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E.B. Pashukanis' 1927 Speech on 'Emergency Legislation Against the Toilers and Their Organisations': Explication and Critical Analysis

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Abstract
In what follows, we provide an explication and critical analysis of E.B. Pashukanis' neglected speech, 'Emergency Legislation against the Toilers and their Organisations' (1927) in connection with Pashukanis' *General Theory of Law and Marxism* (1924) and the present crisis of liberal jurisprudence. An edited version of Pashukanis' transcribed speech accompanies our explication and critical analysis.

Keywords Emergency legislation · Norm · Exception · Bourgeois class justice · Sovereign dictatorship

The past decade has seen the spread of escalating political, social, and ecological crises across the core of the capitalist world-system. In the face of the crisis of prior forms of representation such as mass parties and parliamentary coalitions, there has been an increasing reliance on the concentration of power in the executive branch of government, and, in the wake of the 2008 financial crisis, on emergency administrative governance in the vein of technocratic authoritarian liberalism (Wilkinson 2021; Losurdo 2024; Slobodian 2023). This crisis of parliamentary politics, reminiscent of the interwar period of the previous century, poses the looming threat of 'sovereign dictatorship' or a new Bonapartism as a technique of crisis management within the structural constraints of the capitalist state. Yet what arguably distinguishes the present conjuncture is that the decline of the liberal legal form and the rule of law is not normally occurring via an explicit suspension of the constitutional order, though this too is not outside the realm of possibility. Instead, we are witnessing a gradual erosion in which the formal elements of legality (constitutions, courts, rights and liberties) are *prima facie* retained, but increasingly hollowed out of their prior content or

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weaponised against political opponents. All signs now point to a protracted condition in which legal norms and exceptions, instead of being opposed, are increasingly blurred into a yet-undefined articulation (Rana 2025).

Scholarship in legal and political theory has long noted the presence of emergency executive powers within the fabric of liberal constitutional government, and their deployment in moments of political crisis (Rossiter 1948). In the Anglophone world, interest in exceptional legislation was revived in the shadow of the Bush administration's War on Terror, and more recently, in the wake of the social regulations necessitated by the unprecedented COVID-19 pandemic (See Douzinas 2023). Much of the terms of this discussion have been set by studies of Carl Schmitt and his Weimar interlocutors, particularly Hans Kelsen (See Vinx 2015; Jacobson & Schlink 2002).[1] Scholarship that followed has grappled with the philosophical and practical implications of state(s) of exception for the ideology and practice of liberal constitutionalism, particularly under the hegemony of post-Cold War neoliberal governance (See Agamben 2004; Brown 2010; Lazar 2009).

Perhaps owing to the general decline of Marxist perspectives in the social sciences and humanities that marked the 1990s and early 2000s, there has been comparatively little written on questions of exceptional states and emergency legislation from a distinctly Marxist lens.[2] Earlier generations of Marxist scholarship on dictatorship, fascism, and other authoritarian forms have largely been relegated to works of historical value but of uncertain contemporary purchase (Neumann 2009; Poulantzas 2019).[3] We hope to correct for the continued paucity of specifically Marxist perspectives on emergency legislation by making widely accessible the following 1927 transcribed and edited speech, 'Emergency Legislation against the Toilers and their Organisations', by the leading Soviet jurist, Evgeny Bronislavovich Pashukanis.[4]

[1] For a helpful discussion that places these thinkers and their theories in historical context, see Dyzenahus (1999). See also McCormick (2013).

[2] Head (2016) represents an important exception to this broader trend insofar as he advances a specifically Marxist approach to emergency powers and legislation, which draws on the works of Marx, Engels, Lenin, Pashukanis (on p. 147 of the same text, Head cites Pashukanis' discussion in the *General Theory* of the routine transformation of the liberal constitutional state into a repressive class state), and Trotsky. Head reiterates this view when inferring that, 'for Marxists, therefore, analysis of emergency powers cannot be separated from an examination of the socio-economic and class character of the state and government exercising the powers' (p. 144). However, not being aware of the existence of Pashukanis' 1927 speech, Head is compelled to account for Schmitt's continued influence on contemporary debates about emergency powers. See also Scheuerman (1997), although it must be noted that Scheuerman's discussion of 'Soviet law' (in a provocatively titled chapter 'Carl Schmitt meets Karl Marx') is hampered by its framing in 'totalitarian law' and its lack of engagement with actual Soviet legal thinkers, least of all Pashukanis. For a more recent account, see Nanopoulos (2023).

[3] For a more recent discussion of the concept of dictatorship and its diverse historical expressions, see Kivotidis (2021).

[4] A largely inaccessible and noticeably unedited transcript of Pashukanis' speech was first published in the following collection: *The Practice of Bourgeois-Class Justice in the Struggle of the Revolutionary Movement of the Workers, the National Minorities and the Colonial and Semi-Colonial Peoples,* first issued by the Executive Committee of the International Class War Prisoners Aid (Berlin: MOPR Publishing House, 1928).

Revisiting the Occasion of the Recent Centenary Anniversary of the *General Theory of Law and Marxism*

E. B. Pashukanis' neglected speech, 'Emergency Legislation against the Toilers and their Organisations', coincides with another important juncture, specifically the centenary anniversary for the publication of his groundbreaking *General Theory of Law and Marxism: Towards a Critique of the Fundamental Juridical Concepts* (1924). As one would expect, this important milestone was marked by a plethora of international academic conferences, particularly across Europe and South America, that focused on the global reception of Pashukanis' *General Theory* 100 years on. The centenary anniversary of the *General Theory* also culminated in the publication of two edited volumes in the English language dedicated to re-examining Pashukanis' legacy (see Cercel et al. 2025a; Cercel et al. 2025b). Despite the diverse range of contributors and the manifold themes that are explored in these two volumes, the broader interpretive approach seems to hinge on the overarching assumption that Pashukanis' post-1924 interventions and writings are at best irrelevant and at worst reflect externally-imposed barriers to a meaningful appreciation of the originality of Pashukanis' contribution to legal theory in the *General Theory*.[5] This interpretive orientation is best encapsulated by Rafał Mańko, who offers the following cautionary note for readers:

> I refer to the theory of Pašukanis as contained in *The General Theory*, omitting later works. This is because I assume, following Robert Sharlet and China Miélville, that the further development of the views contained in his publications…did not flow from their free development, but was dictated by a desire to fit into the changed intellectual conditions resulting from the development of Stalinism. (Mańko 2025, n. 8, p. 77)

However, even if it is the case that Pashukanis' later views were largely fashioned by a desire to accommodate to Stalinist realities, it is quite a leap to conclude that *all* of his writings and interventions after 1924 were motivated by such a desire and should therefore be brushed aside without further investigation. As will be further explained below, Pashukanis' speech on emergency law in 1927 provides a formidable case in point.

