

PRINCIPLES FOR A DIALECTICAL MATERIALIST ANALYSIS OF LAW AND THE STATE

ABSTRACT: This chapter is a contribution to the Marxist analysis of law and the state. Its main purpose is to set out the main principles for this analysis. After setting out the main characteristics of dialectical materialist analysis, these principles are discussed in the following order: First, law and the state abstract from and correspond to a specific socio-economic content. Second, they perform a class function in reproducing the dominant relations of production as well as the rule of the dominant class. Third, law and the state efficiently perform this function by being relatively autonomous. In outlining these principles certain categories which are essential for this analysis, such as the ‘unity of form and content’, the ‘relative autonomy of law and state’, the ‘class struggle’, and the ‘reproduction of the relations of production’, are examined.

INTRODUCTION

In this chapter I intend to outline the fundamental principles for a dialectical materialist analysis of law and the state. Recognising the restrictive as well as liberating effect of definitions, I want to begin by defining the essential terms for this chapter. For the purposes of this analysis, law is here defined as the system of state-sanctioned and enforceable rules which reflect the dominant mode of production and the corresponding social relations as their form, ensuring thus the reproduction of the latter and, consequently, consolidating and promoting the interests of the ruling class by contributing to the reproduction of its rule.¹ Furthermore, the state, as a product of the irreconcilability of class contradictions, is defined as the mechanism which, through a combination of repressive and ideological means, ensures the reproduction of social relations (i.e. productive, distributive, property and power relations), consolidates the rule of the dominant social class and ensures the suppression of the exploited class.²

¹ The ‘classics’ of Marxism did not provide us with a definition of law. Nevertheless, we find several fragments that could be used towards constructing a working definition, for instance in the ‘Manifesto of the Communist Party’, where address is made to the bourgeois class and its ‘jurisprudence’, which ‘is but the will of your class made into a law for all, a will, whose essential character and direction are determined by the economical conditions of existence of your class’; see Karl Marx and Friedrich Engels, *Marx and Engels Collected Works Volume 6*, (Lawrence and Wishart 2010) 501. During the first decades of socialist construction in the Soviet Union there was intense debate among legal and political theorists around the question of socialist law. Evgeny Pashukanis, perhaps the most well-known Soviet legal theorist, in his 1924 ‘General Theory of Law and Marxism’ argued that the legal form reaches full development only in capitalism as the essential form of commodity exchange; see Evgeny Pashukanis, *Selected Writings on Marxism and Law*, (Academic Press 1980), 79. The working definition provided here wishes to guard against the problematic elements of Pashukanis’s approach by referring to the mode of production as a whole rather than a limited aspect of it, i.e. exchange relations.

² This definition follows Engels’s definition of the state as ‘a product of society at a certain stage of development’, which ‘has become entangled in an insoluble contradiction with itself, that it has split into irreconcilable opposites which it is powerless to dispel’. This ‘power seemingly standing above society which would alleviate the conflict and keep it within the bounds of ‘order’; and this power, having arisen out of society but placing itself above it, and alienating itself more and more from it, is the state’; see Friedrich Engels, *Marx and Engels Collected Works Volume 26*,

Last but not least, dialectics is a mode of conceiving reality in its many-sided and contradictory movement and consists of mainly three elements. The *first* is many-sidedness. Dialectical analysis is concerned with the interconnectedness of processes. A dialectical analysis of the legal form, therefore, takes into account the intricate relations between legal, political and socio-economic processes, as opposed to the isolated and fragmented way of examination of legal phenomena by positivist theory. The *second* element is movement. A dialectical analysis is an analysis of processes. Dialectical materialism assesses juridico-political phenomena in their development. Additionally, social, political and juridical processes are seen as historical processes. Capitalism, law, the state are not eternal; they are, rather, historical phenomena. So, the examination of the legal form has to take into account the historical movement; how legal form has developed historically with regards to socio-economic development.³

The *third* element is contradiction. The historical movement of juridico-political and socio-economic processes develops on the basis of antagonistic contradictions and struggle of the opposites. Socio-economic and juridico-political contradiction as a category is useful in the analysis of different processes. Contradiction appears in economic forms (in the form of contradiction between use-value and exchange-value, between abstract labour and concrete labour, or between necessary labour and surplus labour); it may appear in social forms (in the contradiction between the socialised labour process and the private ownership of the means of production, or in the class struggle as motor of history).

Elaborating on the above, in the next sections I am going to refer frequently to the interconnected issues of the welfare state form, labour legislation, as well as the right to strike in particular, in order to illustrate the theoretical and methodological points raised. For instance, in order to understand why in 2018 a so-called ‘left wing’ government in Greece passed legislation⁴ that restricted the right to strike one has to take into account the role of the welfare state form in reproducing the contradictory relations of capitalism, the role of labour law in mediating social struggle, as well as the historical development of class struggle (the working class struggle which secured the legal protection of social rights for the toiling classes, as well as the bourgeois class struggle that plays a determinant role in the limitation, restriction or abolition of these rights).

(Lawrence and Wishart 2010) 269. Emphasis on the historical and class nature of the state is necessary in order to guard against approaches to the state that view it as a neutral entity, developed not only by mainstream bourgeois thinkers such as John Rawls (see John Rawls, *A Theory of Justice*, (Harvard University Press 2005)) and Robert Dahl (see Robert A. Dahl and Bruce Stinebrickner, *Modern Political Analysis*, (Pearson 2002)), or critical bourgeois thinkers such as Axel Honneth (see Axel Honneth, *The Idea of Socialism: Towards a Renewal*, (Polity Press 2018)), but also from within the Marxist discourse, by Nicos Poulantzas (see Nicos Poulantzas, *State, Power, Socialism*, (Verso 2000)).

³ See for instance Anthony Chase, *Law and History: The Evolution of the American Legal System*, (New Press 1999).

⁴ In particular article 211 of Act 4512/2018, which limits the exercise of the right to strike by setting a requirement for a fifty percent turnout of the union registered members.

