

TOWARDS A PERIODIZATION OF OSCAR CORREAS'
CRITICAL LEGAL THEORY

Víctor Fernando ROMERO ESCALANTE*

ABSTRACT: Óscar Correas is undoubtedly a key figure in Latin American Marxist Critical Legal Theory as a cornerstone of critical legal thought and one of the founders of the “Latin American Critical Legal Theory” [Crítica Jurídica Latinoamericana or CJL] movement. His training as a jurist allowed him to posit legal questions and theories that were fundamental to understandings of reality, overcoming narrow visions of law that had been popularized in social sciences. Correas’ thought underwent changes over the course of new readings and evolving sociopolitical conditions—the crisis of the prevailing Stalinism in the Soviet Union and the irruption of the indigenous movement in México in the form of the Zapatista Liberation Army uprising, to mention two paradigmatic examples—. It should be no surprise that, in the 1990s, Correas would critique and debate the Marxism of Pashukanis. In this sense, I propose the hypothesis of the existence of a “First Correas” and a “Second Correas.” The first, aligned with the Marxism of the critique of political economy (this from the 1970s to the late 1980s), and the second, with a markedly linguistic turn, embracing skepticism, although he never completely abandons Marx’s position (this from the 1990s to until his death in 2020).

KEYWORDS: Óscar Correas, Marxism, Critical Legal Theory, Latin American, Periodization.

RESUMEN: Óscar Correas es sin duda una pieza clave de la crítica marxista del derecho en América Latina. Es una de las piedras angulares para criticar al derecho moderno y fue el fundador del movimiento denominado “Crítica Jurídica Latinoamericana” (CJL). Su formación como jurista le permitió plantear preguntas y teorías en relación con lo jurídico que fueron fundamentales para entender la realidad. Superando visiones estrechas respecto al derecho que se habían popularizado en las ciencias sociales. El pensamiento de Correas va sufriendo cambios debido a las nuevas lecturas realizadas y distintas condiciones político-sociales (la crisis del estalinismo prevaleciente en la Unión Soviética y la irrupción en México del movimiento indígena vía el levantamiento del

* Professor at the Department of Law, Universidad Autónoma Metropolitana (Mexico City), Lawyer and PhD in Latin American Studies. Email: vicfer0389@gmail.com.

Ejército Zapatista de Liberación Nacional, por mencionar dos ejemplos paradigmáticos para el mundo), no debe sorprendernos que, en la década de 1990, Correa criticará y polemizará con el marxismo de Pashukanis. En este sentido podemos señalar como hipótesis que existe un “Primer Correa” y un “Segundo Correa”. El primero, apegado al marxismo de la crítica economía política (que esta entre la década de 1970 y finales de los ochenta) y el segundo, con un marcado giro lingüístico, llegando incluso al escepticismo, aunque no abandona por completo la posición de Marx (principios de la década de 1990 hasta su fallecimiento en 2020).

PALABRAS CLAVE: *Óscar Correa, Marxismo, Crítica Jurídica, América Latina, Periodización.*

TABLE OF CONTENTS

I. INTRODUCTION	24
II. FORMATIVE YEARS	26
III. ÓSCAR CORREAS’ MARXISM	28
IV. CONSTRUCTING CATEGORIES FOR LAW FROM CAPITAL	30
V. TOWARDS THE FIRST CORREAS.....	36
VI. CONCLUSIONS.....	39

I. INTRODUCTION

Latin American Critical Legal Theory (CLJ) was born Marxist in nature,¹ a fact which did not inhibit it from giving voice to other tendencies of critical thinking.² This school of thought developed in Latin America seeks to demystify and de-fetichize both law and the State with tools rarely used by legal scholars. It points at the limitations of legal-State concepts and practices and is founded in differentiating the deontic and ideological meanings of law. While some of its epistemic frameworks approach those of French *Critique du droit* or US Critical Legal Studies, CJL has a citizenship of its own, proposing specific theories and methodologies to understand Latin America and its particularities.

In this sense, I propose the hypothesis of the existence of a “First Correa” and a “Second Correa.” The first aligns itself with Marx’s critique of political economy (from the 1970s to the late 1980s), and the second, with a markedly linguistic turn, embraces skepticism —although the Marxist outlook is

¹ Arturo Berumen Campos, *Óscar Correa o la izquierda kelseniana. Entrevista a Óscar Correa*, in INTRODUCCIÓN DIALÓGICA AL DERECHO 226, 228 (UAM Azcapotzalco, 2018).

² Óscar Correa, *Presentación*, CRÍTICA JURÍDICA. REVISTA LATINOAMERICANA DE POLÍTICA, FILOSOFÍA Y DERECHO, 1983 at 2.

never completely abandoned (from the 1990s to the present).³ This article centers on the “First Correas.” We will focus on the two books⁴ he published in the 1980s: *La ciencia jurídica* and *Introducción a la crítica del derecho moderno (esbozo)*.⁵ I will also discuss the articles from *Crítica Jurídica* Nos. 0-8,⁶ which refer to law and Marx’s critique of political economy.

1988 is key in this periodization because at that moment, it is possible to distinguish between the “first” and “second” Correas. This claim is based on the author’s own statements (in the 1970s), when he declares his adherence to Marxism,⁷ as well as on his books, which use Marx’s method to analyze law, only to later affirm his evident reproachment with linguistic studies, which would lead to his 1992 doctoral thesis, entitled, *La critique du droit comme analyse du discours*, later published in Spanish as *Crítica de la ideología jurídica. Ensayo sociosemiológico*.⁸ Similarly, I believe it is possible to trace Óscar Correas’ intellectual evolution as parallel to the crisis of a certain kind of Marxism and perspective of world revolution. It would be more accurate, however, to say that the author was influenced by the crisis of the prevailing Stalinism in the Soviet Union, which had proclaimed itself the dominant form of Marxist thought.

