

**STATE AND LAW IN YOUNG MARX: EPISTEMOLOGICAL AND THEORETICAL ELEMENTS FROM A POST-MARXIST APPROACH****ESTADO Y DERECHO EN EL JOVEN MARX: ELEMENTOS EPISTEMOLÓGICOS Y TEÓRICOS DESDE UN ENFOQUE POSMARXISTA****ESTADO E DIREITO NO JOVEM MARX: ELEMENTOS EPISTEMOLÓGICOS E TEÓRICOS A PARTIR DE UMA ABORDAGEM PÓS-MARXISTA**Jorge Gabriel Foa Torres<sup>1</sup>**ABSTRACT**

This paper seeks to identify some epistemological and theoretical paths in young Marx's writings about law, in order to suggest a critique of current state and law from a post-Marxist view. First, the paper argues that young Marx draws the basis for a materialist and political critique of law against idealistic and dogmatic approaches. Second, the bourgeois opposition between unreal generality and real individuality -identified by the young Marx – allows us to analyse law as a juridical form rather than a utopian or essential content of the social. Finally, the young Marxian distinction between political emancipation and human emancipation leads us to think, on the one hand, about the juridical institution of the liberal individual – as isolated monads – and, on the other hand, about the intimate relationship between law and its transgression.

**Key words:** Young Marx. Post-Marxism. Critique. Materialism. Juridical Form. Emancipation.

**RESUMEN**

Este artículo busca identificar algunos elementos epistemológicos y teóricos en los escritos del joven Marx sobre el derecho, con el fin de sugerir una crítica del estado y el derecho actuales desde una visión posmarxista. Primero, se sostiene que el joven Marx sienta las bases para una crítica materialista y política del derecho contra los enfoques idealistas y dogmáticos. En segundo lugar, la oposición burguesa entre generalidad irreal e individualidad real -identificada por el joven Marx- nos permite analizar el derecho como forma jurídica más que como contenido utópico o esencial de lo social. Finalmente, la distinción del joven Marx entre emancipación política y emancipación humana nos lleva a pensar, por un lado, en la institución

<sup>1</sup> Investigador Asistente del CONICET (Argentina). Profesor Adjunto, Instituto AP de Ciencias Sociales, Universidad Nacional de Villa María. Miembro de la Red de Territorios Clínicos de la Memoria (TECME). Abogado (UNC). Doctor en Ciencia Política (CEA/FCS/UNC). Consejo Nacional de Investigaciones Científicas y Técnicas (CONICET-Argentina), Universidad Nacional Villa María (UNVM-Córdoba, Argentina). ORCID: <http://orcid.org/0000-0001-5143-5280> E-mail: [jorgefoatorres@gmail.com](mailto:jorgefoatorres@gmail.com)

jurídica del individuo liberal -como mónadas aisladas- y, por otro, en la íntima relación entre el derecho y su transgresión.

**Palabras clave:** El joven Marx. Posmarxismo. Crítica. Materialismo. Forma jurídica. Emancipación.

## RESUMO

Este artigo busca identificar alguns elementos epistemológicos e teóricos nos escritos do jovem Marx sobre o direito, a fim de sugerir uma crítica ao estado e ao direito atual a partir de uma perspectiva pós-marxista. Em primeiro lugar, considera-se que o jovem Marx estabelece as bases para uma crítica materialista e política do direito contra as abordagens idealistas e dogmáticas. Em segundo lugar, a oposição burguesa entre generalidade irreal e individualidade real - identificada pelo jovem Marx - permite-nos analisar o direito como uma forma jurídica e não como um conteúdo utópico ou essencial do social. Por fim, a distinção do jovem Marx entre emancipação política e emancipação humana leva-nos a pensar, por um lado, na instituição jurídica do indivíduo liberal - como mônadas isoladas - e, por outro, na íntima relação entre o direito e sua transgressão.

**Palavras-chave:** Jovem Marx. Pós-marxismo. Crítica. Materialismo. Forma jurídica. Emancipação.

## 1. INTRODUCTION: A POST-MARXIST APPROACH TO THE YOUNG MARX

This paper seeks to identify some epistemological and theoretical elements of a contemporary critique of law, based on the analysis of state and law provided in the works of the young Marx. As Donald Kelley puts it, “too little attention has been paid to the profession first chosen by Marx, namely, that of the law” (1978: 350). However, jurisprudence was an early focus of Marx studies and also “a system of thought that continued to possess at least a negative importance” for him (KELLEY, 1978: 367). Against the traditional liberal view of law as a guardian of the “Common good”, Marx’s subversion<sup>2</sup> of jurisprudence targeted “a comprehensive secular religion and a paradigm of idealist social thought, in a pejorative sense of “ideology” (KELLEY, 1978: 367).

First and foremost, it is necessary to explicitly state the theoretical assumptions that underly my analysis in this paper. The post-Marxist and Lacanian viewpoint implies certain

---

<sup>2</sup> For Kelley “Marx’s first act of academic subversion was to turn Savigny, not Hegel, on his head” (1978: 358).

epistemological and theoretical foundations that necessarily informs this paper and the focus of the young Marx<sup>3</sup>. The purpose of this paper is not to trace the elements of continuity or discontinuity between the early and the later Marx's works. Louis Althusser, the main advocate of the periodization thesis, focuses on the theoretical unity of Marx work. For Althusser the epistemological break occurs in 1845 when from philosophical anthropologism, focused on the essence of man and human nature, Marx's work moves to historical materialism, a scientific viewpoint (LEOGRANDE, 1977). Furthermore, Althusser highlights *Capital* as Marx's main scientific work:

To rely exclusively on the *Breakup Works* or only on the arguments of the subsequent ideological struggle is practically equivalent to falling into the "blunder" of not understanding that the place *par excellence* where we are allowed to read Marx's philosophy in person is his great work: *Capital* (ALTHUSSER, 2006: 36).

