section VII of *Capital* Volume I to understand how the process of capital accumulation operates.

4. The conversion of mercantile property laws into capitalist appropriation laws

The form of circulation M-C-M' implies the accumulation of capital. The surplus-value (ΔD) represented by the symbol (') means that mercantile exchange is used as a means of



increasing the magnitude of the value at stake. However, the extremes of the movement, as stages of circulation, are relations of equivalence. In fact, both buying (M-C) and selling (C'-M') consist in the exchanging of identical values. In this way, the increase in value released into circulation must take place at the moment of production.

The unfolded formula M-C-M' reveals this matter more clearly: M-C- [MP + LP] - C'-M'. The interregnum [MP + LP] signifies the moment of production, when labor-power (LP) is added to raw materials and means of production (MP), giving rise to commodities full of surplus-value (C'). Such surplus-value is the result of extending the working day for a period of time that exceeds that in which workers simply replace the value of their labor-power.

This means that the beginning and end of capital accumulation cycles are characterized by relations of equivalence, which are therefore legal, carried out by subject of rights endowed with formal freedom and equality, and autonomy of will.

From this perspective, therefore, the norm of private property qualifies as legal law, insofar as it expresses modes of appropriation based on equitable relations, in which neither party is harmed. The exchange of equivalents, which characterizes capitalist circulation, qualifies, at this first moment, the relations of appropriation of the economic surplus, endowing them with a legal character. This also gives rise to the notions of "justice" that permeate capitalist society (Geras, 2018).

However, insofar as the productive moment is artificially isolated, we can have a glance at the constitutive core of the capitalist economy, that is, the production of absolute and relative surplus-value. These represent the surplus-labor, i.e. the period of the working day that exceeds that destined to replace the value of the labor-power, which, in its turn, is called necessary labor. Surplus-labor is appropriated by the capitalist without the payment of an equivalent to the employees and is only possible because of the private ownership of the means of production.

It is precisely at this point that we can point to the relationship of capitalist exploitation, characterized by the obtaining of unpaid surplus labor. This is where the capitalist society comes close to the slave and feudal modes of production, which also consisted of obtaining surplus-labor without compensating the worker with an equivalent. The difference is that in these production systems, labor-power did not qualify as a commodity and, therefore, the individual workers (serfs and slaves) were not



characterized as subject of rights. In capitalism, labor-power is a commodity and the worker qualifies, in principle, as a rights-holder.

It is from this moment, from this specific perspective, that the law of private property under capital must be explained, and not from the point of view of circulation (Arthur, 2016, p. 50).

In this sense, Section VII of *Capital* Volume I, chapters 21 and 22 in particular, contains the Marxian presentation of the transformation of surplus-value into capital, also called the accumulation of capital.

So far, Marx has shown how surplus-value is produced from capital. The next step is to show how capital is produced from surplus-value. In other words, we need to uncover how surplus-value (ΔM) is transformed into money (M) and, from there, a new cycle of accumulation begins: $M-C- [MP + LP] -C'-M'$. This process is called the expanded reproduction of capital.

From the point of view of legal theory, the problem that arises is immediately apparent: as the wage-form seems to remunerate the entire working day, and not just part of it, it seems that the worker receives an equivalent for the totality of the work carried out. It thus seems that the worker's status as a subject of rights, which is only a potential scenario at the start of circulation, becomes a fact, that is, it actually materializes.

Marx's discovery of surplus-value, however, causes this appearance to fade. Since the wage remunerates the value of the labor-power and not the work, i.e. only part of the working day and not the entire period, it can be seen that the worker remains working for part of the time without receiving any equivalent. This period, referred to by Marx as surplus work, is what characterizes the working relationship under capitalism as one of exploitation. What particularizes this mode of production, however, is that this exploitative economic relationship is camouflaged by a legal relationship.