³ Víctor Romero Escalante & Napoleón Conde Gaxiola, *Breve aclaración para la presente edición*, in DEBATES ACTUALES DE LA CRÍTICA JURÍDICA LATINOAMERICANA 27 (Editorial Torres Asociados, 2019).

⁴ In 1995, *Ideología Jurídica* was published as a collection of journal articles Correas published between 1981 and 1983. We do not consider this a book *per se*, but more of a unified discursive body. These works are certainly important to understand the author’s thinking. See ÓSCAR CORREAS, *IDEOLOGÍA JURÍDICA* (Universidad Autónoma de Puebla, 1983).

⁵ This book deserves special mention since it was his theoretical debut to present a broad and complete reflection on law using Marx’s method of critique of political economy in Latin America. We would hazard to say that Óscar Correas’ book is a continuation of Pashukanis’ *The General Theory of Law and Marxism*, published in 1924 following the October Revolution’s triumph over foreign intervention. Both texts reach similar conclusions, such as the “‘circulationist’ and equivalent” nature of the legal form proposed by the former and Correas’s concept of “legal ideology,” which is present in law, but does not eliminate its normative specificity. Both authors reject the economic interpretation that sees law as a mere reflection of economic relations. However, Correas’s book does not contain a single citation of Pashukanis’ work, perhaps the result of Correas’ effort to distinguish himself from the Soviet intellectual. In brief, we believe that the two authors have more in common—at least with regard to the “First Correas”—than is commonly considered. It is also important to note the significant differences between the first edition of *Introducción a la crítica del derecho* and the last (fourth) edition, particularly in terms of his approach to Kelsen. Nevertheless, we will not delve further into this matter.

⁶ These issues were published between 1983-1988.

⁷ Óscar Correas, *¿Una dialéctica del Derecho?* (*Acerca del Libro de E.B. Pashukanis, La Teoría General del Derecho*) 4, *DIALÉCTICA*, Jan. 1978 at 245.

⁸ Óscar Correas, *Testimonios sobre la filosofía del derecho contemporáneo en México* 7, *REVISTA DE TEORÍA Y FILOSOFÍA DEL DERECHO*, Oct. 1997 at 30.

II. FORMATIVE YEARS

For the purpose of providing his background, Óscar Correas was born to a middle-class family in Córdoba, Argentina, in 1943. His father, Óscar Correas, was a doctor who always wished his son to get a university education with solid moral principles. This explains why young Correas was enrolled in the Catholic University of Córdoba, where he received a Christian humanist education and received his first taste of philosophy. However, at that time the position of the Catholic Church (specifically, the Jesuits, who ran the University) was extremely conservative.

Of course, this education conflicted with the prevailing political climate of the 1960s, when young people worldwide had radicalized, inspired by May 68 in France, the Cuban Revolution, the end of capital's high economic growth, etc. It seemed as though the moment for the world revolution had arrived. So, it was that Óscar Correas turned decisively to the left, challenging university authorities—an attitude that nearly cost him his law degree and which, after graduating, drove him to donate his legal services to unions, community organizations, and political prisoners.

In his own words:

In this militancy, undertaken as an *ad later* task in my professional practice, we find Marxist thought. Leading intellectuals like José Aricó played an important role in those years: bringing Marxism closer to the Christian spirit of dissent. Those were the times of the early reign of Althusser, of Leninist parties, of the *Cordobazo*,⁹ of the student rebellions in France and Mexico, and the romantic exploits of Ché [Guevara].¹⁰

These social conditions led the young lawyer from Córdoba and an entire generation to dream and take action for a better world, one without exploiters or the exploited. However, as the author himself states, “I was still far from Marx.”¹¹ In 1973, he joined the university Philosophy and Letters department, where he began to study philosophy systematically under the tutelage of Nimio de Anquin, among others.

The 1976 civilian-military dictatorship and his activism with lawyers for democracy forced him to leave the country and only Mexico would do. He arrived at the Philosophy and Letters department of the Distinguished Autonomous University of Puebla, where he taught the Greek philosophy he

⁹ This term refers to a mass uprising led by workers and students in Córdoba, Argentina. For several days, protesters held the city, trouncing the police and erecting barricades to take on State forces. The Argentine government mobilized the army, which unleashed violent repression leaving dozens dead and wounded and hundreds detained.

¹⁰ ÓSCAR CORREAS, *supra* note 9 at 31.

¹¹ *Id.*

had learned from Nimio de Anquin. It was then that he met another of his teachers, Óscar del Barco, with whom he read Marx and received the teachings that would lead him to understand rationalism as the core of Western thought. This was the path that led him to a philosophy of law.¹²

By this point, Correas had already espoused a particular reading of Marxism, but he had yet to reach a more orderly and original reflection. Class struggle was influential in this respect, but even more so were the defeats suffered by the working class at this historical moment. Salvador Allende had been defeated by the coup d'état led by Pinochet; a savage dictatorship installed itself in Argentina; most of South America was governed by dictatorial regimes that imposed a new socio-economic logic, and left-wing forces, in both their *foquista*-guerilla¹³ variants and political party forms, were unable to incite a mass movement strong enough to overthrow the national bourgeoisie.

