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International Law, race and Marxism: an outline of a commodity-form approach

Direito internacional, raça e marxismo: esboço de uma abordagem baseada na forma-mercadoria

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Abstract

This article attempts to chart out an account of the relationship between international law, capitalism and race through the commodity-form theory. It begins with a discussion of the typical (liberal) approach to racism in international law, outlining its flaws. It then proceeds to explore how Marxists have understood the relationship between racism and capitalism, arguing that this fundamentally impacts upon the structure of international law. Setting this in the context of Pashukanis' work, the piece reconstructs that theory to demonstrate how it can help conceptualise the deep structural inter-relations between capitalism, racism and international law.

Keywords: Pashukanis; Commodity-form; Racism; Imperialism; Marxism.

Resumo

Este artigo busca traçar um panorama da relação entre direito internacional, capitalismo e raça por meio da teoria da forma-mercadoria. Começa com uma discussão sobre a abordagem típica (liberal) do racismo no direito internacional, destacando suas falhas. Em seguida, explora como os marxistas entenderam a relação entre racismo e capitalismo, argumentando que tal relação impacta de modo fundamental na estrutura do direito internacional. Situando isso no contexto da obra de Pachukanis, o artigo reconstrói esta teoria para demonstrar como ela pode ajudar a conceitualizar as inter-relações estruturais profundas entre capitalismo, racismo e direito internacional.

Palavras-chave: Pachukanis; Forma-mercadoria; Racismo; Imperialismo; Marxismo.

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Introduction[1] [2]

Over the past 15 years or so, debates about the relationship between capitalism and racism have re-emerged in a serious way. Crucial to these debates have been what role – if any – the Marxist tradition can play in such debates.[3] These debates have been particularly prominent in the legal discipline, and overlap significantly with an earlier set of international legal debates about the relationship between imperialism and international law.

The Marxist tradition is a crucial voice in the global anti-racist movement. Marxists were at the forefront of the anti-colonial and anti-imperialist movements, with those movements taking up Marxist concepts and deploying them to understand the relationship between capitalism, race and colonialism. Yet such voices did not reflect systematically on international law. To some degree, this has changed recently, with the re-publication of China Miéville's *Between Equal Rights* and the broader resurgence of Marxist approaches to international law.[4]

2024, of course, is the 100th anniversary of the publication of Evgeny Pashukanis' *General Theory of Law and Marxism*. In this work, Pashukanis set out his commodity-form theory of law, a theoretical formulation that remains central to this day. This article, building on earlier work, attempts to chart out an account of the relationship between international law, capitalism and race through the commodity-form theory. It begins with a discussion of the typical (liberal) approach to racism in international law, outlining its flaws. It then proceeds to explore how Marxists have understood the relationship between racism and capitalism, arguing that this fundamentally impacts upon the structure of international law. Setting this in the context of Pashukanis' work, the piece reconstructs that theory to demonstrate how it can help conceptualise the deep structural inter-relations between capitalism, racism and international law.

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[1] To a contextualization of this article, and a debate with it about the value theory, the co-implication on dependency and imperialism, the racialization process and the possibility of tactical uses of law from the insurgent law perspective, see *Does a transatlantic Pashukanis emerge? Dialogues with Robert Knox on dependency-imperialism, racialization, and insurgent law* (PAZELLO; UCHIMURA, 2024), in this same volume of *Direito e Práxis* [Note from the editor of the dossir *Pashukanis, insurgences and praxis: 100 years of 'The general theory of Law and Marxism'*]

[2] This article is based upon, and reproduces elements of, an article I previously published in the *American Journal of International Law Unbound*, see Robert Knox (2023). Thanks to Eva Nanopoulos for comments.

[3] See Robert Knox and Ashok Kumar (2023).

[4] For recent important works see Grietje Baars (2017; 2019); Robert Knox (2016); Tor Krever (2020); Parvathi Menon (2022); Eva Nanopoulos (2023); Rose Parfitt (2019); Akbar Rasulov (2018); Mai Taha (2016); Ntina Tzouvala (2020).