Without a doubt, the integration of labor into production takes place through the buying and selling of labor-power on the common commodity market. Its owner, the worker, then qualifies as a subject of rights. Furthermore, the wage-form erases the difference between necessary labor and surplus-labor. In this way, the legal appearance of the social relationship, which arises in circulation, naturally covers the moment of production, which then qualifies as legal. Law, which blooms during circulation, spread its



roots in the moment of production. These are adventitious roots, which do not found the social relationship, but are founded by it.

However, before presenting the transformation of surplus-value into capital, Marx, in chapter 21 of *Capital* Volume I, deals with what is known as simple reproduction, which means, in general terms, that the surplus-value obtained from the production process is consumed entirely as income by the capitalist, for the purposes of individual survival.

Exposing simple reproduction is in itself epistemologically relevant. Analyzing it makes it possible to understand that certain aspects of production, if considered in isolation, are mere appearances that can be diluted when the systematic repetition of the process is analyzed. Marx notes:

And although this reproduction is a mere repetition of the process of production on the old scale, yet this mere repetition, or continuity, gives a new character to the process, or, rather, *causes the disappearance of some apparent characteristics which it possessed as an isolated discontinuous process.* (Marx, 2015, p. 399; 1962, p. 592, my emphasis).

In fact, if you look at the buying and selling of labor-power in isolation, you get the impression that the capitalist comes to the market with money that comes from the sale of goods produced by themselves, with their own labor. As the general assumption of the world of commodities is that the commodity is the result of the labor of its owner, it seems that the capitalist follows the same logic, so that the money at his disposal is the result of the prior alienation of commodities produced by him.

The presentation of surplus-value and its consumption by the capitalist, however, changes this assumption.

Since, at the end of each production cycle ($M-C [MP + LP] -C'-M'$), the result obtained is a higher value than the one that started the economic chain ($\Delta M = M'-D$), a surplus that belongs to the capitalist because he owns the means of production, it follows that, at the end of a given period, 5, 10 or 15 years, for example, all the existing capital is the result of the surplus-value obtained by repeating the production process. In other words, that initial value (M), whose origin, in principle, comes from the capitalist's own labor, is replaced by the sum of the surplus-values (ΔD) obtained over the periods of time in which capital completes its cycles. Marx explains:

After the lapse of a certain number of years, the capital value he then possesses is equal to the sum total of the surplus-value appropriated by him during those years, and the total value he has consumed is equal to that of



his original capital. It is true, he has in hand a capital whose amount has not changed, and of which a part, viz., the buildings, machinery, &c., were already there when the work of his business began. But what we have to do with here, is not the material elements, but the value, of that capital. When a person gets through all his property, by taking upon himself debts equal to the value of that property, it is clear that his property represents nothing but the sum total of his debts. And so it is with the capitalist; when he has consumed the equivalent of his original capital, the value of his present capital represents nothing but the total amount of the surplus-value appropriated by him without payment. Not a single atom of the value of his old capital continues to exist. (Marx, 2015, p. 401; 1962, pp. 594-595).

Since capital can be understood, in principle, as a certain sum of accumulated value that increases in value (Heinrich, 2012, p. 16), it doesn't matter if this value is materialized in a sausage factory or a shoe factory, in raw materials that are meat or leather, with workers who are butchers or shoemakers. What matters is that it completes the circuit $M-C [MP + LP] -C'-M'$ and produces surplus-value.

Thus, there is no difference between surplus-value (ΔM) and value (M), except in quantitative terms, since the former represents a greater magnitude than the latter.

If it weren't for the production of surplus-value, the capitalist would have to consume the initial amount advanced in his business in order to maintain his survival and that of his family. He would have to sell the factory shed, the raw materials and lay off the hired workforce in order to buy food, drink and shelter for himself and his family. Sooner or later, the initial amount would be reduced to zero. The production and consumption of the surplus-value that flows ceaselessly from the working day performed by the male and female employees keeps the business running, since this magnitude of value replaces the initial one. The maintenance of the shed, the purchase of raw materials and the hiring of new labor are all done using the surplus-value produced from the first production cycle.