One possible explanation for the continued omission of Pashukanis' post-1924 writings and interventions is that many of them remain untranslated and are thus limited to a Russian readership. However, even legal scholars with command of the Russian language[6] have generally disregarded Pashukanis' post-1924 writings and

[5] It should be noted that the same approach has not extended to Pashukanis' pre-1924 interventions, particularly his early contributions in an advisory capacity. For a helpful discussion of Pashukanis' role in the Rapallo Treaty of 1922 and its relation to *The General Theory of Law and Marxism*, see Bowring (2017).

[6] Anna Lukina's recent work on Soviet legal thought is representative of this interpretive trajectory. Although Pyotr Stuchka and Andrey Vyshinsky feature in Lukina's discussion of Pashukanis' 'contemporaneous interlocutors', the primary sources for their debates with Pashukanis are not considered, nor are the contributions of Pashukanis' critics on the Soviet legal theory front (e.g., A.A. Piontkovsky, A.K.

interventions, in part because they do not fit neatly within the familiar conceptual parameters of contemporary Western jurisprudence, especially as formulated in the works of Lon Fuller, Hans Kelsen, and Carl Schmitt, the first two having commented explicitly on Pashukanis' work (Fuller 1948; Kelsen 1955). Our point of departure is to take Pashukanis' post-1924 writings seriously and to situate them in the historico-political contexts in which they proliferated, and only then to draw relevant inferences about their implications for Pashukanis' legal theory and his legacy. Such an approach complicates the dominant narrative according to which Pashukanis' star is extinguished immediately after the publication of the *General Theory*. By bringing into relief Pashukanis' lesser-known contributions, we are able to arrive at a richer perspective of Pashukanis as a thinker and as a revolutionary activist on the ground.

The Main Outlines of Pashukanis' 1927 Speech

Pashukanis' speech on 'Emergency Legislation against the Toilers and their Organisations'[7] was the first substantive speech to be delivered at a conference featuring Soviet and international jurists in Moscow, which was held on 13–14 November 1927 under the auspices of the International Red Aid, better known by its Russian acronym, MOPR [*Mezhdunarodnaya organizatsiya pomoshi bortsam revolutsii*].[8] The International Red Aid was founded in December 1922 as a result of a Comintern resolution aimed at assisting working class political prisoners in capitalist countries (Albert 2016, p. 92). According to the surviving transcript, the conference opened with a welcome address by Clara Zetkin, who emphasised the numerous failings of 'bourgeois-class justice' and the heightened importance of uniting diverse voices within the left in jointly combatting the ascendance of reactionary politics. The conference was attended by 71 persons, including 10 members of the Executive Committee of the International Red Aid. International delegates came from the Balkans, Germany, Austria, Holland, Switzerland, France, Poland, Japan, Indonesia, and India. On the Soviet side, Pashukanis was joined by his colleague, A.Y. Estrin (1889–1938), who specialised in Soviet penal policy.

Footnote 6 (continued)

Stalgevich, S.M. Lieberman, and L. Reztsov, among others), who lodged their scathing criticisms long before Vyshisnky came on the scene. More importantly, the absence of a sustained engagement with Pashukanis' actual views on emergency legislation, as well as those of his contemporary Soviet interlocutors, renders problematic Lukina's attempt to read Pashukanis' theory against the background of Schmitt-inspired 'sovereign dictatorship'. See Lukina (2025).

[7] Pashukanis delivered an updated version of this speech at the International Conference of Jurists in Berlin two years later (in December 1929), which was organised under the auspices of the German section of the International Red Aid, better known as Rote Hilfe. Unfortunately, there is no surviving transcript of Pashukanis' speech on emergency legislation at the 1929 Berlin conference in either the German or Russian state archives. According to the documentary record, Harold Laski was listed among the invitees to the Berlin conference, which likely motivated Laski's subsequent visit to the Soviet Union in 1934. For a recent translation of Pashukanis' 1925 critical essay on Laski's political thought, see Pashukanis (2025).

[8] There is still a paucity of scholarly work on MOPR and its multiple international sections. For a helpful discussion, see Albert (2016).

Pashukanis' speech begins by pinpointing the main catalysts for the adoption of emergency legislation in capitalist countries, namely the perceived threats posed by the 'coming proletarian revolution' and the 'national revolutionary movement of colonised peoples'.[9] Pashukanis then draws a distinction between 'progressive' and 'reactionary' uses of emergency legislation. He links the former to its deployment by historically progressive classes in their respective struggles against extant ruling classes, a streak that began in earnest with the revolutionary bourgeoisie of England, France, and the United States in their respective struggles against feudal aristocracy and slave owners, and which endures in the struggles of workers and peasants against remnants of the bourgeoisie in the USSR and in those of colonised peoples still fighting off the yoke of imperialism in the present. Outside of this 'progressive' terrain, the adoption of emergency legislation in capitalist countries is always reactionary in character, and in Pashukanis' view, 'results in an extreme weakening of the political influence of the toiling masses, if not in a complete annihilation of their political activity'.

