

ALL ROADS LEAD TO PROPERTY: PASHUKANIS, CHRISTIE AND THE THEORY OF RESTORATIVE JUSTICE

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SUMMARY

Nils Christie is acknowledged generally as the theoretical founding father of restorative justice. Evgeny Pashukanis may be taken as the premier Marxist theoretician of law. This essay represents an endeavour to read Christie through the lens of Pashukanism, that is, to comprehend the theory of restorative justice developed by Christie in relation to the general theory of law formulated by Pashukanis. The early part of the essay is expository: firstly, it sets out in abbreviated form the fundamental tenets of Pashukanis's so-called commodity form theory of law, with some attention being given to the Pashukanist approach to criminal justice; and secondly, it explains the core elements of Christie's theory of restorative justice, including his critique of western criminal justice and his advocacy of a system of "conflicts as property" as the answer to the crisis of criminality which plagues the western world. The latter part of the essay is critical: it compares and contrasts Christie's proprietary theory of restorative justice with Pashukanis's commodity form theory of law. On the one hand, it is argued that there exists a remarkable theoretical concordance between Christie and Pashukanis in the sense that Christie's idea of criminal conflict as property constitutes a non-Marxist vindication of Pashukanis's analysis of the legal form. On the other hand, it is posited that because Pashukanis proceeds from a Marxist perspective and Christie does not, there remain crucial areas of difference between them, especially as regards the historicity of the legal form, the concept of legal subjectivity, and the role of the state. In the light of these differences the essay concludes with a Pashukanist critique of the Christie thesis, seeking to assess the prospects of restorative justice replacing criminal justice as the generalised mode of disposition of criminal conflicts.

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