

# Subject and value creation: the force of form in legal theory

Valerie Kerruish, ASFPG

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Are international law and property law treated as discrete in doctrinal legal discourse because their ‘subjects’, nation states and legal persons (natural and artificial) remain caught in an eighteenth century schema of sovereignty and private property (Kant, Blackstone)? Where should legal theory locate the hook or catch? If law’s provision of ‘proper juridical form’ to economic tendencies (e.g. equitable re-writing of the law of mortgages in the 17th and 18th centuries, corporate personality for capital in the nineteenth century, financial derivatives in the late twentieth) is proposed in answer to that question, how does this happening or matter look within different theoretical approaches?

In his sketch of a general theory of law, Pashukanis mentions and parrys an objection to his commodity form theory of law by a Soviet colleague, Razumovsky. Citing Marx’s (1857) Preface to the *Grundrisse*, Razumovsky argued that possession and property, not persons should take priority in categorial analysis of law. Otherwise law’s role in maintaining relations of dominance and subservience would be obfuscated, the working class as ‘subject’ having been dislodged by the legal subject or person. In the passage cited, Marx deliberately selects possession as the beginning of Hegel’s *Philosophy of Right* setting Hegel’s equally deliberate beginning with persons aside: a move implicated in Marx’s ‘inversion’ of Hegel’s logical dialectic.

Categorial analysis of law, paralleling Marx’s logic of capital, can be termed the logic of law and meets a discursive sense of ‘logic’ that is commonly used. To my mind such logics will be embedded in a more abstract theory which has to contend in one way and another with a cracked but still hegemonic paradigm of formal classical logic. The idea that form while being the form of a content also, through language, becomes its own content and that this is at stake in fetish phenomena is to my mind the issue between Marx and Hegel and in performances of jurisdiction which couple the juridical to the political. In other terms, if questions of substance and subject are raised so too are questions of form and the force of form.

I will circulate a section of my ongoing attempt to think the wrong of law, ‘Pashukanis’ Commodity Form Theory of Law’ going to these observations and questions.