In this sense, the second round of production is already carried out by using value that does not come entirely from his own labor, but from the surplus-labor represented in the surplus-value extracted from the labor-power he hires. After a certain number of productive rounds, all the value at stake is the result of the surplus-value accumulated over the period, so that all the entrepreneur's capital comes from surplus-value obtained for free, i.e. without paying the equivalent of labor-power.

That initial assumption, that the capitalist goes to the market with money that is the result of the sale of commodities produced by himself, disappears. The analysis of the simple reproduction of capital makes it possible to understand that, from a certain point onwards, its entire business revolves around obtaining unpaid labor from others, in other



words, from the extortion of surplus-labor taken from workers without the delivery of an equivalent. Here, Marx presents the beginning of the transition from the law of appropriation based on one's own labor to the law of expropriation of the labor of others:

From our present standpoint it therefore seems likely that the capitalist, once upon a time, became possessed of money, by some accumulation that took place independently of the unpaid labour of others, and that this was, therefore, how he was enabled to frequent the market as a buyer of labour-power. However this may be, the mere continuity of the process, the simple reproduction, brings about some other wonderful changes, which affect not only the variable, but the total capital. (...) Apart then from all accumulation, the mere continuity of the process of production, in other words simple reproduction, sooner or later, and of necessity, converts every capital into accumulated capital, or capitalised surplus-value. Even if that capital was originally acquired by the personal labour of its employer, it sooner or later becomes value appropriated without an equivalent, the unpaid labour of others materialised either in money or in some other object. (Marx, 2015, pp. 400-401; 1962, pp. 594-595, passim).

The mere repetition of the productive cycle $M-C [MP + LP] -C'-M'$ is able to show that the buying and selling of labor-power (M-LP), while from a formal point of view is equivalent to the simple exchange of commodities (C-C) and therefore takes on a legal form, from a material point of view is incompatible with the law, because it means the exchange of a certain magnitude of value (M) for a commodity capable of producing an infinitely greater magnitude (LP).

We can see, then, that the identity initially established in the exchange between capitalist and worker (M-LP), that is, the fact that, as values, both ends of the equation represent the same magnitude, brings with it its own negation, implicit in the specific characteristic of the commodity labor-power. And, with it, thus bring the negation of the legal relationship itself. This is the core of the contradiction in question.

Since the use-value of labor-power is labor itself, in other words, the power that creates new value, it would be necessary for the working day to end exactly at the point that corresponds to the value of their labor-power for the purchase and sale of this commodity, if this were to be a relationship of equivalence and therefore a legal one. In this case, however, there would be commodity production taking place, but not capitalist commodity production.

If, on the one hand, simple reproduction allows us to understand how, at the end of a series of production cycles, all the initial value released into circulation (M) corresponds to the surplus-value obtained in the previous production cycle (ΔM), so that the labor represented there no longer involves a drop of sweat from the entrepreneur,



expanded reproduction allows us to see that the expansion of the magnitude of the value at stake accelerates this substitution process, so that the so-called conversion of the laws governing commodity production into laws of capitalist appropriation takes place.

In fact, in chapter 22 of *Capital* Volume I, Marx highlights the specific nature of this quandary:

The original capital was formed by the advance of £10,000. How did the owner become possessed of it? "By his own labour and that of his forefathers," answer unanimously the spokesmen of Political Economy. And, in fact, their supposition appears the only one consonant with the laws of the production of commodities. But it is quite otherwise with regard to the additional capital of £2,000. How that originated we know perfectly well. There is not one single atom of its value that does not owe its existence to unpaid labour. (Marx, 2015, p. 409; 1963, p. 608).

The production of surplus-value occurs through value itself. In other words, an initial amount of value, expressed in money (M), is exchanged for means of production, raw materials (MP) and labor-power (LP). Since the latter contains in itself a very special opposition between exchange-value and use-value, that is, the opposition between wages and the capacity to work, that is, to produce more value than it initially has, a specific dialectic comes into play through which, by means of value, surplus-value is produced which, in turn, is reintroduced into the production cycle as original value. Since value is only expressed quantitatively, the difference between surplus-value and original value is erased every time the production cycle restarts.

