

# THESES ON THE RELATIONSHIP BETWEEN RIGHTS AND SOCIAL STRUGGLE

‘There is therefore an antinomy, of right against right, both equally bearing the seal of the law of exchange. Between equal rights, force decides.’<sup>1</sup>

## **Abstract:**

This article examines the relationship between rights and social struggle. This topic is revisited in light of the phenomenon of rising inequality in the aftermath of the last capitalist crisis, which reignited the debate on the role of rights in processes of social mobilisation. In this context, this paper examines three very recent contributions to this debate, namely Samuel Moyn’s *‘Not Enough: Human Rights in an Unequal World’*, Radha D’ Souza’s *‘What’s wrong with Rights’*, and Paul O’Connell’s work on a critique of the displacement thesis. In critically discussing these contributions it introduces and elaborates on six theses which describe the relationship between rights and social struggle. The argument focuses on the important role of rights in the struggle between different social forces, as well as their limitations in promoting a critique of the structural roots of social inequality.

**Keywords:** rights, social struggle, inequality, social justice, Marxism

## INTRODUCTION

Where we now have a right we used to have the painful void of its absence. But what happens when even constitutionally enshrined rights are rendered meaningless by bourgeois state and international institutions? The question of rights and their place and role in capitalism is not new and has had a constant and polymorphic presence in the legal and political discourses over the last few centuries. Rights and the struggle for rights have been central to the development and formation of bourgeois societies, capitalist social relations and the juridico-political apparatus accompanying these. Meanwhile, rights and struggle for rights have been central to the struggle of the toiling classes, i.e. the struggle of the working class and popular strata for the improvement of their living and working conditions and the amelioration of conditions of repression and exploitation. Last, but not least, rights in the form of concessions to these toiling classes have been central to the processes of ensuring the reproduction of the bourgeois state and rule, as well as of the capitalist property and

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<sup>1</sup> Karl Marx, *Capital: Critique of Political Economy, Vol. I*, (Penguin Classics, 1990), p. 344.

productive relations, in the face of intensified contradictions that could have led to revolutionary upheaval and change.

Therefore, it is safe to claim that the role of rights in capitalism is contradictory. This is due to the fundamental antinomy between ‘equal rights’ in capitalist society that Karl Marx identified first. The rights of workers and the rights of capitalists clash. Rights shape and are themselves shaped by class struggle. This is the point of departure in this paper. In Europe, during the last -until the next- crisis of capitalism we witnessed how constitutional guarantees of social and economic rights turned into empty words on paper. This was achieved either through international agreements (Memorandums of Understanding) for structural adjustment programmes which accompanied the financial assistance towards countries such as Greece, Ireland, Portugal and Spain, or through ordinary legislation which restricted or eliminated the right to collective bargaining and the protection of workers against collective dismissals, as well as limited the right to strike in countries like France, Italy and Britain; but always in the name of restoring growth and competitiveness of European economies and economy as a whole. In fact, the elimination or circumvention of social and economic rights was a necessary response to the crisis on behalf of capital, so as to intensify the exploitation of the labour force and, therefore, its own profitability.

Capital throughout the world has had to increase the exploitation of labour and redistribute wealth in its favour, in order to reproduce the conditions of its existence and dominance. In parallel, and as a result of this, inequality rises globally. The process of pauperisation of the majority of the population finds its double in the process of wealth accumulation by very few. According to Credit Suisse, 1% of the global population owns 47% of global wealth.<sup>2</sup> One could safely argue then that not everyone was adversely affected by the economic crisis. The tendency of capital accumulation following the crisis is confirmed in Oxfam’s latest report on social and income inequality. According to this report, just eight billionaires now hold the same wealth as the 3.6 billion people who form the poorest half of the world’s population,<sup>3</sup> whereas more than 80 per cent of the new global wealth goes to the top 1% while the poorest half get nothing.<sup>4</sup> As a confirmation of this tendency, it is worth noting that according to Oxfam, in 2016 the number of billionaires holding equal amount of wealth as the bottom half of the world was 62; 80 in 2014; and 388 in 2010.<sup>5</sup>

In this context, the debate on the relationship between rights, social struggle and social and economic inequality has been reignited. This debate, which is constantly revisited, revolves around the role of discourses and practices of rights in emancipatory processes and social

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<sup>2</sup> Credit Suisse Research Institute, *Global Wealth Report 2018*, October 2018, p. 9.

<sup>3</sup> Oxfam, *Eight people own same wealth as half the world* (22 January 2018), available at <https://www.oxfam.org.uk/media-centre/press-releases/2017/01/eight-people-own-same-wealth-as-half-the-world> (accessed on 23 October 2018).

<sup>4</sup> Oxfam, *More than 80 per cent of new global wealth goes to top 1 per cent while poorest half get nothing* (22 January 2018), available at <https://www.oxfam.org.uk/media-centre/press-releases/2018/01/more-than-80-per-cent-of-new-global-wealth-goes-to-top-1-per-cent-while-poorest-half-get-nothing> (accessed on 23 October 2018).

<sup>5</sup> Oxfam, *An Economy For the 1%: How privilege and power in the economy drive extreme inequality and how this can be stopped* (18 January 2016), available at <https://www.oxfam.org/en/research/economy-1> (accessed on 23 October 2018).

struggles. Human rights practices and discourses have been criticised for legitimising and perpetuating greater injustice than they addressed, as well as for being atomistic and therefore inappropriate for social struggle around common goals. At the same time there have been various attempts at reconsidering the role of rights and opening them up to a serious evaluation ‘by the Left in order to develop a positive program for a politics of rights.’<sup>6</sup> According to this approach, rights can and should be deployed in emancipatory political projects, because the recognition of rights such as welfare, or socio-economic, rights can form part ‘of a series of measures that constitute a dialectics of subversion of the logic of capital’.<sup>7</sup>

This article rather than reiterate the above positions will examine them in light of new developments, i.e. the effect of the recent crisis and the attack on social and economic rights. It, therefore, focuses on three very recent contributions to this debate: Radha D’ Souza’s ‘What’s wrong with Rights’,<sup>8</sup> Samuel Moyn’s ‘Not Enough: Human Rights in an Unequal World’,<sup>9</sup> and Paul O’Connell’s work on a critique of the displacement thesis.<sup>10</sup> In critically assessing these contributions, the article will propose and examine six theses on the relationship between rights and social struggle. These will be introduced in the first section of the article which sets the theoretical context of the discussion by outlining the central aspects of the critical theoretical approach to rights and human rights. The next two sections will discuss two of the more recent contribution to this debate, i.e. Samuel Moyn’s and Radha D’Souza’s and will set the tone for the final section which will further the examination of the role and limits of rights in the epoch of imperialism, by focusing in particular on the right to strike and examining how this specific right has been treated by the bourgeois juridico-political apparatus, as well as the reasons for this treatment.