THEORY AND PRACTICE

Based on the above, dialectics is associated with a demand for many-sidedness, i.e. a focus on the totality of diverse aspects, rather than abstraction and fragmentation of phenomena. Karl Marx refers to this concept of totality in his Preface to 'A Contribution to the Critique of Political Economy': 'neither legal relations nor political forms could be comprehended whether by themselves or on the basis of a so-called general development of the human mind, but that on the contrary they originate in the material conditions of life, the *totality* of which Hegel, following the example of English and French thinkers of the eighteenth century, embraces within the term "civil society"'.⁵

It is pertinent here to briefly elaborate on the categories of the 'abstract' and the 'concrete', as conceived in dialectical logic. It has been argued that the method that Marx employs in the 'Capital' is the 'ascension from the abstract to the concrete'. The concepts of 'abstract' and 'concrete' in dialectical logic have a different meaning from the 'abstract' and the 'concrete' in formal logic. When we speak of the 'concrete' in the context of dialectics, we do not speak of the concrete thing that exists in objective reality - or at least not merely of this - and which is given to us in our senses. Similarly, when we speak of the 'abstract' we do not speak of something that exists only in our minds, i.e. in the realm of thought (for instance abstract labour very well exists in objective reality in the form of value).⁶

The abstract and the concrete are rather *epistemological categories that help us grasp the process of conceiving reality in its movement and interconnection of phenomena*. The concrete here is seen as a unity of diverse elements, while abstraction corresponds to one-sidedness, the initial point of an analysis. The abstract in the beginning of an analytical process is one side/aspect/part of the whole. In the end of this process the abstract becomes an expression of the concrete totality, because it has been analysed in its relation to other aspects of the totality. In that sense dialectical analysis 'is a continuous process of transition from one definition into the other'.⁷ Therefore, dialectical analysis demands the many-sided analysis of an object: an object must be examined in its development, its self-motion, its essential connections with other objects, and the appearance and resolution of internal contradictions.

⁵ Karl Marx, *Marx and Engels Collected Works Volume 29*, (Lawrence and Wishart 2010) 262.

⁶ Evald Ilyenkov, *The Dialectics of the Abstract and the Concrete in Marx's Capital*, (Aakar Books 2008).

⁷ György Lukacs, *Ontology of Social Being Vol. 3: Labour*, (The Merlin Press Ltd 1980) 3.

Under this prism, a dialectical analysis of law and the state makes use of certain categories, such as the ‘unity of form and content’, the ‘relative autonomy of law and state’, the ‘class struggle’, and the ‘reproduction of the relations of production’, and it is carried out on the basis of the following principles. First, law and the state abstract from and correspond to a specific socio-economic content. Second, law and the state perform a class function in reproducing the dominant relations of production as well as the rule of the dominant class. Third, law and the state efficiently perform this function by being relatively autonomous.⁸

It has to be emphasised that these are not merely abstract principles to be applied to phenomena. These principles are guidelines for the examination and understanding of natural and social processes and phenomena in their movement and interrelation. They are not immutable truths, but epistemological maxims for scientific analysis. Engels himself stresses that the laws of dialectics are abstracted from the history of nature and human society, and not the other way around.⁹ So does Lenin in his attempt to read Hegel materialistically: ‘[Dialectical] Logic is the science not of external forms of thought, but of the laws of development “of all material, natural and spiritual things,” i.e., of the development of the entire concrete content of the world and of its cognition, i.e., the sum-total, the conclusion of the History of knowledge of the world’.¹⁰

Dialectical materialism has nothing to do with the application of infallible principles to the examination of natural and social phenomena. On the contrary, it has everything to do with praxis and the verification of principles in objective reality. Ideas for understanding the world help shape the world - always to the extent allowed by the development of productive forces and relations. This means that objective reality is the ultimate test for the accuracy of scientific theories. The philosophical category of ‘matter’ is here the element that separates dialectical materialism from (neo)idealist accounts of social phenomena. Ontologically the concept of ‘matter’ captures the thesis that whatever exists is matter in motion and development. Epistemologically, this category highlights the crucial conception that man senses and perceives not sensations and perceptions themselves, but things and phenomena of the external world.

This brings us to another point: the relationship between the scientific component and the ideological component of Marxist analysis. Ever since Marx’s 11th thesis on Feuerbach,¹¹ these two *prima facie* contradictory elements are united in Marxist analysis of the contradictions of

⁸ Friedrich Engels, *Marx and Engels Collected Works Volume 49*, (Lawrence and Wishart 2010) 60-61.

⁹ Friedrich Engels, *Marx and Engels Collected Works Volume 25*, (Lawrence and Wishart: 2010) 356.

¹⁰ V. I. Lenin, *Collected Works Volume 38*, (Progress Publishers: 1976) 92-93.

¹¹ ‘The philosophers have only *interpreted* the world in various ways; the point, however, is to *change* it’. Karl Marx, *Marx and Engels Collected Works Volume 5*, (Lawrence and Wishart: 2010) 8.

capitalism. The struggle for scientific understanding of social phenomena and processes is united with the struggle for overcoming exploitation, inequality, poverty, illiteracy, etc. Our understanding of this unity is based on the materialist conception of ideology.¹² Ideas are not the product of a pure intellectual process, but are produced in the course of human social activity. With the development of society and the deepening of the division of labour, abstract ideas are used for the elaboration of more or less systematic theories, doctrines or views about things.

General views and ways of thinking, systems of abstract ideas, become established as characteristic of the outlook of a whole society, or of a section of society.¹³ These systematic theories and ways of thinking are called ideologies. In class-divided societies, ideologies take on a class character. Class divisions give rise to different class interests, based on different relationships to the means of production, different roles in the social organisation of labour, and different ways of obtaining one's share of the social wealth. It is on the basis of these interests that class-ideologies are developed. Nevertheless, and despite the class nature of ideology, it must be stressed that the ideological development, as a development of abstract thinking, has its own special characteristics, its own internal laws.