This process causes a dialectical torsion, also called interversion (Fausto, 2021, pp. 30-49)¹. According to this, the production of surplus-value through value, i.e. the appropriation by the capitalist of surplus-labor performed by the worker without payment of an equivalent, turns the law of appropriation by one's own labor into its opposite, i.e. it becomes the law of expropriation of the labor of others. In a long but important passage, Marx describes this inversion, which is absolutely fundamental to understanding the law of private property under capitalism:

In so far as the surplus-value, of which the additional capital, No. 1, consists, is the result of the purchase of labour-power with part of the original capital, a purchase that conformed to the laws of the exchange of commodities, and that, from a legal standpoint, presupposes nothing beyond the free disposal,

¹ Interversion or dialectical torsion is a category that expresses the mode of being of effective capitalist reality and therefore also assumes an epistemological nature. From a dialectical point of view, method is an aspect or moment of reality itself, which is why categories cannot be sectioned off, as understanding or traditional theory usually does. Moreover, Hegel notes: "Method is thus not an external form, but the soul and content, from which it differs only insofar as the moments of the concept also come to appear in themselves, in their determinacy, as the totality of the concept" (Hegel, 1995, p. 370).



on the part of the labourer, of his own capacities, and on the part of the owner of money or commodities, of the values that belong to him; in so far as the additional capital, No. 2, &c., is the mere result of No. 1, and, therefore, a consequence of the above conditions; in so far as each single transaction invariably conforms to the laws of the exchange of commodities, the capitalist buying labour-power, the labourer selling it, and we will assume at its real value; in so far as all this is true, it is evident that the laws of appropriation or of private property, laws that are based on the production and circulation of commodities, become by their own inner and inexorable dialectic changed into their very opposite. The exchange of equivalents, the original operation with which we started, has now become turned round in such a way that there is only an apparent exchange. This is owing to the fact, first, that the capital which is exchanged for labour-power is itself but a portion of the product of others' labour appropriated without an equivalent; and, secondly, that this capital must not only be replaced by its producer, but replaced together with an added surplus. The relation of exchange subsisting between capitalist and labourer becomes a mere semblance appertaining to the process of circulation, a mere form, foreign to the real nature of the transaction, and only mystifying it. The ever repeated purchase and sale of labour-power is now the mere form; what really takes place is this — the capitalist again and again appropriates, without equivalent, a portion of the previously materialised labour of others, and exchanges it for a greater quantity of living labour. At first the rights of property seemed to us to be based on a man's own labour. At least, some such assumption was necessary since only commodity-owners with equal rights confronted each other, and the sole means by which a man could become possessed of the commodities of others, was by alienating his own commodities; and these could be replaced by labour alone. Now, however, property turns out to be the right, on the part of the capitalist, to appropriate the unpaid labour of others or its product, and to be the impossibility, on the part of the labourer, of appropriating his own product. The separation of property from labour has become the necessary consequence of a law that apparently originated in their identity. Therefore, however much the capitalist mode of appropriation may seem to fly in the face of the original laws of commodity production, it nevertheless arises, not from a violation, but, on the contrary, from the application of these laws. (Marx, 2015, pp. 410-411; 1962, pp. 609-610).

It should be noted that the production of surplus-value through value is the process that leads to interversion, i.e. the passage of the relation into its opposite. To the extent that surplus-value is produced through the consumption of a specific commodity, labor-power, without having to resort to means outside the logic of the market, the production of equivalent values is not only not violated, but is fully confirmed.

However, this confirmation comes at a price. The relationship of equivalence that initially characterizes the arrangement between capitalist and worker is reduced to an appearance. It does not cease to exist because, in fact, the entrepreneur buys the labor-power at its fair value and the employee sells it on those terms, neither above nor below. However, its consumption over a period of time that exceeds the reproduction of this



value (of labor-power) operates the passage from the moment of equivalence to that of exploitation.