In a similar vein, Nicos Poulantzas affirms,

in his youthful works, Marx will systematically deal with the problems referred to the legal field and yet, nothing can be deduced in reference to any scientific basis of the Marxist theory of law (1986: 112).

But other authors like Umberto Cerroni have highlighted the young Marx's writings as a way of avoiding extremely reductionists approaches to Marx, which has "blocked for many years the critique of politics and law that had been promised by Marx and that he had not given" (1980: 22). Even Jaime Escamilla Hernández goes as far as to say, "fortunately, today, the ravages of conceiving the theory of historical materialism as a finished set are well known" (1991: 27). At this conjecture, the basis of this chapter is the epistemological consideration of the impossible unity of any work, including the one of Marx. The post-Marxist viewpoint of this paper implies the acknowledgement of the premise that there is no metalanguage, in the sense that the access to a complete language or metalanguage is impossible, whether it is juridical or any other (LACLAU, 2000; STAVRAKAKIS, 2007). Consequently, if a plenary language is not possible, no theoretical work will be.

---

<sup>3</sup>This research line refers to post-Marxist approaches to law and state from the political discourse theory (among others: GLYNOS & HOWARTH, 2007; FOA TORRES, 2017a) and the articulation between psychoanalysis, law and political theory (among other: FOA TORRES, 2013, 2016).

Second, the aim is not to argue that the young Marx is a “bourgeois Marx” (among others: LUKACS, 1971; DUSSEL, 1993; BERMUDO ÁVILA, 1975) or discover all over the German ideology that is still present in Marx (Lowy, 1973). For Enrique Dussel, Marx’s youth is an anti-idealist philosophical phase rather than the political revolutionary that he was at the definitive phase of his thought (1993). George Lukacs notes that the young Marx is an idealistic one (1971). Once again, a much less ambitious goal in this chapter is to recover some epistemological elements of young Marx’s writings related to law and state, especially considering that a political pragmatic interpretation of Marx’s work is the main one in the field of law, which reduces it to a simple instrument of class neglecting its normative specificity as well as its relationship with economic structures.

Thirdly, the focus of a post-Marxist approach – as Yannis Stavrakakis pointed out - is not to build an approach that could release itself from all theoretical reduction: “Even the most objective (casual) reading of a text, the simplest analysis of a question, are contaminated by certain reductionism” (2007: 14). Consequently, the point is not the assumption of an absolute or rightful position: “To create a distance from the crude reduction, it is necessary to operate within the field of reduction; it is necessary to reduce the reduction to its own impossibility” (STAVRAKAKIS, 2007: 14). Accordingly, facing Marx’s work the question is what type of reduction of Marx’s works we do and not do to avoid any reduction. Our reduction is to take some elements of the young Marx liable to enlighten some currently key issues for critical legal studies: the critique of juridical and philosophical dogmatism, the study of law as a form and the relationship between state and emancipation in the capitalist mode of production.

Fourthly, the study of the young Marx is not necessarily to “exalt Marx as a person with uniquely humanist vision” (HAMMEN, 1970: 120). From this point of view, the young Marx’s humanism relies in the basis of a “human essence” that “is the true communitarian essence of men” (2008e: 131). The problem of human alienation in the capitalist mode of production is central for this essentialist conception. However, for some authors like Donald Hodges (1966) the concern about humanity/alienation is a weak substitute for the economic criticism of bourgeois society. Nevertheless, if we state that there is not a full language, we can assert that there is no correct interpretation of Marx’s work. There are only interpretations –in plural- that could focus on the law function in the humanity alienation under the capitalist mode of production without overlooking the economic structure. Furthermore, from a post-Marxist view the concern about human alienation could be a possibility to radicalize Marxist thought. The

concern about human essence is not necessarily an exercise of a bourgeois doctrine (HODGES, 1966) henceforth there is no pure bourgeois or even pure proletarian doctrine possible. In this sense, for a post-Marxist view we can only access the hybrid and failed theorizations

In short, a post-Marxist approach is possible as long as we agree that a legitimate way to be Marxist is following the Lacanian maxim: “you can dispense it [The Name of the Father] with the condition of using it” (LACAN, 2006: 133), or in our terms ‘you can dispense Marx with the condition of using Marx’. In this sense, post-Marxism is not an anti-Marxism but an attempt to radicalize Marx’s work. In this sense, from certain critiques of young Marx will be drawn some epistemological and theoretical elements. First, the chapter argues that in Marx’s earlier writings relies the basis for a materialist and political critique of law against idealistic and dogmatic approaches. Second, from the bourgeois opposition between unreal generality and real individuality -identified by the young Marx- will be drawn the analysis of law as a juridical form rather than a utopian or essential content of the social. Finally, the young-Marxian distinction between political emancipation and human emancipation leads us to think, on the one hand, about the juridical institution of the liberal individual –as isolated monads- and, on the other hand, about the intimate relationship between law and its transgression. Finally, the focus will be on those writings that, as Rubén Jaramillo points out, “bring together the basic elements of the critique of Marx of bourgeois state and law” (2008: 37). That is to say the “Jewish Question” (1843), “Critique to Hegel’s philosophy of law” (1843) and also “Letter to father” (1842), “Letters to Arnold Ruge” (1843), “Comments on The Latest Prussian Censorship Instruction” (1843), “Moralising Criticism and Critical Morality” (1844) and “Critical notes on the article 'The king of Prussia and social reform’” (1844).