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Race, racism and racialisation

The dominant understanding of race and racism in international law is perhaps best summed up by the International Convention on the Elimination of All Forms of Racial Discrimination. According to Article 1(1), racial discrimination refers to 'distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin'. This, of course, is reflective of a wider 'commonsense' understanding of racism.

At first sight, this definition seems innocuous enough. However, a closer look reveals significant issues. The model of racism in the definition is a liberal one, in which racism results from the differential treatment based on pre-existing 'racial' characteristics. Yet insofar as we accept 'race' as a pre-existing phenomenon we are in danger of sharing the very assumptions that underlie racist thinking – that race is a natural fact.

At the same time, this definition naturalises racism. If racism results from a pre-existing phenomenon of 'race', then racism appears to be the result of prejudice against 'difference'. Yet such an account cannot tell us which 'differences' assume an outsized importance for racism and *why* they do so in particular periods. This definition make it impossible to historicise or explain racism.

A consequence of this account is that international law plays a heroic role. Whilst there have certainly been racist international laws, these are easily remedied. International law stands opposed to racism, insofar as it does not intrinsically discriminate against pre-existing categories of 'race'.

The Marxist tradition has contested this definition. As Frantz Fanon argued, '[a]s long as the black man is among his own, he will have no occasion … to experience his being through others' (FANON, 1986, p. 109). Populations which were dubbed to be black (or other racial identities) did not initially identify as such – they had other identities through which to organise their existence. It was only when juxtaposed to whiteness that black people 'became' black. Yet it was not simply through *juxtaposition* that race came into being, since 'the white man is not only The Other but also the master' (FANON, 1986, p. 109). Black people became 'black' so they could be conceived of as inferior to the 'white' people who sought to dispossess and exploit them. In this way, rather than understanding racism as a product of race, Marxists argue that 'race' is a product of *racism*. As Eric Williams put it in respect of

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slavery '[s]lavery was not born of racism: rather, racism was the consequence of slavery' (WILLIAMS, 1944, p. 7).

A Marxist account of race, then, is one of 'racialisation', in which race is understood as *socially produced*. This social production is not innocent, rather the phenomenon of 'race' is in fact the created by the social practices of *racism*, which involves creating 'races' in order to place them into a hierarchy.

This presents us with a fundamentally different picture of international law's role. To that extent that racism is centrally concerned with processes of *race-making,* then international law's contribution to racism cannot be reduced to its direct, or even indirect, discrimination. Instead, insofar as international law contributes to processes of racialisation, and – crucially – to the conditions that generate and shape such processes, it is crucially intertwined with issues of racism.

Race and Capital

Perhaps the central insight of the Marxist tradition is that social phenomena have to be situated in their material context. In particular, Marxists locate legal, social and political relations in the processes and practices through which human beings produce and reproduce their social existence.[5] It is in this way that Marxists have understood both racism and international law. Understanding racism in this context means moving beyond racism as prejudice, and instead thinking of racism's social role. This is perhaps best summed up by W.E.B. Du Bois (2003):

> The problem of the twentieth century is the problem of the color line, the question as to how far differences of race – which show themselves chiefly in the color of the skin and the texture of the hair – will hereafter be made the basis of denying to over half the world the right of sharing to utmost ability the opportunities and privileges of modern civilization.

In later years Du Bois came to nuance his particular characterisation of these 'differences of race', but he crucially articulated a materialist conception in which the role of race is to define one's ability to share in proceeds of 'civilisation'. As Ruth Wilson Gilmore notes it '[r]acism is a practice of abstraction', in which certain characteristics of individuals

[5] See Robert Knox (2021).

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are separated off, fixed, and used to sort human beings into groups. These groups are then sorted into a *hierarchy*. This hierarchy function as a 'limiting force that pushes disproportionate costs of participating in an increasingly monetized and profit-driven world onto' those who have been racialised, in particular way (GILMORE, 2002, p. 15-16).