## THEORETICAL CONTEXT

There are many sides and approaches to the relationship between rights and social struggle. Correspondingly, the literature on the variety of issues relating to this topic is vast. This paper selects to focus on the issue of rights exclusively from a Marxist perspective and assess it through a lens that puts emphasis on the issue of social antagonisms and the role of rights in mediating and superseding these. However, a Marxist analysis of rights is situated in the context of the existing critical literature of rights, which is vast and growing. The main parameters of this critique are set by what has been termed as the ‘displacement thesis’.<sup>11</sup> Despite this being one specific strand of a more generalised critique and dismissal of human

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<sup>6</sup> Amy Bartholomew & Alan Hunt, *What's Wrong with Rights?* (1991), 9 *Law & Inequality* 1.

<sup>7</sup> See Prabhat Patnaik, *A Left Approach to Development* (2010), 45 (30) *Economic & Political Weekly* 33.

<sup>8</sup> Radha D’ Souza, *What’s wrong with Rights*, (Pluto Press, 2018).

<sup>9</sup> Samuel Moyn, *Not Enough: Human Rights in an Unequal World*, (Harvard University Press, 2018).

<sup>10</sup> Paul O’Connell, *Human rights: contesting the displacement thesis* (2018), 69 *Northern Ireland Legal Quarterly* 19. Also, Paul O’Connell, *On the Human Rights Question*, (2017), available online and forthcoming in *Human Rights Quarterly*.

<sup>11</sup> Paul O’Connell, *Human rights: contesting the displacement thesis* (2018), id.

rights<sup>12</sup>, it has been argued that this thesis has been the common ground for the critique of rights carried out –for the most part- by the Critical Legal Studies (CLS) movement,<sup>13</sup> in two phases (one during the 1980s<sup>14</sup> and the second following 9/11 and the US-led imperialist interventions which led to a new wave of human rights critiques<sup>15</sup>) and which remains highly influential today.<sup>16</sup>

This thesis maintains that reliance on the language of ‘human’ rights by movements for radical social change is problematic, because it tends to crowd out (or displace) other, potentially emancipatory, languages, and as a consequence distract attention from broader, structural causes of injustice and oppression. Variations of this argument have been put forward by thinkers such as Morton Horwitz, according to whom ‘framing issues of social justice in terms of individual rights has the additional effect of denying equal legitimacy to claims that the overall social distribution of wealth and power is unjust’,<sup>17</sup> Wendy Brown, who puts emphasis on the difficulty of trying to engage simultaneously in human rights projects as well as all other kinds of ‘justice projects’,<sup>18</sup> and Austin Sarat and Thomas Kearns who argued that ‘reliance on rights in political struggles and by political movements invites a kind of legal imperialism, in which courts and lawyers take on an unhealthy prominence’.<sup>19</sup>

A comprehensive critique of the displacement thesis has been carried out recently by Paul O’Connell. O’Connell disagrees with this nihilistic approach towards ‘human’ rights. He argues that the mobilisation of rights language can make an important contribution to movements for radical social change, without displacing or precluding the mobilisation of other emancipatory languages, and the challenging of deeper, structural causes of injustice. In support of his argument, he uses the examples of the Focus E15 campaign and the Right2Water movement in Ireland, which ‘engaged the language of human rights alongside other frames of reference, and connected the specific rights struggle its protagonists were engaged in with broader causes of injustice’.<sup>20</sup>

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<sup>12</sup> See for instance Slavoj Žižek, ‘Against Human Rights’ (2005) 34 *New Left Review* 115; and Jarret Zigon, ‘Human Rights as Moral Progress? A Critique’ (2013) 28 *Cultural Anthropology* 716.

<sup>13</sup> For an overview of the CLS movement see: Roberto Mangabeira Unger, *The Critical Legal Studies Movement* (Verso 2015); Alan Hunt, ‘The Theory of Critical Legal Studies’ (1986) 6 *Oxford Journal of Legal Studies* 1; and Costas Douzinas and Adam Geary, ‘News from Nowhere: Anxiety, Critical Legal Studies and Critical “Tradition(s)”’ in Douzinas and Geary, *Critical Jurisprudence: The Political Philosophy of Justice* (Hart Publishing 2005).

<sup>14</sup> See Anthony Chase, ‘The Left on Rights: An Introduction’ (1984) 62 *Texas Law Review* 1541 and Morton Horwitz, ‘Rights’ (1988) 23 *Harvard Civil Rights-Civil Liberties Law Review* 393, 400.

<sup>15</sup> See Duncan Kennedy, ‘The Critique of Rights in Critical Legal Studies’ in Brown and Halley (eds.), *Left Legalism/Left Critique* (Duke University Press 2002) 178 and Wendy Brown, “‘The Most We Can Hope For ...’: Human Rights and the Politics of Fatalism’ (2004) 103 *South Atlantic Quarterly* 451, 453 [original emphasis].

<sup>16</sup> See Robin West, ‘Tragic Rights: The Rights Critique in the Age of Obama’ (2011) 53 *William and Mary Law Review* 713, 716; and Ratna Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl*, (Edward Elgar Publishing 2018).

<sup>17</sup> Horwitz, op. cit., note 14, 400.

<sup>18</sup> Brown, op. cit., note 15, 460.

<sup>19</sup> Austin Sarat and Thomas Kearns, ‘Editorial Introduction’ in Sarat and Kearns (eds.), *Identities, Politics and Rights* (University of Michigan Press 1997) 1, 4-5.

<sup>20</sup> Paul O’Connell, op. cit., note 10, p. 27-32.

This article intends to build on O’Connell’s critique of the displacement thesis, by putting emphasis on the need to examine the role of rights in the context of capitalist contradictions and the issue of class exploitation in particular.<sup>21</sup> In this context it seeks to contribute to the ongoing debate on rights and social struggle by introducing and examining the following theses:

- 1) ‘Human’ rights can be recuperated by social agents other than those they seem to be designed for.
- 2) ‘Human’ rights can be used crudely to legitimise imperialist interventions.
- 3) ‘Human’ rights can be used to divert social struggles away from political goals and canalise them into legal proceedings.
- 4) The struggle over rights is one form of class struggle.
- 5) The protection, restriction or elimination of rights may serve either the immediate or the strategic interests of social classes.
- 6) The struggle of the working class and the popular strata for rights may only serve their strategic interest (i.e. the elimination of the conditions of exploitation) if it is ultimately directed towards the elimination of the capitalist social relations.

The following sections elaborate on these theses, but for the moment it is important to note the distinction they introduce between rights -to which the last three theses refer to- and ‘human’ rights -referred to in the first three theses. This approach follows Radha D’Souza’s point that rights should not be reduced to ‘human’ rights, because the prefix ‘human’ is a post-WII addition ‘that conceals what is entailed in rights in the epoch of imperialism’.<sup>22</sup> An extensive analysis of this distinction and its implications can form the subject of a different article, but does not fall completely outside the scope of our argument. For the purposes of this article it suffices to locate the problematic nature of this discourse in the individualising function of the concept of ‘human’, in its bourgeois conception, as well as the de-politicising effect of the discourse which is discussed later. This argument is based on the well-established critique of the bourgeois conception of ‘humanity’ which is constructed in the model of the profit-seeking rational actor.<sup>23</sup> The concept of rights, on the other hand, may refer to a broader set of claims.