## **2. AGAINST THE METAPHYSICS OF LAW: THE MATERIALISTIC CRITIQUE OF LAW**

Before the end of his jurisprudential studies, Marx wrote a letter to his father (1842) describing his thesis as an “unhappy work”. Even though this thesis has never been found, Marx develops some interesting topics in that letter. Jean Hyppolite has even said “It is very difficult within the short space of an essay to show how Marx fulfilled the program he had outlined in this first letter” (1973: 95). Donald Kelley points out that if the thesis itself was not unconventional what was unconventional was “Marx’s reaction to his own work, and he laid

bare its deficiencies in his usual intemperate language” (1978: 354). Marx’s father himself warned him about the consequences of the radical critique to the juridical field: “Your views on law are not without truth (...) but are very likely to arouse storms if made into a system, and are you not aware how violent storms are among the learned?” (Cited in: KELLEY, 1973: 355). The letter shows that Marx’s studies of law were oriented by “the impulse to undertake them with philosophy” (Marx, 2008a: 43). The developments of jurisprudence or juridical science are insufficient to study the law from a critical perspective. Here, the young Marx’s desire to go beyond the “metaphysics of law” is evidenced. The metaphysics of law implies “principles, reflections, definitions separated from all the real rights and of every real form of law” (2008a: 43). In line with this, the critique to the idealist opposition between the real and the “ought to be” –characteristic of jurisprudence- is the first and foundational step of Marx’s position facing the world of law.

A few years later Marx outlined his critique of the German historical school of law – specifically to of Gustav Hugo and Friedrich von Savigny- and to Hegel’s philosophy of law and state as manifestations of the metaphysics of law. For the young Marx, both represented forms of ideology – in a pejorative sense – rather than scientific or philosophical approaches (Kelley, 1973). Marx opposes the “mathematical dogmatism” with the “living world” to specify the criticism of metaphysical theoretical positions<sup>4</sup>:

The triangle allows the mathematician to construct and prove that it remains pure representation in space, that something new is not developed; it must be placed next to other things and then it will take a different position and this different thing that is added to it gives different relationships and truths to it. On the contrary, in the concrete expression of the living world of thought, as it is Law, State, nature, as it is all philosophy, the object itself must be spied on, it must be stalked; arbitrary classifications should not be imposed from outside, the reason for the thing itself should continue to roll as something in conflict with itself and find itself its unit (2008a: 43).

In this early intervention, Marx situates the Law in the “living world” where the objects are not completely capturable as in the field of pure mathematics. Therefore, the criticism should avoid any voluntarism and any classifications speculatively imposed.

We can also find young Marx’s anti dogmatic position in his “Letters to Arnold Ruge”: “our motto must be: attaining consciousness, not by dogmas but by means of the analysis of the mystical consciousness, obscure to itself, whether it is presented in a religious or in a

---

<sup>4</sup> Jean Hyppolite points out that Marx takes from the Hegel’s Preface to the Phenomenology in which he “contrasts the mathematician’s method with the philosopher’s dialectic” (1973: 94).

political way” (MARX, 2008c: 91). Marx argues for a new orientation of the philosophical critique that avoids the “dogmatic anticipation of the world” of philosophers, which intend to get “the solution to every enigma”. From metaphysics of law and speculative philosophy “to look for the reality itself” (2008a: 46), the main concern for the young Marx emerges here in the conception of philosophy as a mediation between form and content, the object and the idea. As Umberto Cerroni pointed out, the method for a construction of a scientific abstraction is “the development of thought according to the specific object, to prevent that it figures as reality without form or like idea” (1965: 101).

In his “Critique to Hegel’s philosophy of law”, Marx specifies a conception of criticism that struggles against philosophical idealism (specifically Hegelian), religion and thus “that world whose spiritual smell is the religion” (2008d: 95). The first step of every criticism, and specially the critique of law, is to bring into question the state of affairs as a social construction rather than a gift of God: “Men make religions, religion does not make men” (2008d: 95). Then, Marx can state the empty entity of human essence: “[religion] is the fantastic realization of human essence, because the human essence does not have true reality” (2008d: 95).

At least two consequences can be drawn from that statement. First, in those early writings Marx starts to draw a method of critique of ideology that relies on a materialistic analysis. The main characteristic of juridical dogmatism and philosophical idealism is not its isolated nature -isolated from the real world-rather than all its empirical assumptions. As Galvano Della Volpe puts it “the problem is not the emptiness of apriorism but the empirical contents that lie behind apriorisms” (1975: 128). Therefore, to avoid the metaphysics of law it is necessary to build a materialist critique of law that addresses the research to the material structure of society. The ‘idea of the social’ must be replaced by the study of the material social relationships that structures the reality (Escamilla Hernández, 1991). The law as an isolated system must be replaced by the critique of real relationships of property and possession (KELLEY, 1978). As Marx puts it,

... truly philosophical critique does not consist, as Hegel thinks, in recognizing everywhere the determinations of the logical concept, but in conceiving the special logic of the special object (cited on ESCAMILLA HERNÁNDEZ, 1991: 124).

Even George Lukacs acknowledges that in young Marx’s work resides “a transition to materialism” henceforth his critique of the Hegelian state is historically grounded (1971: 52). The historical materialistic study of law implies the study of the relationships between law

and the social-economic structure of the capitalist mode of production. Notwithstanding the foregoing, the materialistic critique of law does not necessarily imply the search for a positive-historical content of social from which would emanate the ultimate meaning of capitalist or bourgeois societies<sup>5</sup>. In other words, from a post-Marxist view the opposition between the form of the law and the economical content is not –necessarily- an opposition destined to be resolved. Neither the relationship between both elements is a linear and a transparent relation in which such and such legal rule responds simply to certain property relation. In the same vein, as will be outlined below, there is no clear or necessary resolution of that opposition in young Marx – as there is in mature Marx.