On the basis of the above distinction between progressive and reactionary adoptions of emergency legislation, Pashukanis' analysis promptly turns to a concrete assessment of their application in specific capitalist countries, principally Italy, Yugoslavia, Bulgaria, Germany, and Britain. Pashukanis' discussion of fascist Italy, Bulgaria (under the newly installed leadership of Professor Aleksandar Tsankov), Weimar Germany, and Britain (under the government of Lloyd George) is particularly revealing. Pashukanis sets the Italian case apart from the others on the grounds that 'the Italian bourgeoisie has gone farthest of all and has abandoned parliamentary and bourgeois democratic state forms altogether and placed its fate in the hands of fascism'.[10] Such a view would suggest that Pashukanis regarded parliamentary and bourgeois democratic state forms as 'progressive' relative to their fascist-capitalist alternatives. Pashukanis' discussion of Italy is also revealing in a counterintuitive way, by the criticisms that he levels against its resultant 'destruction of all bourgeois freedom, the abolition of all political parties except for one, the prohibition of all non-fascist trade unions, and the application of emergency measures of suppression against all of the political opponents of fascism' — criticisms that could just as well have been directed against Stalin's growing dictatorship in 1927, a point to which we will return below.

Pashukanis' discussion of emergency law in Bulgaria is also illuminating because it demonstrates his unambiguous support for presuming the innocence of those accused of committing crimes against the state, which he affirms when referring to an exceptional penal practice in Bulgaria, which 'flies in the face of all previously accepted canons of law according to which the prosecutor must prove the guilt of the accused and not vice versa'. Thinking analogously again in terms of the Soviet penal practice, the presumption of innocence would come

[9] Pashukanis would return to issues of colonialism and imperialism in his 1929 essay, 'Colonial Policy and Its Latest Apologists', a translation of which is forthcoming in *The Revolution of Law: Developments in Soviet Legal Theory, 1917-1931.*

[10] Much of Pashukanis' writings on fascism have not yet been translated into English. For an article of particular importance, see Pashukanis (1927).

under attack in the Soviet Union, initially at the behest of Pashukanis' collaborator, Nikolai Krylenko, during the Shakhty Trial (1928) and would be destroyed altogether by Andrei Vyshinsky in the notorious Moscow Show Trials of the late 1930s (see Vaksberg 1991).

Pashukanis' most piercing commentary concerns the Weimar Constitution, specifically the use of Article 48, which in his view had disproportionately targeted the left and communists in particular, despite dubious claims that it was actually directed against monarchists. Pashukanis' position on this score is that

> the German bourgeoisie has left itself the opportunity in Paragraph 48 of abolishing all the democratic principles in the rest of the constitution, Paragraph 48 gives the Reichs President and the governments of German States the power to take all and any measures for the restoration of public order and security.

On the face of it, Pashukanis' position aligns more closely with his theoretical adversary, Hans Kelsen, than it does with the latter's adversary, Carl Schmitt, who enthusiastically welcomed the expansive executive powers enabled by Article 48 to suspend the constitution and to abrogate its catalogue of democratic rights. However, Pashukanis' approach to Article 48 differs from Kelsen's in that he regards Article 48 as a repressive piece of class legislation that demands vigilant political mobilisation and resistance, foremost from the toilers—the true 'guardians' of the constitution and its democratic rights. Consequently, Pashukanis' position on the proper response to emergency legislation differs markedly from thinkers like A.V. Dicey (see Dyzenhaus 2006), who look to parliamentary sovereignty as the ultimate guarantor of rights in these cases; from Kelsen, who regards the judiciary as the decisive 'guardian of the constitution' in emergency situations; and most certainly from Schmitt, who insists on the necessity of a 'sovereign dictator' to decide on the exception (Vinx 2015, p. 5). In this respect, Pashukanis' unabashedly Marxist position on the undemocratic and classist ramifications of Article 48 should put to rest misguided attempts at interpreting his contributions to the 'revolution of law' in the Soviet Union through the prism of 'sovereign dictatorship'. If anything, Schmitt's reflections on Article 48 attest to his anxieties about working class agitation and the threats posed by growing Soviet influence, precisely those features that Pashukanis considers chief contributing factors to the adoption of emergency legislation in capitalist countries (see Schmitt 2014).

Pashukanis extends his discussion of emergency legislation to strike-breaking laws in Britain that aim at politically disempowering and pacifying organised labour. Pashukanis writes that

> during the miners' strike in 1920 and in particular during the General Strike in 1926, the government used this law [the Emergency Powers Act] and the country was turned into an armed camp. The prisons were filled with people, held without a normal warrant, for making speeches against the government, for having in their possession documents the content of which were in contradiction to the government measures.

Such emergency measures, which were by no means limited to Britain,[11] also had chilling effects on the broader mobilisation efforts of organised labour, including those 'aimed at preventing the intervention in China or a war against the Soviet Union'. Pashukanis goes to great lengths to explain that the immediate consequence of such emergency legislation entails robbing workers of their recently achieved right to strike and their right to picket peacefully.

Pashukanis concludes his speech by reiterating the urgency of unmasking the hypocrisy of bourgeois class justice, in which 'the democratic principles that are proclaimed by the bourgeoisie are continually broken by the bourgeoisie itself, which also breaks through the framework of legality that it has itself created'. He also directs his ire against the hypocritical social democratic parties, which in his view are all too ready to side with the forces of reaction rather than to join the militant struggles of the working classes to protect democratic rights from reactionary assault.

Between the *General Theory* and Pashukanis' Speech on Emergency Legislation

Between 1924 and 1927, Pashukanis' *General Theory of Law and Marxism* had gone through three Russian editions. In 'The Marxist Theory of Law and the Construction of Socialism' (1927), Pashukanis made the important concession (with Pyotr Stucka's prior criticisms of his theory in mind) of acknowledging 'the indisputable fact of the existence of feudal law', though he was still not prepared to admit the coherence of a separate system called 'Soviet law' during the period of revolutionary transition from capitalism to communism (Pashukanis 1980, p. 195). It is worth pondering whether Pashukanis' views on emergency law had likewise altered since the initial publication of the *General Theory*. In that work, Pashukanis viewed the state in a largely derivative manner, as an impersonal institution that comes into being primarily to enforce contracts between property owners. At the same time, however, Pashukanis continued to follow classical Marxist precepts about the state as an instrument of class repression. When the matter touched on the relationship between state and law more specifically, Pashukanis identified what he termed a 'strange dichotomy' at the heart of modern bourgeois law (Pashukanis 2003, p. 97).