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<sup>21</sup> It has to be noted here that the centrality of class struggle in Marxist analyses does not discount or discard the other forms of oppression, be it gender, race, caste or sexuality, but rather encourages a comprehensive understanding of the interwoven nature of these processes. For instance, racial division is ingrained in the logic of capitalism and cuts through the history of capitalist society. One cannot comprehensively make sense of racial discrimination except on the basis of an understanding of capitalist contradiction and Marx’s insights on the processes of social reproduction of capitalism. This refers not just to the process of primitive accumulation but also to the divide et impera policies of the capitalist to ensure maximum exploitation of the labour force. See also David Roediger, *Class, Race and Marxism*, (Verso 2017).

<sup>22</sup> See Radha D’Souza, op. cit., note 8, pp. 3, 65, 66.

<sup>23</sup> See C. B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke*, (Oxford University Press, 2010).

Contrary to ‘human’ rights, rights can be associated with the idea of right-qua-justice and can be pursued as collective demands through collective struggle and a comprehensive critique of the totality of social relations of the existing system. The argument developed here is that the rights discourse can play a significant part in emancipatory processes, as long as it is expanded to assume a materialist content, i.e. as long as it becomes an integral part of a comprehensive critique of the regime of power, property and productive relations in capitalism. In this manner its role could be crucial for uniting the struggle for every day matters, such as working and living conditions, with the struggle for a different social arrangement altogether that prioritises social needs instead of profit. This unity of economic and political class struggle may cancel in practice the separation between the economic and the political sphere in capitalism, which is central to the reproduction of capitalist social relations.

### MOYN’S CRITIQUE OF INEQUALITY

Let us begin the review of the more recent scholarship on the relationship between rights and social struggle with Samuel Moyn’s ‘Not Enough: Human Rights in an Unequal World’.<sup>24</sup> Moyn’s contribution to this debate is significant because he shifts the focus of the debate towards political economy and the relations of distribution in capitalism to contextualise his argument on the role of rights in debates and practices against social inequality. As a result, Moyn contributes to the opening of an intellectual pathway in mainstream discussions about rights where the discussion and critique of capitalist relations of distribution is considered viable and legitimate -fulfilling thus a function analogous to the work of Thomas Piketty on *Capital in the 21<sup>st</sup> century* in the field of economics. However, as will become evident in our analysis, Moyn’s critique of capitalist relations with regards to rights suffers from the same limitation of focus as Piketty’s work.

Moyn describes his work as ‘an intellectual and ideological history’ of human rights.<sup>25</sup> In his critical analysis, human rights are set against the absolute goal of ‘full-fledged distributive justice’.<sup>26</sup> He recognises that the age of human rights ‘has not been kind to full-fledged distributive justice, because it is also an age of the victory of the rich. The age of human rights has focused on just one of the two imperatives of distributional justice: sufficiency; paying little to no attention to its counter-part, i.e. equality. These two imperatives are different as to their subjects (sufficiency concerns itself with the status of the poor, whereas equality with the status of the rich) and goals (sufficiency concerns itself with providing a ‘floor’ for the poor, whereas equality with setting a ‘ceiling’ for the rich). Their difference is what causes tension between the different imperatives of distributional justice.

According to Moyn, the two imperatives have to be pursued simultaneously in order for the ideal of distributional justice to be reflected in a socio-political system: ‘Not merely a floor of

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<sup>24</sup> Samuel Moyn, *op. cit.*, note 9.

<sup>25</sup> *id.*, p. 10.

<sup>26</sup> *id.*, p.2.

protection against insufficiency is required, but also a ceiling on inequality, or even a commitment to a universal middle class'.<sup>27</sup> Moyn carried out his intellectual history of human rights 'out of dissatisfaction with mere sufficiency and committed to a more ambitious equality'.<sup>28</sup> On this basis, he considers that human rights can have a central role in this project of promotion of the principle of fair distribution and pursuit of the dual imperative of distributional justice. The reason behind this conviction is his belief that there is no necessary connection between human rights and market fundamentalism.<sup>29</sup> Their connection has been historically contingent and there is no reason why human rights cannot become vessels for the pursuit of distributional demands of sufficiency and equality.

This conviction conditions Moyn's critical stance with regards to critics arguing for a structural relationship between human rights and neoliberalism, such as Naomi Klein, according to whom 'the human rights movement helped the Chicago School ideology to escape from its first bloody laboratory [in Chile] virtually unscathed'.<sup>30</sup> For Moyn, 'human rights surely did not bring the neoliberal age about'.<sup>31</sup> On the contrary, human rights had a positive impact in citizens' lives by enabling 'unprecedented scrutiny' on state violence and protection of equality in matters of gender, religion, race, or sexual orientation. In addition to this, according to Moyn, there is no reason to think that human rights cannot coexist with more 'structural' politics and critiques of the current social relations. Strangely enough, this point is followed in that very same paragraph with a tentative yet aphoristic defence of neoliberalism which, comparable to Chinese marketisation, 'brought more human beings out of poverty than any other force has in history'.<sup>32</sup>

Nevertheless, Moyn's argument consists of an unconditional acceptance of human rights and, in particular, certain social and economic rights, which he considers part of the general category of 'human rights', to the extent that they promote the twin imperatives of sufficiency and equality. Rights, such as the right to work, the right of subsistence, or the right to the product of one's labour have to be prioritised in order to promote the goal of distributional justice. At this point, Moyn makes a passing yet highly critical reference to Karl Marx who 'did not embrace distributional equality before the revolution', neither did he 'envision material fairness in a communist state'.<sup>33</sup> According to Moyn, Marxist calls for revolution demanded an end to hierarchical power rather than fairer distribution.<sup>34</sup>

Precisely this point is proof of Moyn's failure to grasp Marx's critique of the capitalist mode of production as well as the basis for understanding the limits of his argument and his critical analysis of human rights. For it is common knowledge to those introduced to the Marxist critique of capitalism that not only does this critique move beyond the relations of domination

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<sup>27</sup> id., p.4.

<sup>28</sup> id., p.10.

<sup>29</sup> 'There is no reason for human rights ideals to continue the accommodating relationship they have had with market fundamentalism and unequal outcomes'. id., p.10.

<sup>30</sup> Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism*, (Metropolitan Books, 2007), pp. 118-128.

<sup>31</sup> Samuel Moyn, op. cit., note 9, p.175.

<sup>32</sup> id., p.175.

<sup>33</sup> id., p. 28.

<sup>34</sup> id., p. 92.

and suppression that structure the problem of power hierarchy, but it also examines distributional relations in capitalism as part of the unified whole they comprise with the relations of production. For Marx, ‘any distribution whatever of the means of consumption is only a consequence of the distribution of the conditions of production themselves’.<sup>35</sup> The distributional relations in capitalism are themselves conditioned by the distribution of the means of production, i.e. by the capitalist relations of production.<sup>36</sup> The distribution of the means of consumption in capitalism results automatically from the ‘fact that the material conditions of production are in the hands of non-workers in the form of property in capital and land, while the masses are only owners of the personal condition of production, of labour power’.<sup>37</sup>

Two points follow necessarily from the above. First, Moyn is mistaken in considering the absence of a demand for ‘material fairness’ as a gap in the Marxist critique of capitalist relations. The only reason Marx and Marxists do not focus on a critique of the distributional relations of capitalism is because this critique forms part of the more comprehensive critique of the totality of capitalist relations of production. The second point, which is directly related to the first, has to do with the concrete limitations of Moyn’s analysis of inequality in capitalist society and the role of rights in addressing this. I argue that Moyn fails to assess the structural roots of social inequality in capitalism, by focusing solely on demands of distributional justice, while neglecting the issue of exploitation at the point of production. As Paul O’Connell puts it in his review of Moyn’s book, inequality in capitalist society is not the result of poor distributional choices, but first and foremost a result of the structural character of the extant social system.<sup>38</sup> Therefore, the fundamental question for addressing the issue of inequality via rights is not how we can use rights to minimise inequality by altering the distributional model and reducing the distance between rich and poor, but if and how rights as a practice and discourse can contribute to the elimination of inequality by contesting the very roots of this inequality, i.e. the structural reproduction of capitalist relations of production.

