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From 'Feral' Markets to Regimes of Accumulation: the State and Law in Neoliberal Capitalism

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Abstract

The emergence between 1965 and 1973 of a crisis of over-accumulation and over-capacity, rooted in international manufacturing yet affecting the overall private business economies of the advanced capitalist countries, inaugurated a developmental context whose profound contradictions were brought home by the Great Recession of 2008-9 and the continuing Long Depression. The intervening period has seen profound economic, political and social crisis in the advanced capitalist world and has simultaneously been treacherous for under-developed economies forced to navigate rocketing energy costs and international commodity price and currency exchange rate turbulence under the continual threat of debt-levered expropriation. The struggle to locate the causes – proximate and ultimate – of the present crisis is at the same time a battle to map the basic economic and political coordinates of the continuing long downturn. In this connection it is contended that efforts have been undermined by the epistemological underdevelopment conditioned by a crisis of knowledge-formation which has unfolded in parallel with the long downturn. The dominance of neoclassical economics (‘unworldly’ since the marginal revolution) on the right and the displacement of Marxism on a structurally weakened and autodidactic left in the context of the ascent of postmodernism as an intellectual and cultural dominant has opened a space between the material and discursive realities of global capitalist development.

This work is an attempt to deploy the method developed by the classical Marxist tradition to approach the significance of the state and law in the historically-conditioned reproduction of capitalist social relations. It is contended in the first place that the dualism which obtains between national and global spheres in much theorisation of neoliberal ‘globalisation’ obscures the dialectical interrrelation of state and world market – the institutional and regulatory environment of international trade, money and finance being both the creation of states and the developing context which frames their – necessarily path-dependent and reflexive – projects of domestic economy making. As against popular notions of state decline, following Gowan the state-political content of the centring of private financial markets in the mediation of international monetary relations is recalled, while the embeddedness of the state in circuits of capital accumulation is emphasised (Tony Smith), the concept of ‘regime of accumulation’ being deployed to capture the nexus of monetary, fiscal and regulatory policy which articulates historically-conditioned development strategies. In this respect, we depart from the work of the Bolshevik jurist Pashukanis, who despite significantly advancing the materialist analysis of the juridical form, identified in his most significant work a largely derivative role for the state. It is argued that the methodological weakness represented by Pashukanis’ disproportionate emphasis on commodity *exchange* – his failure to proceed from the basis of the capitalist economy as a contradictory unity of production

and circulation – prevents him from fully apprehending the role of the state in the production and reproduction of capitalist social relations.

As the discussion unfolds, there is developed in conversation principally with Gramsci an understanding of the state as the specific material condensation of a relationship of forces among classes and class fractions. Upholding the notion of the ‘integral state’ as a differentiated unity of civil society and political society upon which terrains the capitalist class forms alliances with proximate classes as the prerequisite for and correlate of its domination of labour, the developmental context represented by neoliberalism is conceived in terms of the transition of interest-bearing capital from leading to dominant fraction of the capitalist class in parallel with its tendential contradictory disaggregation from productive capital. Such a process has necessitated a transformation in the character of bourgeois political supremacy involving a dismantling of the civil rights and social protections accumulated during the period bookended by Americanism and the welfare state and increasing dependence upon an expanded machinery of coercion. Proceeding from this basis, it is considered how in specific developmental contexts the state by way of the legal form maps the social totality, achieving distinctive couplings (and de-couplings) of wealth production and social reproduction. There is asserted the second-order integration of public and private spheres in terms of the fundamental unity of capitalist reproduction, the first-order public/private metabolism being evaluated in view of the facilitation and rationalisation of social reproduction in the context of a productive economy structured around dissociated private producers. The legal form is further interrogated in view of its role in structuring the productive antagonism between capital and labour, a relation which on the basis of its form comes to express various contents – from consensual integration to casuistic assimilation – as domestic social relations are (in-)validated by the operation of the law of value at the level of the world market. In this connection, the unproductive theoretical polarisation obtaining between approaches which consider law to be epiphenomenal and those which pursue its relative autonomy is enriched by a historicised conception in terms of which law, concretising specific relationships of forces within particular regimes of accumulation, appears as ‘sword’, as ‘shield’ and as ‘fetter’. This framework is particularly useful for evaluating the opportunities for the deployment of legal strategies by labour and groups oppressed under capitalism – a question in relation to which Pashukanis, following Lenin, demonstrated a remarkable political astuteness.