As a result, two co-existing processes mutually determine the process of ideological formation: on the one hand, a process of development of the truthful and coherent reflection of the real world in men's ideas, through the elaboration of a system of internally consistent principles based on scientific investigation and practical interaction; on the other hand, and parallel to this, a (deliberate or spontaneous) process of development of illusory elements within an ideology which may be due to the separation of abstract ideas from the actual experiences whence they derived. One or other of these processes may dominate in the constitution of particular ideologies, so that they are predominantly scientific in the one case or predominantly illusory and unscientific in the other case.¹⁴ Therefore, one might argue that the scientific element is stronger in the bourgeois views about natural processes, because of the specific interests in increasing profitability through technological development, which demand the true apprehension of reality. On the contrary, the illusory element is stronger in the bourgeois views about social processes, because the interests and the place that the bourgeoisie occupies in social production give rise to

¹² This is set out in the 'German Ideology': The ideas which these individuals [-who enter into definite social and political relations-] form are ideas either about their relation to nature or about their mutual relations or about their own nature. It is evident that in all these cases their ideas are the conscious expression -*real or illusory*- of their real relations and activities, of their production, of their intercourse, of their social and political conduct. [...] If the conscious expression of the real relations of these individuals is illusory, if in their imagination they turn reality upside-down, then this in turn is the result of their limited material mode of activity and their limited social relations arising from it; see Karl Marx and Friedrich Engels, *The German Ideology*, (Prometheus Books: 1998) 41.

¹³ Maurice Cornforth, *Dialectical Materialism Volume 3: Theory of Knowledge*, (Lawrence and Wishart: 1976) 66.

¹⁴ *ibid.*, 77.

certain preconceptions and illusions which serve the reproduction of its class situation and power.¹⁵

Consequently, a dialectical materialist analysis of law and the state unites political and scientific elements. The struggle for scientific analysis and accuracy against metaphysical and idealist views is simultaneously a political struggle against bourgeois and opportunist views of law and the state. Scientific analysis is an essential prerequisite of political struggle and is itself a form of political struggle. For instance, the analysis of the state as an instrument of oppression, which is necessary for the consolidation and reproduction of class power, property and productive relations, contributes to the scientific understanding of the state, against metaphysical conceptions of the state as an eternal structure or an institution essential to human nature.¹⁶ At the same time, it contributes to the rebuttal of opportunist views that the bourgeois state can be used to 'build the road to socialism'.¹⁷

FORM AND CONTENT

Let us now turn to the first principle, i.e. that law and the state abstract from and correspond to a specific socio-economic content. I will begin with the example of property as a social relation and a legal phenomenon to illustrate how the categories of 'form and content' can help conceptualise the role of law in the social totality. To begin with, property relations are of fundamental importance in the capitalist mode of production, for the capitalist ownership of the means of production - as reflected in private law and safeguarded by the objective legal order as organised by public law - results in the capitalist ownership of the final product, and enables the extraction of surplus value. Additionally, individual property must be easily alienable in the market. Consequently, a modern property regime is a social relation based on exclusive possession and enjoyment of a thing or resource; therefore, in need of a centrally organised

¹⁵ See also István Mészáros's point of the conflation between historical necessity and natural necessity 'from the standpoint of capital'. István Mészáros, *Social Structure and Forms of Consciousness, Vol. II: The Dialectic of Structure and History*, (Monthly Review Press 2011), 299-398.

¹⁶ Such metaphysical conceptions of the state, characteristic of the bourgeois worldview, are manifest in the work of diverse thinkers: from Hobbes and Locke and their natural law theories of the social contract; to the 'counterrevolutionaries', Donoso Cortes and Joseph de Maistre, and their views about 'absolute sinfulness and depravity of the human nature' which makes man a wolf against the other men and necessitates the state (see Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, (University of Chicago Press 2005) 56); to Deleuze's metaphysicised image of the Urstaat, the primordial state, which is the result of a process of fragmenting form from content and elevating the form to an eternal structure (see Félix Guattari and Gilles Deleuze, *Anti-Oedipus*, (Continuum 2004) 237-8).

¹⁷ See for instance Poulantzas's view on the state, which heavily influenced and was an expression of the Eurocommunist current; see Nicos Poulantzas, *State, Power, Socialism*, (Verso 2000).

system of violence that sanctions this relation. What is more, modern capitalist property relations are relations rid of the intersubjective relations of subjugation of the feudal society. The system of violence upholding the feudal property relations was more decentred, corresponding to a different mode of extraction of the surplus product through extra-economic means.¹⁸ The relation between a property regime and a system of violence is the point where law relates to the state and private law relates to public law. The mediation of the two is one of the fundamental aspects of the analysis of the legal form. Complementary to this concept, the modern legal form of property presupposes the notion of the 'legal subject'.

Let us see how the 'form and content' dialectics can explain the nature of the property relation. Marx's theory of value reveals how the social character of the sum of individual labour, i.e. the social relations between individual labourers is hidden behind the commodity form. Here, too, the form is a one-sided relation between a person and thing. The common sense notion of property refers to a 'thing' (a house, a car, a briefcase, money). 'This is my property' says someone to exclude everyone else from the enjoyment of this thing or resource. But the substantive content is a social relation which is expressed in the form of a 'thing'. Behind the form of the 'thing'/object, lies a system of relations, not only between a subject and the object but also between different subjects as well. The substantive content of the property relation itself is abstract if seen in-itself; if we do not move in the analysis of these social relations and their development.