Therefore, the law itself does not belong necessarily to the field of the idea, rather than the metaphysics of law that is the expression par excellence of idealism. In a similar way that Enrique Dussel is positioned against naive materialism “that opposes matter with consciousness” (DUSSEL, 1993: 50), we can adopt a position that avoids the opposition between matter and law to consider the material into the law itself.. The materialism relies on the critical analysis of law that considers the materialistic grounds of the juridical. In this vein, Theodor Adorno’s thesis of the negative character of the Marxian dialectic simplifies a type of materialism that relies on “the redirection of the subject into the objectivity of both historical and natural objectivity, and the simultaneous impossibility of reducing the object to the pure self-production of the subject” (MARTÍN, 2013: 75). From a post-Marxian approach it is possible to conceive that the law –understood in a broad sense that does not reduce the juridical to the positive law and certain normative expressions- is not only an element of historical objectivity neither a mere invention of the subject. Far from that, a materialistic approach can help us to consider the law as a matter and consciousness phenome that belongs to both the objectivity and subjectivity fields at the same time.

Second, far from an opposition between political critique and political involvement, the epistemological orientation in young Marx is premised on a necessary relationship between them. The critique of the “old world” is not isolated from the struggle to found the new one. Marx states in *Letters to Ruge*:

Nothing prevents us from relating our criticism to the criticism of politics, or from participating in politics. Relating it to political struggles and identify them. We do not face the world in a doctrinal way, with a new principle: "Here is the truth, kneel!" We develop new principles from the very principles of the world. We do

---

<sup>5</sup> About it see: Foa Torres & Reynares, 2019.



---

not say "abandon your struggles, which are crazy". We want to shout the true motto of the fight (2008c: 90).

This epistemological viewpoint does not imply a pragmatic-political reduction of Marx's thought but rather an antidote for dogmatism or idealism through the explicit political involvement of the critical. In the Critique to Hegel's philosophy of law, the critique addresses to "make the real oppression even further more oppressive, adding to it the awareness of oppression, and making the infamy more infamous by making it public" (2008d: 98). Oppressive social relationships are the orientation of the critique towards a radical theory that can become "material power when the masses take over" (2008d: 103). The sharp distinction between theory and strategy is rejected in favor of a necessary link between both.

### 3. THE STUDY OF LAW AS A JURIDICAL FORM

As Donald Kelly puts it, the early Marx's rejection of the methodology of jurisprudence that separates form of law from content, rests on the necessity to "investigate first the material base" (1978: 356). Mainstream jurisprudence tends to study the law as an isolated object that has no structural links with social relationships. This being the case, then there is no possible "true philosophy" in the field of jurisprudence, but only a metaphysics that avoids the law's material base. In what follows, the young Marx's distinction between unreal generality and real individuality, celestial life and terrestrial life, will be addressed towards the identification of some key elements of a materialistic critique of law from a post-Marxist view.

In "Comments on The Latest Prussian Censorship Instruction"<sup>6</sup> (2008b [1843]), it is possible to identify the first steps towards Marx's delimitation of the law as a juridical form. Marx claims a "liberalism of appearance" of the Prussian instruction since the "objective vices" of an institution (censorship) has been foisted to the individuals and not to its essential causes:

This is the liberalism of appearance's style, which allows some concessions, sacrificing the individuals, in other words the instruments, for the purpose of conserve the thing, the institution (...) Changing a person is believed to be a change of the thing. The look is not oriented to the censorship but to the individual censors (MARX, 2008: 55).

---

<sup>6</sup> This is the first journalistic article of Marx that reviews the so-called freedom of expression of the Prussian law. Written in 1842, the article was not published in Germany and appeared a year later in a compilation edited in Switzerland (JARAMILLO, 2008).

Consequently, a contradiction between the legal form and the legal content, the dialectic of the censorship instruction, demands that “we must trust in the censor; in spite of the deficiencies of the censorship” (200b: 68). We must respect the law and, at the same time, we must respect institutions that placed “the arbitrary in the place of the law” (2008b: 68).

The next step, more theoretically relevant, refers to the critique of the German philosophy of law and state that “is the ideal extension of the German history” (2008d: 101). Young Marx draws in the distinction between the ideal conditions – the history “made with dreams” and the philosophical and abstract prolongation of the German law and state- and the real conditions of life of German people. In that sense, the purpose of critique could be to identify in what ways the illusions support a certain state of affairs. Religion or law could be seen as forms and not as ethical or moral contents of social relationships: “once the afterlife of truth has been dissipated, the mission of history consists in inquiring the truth of here and now. The mission of philosophy, at the service of history, consists in unmasking the profane forms of self-alienation once the sanctity form of human self-alienation has been unmasked. Critique of heaven becomes critique of the earth. Critique of religion becomes critique of law; critique of theology becomes critique of the political” (2008d: 96). The ideal conditions - build by speculative philosophy of law as the “abstract and exuberant thought of modern State” (2008d: 102) - lead to the abstraction of the real man and his entirely imaginary satisfaction provided by modern state.

Even though for Jean Hyppolite the opposition between the private individual and the citizen has a long history in Hegel’s work, the young Marx will radicalize this distinction. In “On The Jewish Question” the key contradiction of the political state is expressed in terms of “living a double-life” that lies on the opposition between the generic-celestial life and the material-terrestrial life, the “unreal generality” of bourgeois man and the “real individuality”. The religiosity of capitalist life relies on the way in which the modern state behaves with civil society: this behavior is as spiritual as “heaven with respect to the earth” (2008g: 180). Whereas in the modern state man is an “imaginary member of an imaginary sovereign”, in the civil-bourgeois society man is a real selfish individual. For young Marx, this main contradiction or paradox of the capitalist mode of production could be removed. In “Comments on the Latest...” Marx advocates for a “radical cure”<sup>7</sup> for that contradiction and -as Escamilla Hernández puts

---

<sup>7</sup> “The radical cure of such censorship would be its suppression; because the institution is wrong, and the institutions are more powerful than men” (2008b: 78).

it- for a truly juridical unity of form and content: “where the consciousness expression of the will of the people is represented by law” (MARX, 1842, cited in ESCAMILLA HERNÁNDEZ, 1991: 93). Likewise, in “Critique to Hegel’s philosophy of law” Marx addresses that the proletariat claims for the “dissolution of the existing universal order” because the proletariat itself “is the dissolution in fact of that universal order” (2008d: 109). Nevertheless, as Slavoj Žižek (2005) points out, one of the main orientations of Marx’s work is the analysis of mercantile form itself<sup>8</sup>.