CONTENTS

Acknowledgements

Author's Declaration

Introduction	7
1 From 'feral' markets to regimes of accumulation: the state-political content of financialisation	51
2 States, capitals and the regionalisation of production	80
3 Neoliberalism as economic and political crisis	94
4 Redeeming the crisis: the formation flights of neoliberalism and postmodernism	136
5 Juridification and social transformation: legal mapping and the unity of capitalist (re-)production	146
References and Selected Bibliography	193

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AUTHOR'S DECLARATION

I declare that, except where explicit reference is made to the contribution of others, this dissertation is the result of my own work and has not been submitted for any other degree at the University of Glasgow or any other institution.

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INTRODUCTION

The conjunctural moment characterised by the ‘strange non-death of neo-liberalism’ (to borrow the title of Colin Crouch’s 2011 work¹) appears paradoxical. No one doubts that the *causam proximam* of the Great Recession can be located in the failings of the financial system, while there is some consensus that the accumulated bad debt of the financiers operates as a substantial impediment to exit from the continuing Long Depression. More precise diagnoses vary from a generous understanding of the crash as arising unpredictably from a convergence of unfortunate policy decisions and statistically unlikely events², through sub-paradigmatic reflections on the instabilities endemic to financial accumulation³, to a more wide-reaching recognition of financial turbulence as expressive of fundamental contradictions of the capitalist totality of production and circulation⁴. Whatever story one ascribes to however, it must be seen as perplexing that irrespective of the humbling of finance and the related fracturing of free-market ideology, financial markets and actors have retained or even deepened their dominance, while the medicinal prescriptions for continuing economic maladies have been nothing other than the standard neoliberal orthodoxy of fiscal retrenchment, privatisation of public assets and labour-market deregulation. Despite Alan Greenspan’s acknowledgement that “a critical pillar to market competition and free markets, did break down”, regardless of the chief executive of Deutsche Bank Josef Ackermann’s admission that “I no longer believe in the market’s self-healing power”⁵, in the face of what David Colander has described as “a systematic failure of the economics profession”⁶, it seems that if anything, the crisis has drawn us into a closer orbit around the irresistible centre of gravity that is international finance and crystallised a yet deeper (at least European) policy consensus around neo-liberalism, radically reincarnated in terms of ‘austerity’. States have been placed in fiscal jeopardy by their rescuing of beached financial institutions, whilst in a different configuration the power of international finance has been brought to bear on the weaker economies of the eurozone, in which socio-economic destabilisation and the undermining of democratic process has been regarded as a

¹ C. Crouch, *The Strange Non-Death of Neo-liberalism* (London: Polity, 2011)

² N. N. Taleb, *The Black Swan: The Impact of the Highly Improbable* (London: Penguin, 2008); A.

Greenspan, ‘The crisis’ (2010) (available at:

http://www.brookings.edu/~media/projects/bpea/spring%202010/2010a_bpea_greenspan.pdf) [accessed 18 March 2013]

³ C. M. Reinhart & K. S. Rogoff, *This Time is Different: Eight Centuries of Financial Folly* (Princeton: Princeton University Press, 2009)

⁴ Cf. A. Kliman, *The Failure of Capitalist Production: Underlying Causes of the Great Recession* (London: Pluto, 2012); M. Roberts, *The Great Recession: Profit Cycles, Economic Crisis A Marxist View* (Raleigh, N.C.: Lulu.com); G. Carchedi, *Behind the Crisis: Marx’s Dialectics of Value and Knowledge* (London: Haymarket, 2012); A. Callinicos, *Bonfire of Illusions: The Twin Crises of the Liberal World* (Cambridge: Polity, 2010); Toussaint, É., ‘Banks versus the people: the underside of a rigged game!’ (online series available at: <http://www.cadtm.org/Banks-versus-the-People-The>) [accessed 18 February 2013]; C. Lapavistas, ‘Crisis and Financialised Expropriation’ (2009) 17 *Historical Materialism* 114