As a result, for the many-sided analysis of the form of property, we have to look into its relation with the simple commodity relation within the capitalist social formation. For, first and foremost, it is the demands of commodity production-exchange that necessitate the form of the 'free and equal legal subject'. In particular, the sale and purchase of labour-power as a commodity is the fundamental element of capitalist relations. The worker, who has no property over means of production, has to sell her labour-power as a commodity. She must become a 'legal subject', i.e. owner of her labour-power, free and able to enter into an exchange of this

¹⁸ For a debate on the transition from the feudal to the capitalist property relations, see Rodney Hilton, Paul Sweezy et al., *The Transition from Feudalism to Capitalism*, (Verso 1978). This debate focuses on the issue of the factors at work in this transition, and whether these were internal in nature (the contradictory nature of the feudal mode of production) or external. For an argument on the role of class struggle and the development of capitalist relations through market dependence in the English countryside, captured in the concept of 'agrarian capitalism', see T. H. Aston, Robert Brenner, et al., *The Brenner Debate: Agrarian Class Structure and Economic Development in Pre-Industrial Europe*, (Cambridge University Press 1985); and Ellen Meiksins Wood, *The Origin of Capitalism: A Longer View*, (Verso 2017).

labour-power for wage as an equal party with the capitalist, the owner of the means of production.¹⁹

Therefore, the 'legal subject' is a 'mask' in which socio-economic relations are personified. Behind the 'legal subject' as possessive individual one may find: the possessor of commodities; the possessor of capital; the possessor of labour-power; the possessor of land. Therefore, property and contract, the two main legal relations, necessitate the existence of the 'legal subject' as a free and possessive individual. But the process of consumption of the 'commodity labour-power', bought in an abstract process of exchange like any other commodity, takes place in *the depths of the production process*. So that the central function of the abstract legal form is the obfuscation of the exploitative content through this mediation. For this reason the *legal form*, as a form of these historically specific socio-economic relations, is characterised by the principles of 'equality', 'freedom', and 'voluntariness' of the parties.

With regards to the public legal form, i.e. the state form, the argument is that it has to be seen together with the socio-economic content, to the reproduction of which it contributes. On this basis, unity of 'form and content' means that socio-economic and political contradictions are to account for the change in the form of exercise of public power. The public legal form plays a crucial part in the reproduction of capitalist relations of production, as it abstracts from the contradictory socio-economic content in order to contribute to its reproduction. Moreover, the change in the public legal form is contingent upon the intensification of these socio-economic contradictions. For instance, the welfare state was initially established in response to capital's need for a state with an active role in both the management of the economy and social reproduction in the aftermath of a devastating process of destruction of capital. However, this 'Keynesian compromise' provided 'no means of securing the sustained accumulation of capital' but rather soon became 'a barrier to capital' as full employment and rising wages soon led to over-accumulation and a falling rate of profit.²⁰ It was therefore gradually replaced by more 'neo-liberal' forms once it could not anymore accommodate the relations it came to being to reproduce. This development is proof of the historicity of the state form, which is contingent upon the intensification of class struggle and socio-economic contradictions.

We reach the conclusion that the many-sided analysis of the legal form presupposes the examination of law in its unity with the state and other elements of the superstructure, and with

¹⁹ See Evgeny Pashukanis, *Selected Writings on Marxism and Law*, (Academic Press, 1980) 76-81, together with Karl Marx, *Marx and Engels Collected Works Volume 35*, (Lawrence and Wishart 2010) 177-186.

²⁰ Simon Clarke, *Keynesianism, Monetarism, and the Crisis of the State* (Edward Elgar 1988), 354.

the elements of socio-economic base, which make up the totality of the social formation. This analysis has to be bi-directional, as the legal form develops its own historicity, while it shapes and is being shaped by socio-economic development. The concepts of ‘relative autonomy’ and ‘class struggle’, which we now turn to, are crucial for the grasping of the interrelation between the elements of this totality. But it is even more important to grasp that the economic content and the legal form are *abstract constitutive elements -i.e. two sides- of one and the same actual relation*. These abstract economic and legal relations do not exist in their ‘pure form’ in empirical reality; *only in the field of scientific abstraction can the legal form be separated from its content*.²¹ The dialectics of the economic content and the legal form presupposes their internal and mutual relation in the unified actual relation of capitalist commodity production, which is economic in its content and legal in its form. Only in the context of such a unity can the substantive content give birth to and determine its form.²²

RELATIVE AUTONOMY

The concept of ‘relative autonomy’ is crucial for grasping the role of law and the state in a social formation, as well as the relationship between class and law/state. In fact the class nature and the relative autonomy of the state and law are intrinsically linked to one another. Relative autonomy is necessary for the state to act as a factor of cohesion and consolidation of class power (intra-class aspect), as well as for the effective exercise of class rule (class aspect). As E. P. Thompson puts it with regards to the latter, the essential precondition for the effectiveness of law, in its function as ideology, is that it shall display an independence from gross manipulation and shall seem to be just; if the law is evidently partial and unjust, then it will mask nothing, legitimise nothing, contribute nothing to any class’s hegemony.²³

Furthermore, relative autonomy characterises both the capitalist state (which ‘best serves the interests of the capitalist class only when the members of this class do not participate directly in the state apparatus, that is to say when the ruling class is not the politically governing class’)²⁴ and the law in a capitalist social formation (which, according to Engels, must not only correspond to the general economic condition and be its expression, but must also be an internally coherent

²¹ Valentina Lapayeva, *Issues of Law in Marx's Capital* (in Greek), (Modern Time 1982) 55.

²² *ibid*.

²³ E. P. Thompson, *Whigs and Hunters*, (Penguin Books 1990) 263.

²⁴ Nicos Poulantzas, *The Poulantzas Reader: Marxism, Law And The State*, (Verso 2008) 179.

expression which does not, owing to inner contradictions, reduce itself to nought; and in order to achieve this, the faithful reflection of economic conditions suffers increasingly).²⁵

The concept of 'relative autonomy' also pre-empts any characterisation of the dialectical conception of law and the state as instrumentalist. As we saw above, classes are not metaphysical subjects producing superstructural objects. The relation between class and law/state is not one of unilateral action of a subject upon an object. The state and law (and consequently the state and legal form) *objectively* function to reproduce the relations of production to the benefit of the exploiting class. This constitutes their class nature. This means that developments in productive relations and the process of class struggle, i.e. the intensification of socio-economic contradictions, may lead to modifications of the state and legal form. These processes can only be understood through the relative autonomy of state and law from the socio-economic contradictions. Relative autonomy allows the state and law to be responsive to the intensification of socio-economic contradictions and fulfil their function in a social formation more effectively.