Crucially, then, the anti-racist Marxist tradition understands racism as fundamentally structuring access to the material benefits of society. In this respect, a central aspect of Marxist discussions of racism have been its structural connection to *capitalism*. The global capitalist system is one characterised by extreme inequalities of wealth and power, with these inequalities differentiated along clear geographical lines. Capitalism was born in Europe, and spread and consolidated its hold over the globe on the basis of European expansion in the form of colonialism and imperialism. In the process, European states fundamentally transformed the internal socio-economic order of non-capitalist societies.

The process of the spread, intensification and maintenance of this global system was absolutely central in the creation of racialisation. In Fanon's words, racism was but one part of a social system in undergirded by 'exploitation of one group of men by another which has reached a higher stage of technical development' (FANON, 1988, p. 37-38). Insofar as capitalism is characterised by the domination of the majority of the word by a small number of states, it is necessarily undergirded by the notion of the *superiority* of those states to the rest of the world – this is racism. As Walter Rodney put it 'the white racism which came to pervade the world was an integral part of the capitalist mode of production' (RODNEY, 1982, p. 88).

Crucially, racism does not emerge simply as a generic justification for inequalities in power, rather it stems from two key elements of capitalism: its endlessly transformative nature, and its tendency towards abstraction. A core insight of the Marxist tradition is that, as a mode of production, capitalism tends towards continual expansion and transformation (LUXEMBURG, 2003). The capitalist mode of production is structured around the pursuit of profit, social needs are met indirectly insofar as they pursue profit. At the same time capitalist societies are *competitive*, with this pursuit of profit framed by the potential that rivals will make productive innovations and so undercut prices (MARX, 1993, p. 361-362). At the same time, capitalist societies are highly crisis prone, with no crisis solving capitalism's contradictions (MARX, 1993, p. 357).

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The combination of the above two factors means that capitalism is always transformative and expansive. Capitalists will constantly seek out new sources of profit to fend off their rivals, as well as stave off the possibility of crisis. In order to seek these new sources of profit, capitalists must transform the world – economically, socially, and politically – to make it more amenable to these capitalist processes (BUKHARIN, 1972).

Simultaneously with this, capitalism tends towards *abstraction*. Whereas previous modes of human existence have been territorially bounded and rooted in relatively stable hierarchies and custom, capitalism is spatially unbounded and premised on the dismantling of pre-capitalist hierarchies. At the same time, capitalism – based on the systematisation of commodity exchange – must render all goods potentially exchangeable. This requires a colossal practice of *abstraction* in which all goods can reduced to their abstract, universal value as judged against money.

These two facts help us to understand the deep interconnections between race, racialisation and capitalism. Capitalism, of course, initially begins in Europe, based particular on the extraction of raw materials from early European colonialism (MARX, 1990, p. 915-922). The internal pressure of capitalist production to expand leads to it quickly leave the bounds of Europe. Here, capitalism comes into contact with a number of pre-capitalist societies, with their own forms of complex social organisation. These societies needed to be transformed in ways to make them amenable to capitalist production: often in the face of resistance and recalcitrance. In this way, the expansion of capitalism was accompanied by forms of violence and dispossession, through which territory could be accumulated and managed. Even after the firm establishment of capitalism, the uneven global division of labour and its attendant requirement to enable capitalist transformations, continue to require this.

These processes appear as processes of *racialisation*. As European capitalism expanded into the non-European world it met these pre-capitalist societies and marked them out as *racially inferior*. Through a process of racialised abstraction, it assigned these people to specific 'racial groups' which were seen as inferior to European peoples and their values. These values were frequently based on abstracted and idealised social relations of *capitalism*: particularly important in this context was the idea that non-European peoples were incapable of managing their own affairs or of fulfilling reciprocal obligations (KNOX, 2022, p. 25).

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In this way, then, processes of racialisation and racism are *forms of appearance* of capitalist social relations. Far from being 'added extras' or 'epiphenomenal' they are the abstractions through which capitalist social relations – as a totality – present themselves to us. The particular forms that this racialisation takes are protean, corresponding to particular situations and different regimes of capitalist accumulation. Thus in the 'the period of crude exploitation of man's arms and legs' practices of racialisation threw up vulgar, biological racisms. Yet '[t]he perfecting of the means of production inevitably brings about the camouflage of the techniques by which man is exploited, hence the forms of racism' (FANON, 1988, p. 35).