By 'strange dichotomy', Pashukanis meant that

> law is simultaneously the form of external authoritarian regulation and the form of subjective private autonomy. In the one case, the fundamental, substantive characteristic is that of unconditional obligation, of absolute, external coercion, while in the other, it is characteristic of freedom, guaranteed and recognised within certain limits. (Ibid)

[11] In the Canadian context, the Winnipeg General Strike (1919) comes to mind, which was violently put down with chilling effects on workers and organised labour. For a helpful discussion, see Molinaro (2017).

One can apply Pashukanis' account of the 'strange dichotomy' of bourgeois law to account for instances of emergency legislation in capitalist countries that appear as 'exceptions' to norms of legality that are rooted in principles of 'subjective private autonomy'. On this view, bourgeois law oscillates between a constitutionally-bound state, or *Rechtsstaat*, and a repressive class state, especially during periods of crises that are endemic to capitalism. Pashukanis explains that

> the more the hegemony of the bourgeoisie was shattered, the more compromising these corrections became, the more quickly the 'constitutional state' was transformed into a disembodied shadow, until finally the extraordinary sharpening of the class struggle forced the bourgeoisie to discard the mask of the constitutional state altogether, revealing the nature of state power as the organised power of one class over the other. (Ibid, p. 150)

Elsewhere, he writes that 'criminal justice in the bourgeois state is organised class terror, which differs only in degree from the so-called emergency measures taken in civil war' (Ibid, p. 173). To be sure, this 'strange dichotomy' of bourgeois law is not always an easy one for Pashukanis' theory to navigate, owing to its firm anchoring in private law. However, Pashukanis takes seriously the distinction between norms of legality and recurring exceptions to these norms in the bourgeois constitutional state. Indeed, as Michael Head has presciently observed in his interpretation of Pashukanis,

> the character of the state as a seemingly independent apparatus standing above society was not a purely ideological construct for duping ordinary people; the appearance was rooted in the reality of maintaining an *impersonal* guarantor of *personal* rights. To best achieve that end, the state could not be the plaything of this or that tycoon or even dictator. (2016, p. 147).[12]

The oscillation between the constitutionally-bound state and the repressive class state is not an ideological concoction on Pashukanis' part; rather, it reflects the changing balance of class forces and class politics in bourgeois constitutional states against the backdrop of colonialism— one that was becoming increasingly acute following the breakdown of the pre-WWI European order. Indeed, Pashukanis anticipates a central insight from his 1927 speech when he identifies the 'transformation of the bourgeoisie into a reactionary class, fearing the rise of the working-class movement, and, lastly, the policy of colonialism, which has been a school of cruelty all along'. (Pashukanis 2003, p. 175).

In short, there is a definite continuity in Pashukanis' considered position on the relationship between norm and exception in bourgeois constitutional polities that was carried over into his 1927 speech. At the same time, Pashukanis' speech supplements the arguments formulated in the *General Theory* in at least three respects.

[12] In this respect, Pashukanis' position echoes Engels' outlook when he submits: 'In a modern state not only must the law correspond to the general economic situation and be its expression, it must of itself constitute a coherent expression that does not, by reason of internal contradiction, give itself the lie. […] All the more so for the rarity with which a statute book is the harsh, unmitigated, unadulterated expression of the domination of one class: this of itself would be contrary to the "concept of law"'. See Frederick Engels, 'Engels to Schmidt, 27 October 1890', *MECW* 49, p. 109.

First, Pashukanis outlines the different ways that emergency or exceptional legislation can be carried out — by imposing martial law (France), by first adopting emergency measures and then obtaining parliamentary assent (Britain), or by simply applying existing ('normal') laws, such as Otto von Bismarck's 'Socialist Laws' (Germany). Second, Pashukanis appears to be more receptive than he was in the *General Theory* to the value of legal and political rights, and relatedly, the risks posed to working people by their erosion in capitalist societies. Finally, Pashukanis also draws a sharp distinction between progressive and reactionary adoptions of emergency law. He endorses the use of emergency or exceptional measures by revolutionary societies like the Soviet Union in order to defend themselves against perceived class enemies within and without, as well as by national liberation movements of colonised peoples against their colonial oppressors. More specifically, Pashukanis' speech provides a helpful window into his view of the capitalist state as an institutional power whose laws oscillate between the private subjective autonomy characteristic of the legal form and the recurring class-repressive exceptions to its norms. In that regard, it adds an important institutional dimension to his discussion of the state otherwise lacking in the *General Theory*.

The 'Progressive' Adoption of Emergency Legislation and the State of Soviet Politics in 1927

Pashukanis' support for the adoption of emergency legislation in the Soviet Union can be understood in the context of the immediate aftermath of the Russian Civil War and the very real threats facing the then nascent Soviet state owing to capitalist encirclement. However, by the time that Pashukanis delivered his speech in 1927, the Soviet Union had increasingly come under Joseph Stalin's dictatorship, as erstwhile Party members and dedicated Bolsheviks who spoke out against the undemocratic and centralising practices that they observed within the Party apparatus and in Soviet society at large came to be viewed with suspicion as its perceived enemies. Unfortunately, Pashukanis' contributions in this context were most unsavoury. In both public-facing *Pravda* articles and in legal specialist journals in which he served as a leading editor, Pashukanis marked out Leon Trotsky and his supporters in the 'Opposition' as threats to 'intra-Party democracy' and the future direction of the Soviet state. In a 1927 *Pravda* article, entitled 'Where Our State is Headed', Pashukanis chastises the Opposition for falsely sounding the alarm of Thermidorian regeneration and for exaggerating the dangers posed by the bureaucratic state apparatus under Stalin's leadership. In a follow-up article, 'The Dictatorship of the Proletariat and the Opposition' (1928),[13] Pashukanis' tone becomes more threatening towards the Opposition. He goes so far as to declare that 'the further ideological destruction of Trotskyism is the next task of the party… Those [in the Opposition] who refuse to voluntarily disarm themselves of these ideas, the party will disarm on its own'. Incidentally, Pashukanis makes a passing reference in the same article

[13] Translations of both articles are forthcoming with Brill in *The Revolution of Law: Developments in Soviet Legal Theory, 1917-1931*, edited and translated by Rafael Khachaturian and Igor Shoikhedbrod.

to Dr. Thomas Stockmann (the protagonist in Henrik Ibsen's 1882 play, *An Enemy of the People*), whom he counterintuitively interprets as a symbol of the treasonous 'petty-bourgeois' outlook espoused by the Opposition, according to which the 'the majority is always wrong'. These lesser-known articles by Pashukanis are indicative of his principled commitment to the Stalinist regime of the time, and are not at all the tortured efforts of someone trying to accommodate himself to Stalinist pressures from above. Nor would there have been any outstanding reasons for Pashukanis to worry about his intellectual and political standing in 1927—the same year that he was elected full member of the Communist Academy and joined its Presidium.