It would be wrong to assume from the above that the function of the state is a negative function, i.e. a function restricted to reflecting bourgeois interests in their immediate appearance. The state also acts 'in a positive fashion, creating, transforming and making reality'.²⁶ Additionally, law 'does not only deceive and conceal, nor does it merely repress people by compelling or forbidding them to act; it also organizes and sanctions certain real rights of the dominated classes; and it has inscribed within it the material concessions, imposed on the dominant classes by popular struggle'.²⁷

The problem of state and law's positivity (either in the form of labour law, the welfare state, or even in the form of an individual judicial decision sanctioning the rights and interests of members of the dominated classes) has been a most challenging problem for the Marxist analysis of law and the state. The crucial question is this: does the state lose its class character when it legislates on the regulation of the working-day or when it sanctions positive rights for the dominated classes? Can it be argued that such laws, which in their immediate appearance seem to serve the interests of the dominated class, also respond to a - perhaps not immediately evident, but even more vital - need for the reproduction of a class-divided society?

Legal protection of social rights for the toiling classes is proof of the relatively autonomous nature of bourgeois law. However, the protection of such rights can be accounted for by the

²⁵ Friedrich Engels, *Marx and Engels Collected Works Volume 48*, (Lawrence and Wishart 2010) 60-61.

²⁶ Nicos Poulantzas, *State, Power, Socialism*, 43.

²⁷ *ibid.*, 84.

contradictory nature of the capitalist social formation. Rights which were until very recently taken for granted (such as the 8-hour working-day, decent working conditions, collective bargaining and collective agreements) were won through hard fought battles, through organised struggle, and through the organisation of strikes. These struggles were gradually reflected in bourgeois law. Indeed, even the main ‘weapon’ of working class struggle, i.e. strike action, came to be legally (and in certain jurisdictions even constitutionally) protected. Strike actions, born as a means for the workers of the new bourgeois industrialised societies to struggle for the improvement of their working and living conditions, were criminalised in the 19th century. In Greece, strike actions were declassified as a criminal offence in 1920 (N. 211/1920)²⁸, and, under pressure by the popular struggle that overthrew the military dictatorship in 1974, the right to strike was recognised in the Greek Constitution of 1975 (article 23 paragraph 2).

Notwithstanding the limitations that always accompany the sanctioning of social rights in the constitutional text,²⁹ it is undeniable that the bourgeois state and law can under certain conditions reflect the interests of the toiling classes. However, this does not mean that the state is rid of its class character when it does so. For it is possible that a state simultaneously reflects the immediate interests of the dominated classes to a certain extent, as well as the strategic interests of the ruling class. For instance, it is safe to argue that the lengthening of the working day and the increase of labour exploitation is in the immediate interest of the capitalist. However, as Marx showed in his analysis of the English Factory Acts that limited the working day, restriction of the working-day so as not to exhaust the worker and reproduce their labour-power is also in the interest of capital, in a more strategic sense. For Marx, the English Factory Acts are the negative expression of the capital’s ‘appetite for surplus labour’ and ‘blind desire for profit’.³⁰ 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. 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

²⁸ C. Sevastidis, *The Right to Strike and the Judicial Review of its Exercise* (in Greek), (Sakkoulas, 2015), 7. See also 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).

²⁹ As Marx notes with regards to the 1848 French constitution, each of the freedoms recognised therein was protected as an inalienable right of the French citizens, but ‘always with the marginal note that it is unlimited so far as it is not limited by the ‘equal rights of others and the public safety’; see Karl Marx, *Marx and Engels Collected Works Volume 11*, (Lawrence and Wishart 2010) 114. For instance, the constitutional protection of the right to strike in the Constitution of the Republic of Turkey is subject to the restriction that it not be exercised ‘in a manner contrary to the rules of goodwill, to the detriment of society, and in a manner damaging national wealth’ (article 54).

³⁰ Karl Marx, *Marx and Engels Collected Works Volume 35*, (Lawrence and Wishart 2010) 247.

War. Moreover, the welfare state and the accompanying recognition of socio-economic rights served the strategic interest of capital by absorbing the social movements and civil unrest that had dominated Europe for centuries. Last but not least, they served as a useful ideological tool when placed in comparison with the advances of the working-class movement in the Soviet Union and the Eastern European ‘people’s democracies’.

Therefore, the relatively autonomous character of the state is precisely what allows it to perform its class function more effectively, by promoting the strategic interest of capital even when it appears to concede certain rights to the dominated classes. One could also argue that Poulantzas’s investigation of the problem of the positive measures the state adopts for the dominated classes is what leads him to define the state as ‘a relation, or more precisely as the condensate of a relation of power between struggling classes’.³¹ From the rejection of the instrumentalist conception of the state, Poulantzas concludes that the state should be regarded ‘like capital’, as ‘a relationship of forces, or more precisely as the material condensation of such a relationship among classes and class fractions’.³² This view of the state, characteristic of the Eurocommunist current which runs counter to the Marxist-Leninist view of the state, has been influential in the process of abandonment of the revolutionary commitments by Western European communist parties.

Poulantzas’s view of the state ends up reproducing the same bourgeois instrumentalist views that structuralism arguably warned against.³³ It is a position that distorts the category of ‘relative autonomy’ into that of ‘class neutrality’ of the state. The ‘relative autonomy’ of law and the state is, thus, consciously utilised by bourgeois thought in order to promote a false perception of law and the state as ‘class-neutral’ mechanisms. Therefore, it needs to be stressed that the ‘relative autonomy’ does not negate but affirms the class nature of law and enhances its class function, so as to point out the inadequacies and distortive effects of defining the state simply as a ‘material condensation of the relationship between classes’. The crucial question here is: if the state is a condensation of a relation forces, does this mean that the state is indifferent to the struggle of those forces? Is it neutral to it? Dimitris Kaltsonis answers this question in a manner which qualifies Poulantzas’s definition:

Any correlation of forces contains, with the exception of transitional historical periods, a *dominant component*. It ultimately contains the socio-economic and political component

³¹ Nicos Poulantzas, *The Poulantzas Reader*, 283.