The consumption of labor-power differs from the consumption of other commodities. In these cases, it is a matter of consuming objects, things produced by the association between human labor and natural materials. In the first case, it is a question of setting a social relationship in motion, a relationship that lasts over time. This continuance is decisive for the interversion to take place, so that the equivalence of the initial terms is replaced by the expropriation that happens at the end of the working day.

In this way, interversion wipes out the essentially legal character of the purchase and sale of labor-power, which remains only as an inverted appearance. As Ruy Fausto says, "it can be said that the 'accent' of the process changes, from the moment of the contract to the moment of production. It can also be said in general that the moment of the contract is 'swallowed up' by the process or is invalidated" (Fausto, 2021, p. 42, footnote 21). The author continues:

Observe: in this way, both the "purchase" and the commodity "labor-power" disappear – or rather, are reduced to an appearance. Instead, there is now an appropriation, a forced appropriation (not involving buying and selling), which is what the dash now indicates. The basis of this transmutation is the disappearance of what the buyer supplies to the seller of labor-power (because what he supplies is actually produced by the seller himself at an earlier time). And, as the bilateral nature of the act disappears, so does the idea of buying. What remains is the idea of simple appropriation. (Fausto, 2021, p. 47, note 21, author's translation).

The economic appearance that remains expresses an inversion, in other words, the interversion keeps the relationship of equivalence between capital and labor (apparently) intact on the surface of capitalist society, while at the same time, essentially, this relationship passes without its opposite, that is, it takes on an exploitative characteristic. This torsion, however, is enough to sustain the health of the legal relationship. As this is only the form of the economic relationship, and not its content, the law expresses the surface of the social relationship without delving into its constitutive terms.

In other words, the legal form is immediately based on the appearance of equivalence of the economic relationship that unites capitalist and worker, definitively sealing its character of formal equality and reiterating the superficial perception that it constitutes an equitable arrangement. This does not mean that the law produces interversion. It means that the legal form is not affected by the dialectical torsion. To be



more precise, the law accompanies the inverted appearance of equivalence and helps to disguise it, insofar as it reiterates, with its alienated form, the appearance of equity in the contract for the sale of labor-power.

This is the material foundation from which to think about so-called legal ideology. It is not just a matter of pointing out that law, as a form, covers up economic content, so that it provides the appearance that it is legal relations that give rise to economic relations. It is also insufficient to state that its essential core consists of making every individual, naturally, a subject of rights (Althusser, 1985, p. 93).

The fundamental issue revolves around understanding that law itself is based on an objective economic appearance, in other words, on the false equivalence of buying and selling labor-power. The legal phenomenon does not create the appearance, because it precedes it. But by covering it up with its form, the law prevents access to the essential character of the relationship, which is its exploitative nature.

Insofar as the passage from equivalence to expropriation consists of a dialectical torsion, that is, since the appearance of equality is maintained in the terms of the original equation of buying and selling labor-power (M-LP), the legal form remains intact in its meaning, that is, it appears as if, in fact, it were a legal relationship of the same type as that which takes place in direct exchange (C-C), simple circulation (C-M-C) or in the circulation of money as capital (M-C-M').

Thus, there is no disruption to the economic market for the exchange of goods, just as there is no damage to the system of contracts that represents this market. From a formal point of view, in all cases there are adjustments of will between equal, free and autonomous subject of rights. This is why labor law appears as law, and labor justice as justice. Of course, both the former and the latter are based on inverted appearances of expropriatory relations which, deep down, only express symptoms of deeper and more imperceptible relations at this level of categorical presentation, which are the relations between social classes. In fact, Marx observes: To be sure, the matter looks quite different if we consider capitalist production in the uninterrupted flow of its renewal, and if, in place of the individual capitalist and the individual worker, we view in their totality, the capitalist class and the working class confronting each other. But in so doing we should be applying standards entirely foreign to commodity production. (Marx, 2015, p. 412; 1962, p. 612).

The legal perspective revolves around relationships between people. The worker makes contracts with the capitalist or the company, which is a legal entity. The employment contract unites two singularities and the Labor Court, as a general rule,



settles individual claims. Focused on the point of view of the subject of rights, the legal appearance of the employment contract and labor justice is confirmed by the economic movements' empirical praxis.