Race and the Legal Form

The black and Third Worldist Marxist traditions, therefore, point our attention to the structural connections between capitalism and racism. On the one hand, racism is not a natural phenomenon but instead one systematically generated through capitalist social relations. On the other hand, capitalist social relations *require* forms of racialisation to exist. The actually existing history of capitalism has been one crucially undergirded by and appeared as processes of racialised dispossession and exploitation.

But what role for law? Critical international legal scholarship – particularly in the Third World Approaches to International Law (TWAIL) tradition – has powerfully demonstrated that capitalism's processes of dispossession and transformation were thoroughly mediated through international legal argument.[6] Moreover, TWAIL scholarship has gone beyond this, and demonstrated the deep historical connections between the formation of international legal doctrine and European colonialism (ANGHIE, 1999, p. 1).

However, although this scholarship has been powerful – and contains some Marxist elements within it – it has really trouble examining the *structural* connections between international law, racism and capitalism. In many of these accounts, racism is rooted in a somewhat transhistorical process of 'othering', without anchoring this in concrete reality of capitalist social relations. Indeed, often in TWAIL scholarship capitalism appears as

[6] For overviews of TWAIL see Antony Anghie and B. S. Chimni (2003); James Thuo Gathii (2011); Makau Mutua (2000).

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particularly *modality through which othering is expressed*. At the same time, the relationship between law and both capitalism and racism appears, at most, to be the result of a contingent historical encounter which 'encoded' colonialism into the law (CRAVEN, 2012, p. 863). Such a position makes it very difficult to navigate the closely liked but always transforming relationship between capitalism, racism and the law, and ultimately leaves us unable to reflect on what emancipatory law role might play in social struggles.

As we have seen, race is – on the above Marxist account – a mode of abstraction which serves as a form of appearance for capitalist social relations. Such an analysis of race bears a remarkably similarity to the Bolshevik jurist Evgeny Pashukanis' commodity-form theory of law. As is well-known, Pashukanis argued that that previous Marxist theories of law had never theorised law as a specific social form. Instead, he argued, they had simply added some materialist to pre-existing theories, and thus produced 'a history of economic forms with a more or less weak legal colouring, or a history of institutions, but by no means a general theory of law' (PASHUKANIS, 1980a, p. 42).

Against this, Pashukanis insisted that a distinctively Marxist analysis of law ought to understand law as a 'mystified form of some *specific* social relationship'. The task, then, was to understand the specificity of this relationship. In order to do this, Pashukanis posed the formulation 'under certain conditions the *regulation* of social relationships *assumes a legal character*', the task of Marxist theory was to find the conditions in which regulation took on this 'legal character', and so delimit the specific *legal form* (PASHUKANIS, 1980a, p. 58).

Following Marx's scattered reflections in *Capital*, Pashukanis located these conditions in those of commodity exchange, and their attendant commodity form. All commodities must be exchangeable with each other and so exist, this value gives them an abstract form of equality, that is embodied in the form of money. Yet such commodities can only be exchanged by their *owners*. Crucially, these owners must mutually recognise each other as the legitimate bearers of commodities, with a set of abstract equal rights. As such, disputes between these parties cannot be resolved by reference to a status, or via a formal hierarchy, instead disputes must be regulated through a form that preserves formal equality, that is law (PASHUKANIS, 1980a, p. 67).

In this way, law is a form of appearance of commodity exchange which presents those engaged in exchange relations as abstract legal persons counterposed as formal equals. With the generalisation of commodity exchange, that is to say, the consolidation of

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capitalism, and the creation of a working class compelled to sell its labour-power to survive, commodity exchange, and with it the legal form, becomes universal (PASHUKANIS, 1980a, p. 68). At the international level, '[s]overeign states co-exist and are counterposed to one another in exactly the same way as are individual property owners with equal rights' (PASHUKANIS, 1980b, p. 176).