Two consequences or epistemological elements could be drawn at this point. First, the identification of the contradiction between unreal generality and real individuality does not refer to the nonexistence of that generality. In other words, a materialist critique of law does not imply the rejection of the analysis of the celestial or generality life in the capitalist mode of production but rather the study of its structural relationships with terrestrial or individual existence. Second, we focus on the analysis and critique of law as a juridical form rather than a utopian or essential content of the social. As Evgeni Pashukanis points out, the analysis of the juridical form allows conceiving the law “not as an attribute of human abstract society, but as a historical category that belongs to a social certain regime, build upon the opposition of private interests” (1976: 54). As detailed below, for young Marx human rights are not the rights of men but rather the rights of the individual member of the bourgeois society.

Based on the oppositions between ideal conditions and real conditions, celestial life and terrestrial life, unreal generality and real individuality, Marx starts to draw the study of *form* as a method for a materialist critique of the capitalist mode of production. Mature Marx –in *Capital*- points out that even though the classic political economy approach to form of value had achieved the analysis of the value to expose its hidden content, “it never even raised the question about why that content adopts such form” (2008h: 98). The form work’s product value is an abstract and general form and “[i]f we get confused and take it for the eternal natural form of social production, we will also necessarily ignore what is specific to the form of value, and therefore in the mercantile form” (2008h: 99, note 32).

Particularly, the critique of the juridical form permits an approach to law as historical and not the neutral appearance of social relationships. However, the study of the legal form can allow us to pay attention to the hidden content of the legal. As Žižek puts it “the properly

---

<sup>8</sup>Žižek highlights the homology between the Freudian and Marxian interpretation method for the analysis of form (2005a). About it see: Foa Torres, 2013.

fetishistic fascination of the supposedly hidden content behind the form” (2005a: 35). This fascination might constitute the main obstacle for the development of a Marxist and materialist critique of law: once identified the juridical form, we may be tempted to account the different ways in which that appearance deforms or covers the real entity of social relationships. The main risk here is a possible drift of juridical critique to a functionalist study of law (FOA TORRES, 2013). Against this risk, focus could be on the entity and efficacy of the juridical appearance itself: “the form is never “mere” form but supposes its own dynamic that leaves traces in the materiality of social life” (ZIZEK, 2005b: 88).

As Pietro Barcellona has proposed, to understand the life of contemporary men we must inquire “the way in which human relationships can be represented as relationships between atomized individuals, that have no specific forms of social life and that have nothing in common” (1997: 39). Accordingly, the increasingly formalization of modern law as a “pure rule of play (...) indifferent to the materials contents of the justice” involves the appearance of law as an empty form. However, the law yet sanctions “the *nomos* of the market and of the economic calculation” (1997:39). Similarly, Jacques Ranciere (2004) notices that the dynamic of democracy relies on the gap between, on one hand, the abstract literality of rights, and on the other, the politicization of citizens around the polemic of right’s compliance. The juridical form is not seen neither as an essentialist-ahistorical content of the social nor as a simply product of historical-economical process. The juridical form could be seen, therefore, as a politicization space and not as a pre-political terrain. Finally, from a post-Marxist point of view there is no content of the juridical form that could fulfill it. The constitutive division of law drawn by Jodi Dean –taking from Zizek’s thought–relies on two constitutive or ontological lacks: of inconsistency –referred to the impossibility of law to be of fully systematized– and of incompleteness–“involves the way that law is never grounded in truth”- (2004: 21). Furthermore, the law ultimately has no sense or as Todd McGowan puts it out, “Law’s fundamental prohibition is nonsensical because the primordial signifier, the signifier of the law as such, has no meaning” (2018: 54). In this line, the study of the juridical form may involve the study of the symptomatic signs of its own inconsistency.

---

#### 4. STATE AND EMANCIPATION

Jean Hyppolite has stated that Marx's critique of Hegel's philosophy of right is an "early Communist Manifesto" (1973: 106). In this sense, young Marx claims for a radical revolution—based on "the fact that a determined class undertakes the general society emancipation starting from its special situation" (2008d: 106) - rather than a political or partial revolution—"the revolution that leaves intact the building foundations" (2008d: 105). For Hyppolite, the Hegelian contradiction between bourgeois society and State is possible to be surpassed by Marx's critique: "The Hegelian dialectic still preserves the tension of conflict at the very core of the mediation; whereas Marx's real dialectic works for the complete suppression of that tension" (1973: 116). However, the radical revolution is only possible through the proletariat class: "The head of the emancipation is philosophy, its hearth the proletariat" (MARX, 2008d: 109).