³² Nicos Poulantzas, *State, Power, Socialism*, 128.

³³ See Ellen Meiksins Wood, *The Retreat from Class: A New ‘True’ Socialism*, (Verso 1986); and also Colin Barker, ‘A ‘New’ Reformism? A Critique of the Political Theory of Nicos Poulantzas’ [1979] *International Socialism*.

which holds the *monopoly of power in both economic and political level*. As a result, any reflection of the correlation of forces on the legal superstructure finds its *absolute limit* on this: it cannot supersede the fundamental component, i.e. the ruling class, its state, and its legal system. Any integrated legislative conquests of the subordinate classes are always secondary.³⁴

As much as it is wrong to assume that state and law are a mere reflection of the interests of the ruling class, it is equally wrong to conclude from the falseness of this assumption that the state and law shed their class nature because they can assume a more liberal or democratic form or they may adopt positive measures for the non-dominant classes. The state assumes different forms based on the concrete level of intensification of socio-economic contradictions (class struggle and intra-class conflicts). Nevertheless, these forms accommodate the fundamental characteristic of the state in the reproduction of class rule and of the conditions of production. In his definition of the state, Poulantzas seems to be focusing on the former while completely ignoring the latter.

To argue that the state is the material condensation of force relations between classes is accurate, only as long as the state is still understood as a class state, i.e. serving a class function in contributing to the reproduction of the capitalist relations of production. This class state, with its class institutions is not designed to reflect the interests of the dominated classes; this goes against its function in reproducing the capitalist relations. The capitalist state, to the extent that it does reflect interests and sanction rights for the dominated classes, *only does so*, if these rights and concessions serve the above reproduction, i.e. if the strategic interest is served; as was the case with the welfare state form.

Similarly, to argue that the principle of the ‘rule of law’ cancels the class nature of the state and law is to disregard the existence of emergency provisions in every constitutional regime and the intricate relation between norm and exception. The principle of the ‘rule of law’ captures a form of exercise of public power different from the arbitrary decision-making of absolute monarchy or dictatorial governments. However, the fact that constitutional democratic states exercise their public power on the basis of the principle of the ‘rule of law’ does not negate the fact that ‘the State often transgresses law-rules of its own making by acting without reference to the law, but also by acting directly against it’.³⁵

³⁴ Dimitrios Kaltsonis, *State, Society, Classes (in Greek)*, (Modern Time 2005) 31.

³⁵ Nicos Poulantzas, *State, Power, Socialism*, (Verso 2000) 84.

Conclusions similar to E. P. Thompson's celebration of the 'rule of law' as 'a cultural achievement of universal significance'³⁶ have to be avoided in favour of a concrete analysis which sees the legal and political forms in their unity with socio-economic conditions. If we agree that the law and state are relatively autonomous *because of* their class nature, it follows that the more abstract, formal, general and codified a juridical-state structure is, the better it fulfils its class function, 'by virtue of the formal, abstract liberty and equality that it crystallizes and the calculability that is grafted onto them'.³⁷ The more abstract and relatively autonomous a juridical-state structure is, the more capable it is of accommodating the intensification of social and economic contradictions.

CLASS FUNCTION

Based on the above, we could argue that the state does not lose its class characteristics because of its relatively autonomous nature. On the contrary, its relatively autonomous character is essential for the performance of its class function. Law and the state perform a class function, as their contribution to the reproduction of capitalism *objectively* protects and promotes the interests of the dominant class in the capitalist social formation. The category of 'reproduction' is central in order to understand the dialectics between the socio-economic and the juridico-political superstructure. Base and superstructure are parts of a unity in which the effect produced by the superstructure is simultaneously to ensure *the conditions* under which capitalist exploitation is carried out *and the reproduction* of the relations of production.³⁸

Therefore, the social formation dominated by the capitalist mode of production endures as long as the reproduction of the conditions of production is ensured; the latter endures as long as the reproduction of the relations of production is ensured; and, finally, the latter endures as long as the superstructure ensures the reproduction of these productive relations. In order for this 'topographical representation' not to be rendered a formalistic schema, law, state, and ideology must be seen only as distinct aspects of a unity of diverse aspects. It should be remembered at all points that they cannot exist in pure state; they cannot be separated in real life; but legal, political and ideological phenomena must be analysed in their developing interrelations and interdependence.

³⁶ E. P. Thompson, *Whigs and Hunters*, 265.

³⁷ Nicos Poulantzas, *The Poulantzas Reader*, 40.

³⁸ Louis Althusser, *On the Reproduction of Capitalism*, (Verso 2014) 93.

On this basis it has been argued that law's function is, not just to ensure the reproduction of capitalist relations of production, which it also helps ensure, but *directly to ensure the functioning of the capitalist relations of production*.³⁹ Law is the form of the superstructure which articulates it upon and within the base. In performing this function, law exhibits three fundamental characteristics: The first is systematicity: law takes the form of a system which aspires to internal consistency, so that one cannot invoke one rule against another, and comprehensiveness, so that it can tendentially cover every case that could possibly appear in 'reality'. The second is formalism: law's formalism abstracts from the content of what is exchanged between whom and with its correlative systematicity constitutes the 'formal universality' of law. The third is the repressive nature of law: law is repressive in that it could not exist in the absence of a corresponding system of sanctions. This implies not merely the existence of penal law but also of public law, i.e. a codified system of relations between the different institutions regulating the creation, application and interpretation of legal provisions. Law as a formal, systematized, non-contradictory, and tendentially comprehensive system that cannot exist all by itself, contributes to the reproduction of the capitalist relations of production in a dialectical unity with political and ideological processes and institutions. Law, state, and ideology are thus seen as distinct aspects of a unity of diverse aspects.