Accordingly, we now have a structural connection between capitalism and race *and* – via Pashukanis – a structural connection between law and capitalism. However, a frequent criticism of Pashukanis has been that his commodity-form theory is unable to make sense of practices of racialisation – and imperialism more broadly – premised as it is on the *formal equality* within the legal form. This is linked to a broader set of criticisms that Pashukanis paid insufficient attention to the content of law as against its form.

Such criticisms are misplaced however. Firstly, of, Pashukanis – as a committed fairly orthodox Communist Party member – held to a Leninist understanding of imperialism. Lenin's understanding of imperialism was hardly indifferent to processes of uneven development and exploitation under capitalism, and *specifically* understood imperialism as structured by a racialised international division of labour (LENIN, 1970; LENIN, 1964). As such, it is unsurprising that Pashukanis referenced *directly* practices of racialisation in international law:

> While in feudal Europe the class structure was reflected in the religious notion of a community of all Christians, the capitalist world created its -concept of "civilization" for the same purposes. The division of states into civilized and "semi-civilized", integrated and "semi-integrated" to the international community, explicitly reveals the second peculiarity of modern international law as the class law of the bourgeoisie. It appears to us as the totality of forms which the capitalist, bourgeois states apply in their relations with each other, while the remainder of the, world is considered as a simple object of their completed transactions. (PASHUKANIS, 1980b, p. 172).

On the one hand, then, Pashukanis was directly aware of international legal doctrines setting into motion practices of racialisation through which capitalist social relations found expression. At the same time, Pashukanis insisted that 'in principle … states have equal rights yet in reality they are unequal in their significance and their power' and more specifically' and further that 'dubious benefits of formal equality are not enjoyed at all by those nations which have not developed capitalist civilization' (PASHUKANIS, 1980b, p. 178).

It is clear then, that Pashukanis' account takes very seriously the role that international law can play in racialisation. Owing to the structural relationships between

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racism, capitalism and the law – he clearly understands the legal as one which sets into motion and stabilises the processes of racialisation through which capitalism is articulated. Arguably, however, we can develop a deeper relationship than even this.

Pashukanis' account of the generalisation of the legal form was not simply about the mechanical extension of commodity exchange. Instead, he argued that capitalism represented a *qualitative* transformation, in which '[l]egal capacity is abstracted from the ability to have rights' with the legal subject 'the abstract commodity owner elevated to the heavens' (PASHUKANIS, 1980a, p. 68; p. 82). Crucially, though, this was not purely a domestic process, as Pashukanis puts it:

> Accordingly, bourgeois capitalist property ceases to be a weak, unstable and purely factual possession, which at any moment may be disputed and must be defended vi *et armis.* It turns into an absolute, immovable right which follows the object everywhere that chance carried it and which from the time that bourgeois civilization affirmed its authority over the whole globe, is protected in its every corner by laws, police, courts. (PASHUKANIS, 1980a, p. 178).

Yet as observed earlier, this the way in which 'bourgeois civilization affirmed its authority over the whole globe' was *through processes of racialisation*. In this sense, then, racialisation is not simply connected to the legal form, but rather was crucial to its very formation beyond scattered exchange. Substantively, we can see this through the fact that key legal doctrines – both domestic and international – were sharpened and shaped *through* the racialised work of capitalist accumulation. Thus, for instance, systems of property registration were developed through the processes of dispossessing indigenous peoples (BHANDAR, 2015; 2018).

Race, International Law, Capital

Understood in this way, we can now say a tripartite structural connection between capitalism, racism and international law. Capitalism is a mode of human existence structured by abstraction, with two of these crucial abstractions being race and law. The international expansion of capitalism is crucially undergirded by *both of these abstractions*. At the same time each of these abstractions is constituted and shaped by the other, they exist in a complex dialectic of capitalist social relations and their forms of appearance. Thus

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transformations in regimes of accumulation are undergirded by changing patterns of racialisation which are embedded in, and react upon, changing juridical regimes.