The bourgeois State, in this context, is founded on an intrinsic contradiction: "the contradiction between public life and private life, (...) general interest and particular interests" (2008e: 123). This is why the State is impotent facing the bourgeois private law or, more specifically, the anti-social nature of bourgeois' life: "If the modern state wanted to suppress the impotence of its administration, it would have to suppress current private life" (MARX, 2008e: 123). However, the paradox is that at as the state would suppress private bourgeois life, it would be suppressed itself: "because the State only exists in contrast with it [the private life]" (2008e: 124). Accordingly, from a state point of view it is only possible to note accidental and formal errors rather than structural social relationships of production and property. Bob Jessop points out that Marx agrees with Hegel in the separation between state and civil society. However, Marx "argues that this separation cannot be resolved neither through the rule of a universal and neutral bureaucracy nor through the election of a legislative assembly to govern in the interests of the people" (1978: 44). In contrast with Hegel, young Marx highlights that the distinction between state and civil society is a history fact and the second—civil society—determines the relationship between both (EIDELMAN, 2013). Accordingly, Marx concludes that the emancipation of man requires more than the concession of formal political freedom.

Furthermore, in "On The Jewish Question", Marx distinguishes between political emancipation and human emancipation. Against Bruno Bauer's thesis of emancipation of the

modern state's citizen from religion, Marx warns about the limitations of the political emancipation:

... the fact that the state can be released from a limit without the man really getting rid of it (...) that State can be free State without man being a free man”(2008g: 178). In spite of political emancipation, the religious remains the ideal consciousness of man: “the emancipation of state from religion is not the emancipation of the real man from religion (2008g: 187).

Hereafter, young Marx analyses the function of juridical form in human alienation through the distinction between citizen rights and human rights of modern states. The first – citizen rights- refer to the communitarian participation, that is to say, political rights –for instance freedom of speech, religious freedom and so on. The second –human rights- do not address a general or unhistorical man but the member of bourgeois society: “the selfish man, the man separated from men and community” (2008g: 190). In this sense, the main human right is not the right to freedom that is “the right to do and undertake everything that does not harm others”. Instead, the main human right is the one of property<sup>9</sup>, that is the unlimited right to enjoy and dispose of his patrimony “without attending to other men, independently from the society, the right of personal interest” (2008g: 191). The real enforcement of freedom right is the right to property and the security right is no more than “the assurance of egoism”. In addition, the equality right refers to that “every man is considered equally like a monad that rests on itself” (2008 g: 191).

Nonetheless, Humberto Schettino points out that young Marx adopts, at the same time, a negative conception of politics “as nothing but domination of one class over another and the State as the main resource of that domination” and a positive conception “that understands politics as community self-rule” (Schettino, 2004: 3). On their behalf, David Leopold notes that young Marx opposes not without reserves to politics and state, his theory of state and law in first writings “is more complex and original than most of the scholars suppose” (2012: 23). Although young Marx's view –for according to Lepold- is opaque and fragmentary, he failed to “develop his own conception of human emancipation” (2012: 350).

---

<sup>9</sup>As Marx pointed out in “Moralizing Criticism and Critical Morality”: “ private property is not a simple relationship and least of all an abstract concept, a principle, but it consists in the totality of bourgeois production relationships -like all of bourgeois production relationships are class relationships-(...) the transformation or even abolition of this relations can only be possible henceforth a transformation of this classes and its reciprocal relationships, and the change of the relation between classes is a historical change, a product of the whole social activity; in one word, the product of a specific historical movement” (2008f: 165).

Despite these arguments, the aim at this point is to draw two theoretical-epistemic elements that tend to hinder the human-absolute emancipation, given a capitalist mode of production. The first element is the juridical institution of liberal individuality as an isolated monad. As mature Marx pointed out, “goods cannot go by themselves to the market or exchange themselves” (2008h: 103). To link that goods the relationship between persons is necessary, as they see each other as mere private properties: “the content of that juridical relationship (...) is given by the economic relationship itself” 2008h: 103). Evgeny Pashukanis stresses that the relationships between men in the production process implies the appearance, on one hand, of “relationships between things (goods)” and, on the other, the “relations of will between units who are independent from one another, equal to each other: as relations between legal subjects” (1976: 114).

The real man of the human rights is the isolated monad –the selfish individual- rather than the abstract man of the citizen rights. Furthermore, this individual form is the premise of the bourgeois state and society. Pietro Barcellona has drawn attention to the “production process of social individuals” in the sense that “society is not only the organization of the conditions of reproduction of life (...) but fundamentally the creation of social individuals (...) learning what is common to all and what concerns exclusively individuals” (1997: 46). Todd McGowan states states that the paradox of our age remains on the belief of contemporary individual on his own increasingly autonomy or freedom whereas his submission or compliance is more forceful: “the society of enjoyment works to convince subjects that they exist outside this society, in independent isolation” (2004: 193). In this sense, the scope of the isolated monad has been deepened in the contemporary to an imaginary and narcissistic path where – paradoxically- the individual tends to experience itself as historically the most autonomous and radical.

Second, another obstacle for emancipation inside the capitalist mode of production resides on the intimate link –that characterizes the “living a double-life” of the liberal individual- between bourgeois law and its transgression. The simultaneously celestial and terrestrial life –as a political communitarian citizen and isolated egoistic monad- denotes that the juridical form does not merely distort or hide the capitalist production social relationships but rather allows its systematic transgression (FOA TORRES, 2013). For instance, the distinction -highlighted by Etienne Balibar (2006) -among property rights and property type of capitalist mode of production implies that while the appearance of a generalization of property

is affirmed by the juridical form, the real production relationships are structured by an increasingly- unequal access to the property of the means of production. That is why “the type of capitalist property acquires such an appearance, not because it has hidden the relations between bourgeois and proletarians, but because of its enabling systematic transgression through obscenely institutionalized mechanisms of exclusion of groups or social classes” (FOA TORRES, 2013: 160). However, from a post-Marxist and Lacanian approach it is possible to - as Jason Glynos pointed out- address the co-constitutivity of juridical form and transgression: “where there *is* self-transgressive enjoyment, then this is *always* experienced related to a particular ideal” (2008: 694). This contrasts with humanists and rationalists approaches that suppose a subject of self-control and self-knowledge and allow the study of the relationship between law and its -in Freudian-Lacanian terms- superego supplement<sup>10</sup>.