The limitations of Moyn’s critique of inequality account for his misplaced urge for a return to a mid-twentieth century model of welfare state, which would tackle the inequality which exacerbated in the age of neoliberalism. To be fair, Moyn does not idealise the welfare state, since he recognises the role played in its establishment by the emergence of the Soviet Union as the victor of the Second World War, as well as the role of the welfare state as an alternative to revolution.<sup>39</sup> However, he fails at the same time to identify the precarious nature of welfare in capitalism and its contingent nature upon the balance of forces between social classes. This in turn explains his misplaced trust in the collectivist spirit of reconciliation at the heart of the welfare state, as well as his equivocal treatment of more

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<sup>35</sup> Karl Marx, *Critique of the Gotha Programme*, in Marx and Engels Collected Works Vol. 24, (Lawrence and Wishart, 2010), p. 87.

<sup>36</sup> See also Karl Marx, *Grundrisse: Foundations of the Critique of Political Economy*, (Penguin Books, 1993), pp. 81-115.

<sup>37</sup> Karl Marx, op. cit., note 35.

<sup>38</sup> Paul O’Connell, *Capitalism, Inequality, and Human Rights*, (June 4, 2018), available at <https://lpeblog.org/2018/06/04/capitalism-inequality-and-human-rights/> (accessed on 29 October 2018).

<sup>39</sup> Samuel Moyn, op. cit., note 9, p. 44.



confrontational rights, such as the right to strike or the right to collective bargaining,<sup>40</sup> in favour of rights such as the right to work or the right to the product of one's labour.

I argue that Moyn ultimately fails to identify the fundamental contradiction at the core of rights in capitalism because he fails to conceive of the struggle over rights as a form of class struggle. To illustrate this point let us briefly discuss the contradictory nature of right to work in capitalism. Moyn identifies the right to work, i.e. the obligation on government and society to provide gainful employment if none was available, as 'the first right in importance' after the French Revolution.<sup>41</sup> Moreover, the inclusion of the right to work in the Universal Declaration of Human Rights<sup>42</sup> is one of the reasons for the positive treatment of this document and the canon of ideals it consecrated by Moyn.<sup>43</sup>

Nevertheless, despite the social and ontological significance of the category of labour<sup>44</sup> in human history, it is extremely doubtful that a right to work in a capitalist society has chances of ever being satisfied or enforced; in fact historical evidence would prove otherwise. The reproduction of conditions for labour exploitation as well as unemployment are structural characteristics of capitalism and necessary for its reproduction, not the result of a lack of legal enforcement of the right to work; which is why in the first Constitution of a country that initiated the process of socialist construction, i.e. the 1918 Russian Soviet Federated Republic Constitution, 'work' appears not as a right but as a 'universal obligation' for the purpose of 'eliminating the parasitic strata of society and organising the economic life of the country'.<sup>45</sup> This is evidence of the different approach to the place of labour in society in different social systems and its reflection in law.

In capitalist societies there is a contradiction inherent in the right to work, and different class interests from different social class standpoints can be reflected in it and facilitated by it. This right can be useful for the struggle of the toiling classes in capitalism, but it can also be filled with a content that facilitates exploitation against the interests of workers (as well as pensioners, injured or -even terminally- ill individuals) so as to contribute to the reproduction of the conditions of exploitation. One such example is to be found in the introduction of the

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<sup>40</sup> *id.*, p. 32.

<sup>41</sup> *id.*, p. 26.

<sup>42</sup> Article 23.1 of the Universal Declaration of Human Rights states: Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

<sup>43</sup> Samuel Moyn, *op. cit.*, note 9, pp. 3, 6-7, 57-61.

<sup>44</sup> Labour as a dialectical category plays a fundamental part in G.F.W. Hegel's analysis of the process towards achieving self-consciousness. The process following the struggle to the death and the establishment of the positions of Master and Slave between two individual subjects is distinguished for its materiality and its capacity of revealing the transient nature of these social relations. It is through the process of labour that the state of Lord and Bondsman is negated; see G.W.F. Hegel, *Phenomenology of Spirit*, (Oxford University Press, 1977), pp. 118-119. In Karl Marx's dialectics, the importance of labour is furthered as it is linked with the concept of the totality of social relations. Man becomes separated from the animal world when he begins to work using implements of labour which he himself created. Thus, for the dialectical analysis, the real universal basis of everything that is human in man is production of instruments of production; see E.V. Ilyenkov, (Aakar Books, 2008), p. 74. Production of labour implements is the objective basis for all other human traits without exception, as the simplest, elementary form of man's human being; see Ilyenkov, *ibid.*, p.75. It is for this reason that Georg Lukacs in his 'Ontology of Social Being' analyses the concept of labour as the model for social practice; see Georg Lukacs, (Merlin Press, 1980).

<sup>45</sup> Article 1, Chapter 2 (f) of the 1918 Russian Soviet Federated Republic Constitution.

principle of flexibility in labour relations, as part of the process of their deregulation.<sup>46</sup> Flexibility is nominally aimed at countering unemployment and, by extension, satisfying the right to work for a wider part of the population. However, the goal of reducing unemployment in reality stands for the true goal of reducing labour-costs, through the intensified exploitation of a wider labour-force. The reduction of unemployment, in this context, in actuality means the enhancing of the numbers of the reserve army capable of work, so as to lower the cost of labour. Part-time, temporary relations (as well as the introduction of educational schemes for the unemployed) favour the inclusion of previously excluded elements in the workforce, so that the abundance of supply and the increase of workers exploitation reduce the labour-costs. A right to ‘flexible’ work, thus, translates into measures which promote labour-exploitation, through part-time and temporary contracts, performance-related wages, elimination of collective bargaining and facilitation of dismissals.

A similar contradiction appears in a recent resolution passed by the European Parliament on ‘pathways for the reintegration of workers recovering from injury and illness into quality employment’.<sup>47</sup> This resolution could be seen as giving effect to the right to work of those ill and injured. This, of course, in itself is a valid goal. People have a right not to be discriminated against because of their illness or old age; this has to be accompanied by a right to good working conditions, a right to training and a right to support. Nevertheless, in this instance the right to work may be also employed in the favour of capital. Those who exercise their right to work cannot simultaneously exercise their right to pension or social support. The reintegration of injured or -even terminally- ill workers is part of the bourgeois governments’ and supranational institutions’ response to the problem of increase in the average of life expectancy; a problem which is viewed as an obstacle to the profitability of capital, as is evident in the explanatory statement of the resolution.<sup>48</sup> Despite its nominal defence of the right to work, this resolution can be seen as part of the more general process of dismantling of social security systems throughout European Union (EU) Member States, so as to enable their subsequent privatisation.