However, when we broaden our perspective from the individual to the social classes, we see that both the employment contract and the Labor Court are resignified and understood as forms and mechanisms of class domination.

The presentation of the concept of interversion is one of the most important moments in the categorical structure of *Capital*. It unveils how the capitalist obtains economic surplus through a value relationship of identical scale, which produces the inverted and socially objective appearance that the system operates on the basis of equivalence. As Ruy Fausto states, however, "it is striking to see how the content of these texts, and even simply their general meaning, has been ignored or poorly known" (Fausto, 2021, p. 30, author's translation).

5. Norms established by the state and blocking access to interversion

Understanding the law on private property under capitalism requires an understanding of the role played by the state's positivized norm, whether at legislative, executive or judicial level. This norm, of course, is formulated on the basis of the objective appearances that make up the surface of capitalist society.

What traditional theory calls "law", i.e. the set of normative texts drawn up by the established state authority, is based on the empirical observation of the functioning of capitalist society. Therefore, the content of these texts only reproduces the objective appearance of reality, with the aim of unifying and standardizing the possible and necessary state responses to the functioning of the social organism, especially in cases where contracts are breached.

Thus, state regulations reproduce, at a textual level, the same logic that is found in the social relations in which law manifests itself in reality, that is, in the direct exchange of goods (C-C); in simple circulation (C-M-C); in the circulation of money as capital (M-C-M') and in the buying and selling of labor-power (M-LP). The first three give rise to essentially legal social relations. The last one appears as a legal relationship and is thus captured by the legislator, even though, in essence, it is a relationship of exploitation.



In this sense, the state rule assumes as its sole and true presuppositions: that the labor-power, under the designation of "service", can be freely alienated by the worker, without any hindrance or coercion; that the employee is the legitimate owner of his or her labor capacity, just as the entrepreneur is of the means of production, and that both sides deserve broad legal protection; that both parties are subject of rights, i.e. they freely dispose of their wills, having the capacity to contract; and finally, and most importantly, that the agreed salary remunerates the entire working day performed by the individual, and not just part of it.

As legal relations are relations of equivalence, in which the subject of rights can use, enjoy and dispose of their things as long as they are given, in return, an amount of value of the same magnitude, the so-called "right to property", that is, the set of normative texts that traditional theory understands as such, reproduces this logic insofar as it endows such clause with cogent force.

In doing so, however, it keeps intact the relationship of exploitation that takes place at the most fundamental moment of capitalist production, which is the purchase, sale and consumption of labor-power. Given that the rule that describes the right to property originates from the relationship of buying and selling labor-power and perceives such process based on its appearance, that is, as a relationship of equivalence, it reiterates the illusory legal form produced by the economic relationship, thereby helping to hide access to interversion.

Let us be clear: the law does not produce interversion. In the context of the employment relationship, the legal form results from interversion. Since the law is an expression of the objective appearance of equivalence in the employment contract, the legal form merely reiterates this appearance, making it denser, but it does not produce it. In doing so, however, the law, as the formal expression that it is, helps to mystify and block access to interversion, because, among other reasons, the legal form manages to become autonomous from the economic relationship, since it is based on the value dimension of commodities, and not on their use-value.

Thus, the right to private property in capitalism is, in essence, a right to expropriation, in other words, a non-right. To be more precise: from a dialectical point of view, the law of private property under capitalism is essentially a law of expropriation which, however, appears in an inverted form, as a legal law, that is, as a norm that



protects a person's capacity to use, enjoy and dispose of what is theirs, in exchange for an equivalent.

It is an economic-social law, from the "world of being", through which surplus-value is produced, but within a value relationship. The lengthening of the working day and its intensification produce, after certain cycles of accumulation, an interversion of the law of appropriation, which is no longer based on one's own labor but on the appropriation of the labor of others. This is the hidden logic behind the system.