## 5. CONCLUSIONS

The purpose of this chapter has been to introduce some epistemological and theoretical elements of young Marx that can avoid the trend of juridical field that reduces the Marxian approach to law to a simple political-pragmatic one<sup>11</sup>. In contrast, young Marx’s writings are a systematic approach and a critique to ideology through jurisprudence and juridical form, which draw some paths for human emancipation (KELLEY, 1978). Furthermore, this chapter has attempted to argue that young Marx is yet useful to build a critical approach to contemporary law and State. In the first place, based on the early Marxian critique of German jurisprudence and philosophy -the dogmatism and idealism of the “metaphysics of law”- it was possible to point out some elements for a materialist critique of law. Among them, the necessary involvement -even in first Marx’s writings- of the philosopher in the paths of human emancipation and even in the socialist strategy, was presented. Secondly, the bourgeois oppositions -identified by young Marx- between ideal conditions and real conditions, celestial life and terrestrial life, unreal generality and real individuality give rise to the analysis of law as a juridical form rather than a utopian or essential content of the social.

---

<sup>10</sup> For more details on this topic see, among others: ZIZEK, 2005a; DEAN, 2004; GLYNOS, 2008; FOA TORRES, 2013.

<sup>11</sup>For instance, Rubén Jaramillo has identified the Kelsen’s view of Marxian theory as a political pragmatic reduction –most specifically in “Communist theory of law and state” (1957) - .



Furthermore, it was argued that there is no necessary link between the juridical form and economic-social content, at least from a post-Marxist viewpoint. Even the possibility of thinking law as a form, with ultimately, no sense, was raised. Thirdly, both the young-Marxian distinction between the political emancipation and human emancipation and the role of the state in the reproduction of the capitalist social relationships, enable us to draw at least two main obstacles for emancipation given a capitalist mode of production. On the one hand, the juridical institution of the liberal individual as isolated monads that tend to an increasingly narcissistic and unhistorical individual. On the other, the intimate relationship between juridical form and its transgression that structures the dynamics of bourgeois law. Finally, it should be noted that young Marx's writings on law and state could be a relevant input, especially in this phase of capitalism in which the rule of law itself is threatened. As Pietro Barcellona has pointed out, a possible way of the Marxian critique of law is to prevent "democracy from being deprived of form (non representable) and the form from becoming totally indifferent to the contents (pure neutralization)" (1997: 47).

## BIBLIOGRAPHY

ALTHUSSER, Louis (2006). *Para leer el capital*. Buenos Aires: Siglo XXI.

BALIBAR, Etienne, (2006). "Acerca de los conceptos fundamentales del materialismo histórico". In: *Para leer el capital*. Buenos Aires: Siglo XXI.

BARCELLONA, Pietro (1997). "Democracia y Justicia". *Jueces para la Democracia*, n° 28, Madrid, pp. 39-47.

BERMUDO ÁVILA, José (1975). *El concepto de praxis en el joven Marx*. Barcelona: Ediciones Península.

CERRONI, Umberto (1965). *Marx y el derecho moderno*. Buenos Aires: Jorge Álvarez editor.

CERRONI, Umberto (1980). *Teoría política y socialismo*. México DF: Era.

DEAN, Jodi (2004). "Zizek on Law". *Law and Critique*, vol. 15, n° 1, pp. 1-24.

DELLA VOLPE, Galvano (1975). *Rousseau y Marx*. Barcelona: Martínez Roca.

DUSSEL, Enrique (1993). *Las metáforas teológicas de Marx*. Barañain: Editorial Verbo Divino.

DUSSEL, Enrique (1982). *Sobre la juventud de Marx*. *Dialéctica (Puebla)*, 12, pp. 219-239.

- EIDELMAN, Ariel (2013). *El joven Marx y el debate del Estado moderno, 1842-1848*. Buenos Aires: Instituto de Investigaciones Gino Germani (UBA).
- ESCAMILLA HERNÁNDEZ, Jaime (1991). *El concepto del derecho en el joven Marx*. México DF: Ediciones Armella.
- FOA TORRES, Jorge (2013). “Psicoanálisis y Derecho: Elementos para una crítica lacaniana de la ideología jurídica”. *Crítica Jurídica*, n° 35, México, pp. 133-163.  
<http://www.revistas.unam.mx/index.php/rcj/article/view/40803>
- FOA TORRES, Jorge (2016). “Acerca de la revolución capitalista de lo jurídico. Izquierda lacaniana y teoría crítica del derecho”. *Revista Derecho PUCP*, n° 77, pp. 85-105.  
<http://revistas.pucp.edu.pe/index.php/derechopucp/article/view/15631>
- FOA TORRES, Jorge (2017a). *Lógica del riesgo y patrón de desarrollo sustentable en América Latina Políticas de gestión ambientalmente adecuada de residuos peligrosos en la ciudad de Córdoba*. Córdoba: Editorial del Centro de Estudios Avanzados.  
<https://rdu.unc.edu.ar/bitstream/handle/11086/5605/Foa%20Torres%2c%20Jorge.pdf?sequence=1&isAllowed=y>
- FOA TORRES, Jorge (2017b). “Entre la impotencia y lo imposible: Reflexiones en torno al proceso de producción de conocimiento”. En F. Martínez y D. Saur (comp.): *La cocina de la investigación*, 69-78. Villa María: EDUVIM.
- FOA TORRES, Jorge & REYNARES, Juan Manuel (2019). “Historización radical y Teoría Política del Discurso: hacia una epistemología de las memorias del antagonismo”. *Athenea*, vol. 19 n° 1, e2462. ISSN: 1578-8946. <https://doi.org/10.5565/rev/athenea.2462>
- GLYNOS, Jason & Howarth, David (2007). *Logics of Critical Explanation in Social and Political Theory*. U.K.: Routledge
- GLYNOS, Jason (2008). “Self-Transgressive Enjoyment as a Freedom Fetter”. *Political Studies*, vol. 56, pp. 679-704.
- HAMMEN, Oscar (1970). “The young Marx reconsidered”. *Journal of the History of Ideas*, Vol. 31, No. 1 (Jan. - Mar., 1970), pp. 109-120
- HYPOLITE, Jean (1973). *Studies on Marx and Hegel*. New York: Harper and Row.
- HODGES, Donald Clarke (1966). “The young Marx a reappraisal. *Philosophy and phenomenological research*, vol 27, n 2, 216-229
- JARAMILLO, Rubén (2008). “Presentación”. In Rubén Jaramillo (ed.): *Escritos de juventud sobre el derecho Textos 1837-1847*, 5-37. Barcelona: Anthropos.
- JESSOP, Bob (1978). Marx and Engels on the state. In S. Hibbin, ed.: *Politics, Ideology, and the State*, 40-68. London: Lawrence and Wishart.
- KELLEY, Donald (1978). The Metaphysics of Law: An Essay on the Very Young Marx. *The American Historical Review*, Vol. 83, No. 2 (Apr., 1978), pp. 350-367  
<http://www.jstor.org/stable/1862321>