The aforementioned background makes Pashukanis' distinction between 'progressive' and 'reactionary' adoptions of emergency law especially problematic in the Soviet context. As Pashukanis stated in his speech,

> when these historical and exceptional measures are adopted by a progressive class, they are accompanied by the development of unusual political activity on the part of the lower sections of the population which were formerly suppressed and excluded from political life.

To be sure, the initial years following the Russian Revolution indeed saw the remarkable entry of the peasantry and proletariat onto the political stage. However, by the late 1920s, one could already see the start of the Thermidorian reaction under Stalin that was solidified with the first Five-Year Plan, which decisively transformed the class structure of Soviet society for the remainder of its existence. This issue becomes all the more troubling against a background in which considerations of political expediency and the national interests of the Soviet Union determined the terms under which 'progressive' and 'reactionary' politics were defined on both the domestic and international fronts. With exceptional measures becoming regularised as part of the normal conditions of building socialism in one country, they produced the opposite effect to what Pashukanis had anticipated in 1927—not the development but the halting of the autonomous political activity of the working masses—and helped to pave the way for the permanent postponement of the 'withering away' of the state and its repressive laws. As a result, perilous exceptions, like the abrogation of civil liberties, the erosion of due process, and the restoration of the death penalty in the Soviet Union, could all be justified and deemed 'progressive' under conditions of capitalist encirclement and the challenges of building socialism in one country. In retrospect, such *exceptions* became the *norms* of the consolidated Soviet state, indeed the same state that ultimately executed Pashukanis as an 'enemy of the people'.[14]

[14] Even such sympathetic critics of the Soviet Union as Domenico Losurdo affirm that, 'certainly, there was no possibility of survival for regimes which, by eternalising the state of exception, were unable to achieve normality and ended up reproducing the figure of the "childlike" multitude guided by an elite claiming to be enlightened'. See Losurdo (2024, p. 280).

Conclusion: Pashukanis' Contributions to the Marxist Theorisation of Emergency Law

Ever since the overthrow of the February 1848 'social republic' and the bourgeois Second Republic's decline into the Bonapartist Second Empire, Marxists have certainly not been strangers to executive dictatorship as an ever-present possibility embedded within 'normal' bourgeois rule.[15] Writing in the unsettled conjuncture of the late 1920s, Pashukanis could observe that 'the development of capitalism from free competition to monopolism which commenced in the last quarter of the nineteenth century, is being accompanied everywhere with a growth of reactionary tendencies'. Pashukanis shared the view of many Communists of the time that the reactionary tendencies, of which fascism was only the most extreme manifestation, were a sign of the terminal crisis and impending collapse of capitalism, with the bourgeoisie turning to increasingly repressive measures to stave off intensified working class struggles. By 1929, the Comintern would echo this view, formally adopting at its sixth World Congress the theory of the 'third period', proclaiming that 'the increasing growth of the general crisis of capitalism' and 'growing imperialist contradictions' had led fascism to become the 'dominant method of bourgeois rule'.[16]

Despite the innovative approach to the legal form developed in the *General Theory*, Pashukanis nevertheless shared the 'orthodox' economism of the Third International concerning the relationship between the historical phases of capitalism and the political and juridical superstructure. Yet while it is marked by the untenable stageism of the Third International and its account of fascism, Pashukanis' analysis crucially points to class struggle and the underlying balance of class forces as the material substratum beneath the changing political forms of the bourgeois constitutional democracies. In that sense, his comparative assessment of interwar emergency legislation fits squarely within the theoretical lineage of Marxist reflections on emergency legislation and exceptional powers, running from Marx's *Eighteenth Brumaire of Louis Bonaparte* through the writings of Lenin, Trotsky, Gramsci, and Kirchheimer, among others. Indeed, Pashukanis explicitly draws on analogous insights from the *Eighteenth Brumaire*, particularly on the heightened recourse to martial law (i.e., the 'state of siege'), as well as Lenin's warnings, in *State and Revolution*, about how the turn to bureaucratism and militarism in Britain and the United States marked the erosion of the last vestiges of 'Anglo-Saxon freedom'.

Common to all these accounts was the dialectical understanding of political and legal forms as both conditioned by the degree of class mobilisation and struggle, and as potential future tools in the arsenal of intensified working-class struggle. More specifically, emergency legislation was both the defensive response of the threatened bourgeoisie and an urgent signal for working class mobilisation against reactionary assault. It is for that reason that Pashukanis notes that 'the democratic principles that are proclaimed by the bourgeoisie are continually broken by the bourgeoisie

[15] For a recent discussion of Marx's views on this topic during and in the immediate aftermath of the 1848 revolutions, see Shoikhedbrod (2022).

[16] Enlarged Executive of the Communist International, '15 Theses on the International Situation' (1929), in Beetham (2019, p. 155).

itself', and makes the practical conclusion that mass propaganda work is necessary to inform workers about the political dangers of emergency laws and the hypocrisy of the bourgeoisie. For all intents and purposes, Pashukanis maintains that the best defence against the looming threat of executive dictatorship is a thoroughgoing mobilisation of the toilers against those emergency measures that threaten their very political existence—a message that resonates all the more in the present moment.