⁵ M. Skapinker, ‘The market no longer has all the answers’ *Financial Times*, 25 March 2008 (available at <http://www.ft.com>) [accessed 18 March 2013]. Referenced in Callinicos, *Bonfire of Illusions*, p. 12

⁶ D. Collander *et al.*, ‘The financial crisis and the systematic failure of academic economics’ (2009) *Kiel Institute for the World Economy Discussion Papers No. 1489* (available at: <http://www.ifw-kiel.de/publications>) [accessed 18 March 2013]

price worth paying for market stabilisation. Indeed, the combustion of the late twentieth century regime of finance-driven accumulation may be said to have ushered in a period not of circumscribed financial activity and the disciplining of the financiers, but rather of an apparently narrowing state policy horizon, the disciplining of public sector workforces and retrenchment of welfare provision. Thus we might recognise not a closer supervision of finance capital by government, but an increasing regulation of state fiscal policy by un-regulated financial markets and actors, either as externally imposed and institutionally mediated by the *troika*, or internalised in such forms as the UK's *Office for Budget Responsibility* (OBR).

Many intelligent commentators from across the political spectrum have argued vehemently against austerity as a policy orientation, recalling the logical insight that reducing public spending during a downturn will necessarily diminish aggregate demand and deepen the recession⁷. The consequence for public finances would be falling tax revenues coupled with an increasing welfare bill as unemployment rises, these dynamics having a negative impact upon the public fiscal balance and levels of sovereign debt, thus exacerbating the very problems which austerity seeks ostensibly to resolve. In Greece, the contraction of public spending has had a predictably devastating impact, catalysing a deep recessionary spiral which has claimed 22 percent of GDP and some seven hundred and fifty thousand jobs since the intervention of the troika in 2010⁸. Unemployment had reached 27.5 percent by 2013, while wages declined by approximately the same proportion between 2010 and 2014 and journalists⁹ began to report a situation resembling a humanitarian crisis in urban areas blighted by homelessness and increasing reliance on hand outs. Moreover, inasmuch as it was intended to ensure the sustainability of sovereign debt, the Greek austerity programme must be recognised as a resounding failure. Public debt rose from 330bn euro in 2010 to a peak of 355bn in 2011 – when a restructuring of privately-held debt reduced the total to 304bn – before rising once more above 320bn by 2014. The profundity of the problem is still clearer when we consider the ratio of debt to GDP, which rose from 130 percent in 2009 to 177 percent in 2014¹⁰. Of course, none of this seems to have impressed the troika (later rebranded ‘the

⁷ Chief economics commentator at the *Financial Times* Martin Wolf has consistently opposed the Cameron government's austerity programme and the ECB's handling of the crisis in the euro zone. See ‘The sad record of fiscal austerity’, *Financial Times*, 26 February 2013; ‘Austerity loses an article of faith’ *Financial Times*, 23 April 2013 (available at www.ft.com). Interestingly, Wolf has been joined by neoliberal standard-bearer the International Monetary Fund (IMF) in calling for a balance between fiscal retrenchment and demand stimulus in the UK (in the IMF's words, ‘greater near-term flexibility in the fiscal adjustment path’) – *World Economic Outlook, April 2013: Hopes, Realities, Risks* (Washington: International Monetary Fund, 2013), p. 19. Less surprisingly, the Keynesian Nobel Prize winner Paul Krugman has called for counter-cyclical spending, while he has been joined in vocal opposition to austerity by such esteemed colleagues as Joseph Stiglitz and the fashionable Nouriel Roubini. P. Krugman, *End This Depression Now!* (New York: W. W. Norton & Co., 2013).