This complex interpenetration is best illustrated through the legal arguments around civilisation in the colonial period. The doctrine of 'civilisation' was very significant in justifying and structuring European colonial expansion in the non-European world. The doctrine established a European 'standard of civilisation', which, if reached, enabled states to enter into the Family of Nations and so gain legal personality (BOWDEN, 2005, p. 1). The legal doctrine here was fairly straightforwardly racialised, insofar as it posited non-Europeans as intrinsically inferior to Europeans. Crucially, though, this racialisation did not simply *facilitate* European (and thus capitalist) expansion. Instead, the content of the racialisation was rooted in capitalist social practices. In particular, jurists of the time argued that non-European peoples could not be trusted to act in the reciprocal manner expected by capitalist contract and property (KNOX, 2022, p. 47-51).

Yet as Ntina Tzouvala (2019) points out, this doctrine fundamentally articulated the imperatives of capitalist accumulation by allowing for the possibility that these non-Europeans might become *civilised* and thus live up to European. This argument undergirded the transformative drive of capitalism, yet often did so in an indirect way, by – via the medium of unequal treaties – encouraging non-European states to 'civilise' themselves. In this context, then, the expansion of capitalist social relations creates forms of racialisation which were articulated legally. These racialised legal arguments were shaped by the particular capitalist configuration in which they were made, and were crucial in that configuration's constitution. This process of racialisation was a thoroughly *juridified* one, made effective through international legal structures. What this also meant, as TWAIL scholars have demonstrated, was core international legal concepts, particularly sovereignty, were solidified *through* these projects of racialisation (ANGHIE, 2005).

Race and International Law Today

The doctrine of civilisation was coterminous with formal colonial domination, accompanied by more explicit and direct forms of racialisation. Yet the world today, and international law, does not look like this. Indeed, many would argue, international law played a fundamental

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role in bringing such a state of affairs to an end. How, then, can we say that contemporary international law is structurally connected to processes of racialisation?

Marxists have always understood that the exploitation and inequality that characterises capitalism exists independently of formal state domination. It was for this reason that – with the end of formal colonialism – Marxists in the Third World insisted that what had to come into being was a *neo-colonialism* marked by 'the granting of political independence minus economic independence' (NKRUMAH, 1973, p. 172), in which the formerly colonised states were 'politically free' but enmeshed within a global system of economic dominance.

Such a situation was not one in which racism *disappeared* but rather changed into more insidious forms. Given the structural connection between international law, racialisation and capitalism, it is no surprise that these forms are embedded in and mediated through international law. On a very basic level, this was the case in terms of the international legal regime of colonialism. Even as decolonisation represented a significant legal break, the law of self-determination retained some direct continuities. Firstly, under the principle of *uti possidetis juris* international law preserved those very colonial borders that had been established under the doctrines of civilisation. Secondly, and more importantly, self-determination had to take place within the state-form (PAHUJA, 2011, p. 45). This form is one intrinsically linked to both capitalist social relations *and* was formed in legal terms during the colonial period. The net result of these two principles was that the law of self-determination channelled anti-imperialist resistance into a form that was ultimately compatible with capitalism, and preserved a racialised geographical and territorial division (MUTUA, 1994, p. 1113).

At the same time as this, the law of self-determination did not open up the possibility of a wholesale transformation of the international legal order. Instead, newly emerged states were – upon acceding to statehood – said to have implicitly *consented* to those rules which had been created during the period of their active and direct subordination (ANGHIE, 2005, p. 242). Any attempt to transform the international economic system would need to be done through treaty, or via the emergence of new customary norms, both of which would require active and affirmative consent on the part of imperialist states. Unsurprisingly such consent was not forthcoming, and accordingly international law's structure directly preserved the results of racialisation. Yet this was done in co-existence with sovereign equality, meaning

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that – in a formal juridical sense – the newly independent world had *consented* to this racialised order.