#### D’SOUZA’S CRITIQUE OF RIGHTS

The above examples point towards a conclusion regarding ‘human’ rights that forms the first thesis put forward here: *‘human’ rights can be recuperated by social agents other than those*

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<sup>46</sup> Flexibility is effected through policies which focus on ‘removing obstacles which make it more difficult or costly to employ part-time workers or workers on a fixed-duration contract, and gearing careers more closely to the individual, or facilitating forms of progressive retirement’; on ‘reducing working hours in a period of recession’; on ‘gearing levels of pay to company performance and productivity’. See EU Commission, *White Paper on Growth, competitiveness, and employment*, (1993), COM (93) 700.

<sup>47</sup> European Parliament resolution of 11 September 2018 on pathways for the reintegration of workers recovering from injury and illness into quality employment (2017/2277(INI)).

<sup>48</sup> ‘Longer life expectancy combined with the increasing average age of retirement leaves Europe and Member States with significant challenges not only for our health systems but also for our labour markets. [...] People with disabilities make dependable employees with comparable productivity, lower accident rates and higher job retention compared to company’s general workforce. They represent an untapped source of skills and talent’. id.

*they seem to be designed for.*<sup>49</sup> This thesis seems to be understood and well reflected in Radha D'Souza's analysis of the 'human' right to happiness. Much like its originator, i.e. the inalienable right included in the United States Declaration of Independence, the 'human' right to happiness is an abstract right which acquires its individualist connotations and bourgeois content once embedded in the framework of the dominant social relation of capital in the last few centuries. If understood as the right to leisure for workers and the toiling classes, or their right to vacation and a salary that can satisfy cultural and general development, the right to happiness can be seen as carrier of important social demands. However, according to D'Souza, in the epoch of imperialism, the 'human' right to happiness is 'a calculated strategy for expanding the tourism and related industries by relying on legal treaties and health and welfare legislation in European Union member states'.<sup>50</sup>

D'Souza's argument becomes even more powerful when it manifests how this first thesis can be even further 'stretched' into the second: *'human' rights can be used crudely to legitimise imperialist interventions.* This point is one of the central tenets of D'Souza's critique of rights and is illustrated with several case-studies. First and foremost, reference is made to the central role of 'democracy promotion' in U.S. foreign policy.<sup>51</sup> The promotion of 'democracy' by the U.S. government has a long history dating back to Woodrow Wilson's presidency (1913-1921), marked the beginning of the Cold War by legitimising the intervention in the Greek Civil War<sup>52</sup>, and became an overt foreign policy from the mid 1970s.<sup>53</sup> D' Souza describes how democracy promotion has over the last few decades been 'freed' from state monopoly and contracted out to a variety of social actors, like private foundations, NGOs, humanitarian organisations, think tanks, etc.<sup>54</sup>

Under this prism, D'Souza discusses the phenomenon of international election monitoring and the 'right to few and fair elections' in the epoch of imperialism. She begins by identifying how the right to self-determination and the principle of non-interference in the internal affairs of a state in international law meant that the political, diplomatic and military

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<sup>49</sup> In this paper, I will distinguish between rights and 'human' rights. This approach follows Radha D'Souza's point that rights should not be reduced to 'human' rights, because the prefix 'human' is a post-WII phenomenon 'that conceals what is entailed in rights in the epoch of imperialism'. See Radha D'Souza, *op. cit.*, note 8, pp. 3, 65, 66. An extensive analysis of this distinction and its implications can form the subject of a different article, but does not fall completely outside the scope of our argument. For the purposes of this article it suffices to locate the problematic nature of this discourse in the individualising function of the concept of 'human', in its bourgeois conception, as well as the de-politicising effect of the discourse which is discussed later. This argument is based on the well-established critique of the bourgeois conception of 'humanity' which is constructed in the model of the profit-seeking rational actor. See C. B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke*, (Oxford University Press, 2010). The concept of rights, on the other hand, may refer to a broader set of claims. Rights can be associated with the idea of right-qua-justice and can be pursued as collective demands through collective struggle and a comprehensive critique of the totality of social relations of the existing system.

<sup>50</sup> Radha D'Souza, *op. cit.*, note 8, p. 12.

<sup>51</sup> *id.*, pp. 27-35.

<sup>52</sup> On account of which the Truman doctrine was stated in front of Congress on March 12, 1947 by President Truman, who sought for financial and military 'assistance' to the Greek 'democratic' government which was 'threatened by the terrorist activities of several thousand armed men, led by Communists'.

<sup>53</sup> Radha D'Souza, *op. cit.*, note 8, p. 29.

<sup>54</sup> *id.*, p.31.

intervention by the US-led imperialist bloc in Third World countries had little legitimacy.<sup>55</sup> An antithesis, thus, emerged between self-determination, on the one hand, and the promotion of democracy and ‘human’ rights, on the other. The point of departure for the supporters of the latter was the view that the right to self-determination had ‘become a facade for states to violate ‘human’ rights. When states act in their narrow self-interest and compromise ethics and universal norms, the UN must intervene to promote ‘human’ rights within states even if it means weakening the principle of self-determination.<sup>56</sup> Hence the role of the ‘right to free and fair elections’ in international law so as to legitimise the interference in the internal affairs of states. D’Souza refers to the 2005 Report entitled ‘In Larger Freedom’ by the U.N. General Assembly, which sought to modify the sovereignty principle by imposing a duty on the ‘international community’ to intervene to monitor democracy.<sup>57</sup>

D’Souza furthers this argument with a discussion on the antithetical approaches to the right to self-determination between U.S. President Woodrow Wilson and V.I. Lenin. On the one hand, Wilson promoted the idea of *legal* rights in the name of freedom for colonised nations; formalised later in the Montevideo Convention on Rights and Duties of States, 1933, between the U.S. and Latin American states and extended under the Atlantic Charter between the U.S. and the U.K. in 1941.<sup>58</sup> For Wilson, the agents of freedom in the colonies were the financiers and investors who would bring modernisation to the colonies through their investments. Thus, according to D’Souza, the purpose of self-determination as a *legal* right was ‘to establish equal access to colonial markets between capitalist states’.<sup>59</sup> On the contrary, according to Lenin, self-determination could never be a *legal right*, but was instead a *political claim* which colonies had to fight for through political actions. According to D’Souza, this theoretical understanding moved many national liberation struggles away from demands for legal rights, channelled their energies into organising for political change, and by bringing the socialist and national liberation struggles closer, extended moral and material support to anti-colonial movements.<sup>60</sup>

This brings us to the third thesis which I consider as flowing directly from D’Souza’s analysis: *‘human’ rights can be used to divert social struggles away from political goals and canalise them into legal proceedings.* It can be argued that ‘human’ rights contribute to the reproduction of capitalist social relations by contributing to the process of depoliticisation and individualisation of social problems, i.e. by turning a political issue into a technical legal issue and a matter of collective struggle into a matter of individual struggle.<sup>61</sup> This is why,

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<sup>55</sup> *id.*, p. 101.