⁸ H. Flassbeck & C. Lapavistas, *Against the Troika: Crisis and Austerity in the Eurozone* (London: Verso, 2015), p. 96

⁹ A. Politaki, ‘Greece is facing a humanitarian crisis’ *The Guardian*, 11 February 2013. Available at: <http://www.theguardian.com/commentisfree/2013/feb/11/greece-humanitarian-crisis-eu> [accessed 10 March 2015]

¹⁰ Flassbeck & C. Lapavistas, *Against the Troika: Crisis and Austerity in the Eurozone*, p. 97

institutions’), who have in negotiations with a Syriza government elected with an anti-austerity mandate demonstrated a remarkable intransigence in insisting on the continuity of the bailout conditions which have strangled the Greek economy. More broadly, the results of the Greek test case do not seem to have had an impact on the broader political trajectory of the Eurozone, whose dominant players continue to prefer a beggar-thy-neighbour policy of enforcing internal devaluation on the periphery to addressing profound trade imbalances and developmental unevenness through resource pooling and fiscal transfers.

Introducing the thesis

It is in this puzzling and contradictory conjuncture that the present thesis seeks to make an intervention. The struggle to locate the causes – proximate and ultimate – of the present crisis and to construct a convincing critique (or indeed effective rationalisation) of the policy responses thereto is at the same time necessarily a battle to map the basic economic and political coordinates of neoliberal capitalism. It is only through a detailed interrogation of this developmental context that we may hope to understand the stratospheric (and retrospectively, unsustainable) rise of finance and the continued post-crash propagation of policy orientations which are driven by and serve the interests of the financiers. This same context informs the general prostration of social democratic and Marxist responses to austerity policies which proceed apace despite their patent social destructiveness and keenly observed exacerbation of recessionary dynamics. It is only by familiarising ourselves with the stumbling, uneven development of the global capitalist economy and the antagonism of the vested interests it generates that we may understand how a crisis which has so starkly revealed the instabilities and contradictions of financial accumulation can possibly have deepened the dominance of free-market ideas and entrenched the power of high finance over state policy formation; how a crisis of neoliberalism can have further generalised the neoliberal policy consensus.

The present thesis seeks therefore to develop a preliminary account of the development of the global capitalist economy following the maturation of the contradictions of the post-war period in the crises of the early 1970s. Upon this foundation it becomes possible to introduce an account of the emergence and consolidation of neoliberal political projects, understood as both a response to and driver of economic and political crisis. These projects are interrogated as the political condensation and ideological systematisation of the insights and strategic objectives of capital, emerging from a particular matrix of civil society power relations which has developed in interrelation with changing global macroeconomic conditions and the (in-)validation of fundamental productive relations by the operation of the law of value in the world market. It will be discussed how these projects are path-dependent and more or less degenerative in nature, how the privileging of short-term financial profitability can jeopardise the competitiveness of exports and

entrench industrial decline. How these economic problematics affect the exercise of political power in national political systems will further be investigated, it being demonstrated how the erosion of the material concessions undergirding consent with the emergence of structural unemployment and secular wage repression has necessitated the tendential transformation of the character of bourgeois supremacy. The institutions and processes which constituted this ‘materiality’ of consent are appraised not only from a political perspective, but economically in terms of their development in the post-war context as a machinery of state subvention undergirding the private business economy. The latter lens permits certain neoliberal reforms to be understood not only as reversals for the organised labour movement, but as a crucial dismantling of systems of (partially) rationalised social reproduction and the disintegration of a national transport and utilities infrastructure which once underpinned industrial development. The matter of how such policies came to be formulated, and continue to be adopted, is once more explained in reference to the transformation of the balance of domestic political forces in conversation with changing global macroeconomic and geopolitical conditions and the crystallisation of those transformed relations in a recomposed ‘historical bloc’ leading/dominating society.

Moreover, the retrenchment and recommodification of public services is investigated in terms of the changing form of integration of labour into the process of value production in the context of a shifting balance between productive and unproductive labour as finance as the dominant fraction of the capitalist class re-orientes away from industrial investment toward the mediation of labour revenues and the extraction of rents in international financial markets. In this light, neoliberal reforms are cognised not in terms of the victory of economics over politics or of market over society, but rather as the decoupling/recoupling of wealth production and social reproduction within ‘regimes of accumulation’ which institutionalise specific strategies of accumulation which are different from those which prevailed in the ‘welfarist’ period. To better understand this, there is developed a critique of the public/private dichotomy insofar as it is understood as delimiting the market or ‘capitalist’ space of the private business economy from a realm of ‘institutionalised altruism’ animated by democratically generated imperatives and operating as a boundary or limit to market activity. A deconstruction of the boundary is pursued from the perspective of capital accumulation, which reveals the organic and second order unity of capitalist production and social reproduction, below which the public/private dichotomy is revealed a first order distinction which facilitates the reproduction of the social conditions grounding capital accumulation. This move permits the consideration of how the state, by way of the legal form, maps the social totality, organising social reproduction in a manner facilitative of the extraction and realisation of surplus value. The re-drawing of the public/private boundary can then be recognised as an expression of both the balance of political forces and the nature of the production-reproduction coupling operative within the attendant regime of accumulation. This discussion leads on to a broader consideration of how the state through the machinery of law has historically driven social