Appendix

Exceptional [Emergency] Legislation against the Toilers and their Organisations

[Чрезвычайное законодательство против трудящихся и их организаций]

E.B. Pashukanis (Speech Delivered in Moscow, 1927).

*Retrieved and edited by Igor Shoikhedbrod and Rafael Khachaturian

The preparation and proclamation of exceptional [emergency] laws is one of the signs of the epoch of social revolution. Fear of the coming proletarian revolution drives the bourgeoisie in a number of countries to adopt exceptional [emergency] and dictatorial laws and administrative methods in order to hold down the revolutionary movement of the workers and peasants and the national -revolutionary movement of colonised peoples. The character of these laws and administrative methods is absolutely reactionary in comparison with the revolutionary dictatorial exceptional [emergency] laws and administrative methods used by the rising bourgeoisie in the English revolution of the 17th Century, in the Great French Revolution in the following century, and in the United States of North America in the years 1864/65. In all these latter cases, the rising bourgeoisie issued these exceptional [emergency] laws against a reactionary class, namely, the feudal aristocracy and slave holders. These exceptional [emergency] laws are aimed at breaking down the resistance of reactionary classes and clearing the path for new and progressive social forms.

The regime of the proletarian dictatorship in the Union of Socialist Soviet Republics (USSR) has the same historical significance. It must be stressed that when, say, oppressed colonised peoples use exceptional [emergency] laws to rid themselves of imperialist oppression, then such laws are progressive. However, when such laws are applied by imperialist countries with a view to staving off the inevitable collapse of capitalism, they are retrograde and reactionary, for then these laws are directed against the most progressive of all classes in present day society, namely, the proletariat. In such a case these laws serve only to preserve the privileges of a small capitalist group.

When these historical and exceptional [emergency] measures are adopted by a progressive class, they are accompanied by the development of unusual political activity on the part of the lower sections of the population which were formerly suppressed and excluded from political life, i.e. the petty bourgeoisie and peasantry

during the English and French revolutions, and the proletariat and the peasantry during the Russian revolution.

Exceptional legislation applied by reactionary classes, however, results in an extreme weakening of the political influence of the toiling masses, if not in the complete annihilation of their political activity.

In the second half of the nineteenth century, the French system for applying exceptional measures through the declaration of martial law was the exemplary practice in Europe. Marx wrote in the *Eighteenth Brumaire*: 'The [revolutionary forefathers] of the 'honest republicans' had sent their symbol, the tricolour, on a tour [of conquest] round Europe. For their part they made a discovery which found its way over the whole Continent, but which came back to France with ever increasing affection, until it became a true citizen in half *its départements — the state of siege*.'[17]

Another method, another system is to be found in England, where the government adopts the necessary exceptional [emergency] measures on its own accord and only afterwards secures the consent of parliament to the accomplished fact.

A third method for the application of exceptional measures is the use of normal laws. The best example of this method is the "Socialist Law" of the Bismarck epoch.

The development of capitalism from free competition to monopolism, which commenced in the last quarter of the nineteenth century, is being accompanied everywhere with a growth of reactionary tendencies. Examples of this are to be found in the struggle against the trade unions, which was carried out in the first decades of the twentieth century, the policy of violence in the colonial countries before the imperialist world war, and the general reactionary and military tendencies of home and foreign policy before the war. During the imperialist war these tendencies became particularly strong, and the war brought with it a number of exceptional [emergency] laws and measures: censorship, the persecution of internationalists etc.

During this belligerent period the last remnants of the so-called 'Anglo-Saxon freedoms' were destroyed. Lenin has pointed this out in his work *The State and Revolution*. He wrote: 'Both Britain and America, the biggest and last representatives — in the whole world — of Anglo-Saxon "liberty," in the sense that they had no militarist cliques and bureaucracy, have completely sunk into the all-European filthy, bloody morass of bureaucratic-military institutions which subordinate everything to themselves, and suppress everything.'[18]

The Defence of the Realm Act, which was promulgated in Great Britain in the first year of the war introduced the court martial for a number of crimes. This was accompanied by military censorship, searches and arrests in accordance with the arbitrary will of the police and the authorities without the formality of any previous court decision.

Following upon the end of the world war we saw a number of exceptional [emergency] laws in Europe. Everywhere these exceptional [emergency] laws were called into being out of fear of the threatening proletarian revolution.

An exception to this principle might have been the law of the 21st July 1922 in Germany, which was introduced under the pretext of defending the Republic against

[17] See Marx (1996, p. 46).

[18] See Lenin (1975, p. 337).

the reactionary monarchists. The fact is, however, that this law was used most zealously not against the monarchists, but against the 'left' danger, and above all, against the communists.

The Italian bourgeoisie has gone farthest of all and has abandoned parliamentary and bourgeois democratic State forms altogether and placed its fate in the hands of fascism, that is to say in the hands of the political monopoly of a party representing the interests of the agrarians and of large-scale capitalism. The results are as follows: the destruction of all bourgeois freedom, the abolition of all political parties except for one, the prohibition of all non-fascist trade unions, and the application of exceptional [emergency] measures of suppression against all the political opponents of fascism.

Parliamentarism in Italy was formally abolished as early as the end of 1925. Further, in all municipal districts with a population of less than 5,000 the elected municipal corporations were abolished and their functions taken over by officials appointed by the State. The law against political emigrants, which was adopted at the same time robbed all such emigrants of their civil rights and their nationality and confiscated their properties. The law concerning the State officials has given the government the possibility of immediately dismissing all servants from the State service who show any opposition to the governing system.

The law of April 1926, supplemented by a governmental decree of July 1926, handed over the representation of the interests of all persons engaged in wage labour exclusively to the fascist trade unions. Only one trade union is recognised for each branch of industry. Only 10% of the workers in any particular industry are necessary for the formation of a union, even though the other 90% must contribute to the upkeep of the union. These unions are under the strict control of the authorities and strikes are prohibited, participation in strikes being punished severely. This law is to be regarded as the utter destruction of trade union organisations in Italy. The culminating point of the fascist dictatorship, however, is expressed [represented] by the Law for the Protection of the State, which was adopted in November 1926, after the fourth attempt upon the life of [Benito] Mussolini.