Crucially, however, international law has not simply preserved a historical legacy of racialisation, it has also been crucial articulating forms of post-colonial racism, through which transformation and intervention can exist even as post-colonial states retain their formal legal sovereignty. This has been most evident in the context of the international institutions of the International Monetary Fund and the World Bank. These institutions have played a significant role in restructuring the economies of states in the Global South to facilitate the movement and accumulation of capital. They have done through mobilising racialised discourses as to the laziness of such states and the corrupt or kleptocratic nature of their leaders. These racialised articulations are crucial firstly in rearticulating contentious political-economic choices as 'technocratic' exercises in growth, as against corrupt or inefficient social democratic policies (GATHII, 1998, p. 65). At the same time, the interventions are framed by a racialised assumption that it is the inability of non-Europeans to fulfil their obligations, or manage their affairs which cause them to default on their debts, as opposed to the nature of the global capitalist system. In this way political-economic restructuring in the Global South is undergirded by racialised assumptions, to which – once again – the Global South formally consents (KNOX, 2020).

This particular racialised assumption – about the inability of non-Europeans to manage their own affairs – has been active in a number of international legal arguments. It underscores the 'unwilling and unable' doctrine articulated in the War on Terror (TZOUVALA, 2015, p. 266), forms a crucial element in humanitarian and human rights discourse (MUTUA, 1995, p. 589), and serves as a powerful tool of delegitimation in the case of international legal reforms from the Global South. In this way, it serves as a powerful racial fix (KNOX, 2020; CARRILLO, 2021, p. 641). These racialised assumptions are vital in managing the ways in which formal sovereignty is able to co-exist with a hugely unequal world, and one in which international law mediates political-economic intervention for the purposes of capitalist accumulation. In this way, rather than international law's importance diminishing in the context of formal independence, it has in fact increased.

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Conclusion

This brief article has attempted to chart out a Marxist understanding of the relationship between capitalism, racism and international law. It began by pointing out the socially-constructed nature of racism – noting that 'race' is an abstraction that emerges from practices of racialisation. It tied these processes of racialisation to capitalism's ceaseless drives to expand, transform and – crucially – abstract. It argued that racism represents a form of appearance of capitalist social relations. It then, engaging with Pashukanis' commodity-form theory, demonstrated how processes of racialisation are intimately entangled with law at the level of its very form. Race and law both represent abstract forms of appearance of capitalist social relations, with the three existing in a inter-penetrating relationship.

The Marxist tradition has never been pure speculation or analysis. Rather, Marxists have always turned their eye to *social transformation*. The crucial lesson here is that those fighting anti-racist struggles must be sceptical about law, and in particular international law. In capitalist society law exercises and almost irresistible pull on political work. In particular, law often appears to offer shortcuts that circumvent difficult political struggles.

This is especially true as regards anti-racism, with the formal equality embedded in the legal form appearing to directly run against racism. Yet this article has shown that this is not the case, once we understand the underlying dynamics of racialisation it is not enough that law is usually 'against' direct discrimination. Instead, we need to understand law as helping to constitute the conditions through which processes of racialisation occur. But, this is not neutral, rather the legal form's structural connection to capitalist accumulation binds it equally to patterns and practices of racialisation. Law will not save us.

So what does this mean? Concretely, the structural relationship between law, capitalism and racism means two crucial things. Firstly, that there are hard limits of what the law can achieve – it cannot ultimately transcend racism because it represents a form of appearance of those social relation to which racism is tied. Secondly, it means that law is not a *neutral terrain* through which to pursue anti-racist struggles, instead law will help channel such mobilisations into forms that preserve and translate racialisation in new contexts.

As I have argued elsewhere, this does not mean 'giving up' on the law, which – in a society dominated by commodity exchange – would not be possible in any case (KNOX, 2010, p. 193). Rather, legal tactics need to subordinated to the wider strategic goal of contesting

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the *capitalist social relations* that generate processes of racialisation. Anti-racist struggles, therefore, must be understood as part of a wider set of struggle. In leveraging the law, we must focus not on law for its own sake, but rather for how it can aid and strengthen those social forces best able to contest capitalist social relations. Crucially, this must be pursued as *openly* subordinated to the political struggle against racism, since to appeal the law on its own terms, is ultimately to appeal to those very terms that produce racism in the first place.

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