transformation through the institutional mediation of social relations, especially that of the fundamental productive antagonism obtaining between capital and labour. It is recalled how legal coercion is deployed to create a market of free labour powers in the process of primitive accumulation – both historically and as regards the commodification of labour in regions characterised by mixed modes of production – and further to devalue labour power where periodically necessary to ensure competitiveness in global commodity markets. This function of the law-state is compared and contrasted with the opportunities which arise in different macro-economic and class-relational contexts for labour and groups oppressed under capitalism to operationalise the relative institutional insulation of law, deploying its own structures and logic to embed political victories and impose limits on their subjection by capital. From the perspective of the latter, understood in aggregate as total social capital, this process can stabilise accumulation through securing the sustainable reproduction of a healthy and sufficiently content working population. In this way, labour movements, perhaps intersecting with bourgeois reformist currents underlain by notions of ‘civilised morality’, may offset the tendency for individual capitals in a competitive environment to myopically increase the rate of exploitation to such a degree as the erode the foundation for future exploitation. At this point, the pertinence of the discussion to the diagnosis of neoliberalism is apparent insofar as state organisation of rent-seeking through the regulatively incentivised expropriation of both the socialised and non-socialised portion of the wage speaks to the increasing inability of the state to represent the interests of total social capital or of long-term accumulation (or rather of such interests to be heard within a historical bloc dominated by finance capital). The final perspective from which the role of law in mediating the capital-labour relation is assessed is that of the legal form’s structural interconnection with the commodity form and its consequent historical contingency. Given that legal relations are the institutionalised form of the antagonistic interaction of dissociated private commodity owners, they form part of the total ensemble of social relations of production which come to act as a brake on the further development of the forces of production. The specifically legal form of social regulation, as opposed to modes of normative social control more generally, therefore outlives its usefulness in the transition to more advanced forms of economic and political organisation.

As is apparent from the above, the substantive and methodological pivot of the thesis is the capitalist state, its form, and the character of its activities in different developmental contexts, especially those represented by the post-war ‘Keynesian’ compromise and neoliberalism. The state is theorised both in terms of the changing structure of the inter-state system and its interrelation with the development of the world market, and as regards its operation domestically in representing, concretising and regulating civil society relations in reflexive response to global macroeconomic and geopolitical conditions. These facets are considered to be deeply intertwined insofar as the present work seeks to recover an understanding of the dialectical unity in opposition of state and world market, the latter being both the product of the competitive interaction of rival

state-capitals and the continually developing context which frames their reflexive projects of domestic economy-making. An accurate appreciation of the state form is indispensable if we are to understand the present conjuncture and hope to offer appropriate guidance for political intervention therein. The consequences of misdiagnosis are profound, such that the thesis serves partly as a corrective to those theoretical approaches which would recognise the spectre of undead neoliberalism and the contradictory quality of austerity programmes as confirming some of the stronger popular narratives of the decline or decentring of *the state* in the neoliberal period. Some may find it hard to accept that national governments would adopt austerity measures deepening recessionary dynamics if it weren't for the threat public deficits and mounting sovereign debts posed to creditworthiness in international financial markets. It may be tempting to view the transfer of public wealth through bailouts and quantitative easing to financial institutions whose speculative activities were the immediate cause of the economic crisis as symptomatic of the prostration of state managers in view of a boundless, disembodied technocratic process of financialisation which develops outwith their control. The argument presented in this thesis unfolds in contradistinction to such accounts which assert the declining significance of the boundaries and institutions of the nation-state as against the rising power of Multi-National Corporations (MNCs) and mobile financial capital. As I explore in depth, such understandings commonly neglect the extreme inequities of power and influence within the state-system (states exist only in the plural), fail to recognise the crucial *state-content* of financialisation internationally and further make strong assumptions about what states *are*, consequently privileging particular institutions and activities as state institutions/activities and recognising particular policy orientations as demonstrative of state 'strength' or integrity.