The category of reproduction is central in Louis Althusser's analysis of the capitalist social formation. Althusser's analysis warns us against subjectivist interpretations of the relation between law and social classes. He claims that 'certain Marxists, and by no means the least of them, have 'fallen' to the wrong side of the path on the ridge by presenting the state as a mere instrument of domination and repression in the service of objectives, that is, of the dominant class's conscious will'. According to him, this reflects 'a bourgeois, instrumentalist-idealist conception of the state reinforced by a bourgeois idealist (humanist) conception of social classes as 'subjects''.⁴⁰ Therefore, Althusser discusses the structural function of law and the state in reproducing capitalist relations, but he refrains from speaking of the reproduction of *bourgeois rule*.

Althusser is correct in rejecting a metaphysical conception of the state as a mere instrument of domination and repression. Of course social classes should not be seen in a metaphysical way, as unified subjects. The dialectical materialist analysis of the relationship between classes and law and the state has to take into account the existence of conflicting interests and different tendencies within the same class. *Classes are not unified subjects. But, as they occupy a specific place within*

³⁹ *ibid.*, 169.

⁴⁰ *ibid.*, 72.

the relations of production they have objective interests on the basis of which they act as agents of production. Precisely these interests are protected and promoted by law and the state in their function to reproduce the capitalist productive relations. Althusser's analysis remains one-sided to the extent that it fails to mention the issue of class rule.

This means that, on the one hand, we have to take into account class and intra-class contradictions, by concretely analysing the concrete situation. The state's role in the social formation, its function in reproducing the relations of production cannot be fulfilled unless it is a 'relatively autonomous' state which reflects the class struggle, the contingent correlation of powers. On the other hand, it means that the economic power of the class of owners of means of production is consolidated and expressed in the form of political-state power. Consequently, *the state and the law is a class (e.g. bourgeois) state and law; yet it is a class state and law which reflects the class struggle, as is evident, for instance, in the different forms with which the ruling class exercises its power in different socio-historical conditions.* The different forms of exercise of state power are evidence of the state and law's relatively autonomous nature and of their being reflective of the class struggle and the degree of intensification of class antitheses and intra-class conflicts.

A related point that has been raised against the dialectical materialist analysis of law and the state is that there is no necessary link between class interest and legislation or judicial interpretation. Such arguments tend to overemphasise the relatively autonomous character of law in order to sever the objective relation between law and class interests. Of course I am not claiming that this relationship is subjective or unmediated. Indeed, the class origins of a judge or a state official are not absolutely determinant of a decision they make or a rule they choose to apply. Their relation is rather objective.⁴¹

In order to illustrate this point, let us return to the example of the right to strike. The class function of law may be manifest in different ways. First, in the form of legislation that restricts the exercise of a right that is vital for the working class. In the aftermath of the 2008 global financial crisis limits to the exercise of the right to strike have been legislated across Europe following the European Union principle of 'best practice'. In Greece, article 211 of Act 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 UK. According to

⁴¹ This point was well established by Nicos Poulantzas, according to whom the relation between the bourgeois class and the state is an objective relation. In fact, he argued that while members of the state apparatus belong, by their class origin, to different classes, their class origin and class situation recedes into the background in relation to their class position. This means that they belong precisely to the state apparatus and that they have as their objective function the actualisation of the role of the state. See Poulantzas, *The Poulantzas Reader*, 178-179.

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.

Second, the class function of law may be manifest in the interpretation of the law that actually restricts the exercise of the right. For instance, the Greek courts, based on a *contra legem* interpretation that finds the exercise of the right to strike legitimate only if it is the measure of last resort, have displaced the relevant constitutional provision and, thus, rendered it ineffective.⁴² As a result, from 2009 to 2014, out of 300 judicial decisions on the legality of strike actions, 88% were declared illegal and only 8% legal.⁴³ Last but not least, the class function of judicial interpretation might operate in more subtle ways. It has been argued that the way in which the European Court of Human Rights has conceptualised the right to strike served to disempower the trade union movement and - ultimately - buttress the status quo, by depoliticising this activity and encouraging an understanding of it 'in ways that are ultimately compatible with the maintenance of capitalist social relations'.⁴⁴ This is the result of viewing trade union activity through the individualising lens of 'freedom of association' (article 11 of the European Convention of Human Rights).

From a different angle, the Marxist analysis of the relationship between class and law/state has been attacked by 'post-Marxist' thinkers based on their view of class as a 'product of political articulation'. Classes, these thinkers argue, are not to be found already in existence but 'have to be produced through political activities'.⁴⁵ This view, exemplified in Ernesto Laclau and Chantal Mouffe's 'Hegemony and Socialist Strategy', is 'grounded in privileging the moment of political articulation'.⁴⁶ A class is 'created' by the consciousness and political practice of its members. According to these thinkers, which class one belongs to is a matter of consciousness, not a matter of social relations.

The question then is: Does the fact that a worker does not join in a strike or protest mean that he/she is not a worker? I argue that from a dialectical standpoint, Laclau and Mouffe conflate two different issues and processes. The first is the process of the development of relations of production, which results in the developing class position of different groups; a process manifested, for instance, in the proletarianisation of previously self-employed social strata. The

⁴² Christoforos Sevastidis, *The Right to Strike and the Judicial Review of its Exercise* (in Greek), (Sakkoulas 2015) 131-133.

⁴³ *ibid.*, 9.

⁴⁴ Robert Knox, 'A Marxist approach to R.M.T. v the United Kingdom', in Damian Gonzalez-Salzburg, & Loveday Hodson (eds), *Research Methodologies for International Human Rights Law Beyond the Traditional Paradigm*, (Routledge 2019), 26-27.

⁴⁵ Robert Bocoock, *Hegemony*, (Routledge 1987) 103.

⁴⁶ Ernesto Laclau & Chantal Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics*, (Verso 1986) x.

second is the process of achieving class consciousness. These two processes are intertwined and the relation between them is similar to the one between *dynamis* and *energeia* (in Aristotelian terms) or between the *in-itself* and the *for-itself* (in Hegelian terminology). As a result, the ‘anti-essentialism’ of Laclau and Mouffe could only make sense if it were taken to mean that classes are not predetermined metaphysical subjects, but are produced in the development of the mode of production; so if the tendency is for former areas of self-employment, such as legal advice and healthcare, to become proletarianised, then these strata could be considered as part of the working-class.