This law officially re-introduced the death sentence [penalty] into Italy. Unofficially, of course, the death sentence [penalty] was applied continually under the fascist regime long before the introduction of this law. The death sentence is provided for terroristic attempts against the life of the King or the life of the head of the government. Other offences that are also punishable with death are attacks upon the security of the State, insurrection, and incitement to civil war.

Article 3 of this law provides that when two or more persons come together for the purpose of committing any of the crimes mentioned, then they may be punished with imprisonment for a duration ranging from 5 and 15 years. Leaders of organisations are liable to from 15 to 30 years imprisonment. Anyone inciting in the press to the committal of any of these crimes or praising their perpetrators is liable to from 15 to 20 years imprisonment.

Article 4 provides that any person attempting to resuscitate forbidden organisations or parties in any other form and under any other name shall be punished with from 3 to 5 years imprisonment and with the loss of the right to hold any position

in the State service. Anyone who is a member of any such prohibited organisation may be punished with 2 to 5 years imprisonment and the loss for life of the right to be employed by the State. The same punishment awaits anyone who conducts propaganda in any form whatever in favour of the political doctrine, program or methods of action of any such prohibited organisations or parties.

Article 5 declares that Italian citizens who spread or support the spread of false, exaggerated or tendentious reports abroad concerning events in Italy that might damage the credit or the prestige of the Italian State , or persons who conduct any activity damaging to the national interests of Italy, shall be punished with from 5 to 15 years imprisonment and the life-long loss of the right to be employed in the public service.

Should the offender be outside Italian territory, he may be punished with the loss of citizenship and the confiscation of his entire property.

Article 8 fixes the competence of the Italian Special Tribunal, which consists of a General or high officer of the army, navy, air force or fascist militia as president, and 5 militia officers who must have had a legal training as judges.

This Special Tribunal is appointed by the War Minister. The proceedings are based upon the penal code applicable to the army during times of war. The final paragraph of this law determines that all trials that are not concluded upon the day of the promulgation of this law shall be taken over and concluded by the new Special Tribunal. With regard to attempts upon the life of Mussolini, this law has retrospective [retroactive] force.

The following measures proposed by the Minister of the Interior Federzoni were adopted in a session of the Italian Cabinet on the 5th of November and at a parliamentary session on the 9th November:

1. Supervision of all passports and all permissions to leave the country from the 9th November on, with the exception of those passports issued to persons abroad.
2. 2. The severe punishment of all persons attempting to leave Italian territory without being in possession of a legal passport, and the same for all persons assisting such illegal journeys. The frontier guards shall be obliged to use their weapons in order to prevent all illegal crossings of the frontier.
3. The publishers of all daily newspapers and other publications that write against the existing regime shall be deprived of the right to publish for an indefinite period.
4. The prohibition and the forcible dissolution of all parties, unions and other organisations whose activity is directed against the existing regime.
5. The internment of all persons who conspire to overthrow by violence the social, economic and national order of the Italian State. Further, the internment of all persons who endanger public order and security or who interfere with the official actions of the authorities.
6. The severe punishment of all persons insulting or otherwise offending against the uniforms and badges of the State.

I think there is no comment necessary upon such provisions.

I will now direct my attention to the Balkan countries. In the Balkans, we see a regime related to that of fascism, although external parliamentary forms are still maintained there. In fact, however, there exists unlimited white terror in the Balkans, which is chiefly directed against the left-wing parties, the communists, and the left-wing peasant organisations.

In Yugoslavia, 59 communist members were elected into the Skuptchina or Yugoslavaian parliament in the elections of 1919. Immediately afterwards, the government placed the Communist Party under exceptional [emergency] law, and in 1920 a Law for the Protection of the State was passed, which prohibited all activity on the part of the Communist Party.

The situation in Bulgaria is still worse. On the 9th of July 1923, the military authorities seized power though a coup d'Etat and put forward Professor Tsankov as Prime Minister. A law for the Protection of the State was promulgated in order to destroy the Communist Party and the left-wing peasant organisations. It must be pointed out that this law was adopted on the 25th of January 1924 and amended on the 16th of March 1925, i.e. before the explosion in the Svedela Cathedral in Sofia. Nevertheless, the Bulgarian government attempts to justify the introduction of the exceptional [emergency] law by this explosion. Articles 20 and 21 of this law prohibit all revolutionary organisations and in particular the Communist Party and all other groupings that support it. These paragraphs order the "prohibition of these parties no matter what name they may go under". The law even provided for the expulsion of all revolutionary oppositionists (communists and sympathisers) from the public services and from parliament. Article 20 hands over the minorities in all public bodies to the mercy of the government and every excess of the majority against the minority is justified in advance in the provisions of this law.

Articles 8, 11, and 16 introduce the death sentence [penalty] by hanging for offences such as the incitement of military persons or gendarmes to mutiny, the destruction of war material, public buildings or goods, arson, [and] insurrection. The simple membership in any group having as its aim crimes against the State or against public security or private property is also punished with death (Article 13). The same paragraph provides the death sentence [penalty] for all persons who harbour, assist or in any way give aid to such criminals. Article 14 provides 5 years hard labour for any citizen working abroad against the governmental regime. The peculiarity of this law is that it flies in the face of all previously accepted canons of law according to which the prosecutor must prove the guilt of the accused and not vice versa. Articles 13 and 16 imply as preliminary in all cases the penal responsibility of the accused. In this way the consideration of goodwill or honourable motive in the committal of an offence is abolished without it being necessary for the law to stress this at all. Arrest whilst awaiting trial is obligatory in all cases.

This law, which is a juridical [legal] monstrosity, was drafted by a jurist named professor Molov. Marcel Willard devotes the following sarcastic lines to this professor:

'It is worthwhile to note the name of this man as one who in a constitutional parliament represents exactly the opposite of that which he teaches to his pupils. I can very well imagine the situation, when after leaving parliament, where with the weight of his authority articles 13,18, and 20 were adopted, he makes his amiable

way to the university in order to teach his pupils the first principles of civilised law, personal freedom, the personal character of an offence, the presumption of innocence until guilt is proved etc., all wonderful principles which he has himself ruthlessly thrown overboard.'