While austerity programmes are necessarily contradictory, these contradictions do not arise primarily and for most states at the level of policy formation, either due to the process being constrained by the disciplinary force of financial markets or distorted by an evangelical commitment to free markets. Rather the contradictions are real contradictions attending the interaction of different scales of economic activity in a global economy characterised by uneven development and a changing international division of capital (and labour). The story is a familiar one of macro-scale irrationalities issuing cumulatively from micro-rational behaviours in an unplanned system of production structured around the association of dissociated private producers. As competition for stagnating markets intensifies within a structural context of over-capacity, individual capitals (and at a further remove, state-capitals) will seek rationally to improve their cost-positions through labour devaluation. With the long-term outlook uncertain and retained earnings more likely to be channelled towards financial investments than productive ones, increasing the rate of exploitation by squeezing wages will be the primary mode of shoring up profitability. Fiscal retrenchment represents in large part the expropriation of the socialised portion of the wage, while the hollowing out of welfare provision increases the disciplinary pressure on

those remaining in work. Workers are more likely to accept labour intensification and detrimental changes to pay and conditions as the alternative of living on welfare becomes progressively bleaker. In the UK, the downwards pressure exacted on the wage rate by welfare reform is most viscerally apparent in the retail sector, where it is personified by workers ‘employed’ under the coalition ‘Workfare’ regime who labour to retain their entitlement to unemployment benefit alongside (and sometimes in the place of) minimum-wage workers. The bargaining position of the latter in relation to management seeking to reduce costs in a recession is dramatically undermined by the availability of effectively free labour, while the fraternisation of these two groups of workers will doubtless quickly reveal the realities of life on increasingly austere state benefits. So far, so rational in view of the imperatives of capital accumulation. Yet the cumulative effect of the individually-rational policies of state-capitals locked into a competitive project of labour devaluation is to reduce the overall demand for wage goods in the biggest markets of the global economy, which when coupled with stagnant demand for capital goods as investment dries up, deepens the recession. Austerity as a policy orientation is therefore highly contradictory, insofar as it involves balancing long-term structural adjustment (wage devaluation) against the (hopefully short-term) entrenchment of recessionary dynamics – in other words the privileging of profit over growth. However, the standard Keynesian appeal for counter-cyclical spending (which has unfortunately been too un-critically articulated by parts of the far left as a ‘solution’ to the crisis) is no less contradictory, since it would from the perspective of capital privilege the imperative of growth over that of profit. Every capitalist crisis is one of over-production and under-consumption, twin features which if they could be sublated by force of will would not operate as drivers of crisis. State productive investment would promote labour *valorisation* in opposition to the project of labour devalorisation, inasmuch as an increase in employment decreases the disciplinary power of mass of the unemployed, while state contracts would potentially enable firms to survive at cost-positions not validated by global commodity markets. The threat to the newly-‘Keynesian’ state-capital’s overall cost-position in relation to state-capitals pursuing austerity would be severe. The problem would be particularly acute for state-capitals (such as the UK) occupying fundamentally weak industrial cost-positions and recording sizeable trade in goods deficits, in which case productive investment would likely *feed* those trade deficits and benefit more competitive export economies as *free riders*. Moreover, the pursuit of Keynesian deficit spending engenders a particular tension between growth and the profit of finance capital specifically, since on the basis of the experience of the 1970s, the former is likely to generate inflationary dynamics which endanger returns on financial assets. Thus, the dominance of finance capital (which for reasons we will explore is as likely to be entrenched as unseated by the economic crisis) would militate against the pursuit of deficit spending, even in the event of such projects being theoretically in the interests of total social capital. These contradictions find their ultimate expression in the coercive pressure of an *international* financial regime which punishes deficit spending by states which have neither the freedom of a current account surplus nor the privileges of international monetary seigniorage.