Intervention, however, maintains the inverted and socially objective appearance that the buying and selling of labor-power is a relationship of equivalence and therefore legal. The "legal" norm produced by state power, i.e. the positive text whose content is an "is-ought", only expresses the relations of equivalence captured from the surface of society, helping to hide the expropriatory economic essence.

Ruy Fausto was the first to highlight the importance of intervention when it comes to an accurate understanding of the legal phenomenon. In Volume II of his book *Marx: Logic and Politics*, he observes:

We thus arrive to the topic of law as positive law, as law enforced by the state. But why must the juridical relationship be enforced as law? The starting point to answering the question, but merely the starting point, is obtained by comparing the juridical relationship in the form of law to ideology. As we have noted elsewhere, ideology is defined by the blocking of significations. Ideology renders positive – and this use of "positive" can also be linked to the notion of position – that which is in itself negative, that which contains negativity. The essence of ideology lies in "crystallizing", in its positive moment, a discourse that is interverted into its opposite. It acts as a block, a brake on – that is, against – intervention (...) The same thing could be said about when legal relationships are established as state law. Positioning legal relationships as state laws "denies" the subsequent moment and showcases only the first one, precisely so that, in a contradictory way, the intervention of the first moment in the second can take place on "material basis". The state considers only the moment in which the contracting parties are equal by denying the inequality between classes, so that, contradictorily, the equality of the contracting parties be denied and the inequality of the classes be put in place (Fausto, 1987, pp. 299-300, passim, author's translation).

The degree to which the law set by the state signifies the position of the legal relationship is a subject that we cannot address now. In any case, the social efficacy of the legal form is more pronounced than Fausto supposes. A hasty reading of this thesis has given rise to a series of misunderstandings within legal criticism (Grau, 2000).



In any case, if the state enacts a law that blocks access to interversion, that is, to the perception of its occurrence, this is because the legal form that expresses the buying and selling of labor-power has already blocked access to dialectical torsion.

State law is based on a legal form which, in turn, is based on an inverted and objective appearance produced by the economic relations themselves. Furthermore, it is worth pointing out that the law put in place by the state is more a result of capitalist class inequality than a cause, as Fausto's text somehow suggests. Interversion doesn't occur because the state passes a law that reproduces the legal logic of equivalence, but normative positivization takes place because it is based on the inverted and objective appearance produced by interversion. Furthermore, Fausto's development is perfect.

This pattern of legal equivalence, whose systemic and therefore logical origin is the buying and selling of labor-power (the employment contract), is generalized across the most diverse spheres of capitalist sociability, adapting to social relations according to their specific nature. It is a pattern that shapes all types of social contact between individuals, in which the involvement of a magnitude of value, even if only potential, can be glimpsed, even if only on a distant horizon.

Thus, in private law, which goes back to the historical origin of legal relations and therefore has the oldest and most consistent theoretical development, the standard of equivalence is clearly found in civil law, especially in contracts, obligations and liability. That branch of law is the oldest, as its business side accompanies the so-called "antediluvian forms of capital", especially commercial capital. However, due to the fetishistic nature of the system, it is retroactively validated as the branch par excellence of the legal world, relegating the legal employment relationship, which is central from a logical point of view, to a secondary and subordinate plane.

As the legal figures of private law deal with the exchange of marketable things, i.e. objects that have well-determined values, this branch expresses, in its purity, relations of equivalence, appearing as the natural law of capitalist society. Its obvious link with Roman law allows traditional legal theory to establish a firm and consistent evolutionary line, thickening the ideological mists that cover this field of law.

From this thicker core, it is not difficult to understand that the legal form, as it resides at the heart of the capitalist system, lends its logic to the relationships that accompany or derive from contracts, obligations and responsibilities, in other words, from this hard core of the concept of a subject of rights. It is therefore necessary to regulate



what the individual can and cannot do (personal law); how assets are to be maintained and transferred within the family and sentimental unions (family law), or in the event of death (inheritance law); in the consumer sphere (consumer law), among others.

On the other hand, the legal form is also present in relations where the standard of equivalence is not at the heart of the social bond, but still revolves around the paradigm of value, as the legal logic needs to be reproduced in moments of sociability that are far removed from economic production in the strict sense. This occurs, for example, in relations involving the state. This is what traditional theory calls "public law".