The issue of class consciousness is dialectically related to this, but it is certainly not constitutive of the relation of a class to the means of production. For Laclau and Mouffe, on the contrary, any connections among groups in a society have to be ‘politically articulated’, and maintained. Outside of the ‘articulatory practice’ there are no social interconnections. This is an arguably idealist position.⁴⁷ A comprehensive analysis of classes and class theory falls outside the scope of our investigation. Such an analysis would have to take into account the post-War movement of capital, in order to understand, and situate historically, the shift from social classes, as a methodological tool of analysing social inequalities, to ‘identity strategies’.⁴⁸ It has been argued that these conceptualisations are linked to the ideological hegemony of the middle strata, i.e. to a social restructuring which added more flexible, post-Fordist elements in production and to the post-war development which sought for new social spheres and demands to be subsumed under Capital.⁴⁹

A Marxist viewpoint accepts that classes exist independently of consciousness and they are not unified subjects, but are replete with intra-class contradictions. Moreover, a comprehensive class analysis has to take into account not just the two main classes, but also intermediate strata, as well as class fractions within these classes. However, from a Marxist standpoint it is acknowledged that, at a high level of abstraction, class struggle in capitalist social formation is carried out between two main classes: capital and labour.

The concept of class struggle is an essential element of the dialectical analysis of law and the state. Struggle, i.e. force mediating conflicting economic interests, decides between formally

⁴⁷ For a critical reading of Laclau and Mouffe’s ‘Hegemony’ which sees their analysis as reducing Marxism to a few dogmatic absolutes by presenting it on the basis of absolute distinctions, see Norman Geras, ‘Post-Marxism?’, *New Left Review I* (May-June 1987), 163.

⁴⁸ See Thanasis Alexiou, ‘From the social classes to the strategies of identity: Reconstruction of production and new social movements’ (in Greek). *Theseis* 79, (2002), 67-74; and Ellen Meiksins Wood, *The Retreat from Class: The New ‘True’ Socialism*, (Verso 1986).

⁴⁹ Thanasis Alexiou, *ibid.*

equal rights. Marx's analysis manifests this clearly enough. The intense class struggle around the legislation on the length of the working-day reveals the clash of interests and wills of antagonistic classes beneath the 'voluntary' legal relation of 'equal' individuals. As Marx put it, *'between equal rights, force decides'*.⁵⁰ I argue that the relationship between law and productive relations cannot be understood clearly unless seen in its dialectical unity with the socio-economic contradictions which give rise to conflicting interests in a class-divided society. Class struggle is conducted by social classes (internally contradictory themselves), on the basis of competing socio-economic interests which are determined by the social relations and, in particular, by the place occupied by these classes in the production process.

The intensification of class struggle may result in the inability of specific state forms to accommodate the reproduction of the contradictory capitalist relations. This may, consequently, mean that 'normal' or 'liberal' forms of decision-making may be replaced by exceptional or authoritarian ones. 'Norm' and 'exception' as forms correspond to different concrete historical situations, i.e. to different levels of intensification of social contradictions. Both 'norm' and 'exception' serve the purpose of reproducing the property and productive relations, albeit with different means and in different circumstances, the specificity of which has to be taken into account for the change in form to be explained.

Seen in this light, the concept of class struggle comprises of two aspects: the aspect of class contradictions between the dominant/exploiting class and the subservient/exploited classes; and the aspect of intra-class contradictions between different fractions of the dominant class itself. Consequently, the state and legal form change and function with reference to both class and intra-class struggle. In fact, the state objectively functions to consolidate the bourgeois rule and ensure its reproduction by unifying the different fractions of the dominant class both against the common enemy and against centrifugal tendencies. It is accurate then to say that the primary class interest and the primary class function of the state is the security and reproduction of bourgeois rule; but, the form of exercise of public power to protect this primary interest is simultaneously informed by a variety of other conflicting (class and intra-class) interests.

CONCLUSION

⁵⁰ Karl Marx, *Capital Volume I*, (Penguin 1976) 344.

To conclude I want to return to the question posed in the beginning: how are we to understand the fact that in January 2018 a so-called 'left-wing' government in Greece passed legislation that restricted the right to strike?

Based on the above principles, we first need to take into account the contradiction between formal equality and material inequality. In this way we can grasp the purpose of labour law in capitalism, as a mechanism to ameliorate the material inequality and imbalance of power between employer and employee. Moreover, social rights can be conceived in terms of the 'relative autonomy' of law. Rights mediate social struggles and they reflect social struggles. The right to strike is a right that was won with the blood and struggle of workers over decades. Realising this, from a Marxist standpoint, means that the working-class and the popular strata need to fight for the right to strike (as they have done so for decades), as it is an essential tool for their struggle for better working conditions. Last but not least, Marxist analysis helps us grasp the limits of struggle for rights in capitalism, i.e. the limited protection of rights for the toiling classes that the capitalist state affords. So long as capitalist relations of production are reproduced, the rights of the toiling classes are always subject to arbitrary suspension or elimination, because of the need of capital to ensure its profitability and respond to situations of crisis.

The Greek labour movement has been using for many years and especially in recent years the slogan: 'The worker's justice is the law'. How do we understand this normative statement and how are we to give effect to it? Based on the above analysis, it can be argued that the normative content of the 'worker's justice' can never be reflected in bourgeois law. The bourgeois state may legislate the regulation of the working-day; it may sanction positive rights for the exploited classes, such as the right to strike. But, the capitalist state, as a condensation of a relation forces, is not indifferent to the struggle of those forces. It is certainly not neutral to it. The fact that between 2009 and 2014, the years of intensified class struggle in Greece, out of 285 strikes that were scrutinised by the courts on the grounds of their legality 249 were found illegal and abusive, attests to that. Precisely because of this, Marxist theory has a duty to contribute to the supersession of capitalism and play its role as a theory of praxis in the class-conscious movement that gives effect to the normative statement: 'The worker's justice *must be* the law'.