These conditions paved the way for legal theorization, above all because in this moment of revolutionary flight, it was necessary to understand how legal institutionalization operated so as to, in some cases, defeat it and repurpose it as tool to benefit the exploited. However, in less fortunate cases, some “leftists” would use it to position themselves in the dominant system. Regardless, crises provide moments of epistemic creation *par excellence*, moments of great creativity that can help advance human thought.

According to Bolívar Echeverría, the concept of “crisis” should be understood as the historical moment at which social reproduction, i.e., economic, social, cultural, and legal norms, reaches a limit by which it can no longer reproduce as before. At that moment, considering the impossibility of the old society to continue on its course, there is the possibility of another society emerging as a revolutionary transformation.¹⁴ The same occurs with respect to knowledge, and law in particular. When the legitimacy and functionality of legal doctrine is questioned in detail, space opens up to propose new readings and practices of the legal form. The most radical revolutions in history, such as the French Revolution of 1789 and the Russian Revolution of 1917, demonstrated their depth by questioning the very existence of the prevalent legal system.

The rejection of the legal form is at the same time a rejection of a moral, economic and political system. When a critique seeks to advance to its logical conclusion, it must attempt to liquidate the existing order to overcome all that “is” in order to reach what has yet to “be.” Otherwise, I find ourselves with a fragmented criticism, one that only seeks to change one aspect of reality while leaving the rest intact. Seeking to change legal norms or established morals without modifying economic and political relations, or vice versa,

¹² *Id.*

¹³ *Foquismo* refers to a guerilla warfare strategy associated with Che Guevara.

¹⁴ BOLÍVAR ECHEVERRÍA, *EL DISCURSO CRÍTICO DE MARX 191* (Fondo de Cultura Económica-Itaca, 2017) (1986).

leads to the project's failure. When such a situation occurs, the premises are considered erroneous,¹⁵ without asking whether the criticism had arrived at the root of the problem.

In this way, Óscar Correas, armed with Marxist tools, entered history offering a possible solution to the historical crisis of legal thought. It was no coincidence that it was in Latin America, a region fraught with some of the most powerful contradictions in the world, where alternatives like "transitional States" toward socialism were also being developed. These later ones devolved because of material conditions and the impossibility to sustain them over time, as in Cuba, obliging us to consider the mistakes made and how to avoid them in the future. We hazard this in light of the realities currently seen under capitalism: increasing rather than decreasing world hunger; the persistence of war; fascist and xenophobic hatred on the rise; the terrible reality of climate change —and this long and shameful list goes on.

III. ÓSCAR CORREAS' MARXISM

It must be first noted that the Marxist intellectual and political tradition in Mexico arrived several years after it had in other Latin American countries (for example: Chile or Argentina had socialist parties affiliated to the Second International). Mexico did not have close contact with the advanced ideas of revolutionary Marxism, let alone its forms of political organization. In fact, the first socialist party in Mexico did not emerge until 1919 and would later become the Mexican Communist Party.

The tragic defeat of the Republicans in the Spanish Civil War transformed Mexico into a refuge for a large number of republican thinkers. This event strengthened the Mexican intellectual field spectacularly; some of the émigrés were critical leftist jurists like Wenceslao Roces (whose famed translation of Marx's *Capital* was published by the Fondo de Cultura Económica), Mario de la Cueva (who wrote an excellent work on labor law with clear references to Marxist theories), and Adolfo Sánchez Vázquez (an intellectual who introduced Pashukanis¹⁶ to the Spanish-speaking world), among many others.¹⁷

From 1940 to the 1960s, Marxist law-related intellectual production began to flourish, although it was somewhat spread across several European nations like France, Italy, Germany, Russia, and Spain. In Latin America, and in Mexico, especially, notable debates had yet to occur. Material was scarce,

¹⁵ This by no means implies that premises should not also be questioned.

¹⁶ Evgeny Pashukanis (1891-1937), was a Soviet jurist, known for his work on legal theory and Marxism. His most important work, "General Theory of Law and Marxism", in which he argued that law only makes sense in situations of commodity exchange, therefore, law and the state would disappear when the communist society is achieved.

¹⁷ Víctor Romero Escalante, *Pashukanis y su recepción en México*, 19 VERINOTIO REVISTA ON LINE DE FILOSOFÍA E CIENCIAS HUMANAS 127, (2015).

and those that could be found were not usually in Spanish. The discussion really began in 1976 when Grijalbo publishers published a translation of revolutionary Russian jurist Evgey Pashukanis's *The General Theory of Law and Marxism (Obschia Teoria Prava I Markism)*. The edition was forwarded by Adolfo Sánchez Vásquez (ASV), who details the principal arguments of the book from a philosophical and historical perspective.

1976 was a key year with two significant events: Óscar Correas's arrival in Mexico and the publication of Pashukanis' book. The Russian jurist greatly influenced Correas, despite the intellectual tension between them. In 1980, sponsored by the Autonomous University of Sinaloa, Correas published his first book, *La Ciencia Jurídica*.¹⁸ It was not the author's first written publication. He was on the Editorial Board and Leadership Committee of the famous Marxist journal *Dialéctica*, edited at the Distinguished Autonomous University of Puebla, and had contributed several articles since its first issue, thus revealing his extensive knowledge of Greek philosophy and Marxism.