Thus, although tax law is an indirect form of expropriation of labor by capital, through the state, it appears as an equitable legal relationship in which the taxpayer and the tax authorities have similar rights. There is nothing more artificial in the legal world than the so-called tax obligation. In administrative law, although the predominance of the state's position is recognized, or precisely because of this recognition, it seems that the administrator has special prerogatives, such as maintaining the economic and financial balance of the contract. However, it is well known that the *factum principis* completely subverts this rule. In criminal law, crime is understood as a kind of contract in reverse, in a way that the offender disposes of all the rights relating to defense, even if, in the end, depending on their social class, their fate is sealed in advance (Pashukanis, 2003a, pp. 167-190; 2003b, *idem*).

It can therefore be seen that the expropriatory nature of the law of private property under the rule of capital, which is established as a general social norm, appears in legal texts in an inverted way, i.e. as a law of equivalence.

In the field of private law, this appearance is described naturally by the legislation, and is merely replicated, without the need to distort the categories. In public law, where the political moment is present, sometimes more or less strongly, the normative text does not simply replicate legal categories, but proceeds to adulterate them, in other words, shape them in such a way that they fit into a type of relationship in which absolute discretion predominates, as required by political circumstances. In criminal law, the standard is maintained or not depending on the class position of the individual under prosecution.

Only exceptionally is the essentially expropriatory nature of private property law admitted in the texts passed by the state. This is the case in Brazil, for example, with



Article 243 of the Constitution, which allows for the expropriation of rural and urban properties where illegal cultivation of psychotropic plants or slave labor are found.

As we can see, the law definitively seals the exploitative mechanism of the capitalist economy insofar as it lends its form to the law of private property. Such law, which is essentially a natural-social norm of expropriation, appears as a legal norm that expresses relations of equivalence. As in *The Odyssey*, legal language is a kind of siren song. The problem is that, on the real stage of capitalism, the worker cannot do as Ulysses and tie himself to the mast.

Conclusion

The law of private property under the rule of capital is a socio-economic norm of expropriation, i.e. the extraction of other people's labor without the payment of an equivalent.

In this sense, it is an anti-legal norm or a non-law, since the meaning of law is that of the social validity of the standard of equivalence, that is, the formalization of social relations in which different use-values are exchanged, but always with the maintenance of identical values at stake. Things change, but the quantities of value do not.

Nevertheless, this law of property is based on a kind of social relation that appears as an equitable legal relation. In fact, the buying and selling of labor-power appears as a contract between equal, free, property-owning parties who exchange identical values. Since, on the surface of capitalist society, the wage-form corresponds to the entire working day, it seems that legal equality essentially qualifies such relations. This is an inverted appearance that can only be unveiled once the phenomenon of interversion is borne in mind.

The dialectical torsion, on the other hand, can only be perceived once the nature of surplus-value has been revealed and only after understanding the process of capital accumulation, i.e. its expanded reproduction. After a few turns in the cycle of capital production, the value that restarts the process is, in its entirety, the result of the surplus-value previously produced and extracted from the working class without payment of an equivalent. The law of appropriation by one's own labor becomes its opposite, that is, it becomes the law of appropriation of the labor of others.



This twist, however, because it takes place within a value relationship, keeps the appearance of economic equivalence intact, and therefore also preserves the legal equivalence of buying and selling labor-power. Thus, the state normative texts that describe the legal logic are drawn up in the light of the paradigm of the inverted and socially objective appearance of equivalence of this relationship. This, in turn, is retroactively relegated to the background by civil and business relations which, in the light of the fetishized dynamics of the system, appear to be the authentic legal relations.

Legal law does nothing more than intensify and definitively block access to interversion, that is, to the real socio-economic law that molds the norm of private property in capitalism into a norm of continuous expropriation of the unpaid labor of others. Law is only possible because it is anchored in non-law; legal freedom is the other side of economic slavery.

Translation

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