Given the above discussion, we must be careful to avoid the temptation to characterise austerity programmes as ‘ideological’ in a strong sense which infers a theoretically-generated disjuncture between state policy and objective economic conditions – i.e. neoliberal governments are blinded to reality by unquestionable faith in the free market. The sense in which austerity is ‘ideological’ (apart from the obvious manner in which its implementation involves political choices such as, say, the prioritisation of housing benefit cuts over those in the military) is altogether different. Austerity politics represents a discursively-generated policy consensus driven fundamentally by the real-world structural imperatives of capital (led itself crucially by finance capital in the neoliberal context) in dialogue with proximate classes and in partial consort with organised sections of labour as the dominated class. The *ideological* moment is thus the process by which the insights of capitalists enslaved by the coercive pressures of competitive accumulation in a deteriorating macro-economic context receive systematised articulation – institutionally mediated and state-inscribed – in a narrative of the unfolding crisis and the appropriate responses thereto. The authentically *political* moment is the moment of totalisation or hegemonic *universalisation* whereby the particular interests of a specific social group are presented (and received) as being in the national-popular interest. This is of course to state the matter in the very simplest of terms, such that we would do well to recall that austerity, like the neoliberal project as a whole, is not one singular monolithic programme, but a collection of differentiated policy packages deployed in divergent national contexts and united often as much by legitimating reference to a hegemonic conjunctural narrative as by substantive homology. However, while austerity comes in a wide variety of flavours, the most fundamental distinction internal to the project is that which obtains between austerity measures as externally imposed upon a state and those independently undertaken, which we might term respectively *punitive* and *elective* forms of fiscal austerity. While these categories might be fuzzy around their edges, there is no doubting the qualitative distinction obtaining between the form of elective social rationalisation (from the perspective of capital) being pursued in the UK and the type of wholesale punitive re-engineering being imposed in Greece under the supervision of the *troika*. The difference, which might be playfully described in terms of purportedly ‘creative’ versus decidedly ‘wilful’ forms of destruction, will be familiar to anyone who sought to contrast the 1980s IMF ‘structural adjustment’ programmes in Latin America with the altogether more modest (though nonetheless painful) retrenchment and re-commodification of the welfare state that occurred in the ‘advanced capitalist’ world. While all austerity programmes have a domestic class inflection, in the *punitive* forms this is fused with a strong international class – indeed *imperial* – dynamic. In an environment structured by stagnating or contracting demand in international commodity markets and a monetary tightness prefigured by the emergence of the true extent of asset-price over-valuation in the world’s financial centres, any state-capital would naturally concern itself with fiscal consolidation. The latter is however far from a technocratic process devoid of political content and receives divergent forms of implementation reflecting

different domestic balances of class forces and different degrees of external coercion. There is a particular tension operative between the interests of foreign creditors in the timely repayment of debts and that of (sections of) domestic capital in the long-term re-structuring of the economy, including principally the improvement of its international cost-position. The relative force of these interests will depend upon the particular state's trade balance, its public fiscal balance and the terms of its access to liquidity, the latter determined crucially by its form of integration into the international monetary system and its consequent degree of insulation from (or form of mediated articulation with) the raw coercive power of international financial markets. Further, as we shall explore, financial markets form an integral part of the inter-state system, such that foreign bondholders act in parallel with corresponding states, the two forming 'militant consortia'¹¹ which seek quite rationally to reconfigure the nature of the economic interrelation of the creditor and debtor state-capitals, in lieu of or in addition to the repayment of debts.