Correas recognizes Pashukanis' effort to explain law and economics under the concept of "form," but, at the same time, our Latin American jurist believes that rather than starting from the idea of a legal "subject," as Pashukanis does, one should begin with the concept of the "object." Correas finds Pashukanis' handling of civil law systems reductionist as it omits the concept of the legal "norm." Furthermore, Correas criticizes the leap from the mercantile legal form to the legal form in general. Unlike the Soviet jurist, Correas also notes that in the USSR, the law, far from extinguishing itself, had become more robust, which is to say that planning does not tend to extinguish the legal form.¹⁹

This is because, among many other factors, in the USSR, the prevailing "socialist legality" was presented as the proletarian version of bourgeois legality. The theoretical father of this approach was Adrei Vyshinsky, Stalin's prosecutor, who defined it as a State apparatus capable of guaranteeing social stability, i.e., the policy of socialism in a given country. He considered a State and its repressive machinery necessary, but he did not broach the question of changes in the relations of production, the elimination of the commodity

¹⁸ We emphasize this book not only for being Correas' first, but because he outlines practically all the theories to be later developed in greater depth in the 1990s. It is already possible to catch sight of his concerns about teaching law in the university and how it atrophies the critical potential of young lawyers. Criticism of legal ideology is only just explored, but he already poses the question as to how it operates. Democracy is another important theme that appears in the book, the direct corollary to human rights. In the first pages of the book, he examines the question regarding law's status as science, which entailed the problematization of the concept of "Truth." The theory of discourse and language is also present. The only concern that did not appear was that of legal pluralism and, therefore, that of indigenous and non-State legal systems. Curiously, *La Ciencia Jurídica* is one of his lesser-known works and, consequently, one of the most underappreciated.

¹⁹ CORREAS, *supra* note 5 at 19-22.

form and the law of value, or workers' democracy. Rather, everything was aimed at strengthening military force, the repressive apparatus, and high-level bureaucratic positions. In the end, it was no more than a collection of ideologies to justify Stalinist bureaucracy, which served to impose the legitimating idea that his program was identified with a socialist one. In this case, by assigning a colossal role to the State, they sought to shield their own privileges.²⁰

I ought to make an observation here. The Soviet Union's bureaucratization process was precisely the opposite of what Pashukanis believed necessary for the refoundation of property. Instead of democratizing production and eliminating the specialized bodies that dictated production, workers' democracy was liquidated and substituted with bureaucratic bodies that grew increasingly distant from the working masses and, consequently, gained greater privileges.²¹ In sum, the material and cultural conditions that would allow the extinction of the law and the State were defeated, leading to Pashukanis' execution and the "decree" of the "error" of his ideas, as though the truth could still be issued by decree.²²

Returning to *La ciencia jurídica*, Correa begins with the idea that "we are speaking here of the exploitation of the work of others, monopoly accumulation, wars led by corporate moguls."²³ From the outset, I can observe his concern for the division of labor and imperialism, two classic subjects of Marxism. The division of social classes is based on the dispossession of the better part of the population of means of production, depriving them of a means of survival. All the majority has is their labor power, their biological and intellectual body. This forces them to interact with other human beings—in a state of subordination—if they want to obtain daily sustenance and additional objects needed to live.

IV. CONSTRUCTING CATEGORIES FOR LAW FROM CAPITAL

By this point, Correa's reasons for adopting Marxism seem obvious, but how can this position in *Capital* be epistemologically grounded to create new categories? One possible response is that Correa's position is based on the analysis of political economy which is, at the same time, an expression of class, a manifestation of the revolutionary workers' movement, aimed at the historic

²⁰ Víctor Romero Escalante, *De la legalidad revolucionaria a la legalidad 'socialista' de Stalin*, IDEAS DE IZQUIERDA, (Nov. 2, 2021, 11:05 AM), <https://www.laizquierdadiario.mx/De-la-legalidad-revolucionaria-a-la-legalidad-socialista-de-Stalin/>.

²¹ Evgeny Pashukanis, *Os dez anos de o estado e a revolução de Lenin*, in A TEORIA GERAL DO DIREITO E O MARXSIMO 299 (Lucas Simone trans., Sudermann/ ideas baratas 2017).

²² On the process of counterrevolution in the Soviet Union *see*: VÍCTOR SERGE, MEMORIAS DE MUNDOS DESAPARECIDOS (1901-1941) 30-50 (Tómas Sogovia trans., Siglo XXI, 2002) (1951).

²³ ÓSCAR CORREAS, LA CIENCIA JURÍDICA 9 (Universidad Autónoma de Sinaloa, 1980).

transformation of the world. If we accept the postulates of *Capital*, we must also accept their political and legal consequences.

To that regard, Karl Korsch noted that the fetishistic nature of economic forms and the objectification of human relations change the phenomena of society and, with them, their perception. For Korsch, bourgeois science is situated simply and dogmatically in the terrain of capitalist society, uncritically accepting its essence, its objective structure, and its laws as the immutable foundation of “science.”²⁴

For these reasons, Marxist Critical Legal Theory does not fit within the boundaries of “science.” Rather, it supersedes them, obliterating the dominant categories and proposing new ones. This is precisely because the movement of history, contradictory and always in motion, constitutes new social phenomena that remain tied to the logic of capitalism. Thus, all that remains is to generate new concepts that fundamentally seek to modify reality, and not just to explain it. As such, it is both possible and necessary to use Marxism to problematize law.

Correas states that the construction of the legal category of “person” should be based on the concept of “exchange” of “objects,” with reference to the concept of “commodity” and the circuit of commodity-capital.²⁵ In the introduction to the *Grundrisse*, Marx contends:

Hegel, for example, correctly begins the Philosophy of Right with possession, this being the subject’s simplest juridical relation. [...] Thus, in this respect it may be said that the simpler category can express the dominant relations of a less developed whole, or else those subordinate relations of a more developed whole which already had a historic existence before this whole developed in the direction expressed by a more concrete category. [...] As a rule, the most general abstractions arise only in the midst of the richest possible concrete development, where one thing appears as common to many, to all.²⁶

Marx returns to these same methodological guidelines in *Capital*:

The wealth of those societies in which the capitalist mode of production prevails, presents itself as “an immense accumulation of commodities,” its unit being a single commodity. [...] Exchange value, at first sight, presents itself as a quantitative relation, as the proportion in which values in use of one sort are exchanged for those of another sort, a relation constantly changing with time and place.²⁷

²⁴ KARL KORSCH, TRES ENSAYOS SOBRE EL MARXISMO 7 (Ana María Palos trans., Era, 1979).