<sup>56</sup> *id.*, p. 80.

<sup>57</sup> *id.*, p. 96.

<sup>58</sup> *id.*, p. 192.

<sup>59</sup> *id.*, p. 192.

<sup>60</sup> *id.*, p. 192

<sup>61</sup> It has been argued that the process of depoliticisation of social and economic issues is essential to the process of reproduction of capitalism. See E. M. Wood, *Democracy Against Capitalism: Renewing Historical Materialism*, (Verso, 2016); Louis Althusser, *On the Reproduction of Capitalism*, (Verso, 2014). Marx’s insight in *Capital* was that he understood that the main conditions of surplus appropriation in capitalism (i.e. the separation of the individual producer from the conditions of labour and the absolute private property of the means of production) rest on a specific and historically conditioned political configuration and force-relation between classes. Depoliticisation, i.e. the separation of the economic from the political, means that these

according to D'Souza, there is an important lesson to be learned from the anti-colonial struggles of socialists and freedom fighters, who demanded food and not the right to food, national independence and not the right to independence<sup>62</sup>: to demand not the legal protection of a right, but the satisfaction of the social need itself.

The dangers of framing wide social and political demands in the language of rights are well understood by Paul O'Connell in his critique of the displacement thesis. This thesis maintains that reliance on the language of 'human' rights by movements for radical social change is problematic, because it tends to crowd out (or displace) other, potentially emancipatory, languages, and as a consequence distract attention from broader, structural causes of injustice and oppression. O'Connell disagrees with this nihilistic approach towards 'human' rights. He argues that the mobilisation of rights language can make an important contribution to movements for radical social change, without displacing or precluding the mobilisation of other emancipatory languages, and the challenging of deeper, structural causes of injustice. In support of his argument, he uses the examples of the Focus E15 campaign and the Right2Water movement in Ireland, which 'engaged the language of human rights alongside other frames of reference, and connected the specific rights struggle its protagonists were engaged in with broader causes of injustice'.<sup>63</sup>

It is possible here to discern the different nuances between the two authors' arguments. Both recognise the limits of the 'human' rights discourse, their individualising and depoliticising effect, as well as their aptness for recuperation by social forces for reasons other than those they seem to be designed for. However, D'Souza argues that in the epoch of imperialism rights 'lose any limited progressive potential they may have had in the nineteenth century'<sup>64</sup>, whereas O'Connell argues that the human rights discourse can operate alongside other critiques against commodification, privatisation and austerity. Based on their analysis the following sections in this paper will examine ways in which the rights discourse may contribute to the struggle for strategic political and wider social goals.

## RIGHTS AND SOCIAL STRUGGLE

This section will continue with the next three theses which distinguish between rights and 'human' rights for the reasons stated in the first section, namely the rejection of the individualist connotations of the bourgeois conception of humanity. Instead I argue that rights can only properly be understood on the basis of the contradictory relations of capitalism. This is reflected in the fourth thesis advanced here: *the struggle over rights is one form of class struggle*. This was the central point in Marx's analysis of the class struggle over and the legislative intervention on the regulation of the working day. For Marx, the capitalist's right

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conditions are presented by bourgeois political economists as natural conditions and, as a result, not subject to political debate or contestation. It is, therefore, important to consider the ways in which the 'human' rights discourse contributes to this.

<sup>62</sup> Radha D'Souza, op. cit., note 8, p. 210.

<sup>63</sup> Paul O'Connell, op. cit., note 10, p. 27-32.

<sup>64</sup> See Radha D'Souza, op. cit., note 8, p. 206.

as a purchaser to make the working day as long as possible is countered by the worker's right as a seller to reduce the working day to a particular normal length.

There is here therefore an antinomy, of right against right, both equally bearing the seal of the law of exchange. Between equal rights, force decides. Hence, in the history of capitalist production, the establishment of a norm for the working day presents itself as a struggle over the limits of that day, a struggle between collective capital, i.e. the class of capitalists, and collective labour, i.e. the working class.<sup>65</sup>

I argue that this point applies in general to the establishment of norms that regulate labour relations. The institution and abolition, protection, restriction or circumvention of rights is contingent on the balance of social forces and the development of class struggle. For instance, labour rights were not recognised in the early days of the bourgeois state. It was not until after the Second World War that most Western bourgeois states recognised labour rights. This recognition can be (to a large extent) attributed to the class struggle of the working class and the popular strata. Similarly, the attack on social rights, labour legislation, and the welfare state, in these same countries over the last decades can be (to a large extent) attributed to the class struggle of the capitalist class to get rid of these rights so as to restore its profitability through intensified exploitation of labour.

Let us illustrate this point with reference to the right to strike. The right to strike itself is now a legal (and in certain jurisdictions a constitutional) right whose recognition was the result of bloody struggles on behalf of the toiling classes. Strike actions were criminalised in the 19<sup>th</sup> century. They were born as a means for the workers of the new bourgeois industrialised societies to struggle for the improvement of their working conditions; intolerable conditions which resulted in accidents with hundreds of dead and injured in mines and factories. In Britain a strike was called as early as 1842 as part of the Chartist movement for fair wages and working conditions. In Greece, strike actions were criminalised until 1920, when recognised by Act N. 211/1920.<sup>66</sup> In 1975 the right to strike was recognised and enshrined in the Greek Constitution. Article 23 paragraph 2 provides that: Strike constitutes a right to be exercised by lawfully established trade unions in order to protect and promote the financial and the general labour interests of working people. The right is protected unconditionally. The only limits to the protection of the right relate to the subject of its exercise and its aims.

Nevertheless, the right is not wholeheartedly accepted by bourgeois society and its juridico-political apparatus. The unconditional protection of the right in the constitution was followed by article 19 of Act 1264/1982 which established further conditions for the legitimate exercise of the right (24-hour notice of the employer, provision for security staff, declaration of strike by the competent organ). A literal and teleological interpretation of the constitutional provision would consider that these conditions lie beyond the scope of the constitutional provision and are, therefore, inapplicable. On the contrary, not only are these legislative conditions applied by the courts but based on these the vast majority of strike actions are

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<sup>65</sup> Karl Marx, op. cit., note 1, p. 344.

<sup>66</sup> Christophoros Sevastidis, *The Right to Strike and the Judicial Review of its exercise (in Greek)*, (Sakkoulas Publications, 2015), p. 7.

declared illegal. As a matter of fact, from 2009 to 2014, i.e. during the first hard years of the last economic crisis, 300 judicial decisions on the legality of strike actions had the following outcome: 264 were declared illegal or abusive; 10 of the applications were dismissed for formal reasons; only 26 strikes were declared legal.<sup>67</sup> So, 88% were declared illegal and only 8% legal.