- LACAN, Jacques (2006). *El Seminario 23: el sinthome*. Buenos Aires: Paidós.
- LACLAU, Ernesto (2000). “La imposibilidad de la sociedad”. In: *Nuevas reflexiones sobre la revolución de nuestro tiempo*, 103-106. Buenos Aires: Nueva Visión.
- LEOGRANDE, William (1977). “An investigation into the young marx controversy”. *Science and society*, 2, 129-151.
- LEOPOLD, David (2012). *El joven Karl Marx. Filosofía alemana, política moderna y realización humana*. Madrid: Akal.
- LOWY, Michael (1973) *La teoría de la revolución en el joven Marx*. Madrid: Siglo XXI.
- LUKACS, George (1971). “En torno al desarrollo filosófico del joven Marx (1840-1844)”. *Ideas y Valores*; Vol 20, No 38-39.
- MARTÍN, Facundo (2013) *La dialéctica negativa en el joven Marx: una lectura adorniana de la crítica al hegelianismo*. *Diánoia*, vol. LVIII, n° 71 (noviembre de 2013): pp. 53–78.
- MARX, Karl (2008a) [1842]. “Carta al Padre”. In Rubén Jaramillo (ed.): *Escritos de juventud sobre el derecho Textos 1837-1847*, 41-51. Barcelona: Anthropos.
- MARX, Karl (2008b) [1843]. “Observaciones sobre la reciente reglamentación de la censura prusiana”. In Rubén Jaramillo (ed.): *Escritos de juventud sobre el derecho Textos 1837-1847*, 53-79. Barcelona: Anthropos.
- MARX, Karl (2008c) [1843]. “Cartas de Marx a Ruge” (marzo y setiembre de 1843). In Rubén Jaramillo (ed.): *Escritos de juventud sobre el derecho Textos 1837-1847*, 81-91. Barcelona: Anthropos.
- MARX, Karl (2008d) [1843]. “Contribución a la crítica de la filosofía del derecho de Hegel”. In Rubén Jaramillo (ed.): *Escritos de juventud sobre el derecho Textos 1837-1847*, 95-111. Barcelona: Anthropos.
- MARX, Karl (2008e) [1844]. “Glosas marginales al artículo ‘El Rey de Prusia y la reforma social. Por un Prusiano’”. In Rubén Jaramillo (ed.): *Escritos de juventud sobre el derecho Textos 1837-1847*, 113-133. Barcelona: Anthropos.
- MARX, Karl (2008f) [1844]. “La crítica moralizante y la moral crítica”. In Rubén Jaramillo (ed.): *Escritos de juventud sobre el derecho Textos 1837-1847*, 135-169. Barcelona: Anthropos.
- MARX, Karl (2008g) [1843]. “Sobre la cuestión judía”. In Rubén Jaramillo (ed.): *Escritos de juventud sobre el derecho Textos 1837-1847*, 171-204. Barcelona: Anthropos.
- MARX, Karl (2008h) [1867]. *El capital: el proceso de producción del capital*. Buenos Aires: Siglo XXI.
- MCGOWAN, Todd (2018). *The psychosis of freedom. Law in modernity*. In John Mills & David Downing: *Lacan on Psychosis*, 47-76. London: Routledge.

PASHUKANIS, Evgeny (1976). *La teoría general del derecho y el marxismo*. México DF: Grijalbo.

POULANTZAS, Nicos (1986). *Hegemonía y dominación en el Estado Moderno*. Cuadernos de Pasado y Presente, n° 48. México DF: Pasado y presente.

RANCIERE, Jacques (2004). Who Is the Subject of the Rights of Man? *The South Atlantic Quarterly* 103:2/3.

SCHETTINO, Humberto (2004). The notion of politics in Marx's early writings. *Crítica, Revista Hispanoamericana de Filosofía*, n° 36 (107), 3-38.

STAVRAKAKIS, Yannis (2007). *Lacan y lo político*. Buenos Aires: Prometeo.

ZIZEK, Slavoj (2005a). *El sublime objeto de la ideología*. Buenos Aires: Siglo XXI.

ZIZEK, Slavoj, (2005b). "Contra los derechos humanos". *New Left Review*, n° 34, pp. 85-100.

**Trabalho recebido em 06 de novembro de 2020**

**Aceito em 03 de dezembro de 2020**