²⁵ *Id.*, at 19.

²⁶ KARL MARX, ELEMENTOS FUNDAMENTALES PARA LA CRÍTICA DE LA ECONOMÍA POLÍTICA (GRUNDISSE) 20, 25 (Pedro Scaron trans., Siglo XXI, 1973) (1939).

²⁷ KARL MARX, EL CAPITAL, V. I 125-126 (Pedro Scaron trans., Siglo XXI, 1982) (1867).

In this way, the idea of “equivalence” —in addition to being decisive for understanding the legal form —appears for the first time in Correas’s work. In his book, *Introducción a la crítica del derecho moderno (esbozo)*, the concepts of “circulation” and “equivalence” emerge fully developed. According to traditional doctrine, private law, is an assemblage of rules governing individuals. In a distinct sense, our jurist states that “private” refers to a level of law in which the phenomenon of circulation appears. In this sense, I can say the same of agrarian law, mining law, criminal, labor law, etc., as all imply the circulation of commodities.²⁸

The essence of law is distinct from the essence of positive law, just as the essence of voluntary exchange is distinct from its appearance.²⁹ Here I find the seeds of the concepts of “effectiveness” and “efficiency” that Correas would further develop in his writings on the sociology of the law. Hence, Correas considers it legitimate to construct a sociology of the law grounded on Marx’s *Capital* and *Grundrisse*, but without recourse to the texts of the revolutionary Tréveris,³⁰ and largely basing himself on Hume to analyze the legal form and to criticize Marxists.^{31,32}

The form constitutes concrete existence, the underlying matter. In Critical Legal Theory, unity is indispensable. If we separate law from the economy, we have no way whatsoever to account for the legal phenomenon in all its fullness. The idea of form is what allows this unity to come into being: law is a social form, a form of social relations that permits us to distinguish, within the legal form, ways of mandating, permitting, or prohibiting certain behaviors.³³

It should be mentioned that civil suits are disputes between persons over contracts that put objects into circulation. Equivalency exists as the free will of said persons and therefore serves as a reflection: State intervention is required when the equivalency is violated, in the form of the court. Therefore, the State —at the level of commodity circulation— has two essential functions: to protect equivalency and to guarantee circulation. When commodities or money come to a stop, the State mobilizes itself to reactivate the cir-

²⁸ ÓSCAR CORREAS, *INTRODUCCIÓN A LA CRÍTICA DEL DERECHO MODERNO (ESBOZO)* 89-90 (Universidad Autónoma de Guerrero, Universidad Autónoma de Puebla, 1982).

²⁹ CORREAS, *supra* 23 note at 46.

³⁰ Óscar Correas, *Teoría sociológica del derecho y sociología jurídica (parte I)* 7 *CRÍTICA JURÍDICA. REVISTA LATINOAMERICANA DE POLÍTICA, FILOSOFÍA Y DERECHO* 100 (1987).

³¹ *Id.*, at 101.

³² By 1988, Correas no longer believed —at least in the short term— that revolution in the classical sense of the word would come to Latin America, declaring that “our great task is the construction of democracy.” This statement appears quite in line with the social climate of the period. See Óscar Correas, *Teoría sociológica del derecho y sociología jurídica (parte II)* 8 *CRÍTICA JURÍDICA. REVISTA LATINOAMERICANA DE POLÍTICA, FILOSOFÍA Y DERECHO*, (1988).

³³ ÓSCAR CORREAS, *supra* note 5 at 9-16.

cuit.³⁴ This is why crime rises, at least in lower courts. An attack against the reproduction of capital is an attack against the heart of legal rules.

In issue No. 0 of the *Revista Crítica Jurídica* in 1983, Oscar Correas bolsters this idea, considering property a later moment, an element posed by exchange. If he recognized the need for legal property, it was precisely because of the prior existence of exchange and, therefore, of equivalence. When this situation is obscured by affirmations that “property” is the foundational institution, we fall into a legalistic idea specific to the apologetic positions of bourgeois society, like that of Kelsen.³⁵

It is interesting to note that in this stage of Marxist critique of political economy, Correas levels harsh criticism against Hans Kelsen, yet he also expresses sympathy for the Austrian jurist. This may be explained by the fact that the revolutionary struggle of the 1970s was still in recent memory. Furthermore, the study of law from a Marxist perspective was still influenced by Pashukanis, who directed devastating criticism against Kelsen, who naturally responded in kind.

To explain the emergence of the legal relationship, Correas turns again to *Capital*, which explains that in order for objects to relate to each other as commodities, owners must relate to each other as persons whose will resides in said objects. Through a mutual act of free will, they appropriate the alien commodity by alienating their own, and must recognize each other as private proprietors. This legal relationship, under the form of a contract, is a relationship between wills in which the economic relationship is reflected.³⁶

It appears that the idea of the “truth” is quite present for our Marxist jurist; he considered the world to be structured in a certain way, conditioned by the capitalist form of production. The problem of language as a means of organizing the world and of legitimating violence are still in an embryonic state, although quite latent. Evidence of this is seen in 1980, when he foresees in his book *La ciencia...* problems like: “[Legal] technique is a specialized procedure [...] it is a term that we should use in different senses. The problem is that we have no alternative words.”³⁷ This concern for the study of language is latent and appears from this early stage of his thinking, but it does not become central to his discourse until a certain Marxism—that of the Stalinist USSR—enters its decline.