Another way through which the constitutional protection right to strike is circumvented in Greece is the governmental prerogative known as ‘civil mobilisation’ (πολιτική επιστράτευση) which can be used to terminate a legally called and organised strike action. The decree in question (17/1974) contains a very loose definition of emergency which is apt for targeting industrial action as it is meant to cover events that can bring about damage to life or property or ‘cause disruption to the economic and social life of the State’. Furthermore, the decree does not specify any time limits for its application, which allows the government to declare a sector under civil mobilisation regime for months or even years. For instance, in June 2013 the subway employees were mobilised and the ban to strike action was lifted one year later (July 2014). In general, between 2010 and July 2014, the government exercised its powers under the decree to bring a strike to an end six times. During the first six months of 2013 alone, the decree was used three times.<sup>68</sup>

In the aftermath of the crisis further limits to the exercise of the right to strike have been legislated following the EU principle of ‘best practice’. Article 211 of Act No 4512/2018 limits the exercise of the right to strike by setting a requirement for a 50% turnout of the union registered members. This measure followed the ‘best practice’ already applied in the Britain. According to section 2 of the Trade Union Act 2016, a 50% turnout of those entitled to vote is required for the decision for industrial action to be valid. In parallel, in important public services a further requirement of 40% support is added, rendering it even more difficult for industrial action to be taken in sectors of health, education, fire department, transportation, etc. It is evident from the above that the conditions of exercise of the right to strike -a right so vital for the needs and the negotiating power of workers- are worse than the previous regime which required a simple majority of those present in the ballot.

Of course, these measures are not an exception to the EU institutional apparatus; they are rather a manifestation of the general approach of the EU towards socio-economic rights. In the landmark cases *Laval* (C-341/05) and *Viking* (C-438/05) the CJEU held that the right to take industrial action is fettered in so far as it restricts freedom of movement and freedom of establishment such that where industrial action restricts freedom of movement or establishment, it will only be lawful if it is both justified and proportionate. This approach is indicative of the capitalist orientation of the EU and reflects the interests and views of colossal capitalist institutions, such as JP Morgan. In fact, a Report conducted by J.P. Morgan Chase in 2013 on the process of adjustment of the Euro-area economies to the crisis,

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<sup>67</sup> *id.*, p. 9.

<sup>68</sup> Ntina Tzouvala, *Continuity and rupture in restraining the right to Strike*, in ‘Neoliberal Legality: Understanding the Role of Law in the Neoliberal Project’, edited by Honor Brabazon, (Taylor and Francis, 2016).

Southern European Constitutions and their constitutional protection of labour rights are seen as aberrations to the EU social *acquis* and as obstacles to growth and competitiveness.<sup>69</sup>

It is, thus, safe to argue that attacking the right to strike is a necessary aspect of bourgeois class struggle, especially during periods of crisis and intensified contradictions, because it removes a ‘weapon’ -perhaps the most powerful one- from the worker’s ‘armoury’. Additionally, restricting the right to strike may result in the hindering of the processes of class-organisation<sup>70</sup> and class- consciousness<sup>71</sup>. It is for this reason that the EU, bourgeois governments and the international capitalist system, carry out a sustained attack on this right so as to reproduce or facilitate favourable conditions for capitalist exploitation.

This brings me turn to the fifth thesis: *the protection, restriction or elimination of rights may serve either the immediate or the strategic interests of social classes*. I argue that the relationship between rights and social struggle is mediated through social and class interest. It is in the pursuit of their class interests that workers go on strike and, consequently, fight for the right to go on strike. Similarly, it is in the pursuit of their class interest that the bourgeois class seeks the restriction of this right.

Further to this, I argue that there is a distinction between what we may call an immediate interest and what may be called a mediated or a strategic interest. We find an example of this in Marx’s analysis of the struggle for the length of the working-day. The lengthening of the working day and the increase of labour exploitation is in the interest of the capitalist, as it directly increases capital’s profitability. However, the restriction of the working-day so as not to exhaust the worker and reproduce their labour-power is also in the interest of capital. For

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<sup>69</sup> David Mackie, Malcolm Barr, et al., *The Euro area adjustment: About halfway there*. (28 May 2013), available at <https://www.legrandsoir.info/IMG/pdf/jpm-the-euro-areaadjustment-about-halfway-there.pdf> (accessed on 13 November 2018).

<sup>70</sup> The example of the October 2018 ballot for a strike action by the University and College Union is illustrative here. The October 2018 ballot manifested the full effect of the 50% turnout requirement set by the Trade Union Act 2016. The previous ballot (January 2018) on a strike action to defend pensions had resulted in a 58.3% overall turnout (24,707 votes cast in a total number of 42,145 members in the institutions concerned). This mandate gave effect to a strike action that lasted for several months. One result of this action and the subsequent mobilisation of workers in Higher Education was the increase in the numbers of union members by 16,000. However, this positive development with regards to class organisation was counteracted by the provision of the 2016 Act. To give an indicative example: at Birkbeck College, University of London the amount of votes cast in the two ballots was almost identical (223 in the January ballot versus 222 in the October ballot); however, in the first ballot this amounted to a 53.7% turnout whereas in the second ballot only to a 42.05% turnout, because union membership in this institution had risen from 415 to 528. All relevant information can be found at the UCU website, ([https://www.ucu.org.uk/media/9730/HE-pay-and-equality-industrial-action-ballot---full-results-Oct-18/pdf/ucu\\_he-ballot-report\\_oct18.pdf](https://www.ucu.org.uk/media/9730/HE-pay-and-equality-industrial-action-ballot---full-results-Oct-18/pdf/ucu_he-ballot-report_oct18.pdf), [https://www.ucu.org.uk/media/9091/USS-ballot-results---ranked-summary-table/pdf/uss\\_ballotresults\\_summaryranked\\_jan18.pdf](https://www.ucu.org.uk/media/9091/USS-ballot-results---ranked-summary-table/pdf/uss_ballotresults_summaryranked_jan18.pdf)).

<sup>71</sup> The educative effect of strikes in workers’ consciousness has been highlighted in radical thought. See for instance Rosa Luxemburg, *The Mass Strike*, (Bookmarks, 1995); and V. I. Lenin, *On Strikes*, in ‘Lenin Collected Works Vol. 4’, (Progress Publishers, 1977). It has been argued that a strike action teaches workers of their real power and makes them realise their role in the production process. Even more importantly perhaps, a strike action teaches the workers to move beyond their immediate interest. As Lenin puts it, ‘every strike means many privations for the working people, terrible privations that can be compared only to the calamities of war - hungry families, loss of wages, often arrests, banishment from the towns where they have their homes and their employment’; see Lenin, *ibid*, p. 315. The sufferings during the strikes are definitely not in the immediate interest of the individual worker. But, the goal of improving working conditions and increasing wages is mediated by a process which goes against their immediate interests. The workers thus learn to differentiate between the immediacy of self-interest and the mediated consciousness of class interest.



Marx, the English Factory Acts were the negative expression of capital's 'appetite for surplus labour' and 'blind desire for profit'.<sup>72</sup> Such laws are in the strategic interest of capital. The longevity of labour exploitation by capital is mediated through the restriction of the working-day and the limiting of capital's immediate profitability.

The same point can be raised *mutatis mutandis* regarding labour law and the welfare state in general. It can be argued that the welfare state was in the strategic interest of capital. It served the reproduction of capitalism by facilitating the expanded reproduction of social capital following the Second World War. Furthermore, the welfare state and the recognition of socio-economic rights served the strategic interest of reproduction for capital by absorbing the social movements that had threatened the European ruling classes for centuries. Therefore, the argument can be sustained that the welfare state, labour law and socio-economic rights, despite on the face of it contradicting the interests of the capitalist and intervening in the field of class struggle in support of the worker, *strategically* may serve the interests of capital.