Apart from the exceptional [emergency] laws there is a detailed order of the Bulgarian Minister for War which reads as follows:

'Above all, the intellectuals, the most capable and courageous supporters of these ideas, must be destroyed. Lists of these people must be made out as speedily as possible so that at a given moment all the leaders can be killed no matter whether they are guilty or innocent. Wherever disturbances take place, all prisoners, conspirators and their helpers, and all persons who harbour or assist them, must be mercilessly killed. Their families must be similarly treated and their homes burned down ...'

I think that no [further] comment is necessary.

I will deal now with the great European States. In the Weimar Constitution, the German bourgeoisie has left itself the opportunity in Paragraph 48 of abolishing all the democratic principles proclaimed in the rest of the constitution, Paragraph 48 gives the Reichs President and the governments of the German States the power to take all and any necessary measures for the restoration of public order and security. This is different from the pre-revolutionary exceptional [emergency] laws that required an insurrection or a war in order to abolish the existing normal laws. All that is necessary today is any [seeming] considerable threat or disturbance to public order and security.

Paragraph 48 gives a few examples of the measures that may be adopted. Armed power may be used for instance if the authorities consider it necessary. The basic principles laid down in Paragraphs 114, 115, 117, 118, 123, 124 and 153, i.e. the freedom of the individual, the inviolability of the home, the inviolability of the post, the right to express opinions freely etc. etc., can all be entirely or partly abolished.

Paragraph 48 has very often been deployed. Up to January 1925 no less than 153 ordinances were issued by the Reichs President and 57 by the governments of the German States. Amongst these ordinances are a number that are not reconcilable with the constitution or contain, against the purpose of the constitution, a new regulation. This anti-constitutionalism is to be found, for instance, in the ordinance of the 29th of March 1921 concerning the formation of exceptional [emergency] courts.

These measures which can be taken upon the basis of paragraph 48 bring about a state of siege or martial law by extending the competence of the administrative authorities, by annulling fundamental rights, setting up governmental commissars, appointing a General State Commissar, by handing over the executive power into the hands of the military commander, who may receive a civil commissar as his collaborator, by transferring law-making rights, by introducing alterations in jurisprudence, namely increasing punishments, by setting up exceptional [emergency] courts etc.

Apart from the various ordinances that were issued upon the basis of paragraph 48 , there is the law of the 21st July 1928. This "Law for the Protection of the Republic" concerns itself with various offences, including not only terroristic acts, but also membership in prohibited organisations with treasonable aims (Paragraph 2, article 4.), supporting the same or their members (ditto), abusing or disparaging the State form (para . 8 art. 1.), various offences referring to the

endangering of public order and security etc. This law provides for very severe punishments, commencing with imprisonment for various terms and culminating in hard labour for life and the death sentence [penalty].

I have already pointed out that this law was adopted under the pretext that it was there to protect the Republic against the dangers threatened by the monarchists, but as it has been said, "the exceptional [emergency] ordinances issued as a result of monarchist excesses can always be used as a weapon against the left". And in fact, these ordinances are being used enthusiastically as a weapon almost exclusively against the left-wing parties.

I will now deal with Great Britain. I mentioned before that the Defence of the Realm Act passed during the first year of the war gave the British government unlimited powers.

During the strike of the miners in 1920, the government of Lloyd George secured the passing of the Emergency Powers Act. This act gave the government power at any time to restore the whole complex of exceptional [emergency] regulations that existed during the war period. On the basis of this act, the government can issue emergency regulations for the maintenance of public security irrespective of the rights of the individual citizen. The most important regulation is the right to arrest without a legal warrant and without court sanction.

During the miners' strike in 1920 and in particular during the General Strike in 1926, the government used this law widely and the country was turned into an armed camp. The prisons were filled with people, held without a normal warrant, for making speeches against the government, for having in their possession documents the contents of which were in contradiction to the governmental measures, for using threats against strike-breakers and similar offences.

Immediately following the General Strike in 1926, the British government forced through an Anti-Strike Bill. This law of the 29th of July 1927 declares certain categories of strikes to be 'illegal'. The organisers and the participators in such illegal strikes are made to bear criminal responsibility, while trade unions are made responsible for damages arising out of such illegal strikes.

It must be especially stressed that in accordance with this law all strikes etc. would be illegal which aimed at preventing the intervention in China or a war against the Soviet Union.

Articles 2 and 3 of this new law have caused the whole bill to be dubbed the 'strike-breakers charter'. Article 2 takes away from trade unions the right to impose any disciplinary punishment on any of their members, for instance, the expulsion of a strike-breaker from the union.

At the same time, a clause has been included favouring such strike breakers that permits actions against trade unions for damages arising from the claims of members. In practice, that would mean that a strike-breaker who was expelled from his union in opposition to the clause mentioned could either claim through the courts his readmission to the union or claim damages for his expulsion.

Article 3 is also in favour of strike breakers and refers to strike picketing. With the assistance of this article the British workers are actually robbed of all right to peaceful strike picketing, a right which was granted to them by the law of 1906.

What conclusions must be drawn from these circumstances?

First of all, the struggle against such exceptional [emergency] laws must be carried on not only with general political means, but also by widespread propaganda aiming at exposing their reactionary character. What are the necessary measures? Widespread propaganda must be carried on in order to inform the workers concerning the details of such laws, the motives of the lawmakers [legislators] and the practical consequences of the application of such laws. It is absolutely necessary to expose the hypocrisy of all such laws. It is also necessary to collect and publish all possible material concerning the effect of such laws upon the economic and political situation of the working class. It is absolutely necessary to expose the hypocrisy of the bourgeoisie and to show to the masses of the workers, again and again, that the democratic principles that are proclaimed by the bourgeoisie are continually broken by the bourgeoisie itself, which also breaks through the framework of legality that it has itself created. The tactics and policies of the Social Democratic Parties must also be exposed and the workers shown that the latter prefer to support the reactionary bourgeoisie to the disadvantage of fighting the working class.

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