In *Introducción a la crítica...* the way of engaging the legal form becomes evident, and the directive is decisive:

³⁴ *Id.*, at 92.

³⁵ Óscar Correas, *La concepción jurídicista del Estado en el pensamiento marxista* 0 CRÍTICA JURÍDICA. REVISTA LATINOAMERICANA DE POLÍTICA, FILOSOFÍA Y DERECHO 3, (1983); See first footnote in the first chapter of Correas, *supra* note 28 at 337.

³⁶ MARX, *supra* note 27 at 103.

³⁷ CORREAS, *supra* note 23 at 17.

The theory of law, in the critical sense, should begin at the same point as the critique of political economy and of capitalist society; that is to say, it should begin with the difference between use value and exchange value. This distinction permits the establishment of a theoretical space between “the social” and “the natural.” Immediately after establishing the difference between use value and exchange value, the critique should abandon the former and focus on the analysis of value.³⁸

The same should be done in the case of Critical Legal Theory; private law is only concerned with exchange value.³⁹

This idea is founded on an elemental consideration for Correas: the distinction between essence and appearance in social phenomena. The problem resides in the fact that social reality in general is not what we initially perceive it, to be; phenomena do not disclose their full ontological potential. It is not a “lie” or a “not-being,” but rather that the most superficial part of it does not express all the richness of the content in question. For the author, exposing appearances is not a matter of an inversion of appearances, but rather of signaling the inversion of reality. Reality is inverted in capitalist society because the machine dominates the worker rather than the other way around.⁴⁰

To conclude, Correas is categorical when he writes that:

Óscar del Barco shows in his aforementioned work that the matter is methodological *only in appearance*; in “essence” the matter is political, and it manifests precisely as the apparently apolitical nature of science. Classical economics, principally Smith and Ricardo (which we could compare to our classical law), is comprised of analyses of surface phenomena without warning that it engages with the *apparent form* and not with its essence. The same occurs with the legal positivists, Kelsen included. The Marxist position, as del Barco explains, consists in declaring that classical economics was incapable of arriving at the essence of the phenomenon, because that implied an imminent critique of society; the same occurs in the case of the legal sociologists; exposing the appearance means revealing the very society that they attempt to justify. And in the case of Kelsen, although much more so, the capitalist apology consists in denying any link between the study of the law and the content of the law.⁴¹

³⁸ By 1987, he insists that, methodologically, the root of the matter is found in the concept of “value” as a social relation. Nevertheless, Correas already expresses doubts regarding this principle, writing, “[...] if Marx believed that his writings were free of political subjectivity, if he believed in the Truth, there is no doubt that he was wrong.” At the same time, however, he states that it was the best starting place that he had. In other words, each step towards Kelsen is a step away from a certain kind of Marxism. See Óscar Correas, *Kelsen y las dificultades del marxismo* 5 CRÍTICA JURÍDICA. REVISTA LATINOAMERICANA DE POLÍTICA, FILOSOFÍA Y DERECHO 56, (1987).

³⁹ CORREAS, *supra* note 28 at 26-27.

⁴⁰ CORREAS, *supra* note 28 at 36-38.

⁴¹ CORREAS, *supra* note 28 at 39.

This is what is known in Marxist *argot* as “alienation.” The legal form is alienating, or, to put it another way, it hands over the natural and intellectual power of human beings, the singularity of the subject, to an alien force. The objective creation of materiality—i.e., the creation of concrete labor—is no longer the integral realization of the person, but the production and reproduction of the system itself. The individual registers no direct benefit beyond continuing to live and breathe.⁴²

This division between essence and appearance originates in the social division of labor. Labor is the sum of all efforts, practical and theoretical, that a human being must employ to survive. This process combines physical and mental activity, and this human energy is objectified in the product of labor. The human being objectifies themselves in the thing they have created, but this object appears to have an existence of its own.

This thoughtless, almost unconscious repetition generates a non-problematization of the act itself, which is coerced by necessity, i.e., the obligation to continue engaging in the same activity in order to continue reproducing human life. Later, the division of labor is accentuated when certain members of the community appropriate the basic means of production, through superior technical knowledge, violence, etc. The social whole can only function if each member carries out their specific task. Thus, the idea of “general interest” begins to prevail in the consciousness of the subjects in the community. The social body can survive without one member, but that member cannot survive without the social body.

Why, then, is there a difference between essence and appearance? Why does the essence, the significant part, not present itself to us plainly? By unconsciously distancing themselves from the cause of this division, human beings began to attribute the social consequences of exploitation to forces outside them. The essence lies in the community and its reproduction, but instead of seeking it there, they turned to relations external to the social body. The essence/appearance dichotomy is nothing more than a split between the driving force of society (the social division of labor) and the mental representation of that force, which is generally attributed to external and autonomous powers.⁴³

⁴² Víctor Romero Escalante, *Programa de trabajo mínimo para una lectura de la forma jurídica desde Marx* in DEBATES ACTUALES EN LA CRÍTICA JURÍDICA LATINOAMERICANA 246 (Editorial Torres Asociados, 2019).