Conversely, it is in the workers' *immediate* interest to ameliorate the conditions of exploitation; to improve their working conditions so as to eliminate accidents; to increase their wages and to reduce the working day. This is why the toiling classes carry out their class struggle. But, if the *amelioration* of the conditions of exploitation is in the *immediate* interests of workers, it is the *elimination* of these conditions of exploitation that constitutes their *strategic* interest. To the extent that labour law, socio-economic rights and the welfare state can advance some of the workers' demands in capitalism and improve their working and living conditions, they serve their immediate interests. But, to the extent that these institutions contribute to the reproduction of capitalism by not contesting the fundamental conditions of exploitation (i.e. the private ownership of the means of production), they do not serve the strategic interest of the working class and popular strata.

I can now turn to the sixth and final thesis: *The struggle of the working class and the popular strata for rights may only serve their strategic interest (i.e. the elimination of the conditions of exploitation) if it is ultimately directed towards the elimination of the capitalist social relations.* The above analysis highlighted the importance of socio-economic rights, and the right to strike in particular, as well as the vital role of the struggle for these rights. However, it also highlighted their precariousness in capitalism. The status of social rights in capitalism is precarious and the onslaught against those rights over the last four decades is proof of this. Does this mean then that we have to eliminate the discourse of rights from social struggles? I claim that the recognition of the limitation of the struggle for rights in capitalism should not amount to an outright rejection of this struggle and of the role that the rights discourse can play in the working-class struggle. I argue instead for the necessity of re-evaluating the role of rights in social struggle. What is necessary is to struggle for rights while at the same time recognising the limitations of any demands and forms of struggle articulated in the rights discourse.

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<sup>72</sup> See Karl Marx, op. cit., note 1, p. 348: 'These laws curb capital's drive towards a limitless draining away of labour-power by forcibly limiting the working day on the authority of the state, but a state ruled by capitalist and landlord'.

I would argue that any critique and struggle for social justice articulated within the rights discourse has to be expanded and assume a materialist content. As mentioned above the amelioration of the conditions of capitalist exploitation is limited compared to the elimination of those same conditions. Similarly, addressing the issue of distributive relations in capitalism is limited compared to addressing the issue of productive relations in capitalism, i.e. the root of the imbalance of forces between different social classes as they participate in the production process. Recognition of the limitations of the rights discourse may result in recognition of the need to transform a struggle framed in this discourse into a struggle against the totality of capitalist social relations, i.e. transform an individual struggle for a legal right into a collective struggle for collective demands. Furthermore, it may necessitate the move from a critique of distributive relations in capitalism to a critique of capitalist productive relations, since the former are themselves conditioned by the latter.<sup>73</sup>

Last but not least, expanding the rights discourse would certainly necessitate a move beyond the juridification of social struggle. The above analysis of the right to strike showed that the institutionalisation of a social goal and the constitutional enshrinement of a right is not the end of the process or its ultimate goal. It is, thus, essential to move beyond positive law and avoid limiting a social struggle in the strict confines of juridification as a goal. The juridification of the struggle may reflect a temporary victory of the workers' struggle and serve their immediate interests, but it has to be remembered that the legal status of rights - social and economic rights of the toiling class in particular- in capitalism is precarious and vulnerable to all sorts of mechanisms aiming at the restriction or elimination of these rights.

So, the goal is the unity of the struggle *for* rights with the struggle *against* capitalism, i.e. the unity of economic and political class struggle. To unite the economic and the political class struggle is essential in order to overcome in practice the separation of the economic from the political sphere in capitalism and, thus, raise consciousness of the deeply political nature of everyday problems in capitalist society. As we saw above class struggle carried out in the form of a strike action is significant for the process of development of class-consciousness. For instance, with 88% of strike actions declared illegal by the Greek courts, it is safe to argue that a strike action may have a rather educative effect in the workers' consciousness regarding the role of the state in bourgeois society. Additionally, the fact that a strike action necessarily teaches the workers to move beyond their immediate interest is another example of how social struggle may contribute to the process of development of class consciousness as well as to a radicalisation of the demands that carry the struggle forward.

Therefore, expanding a critique of inequality framed in the language of rights into a comprehensive critique of social relations in capitalism can be a pathway for uniting the struggle for every day matters, such as working and living conditions, with the struggle for a different social arrangement altogether that prioritises social needs instead of profit. Ultimately this move beyond juridification of social struggle is an essential aspect of the process of transforming the struggle for distribution of wealth and satisfaction of social needs

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<sup>73</sup> See Karl Marx, op. cit., note 35.

to a struggle for radical change of the mode of production which involves a thorough and comprehensive critique of the extant power, property and productive relations.

## CONCLUSION

To conclude, this article examined several aspects of the relationship between rights and social struggle. Reviewing recent literature on this topic it outlined six theses that characterise this relationship. Starting with Samuel Moyn's intellectual and ideological history of 'human' rights it highlighted its limitations. It was argued that Moyn's analysis of inequality in capitalism does not concern itself with the structural roots of inequality. It focuses solely on distributional relations in capitalism while neglecting the issue of exploitation in the sphere of production. It therefore fails to conceive the struggle for rights as a form of class struggle and misevaluates the role of rights in addressing social inequality.

On the contrary, Radha D'Souza's critique of rights presents a solid base for assessing the role of rights in the epoch of imperialism, because it examines rights in the context of struggle between different social forces. Her analysis provides a strong argument that rights can be used for other purposes and by other social agents than those they seem to be designed for; in fact they have been used to justify imperialist interventions. D'Souza assesses negatively the role of rights -and especially 'human' rights- in the epoch of imperialism and concludes that social movements ultimately need to demand not the legal protection of a right, but the satisfaction of the social need which this right addresses. O'Connell, on the other hand, while recognising the limitations of the rights discourse argues that 'human' rights language can be used alongside other critiques of social injustice.

Acknowledging the difficult questions raise by these thinkers and their fruitful contributions, this article was structured around one central question: To what extent can the rights discourse promote a comprehensive critique of capitalist social relations? I argue that the rights discourse can be an essential element in the working-class struggle only to the extent that it is expanded, i.e. only as long as it teaches the toiling classes to move from a struggle for rights to a struggle against the totality of capitalist social relations; to move from quantitative change (concessions in capitalism) to qualitative change (supersession of capitalism) -to put it in more abstract terms.

The rights discourse can be the spearhead of a comprehensive critique of social injustice once it is expanded into a critique of capitalist social relations as a whole, i.e. once the idea of rights itself assumes a distinctively materialist content instead of an idealist one. For this a different conception of justice is necessary: a materialist conception of justice. A conception, the essence of which is captured in the slogan sung by the Greek workers in the strike actions in the years of the crisis: 'The workers' justice is the law' ('νόμος είναι το δίκιο του εργάτη'). I argue that this slogan contains the seeds for a materialist conception of justice and can be viewed as a maxim (*jus proletarii suprema lex esto*) that contains a normative statement: a normative demand for the elimination -and not just the amelioration- of the conditions for labour exploitation.