⁴³ According to German philosopher Hans Barth, the world's division into a secular world and a philosophical or religious world originates in the disassociation of the relationship between being and consciousness. This disassociation is itself, in a double sense, a consequence of the social division of labor. That is to say that the separation of intellectual and manual labor prompts consciousness to create its own object: the world of spiritual essence, of ideas, which appears as the driving force and the purpose of history and of society. The division of labor conditions the birth of this strange power over man. See HANS BARTH, VERDAD E IDEOLOGÍA 114 (J. Bazant trans., Fondo de Cultura Económica, 1951) (1945).

The causes of the social division of labor are unknown to the subject because those controlling production create an entire ideological discourse⁴⁴ to legitimize existing injustice. The oppressors consider their privileged position natural, but they need to convince the oppressed that no better world is possible. Thus, they develop sophisticated discourses and practices to maintain the existing order. In sum, the social division of labor creates the division between essence and appearance.

V. TOWARDS THE FIRST CORREAS

It would seem that only in a society founded on egoism—in the sense of survival conditioned by the (artificial) scarcity of the means of subsistence (for the majority)—it is possible for law to exist with its present characteristics. The First Correas appears to insist on this idea. Exploitation and accumulation are the underlying rules of the current socio-legal system. If that were not so, it would be impossible to understand how the world has more and more legal rules, especially those concerning human rights, and yet those laws are violated without any consequences; or why is it that systems that seemed quite solid, like that of Chile, totter after only two months of social mobilizations because street protests revealed how unjust and predatory the model is for the working class and for the environment, while a rapacious minority continues to enrich itself.

One theme that reinforces our discussion of a First and Second Correas is that of the extinction of the State. Between 1980 and 1983, our jurist believed the following: “[...] That therefore it is possible—and necessary to pursue—for modern law to be totally eradicated from a society in which the production process no longer exists solely for the profit of the owner of capital.”⁴⁵ Correas also criticized the USSR: “[...] This is to say that Soviet political practice, far from nearing its objective of the extinction of the State, moves in the direction of the concretization of an ever-more powerful State that continues, despite being ‘socialist,’ to sever civil society from the apparatus of political decision-making.”⁴⁶

⁴⁴ Engels conceives ideology as “a process accomplished by the so-called thinker” (for the most part), “but with false consciousness. The real motives impelling him remain unknown to him, otherwise it would not be an ideological process at all. Hence, he imagines false or apparent motives. Because it is a process of thought he derives both its form and its content from pure thought, either his own or that of his predecessors. It works with mere thought material which he accepts without examination as the product of thought, he does not investigate further for a more remote process independent of thought...” See: CARLOS MARX & FEDERICO ENGELS, CORRESPONDENCIA 635 (Wenceslao Roces trans., Ediciones de Cultura Popular, 1978) (1951).

⁴⁵ CORREAS, *supra* note 23 at 78.

⁴⁶ CORREAS, *supra* note 5 at 203.

These quotes show that Correás was following the position of Marx,⁴⁷ Engels, Lenin, and Pashukanis, who believed that the configuration of society responded entirely to the necessities of capital, and that therefore, the only truly viable way to modify the manner in which human beings relate to one another and to nature is through a revolution of the State (law), which is to say, by destroying it.

This is so because the contradiction between value and labor will be entirely overcome under communism. If we follow Pashukanis, who understood law as a relationship between proprietors of commodities, we can see that the mainstay of his definition of law is based on the exchange of commodities, i.e., the exchange of values (accumulated labor), whose antinomy is, to put it briefly, placing the commodity the center of the relationship instead of (as it ought to be) the subject. Law would lose all sense, given that under capitalism, the needs that are met are those of capital, by valorizing value itself, instead of meeting the needs of the mass of humanity. From this, I can conclude that the relationship that brings law to life would cease to exist.

A transitional society would continue to conserve the form of the exchange of equivalents, which would also conserve law since, according to Pashukanis himself, "law can only consist, by nature, of the application of an equal measure." Given the form of equivalent exchange, law and State power could endure for a time, even once class divisions ceased to exist. As Pashukanis puts it (following Marx), the disappearance of law and with it, the State, only happens once "labor is no longer a mere means of life, but a vital necessity. In conclusion, once the relation of equivalence is definitively overcome."⁴⁸

Correás perceives the possibility of the State's extinction as real, which is to say that, revolution is a relatively upcoming and possible scenario. In 1980, the Sandinista Revolution had just triumphed, opening an offensive for the arrival of socialism in Latin America, while, on the other side of the planet, the USSR had proven itself a nearly invincible power, offering hope for a better world. In Mexico, struggles for democracy had forced the PRI regime to initiate a feeble opening up to democracy. Thus, Marxist studies worldwide enjoyed good health, especially those devoted to Latin America.

⁴⁷ There is debate over Marx's attitude on this topic. Some consider that he initially advocated for the "extinction of the State," but that he was later inclined towards its "transformation." We are inclined towards the first option, because upon following not only Marx's theoretical activity but also his revolutionary activity, he always sought a fundamental change of society, to commence "the history of humanity" and leave behind its "prehistory," which is only possible by destroying the existing social order.

⁴⁸ EVGENI PASHUKANIS, *LA TEORÍA GENERAL DEL DERECHO Y EL MARXISMO* 41-42 (Carlos Castro trans., Grijalbo, 1976) (1924).

It should be emphasized that Correas also specifies “modern law,”⁴⁹ which indicates he conceived it as the “law of the exchange of equivalents and subjective law.”⁵⁰

A recurrent topic among legal theorists is the debate over whether “law” has existed at other historical moments. I have no intention of opening this discussion, but merely to state that Marx’s ideas about the mutability of social forms are present in the problematization of law. The First Correas pays tribute to these ideas. It is noteworthy that the topic does not stand out in *Introducción a la crítica...* One possible explanation is that, as the book followed the expository method of Volume I of *Capital*, which does not mention the State, Correas respected that argumentative logic and did not broach the subject either.

His attitude had changed by 1987. In *Crítica Jurídica*, the author declared that modern law is not necessarily an instrument of class domination. The extinction of law and the State is only possible in terms of the philosophy of history, more like that of Engels than that of Marx. At the same time, he indicates that man’s ethical nature and the fact that some men impose themselves over others has existed in society since its inception, though he astutely accepts that revolutions are not consummated in parliaments, but in constituent assemblies.⁵¹

What prompted this change of position? To begin with, we find ourselves at a moment of transition. The rupture is not only theoretical but political. As mentioned, the social struggles worldwide were facing clear setbacks or, to put it plainly, defeats at the hands of imperialist governments and their allies. Undoubtedly, this situation influenced most social thinkers of the time. For Latin America, the reality was (and is) quite difficult: the better part of guerrilla movements were in decline, and neoliberal policies had been imposed — sometimes by force, in other cases, smoothly implemented— and the USSR was on the verge of collapse.

The return of most South American nations to democracy⁵² posed the question of how to make revolutionary Marxism compatible with a liberal institution like democracy. This quandary was resolved in favor of political liberalism, which essentially contradicts Marx. The theoretical studies of the

⁴⁹ In 1986, Correas recognizes that the idea of the law as a social phenomenon and subject to disappearance is congruent with Marx’s logic and thought, though it is possible by then to identify a certain distancing from this contention. See Óscar Correas, *Kelsen y Marx: de la ciencia a la filosofía* 4 CRÍTICA JURÍDICA. REVISTA DE POLÍTICA, FILOSOFÍA Y DERECHO 105, (1986).

⁵⁰ Correas states the following: “The modern world is an immense arsenal of commodities, and these are immediate units of *use value* and *exchange value*.” Correas, *supra* note 23 at 25.

⁵¹ CORREAS, *supra* note 38 at 62-69.

⁵² Correas had already begun to pose the question of democracy in 1977, together with the role that lawyers should play. He would return to this subject with *gusto* in 1990. See ÓSCAR CORREAS, *EL DERECHO Y LAS LUCHAS DEMOCRÁTICAS* (Universidad Autónoma de Puebla, 1977); ÓSCAR CORREAS, *LA DEMOCRACIA EN LA UAP* (Universidad Autónoma de Puebla, 1990).

law found a method in the theory of argumentation with which to legitimize themselves before society; as the idea of the law's scientific nature is unable to convince most people to voluntarily follow legal rules, they must be persuaded with "reasons," a task given to legal argumentation. Incidentally, over time, achieving that objective has proven impossible, not because of poor arguments, but because these arguments cannot offer a solution to hunger, to war, and to the injustices of the capitalist system. To the contrary, they justify many of the most damaging decisions against the dispossessed classes.

Already attracted to the study of language and discourse, Correas used them as a means to continue his criticism,⁵³ somewhat distant from certain Marxist political positions but not without the theoretical and emancipating knowledge of the theory of value and class struggle. In this sense, the best homage that we can give this author is to go back to his ideas, discuss them, and problematize them. I cannot shirk from frontal but fraternal debate, or we risk falling into dogmatism and the cult of personality. I believe that turning Óscar Correas into a cold and inoffensive idol would go against the Marxist tradition. No, his theory should serve to transform the world and be criticized when necessary.

VI. CONCLUSIONS

To briefly conclude, one important point is that the division between the "First Correas" and the "Second Correas" is not as clear as it may have seemed initially in epistemological terms, as the author had already explored the topics he would later develop with intellectual vigor in his early writings. Nevertheless, there are sufficient elements to claim that the distinction remains valid, at least on some topics: understanding the author's intellectual evolution, the concepts that are key to his critical legal thought, and the reasons these were abandoned or fortified over time.

However, what really constitutes the difference between the First and Second Correas is his political position. On this issue, the division is clear: the First defends fundamental elements of revolutionary Marxism, while the Second rejects several such postulates. I can see the paradigmatic example in the theory regarding the extinction of the State, in which Correas opts for the impossibility of the extinction of law (and the State).

⁵³ The Berlin Wall, a symbol of the dissolution of the socialist camp, fell in 1989. The 1990s were characterized by bourgeois triumphalism, the end of history. To speak of Marxism or revolution was for anachronistic fools who did not understand the world they lived in. Without a doubt, those were difficult years for the Left, which was largely demoralized in its defeat. Nevertheless, the capitalist crises that produce misery and pain are also the midwives of new movements that, over time, acquired the consciousness of struggle against the economic and social system. Furthermore, new generations, unburdened by the defeats of the past, are returning to the idea of "social revolution."

The concepts of “equivalence” and “exchange” are therefore integral parts of Correas’ Marxist Critical Legal Theory. Without them, it is impossible to understand the internal dynamics of the legal form. At the same time, however, this Latin American intellectual casts doubt on the Marxist maxim on the eventual extinction of law.

As has been said repeatedly, the specific political conditions of the time had a decisive influence on this political and theoretical turn. The defeat of the international workers’ movement and the mutation of USSR bureaucracy into a new bourgeoisie, together with the emergence of new social movements, shaped his thoughts from 1990 onwards. We may or may not agree with the conclusions to which the author arrived at that stage. From our point of view, the First Correas exhibits his full critical potential when he makes use of the critique of political economy because he seeks radical social transformation. Nevertheless, his thoughts are not static, but open to debate and self-criticism—most importantly, perhaps, in the face of defeat. As a result, all that is left for us to do is to follow through with both practical and theoretical action to the final consequences.