Structure and methodology

The thesis proceeds by way of the following structure. In the opening chapter there is developed an account of the long historical context of post-war capitalism's descent into crisis. This chapter prepares the ground for discussion of the specificities of neoliberalism, providing an elementary framing within which consideration of the nature and function of 'the state' in financialised late capitalism may be advanced. The argument begins by recalling the position of interest-bearing capital in Marx's account of accumulation, its embeddedness in the real economy and its indispensability for reproduction on an expanded scale. This is necessary to ground the discussion in view the seemingly abstracted and alchemical character of financial accumulation which arises from its fetishised form and whose mystical properties are inadequately interrogated by neoclassical economists and the mainstream media. While Marx is clear that finance is integral to productive expansion, a theme which runs throughout his analysis is an understanding of the manner in which interest-bearing and productive capital can under certain conditions become disaggregated, the spheres of production and circulation being decoupled as capital is gripped by a speculative euphoria, seeking to bypass the sphere of production and make money directly out of money. The discussion proceeds then to consider why financial activities and profits have experienced such rapid expansion since the late 1970s, the crucial move being to locate this process historically in conversation with Giovanni Arrighi's Braudelian long-run historiography of the development of the capitalist world system. The importance of this step inheres in the fact that it is only by so broadening the space-time horizon of our observations that we may discern whether,

¹¹ The phrase is borrowed from Hobsbawm's analysis of the response of the British state and its capitals to the defaults of their foreign debtors during the so-called 'Great Depression' of 1873-1896. The parallels with the present crisis in terms of the tendential *verticalisation* of relations (marking a transition from fraternity to fratricide) between associated state-capitals – driven by debt obligations as a lever of expropriation – in a context of intensifying competition for stagnating markets should be clear. E. Hobsbawm, *Industry and Empire: From 1750 to the Present Day* (London: Penguin, 1999), pp. 108-9

behind the seeming radical novelty of the contemporary process of financial expansion, there emerge familiar and recurrent patterns. Drawing on Arrighi's discussion in *The Long Twentieth Century*, it is argued that we should not treat either the protracted crisis represented by the continuing long downturn nor the contemporary financial expansion as radical departures from previous patterns of development. Rather it becomes clear that the history of the capitalist world system is characterised by the alternation of relatively short phases of generalised expansion along a definite developmental path ('continuous change') with long periods of 'discontinuous change' entailing crisis, restructuring and reorganisation. Similarly, financial expansion, far from a contemporary anomaly, has been a recurrent tendency of historical capitalism from its earliest beginnings, emerging typically at the moment of exhaustion of phases of material expansion of the global economy and prefiguring its structural reorganisation.

Arrighi's methodology is particularly apposite in view of the fundamental questions the thesis seeks to address, insofar as it illuminates this interrelation between the creation and reproduction of a system of national states and the development of a stuttering, crisis-ridden, yet tremendously adaptive capitalist world economy. Arrighi, following Braudel, periodises the history of capitalist development into four distinct but overlapping 'systemic cycles of accumulation', each consisting in a pattern of major capitalist development of systemic significance, yet centred on a distinct geographical location and overseen by a dominant bloc of governmental and business agencies led by a hegemonic state. This interpretative scheme permits the recovery of the agency of state-capitals in the development of the world market, each cycle of accumulation proceeding through a complex apparatus of institutions and practices (a 'regime of accumulation') by which the leading state-capital formation promotes, organises and regulates the expansion of the global economy. The insight that the exercise of 'world hegemony' has always involved fundamental transformative action, that the modern state system has developed through profound restructurings led by successive hegemonic states in organising systemic patterns of accumulation, is crucial in understanding the present conjuncture and responding to contemporary anxieties as to the decentring of the state. This is particularly the case when we consider the present financial expansion in view of Arrighi's assertion that such phenomena typically express the 'autumn' phase of a systemic cycle of accumulation, at which point the primary agent of world-scale accumulation, in response to intensified international competition, leads a 'reversal to eclecticism', tendentially withdrawing from trade in search of profits in the sphere of circulation. The result is a temporary 'efflorescence' of vertiginous profitability for the dominant state-capital formation, which nevertheless ultimately signals the decline of its hegemony as its interests become decoupled from the further material expansion of the global economy. The idea which emerges is that the contemporary financial expansion and the interconnected reconfiguration of the monetary and financial architecture of the inter-state system has been crucially driven by the strategic action of the dominant state-capital formation, led by the US, in an attempt to secure its global hegemony in

reflexive response to a growing challenge in the sphere of production. This notion is developed and revisited through the chapter and in the remainder of the thesis.

Similarly as in Arrighi's analysis the intensification of inter-state competition catalyses the transition from a phase of generalised expansion to a period of discontinuous change involving crisis, restructuring and reorganising, Robert Brenner explains the exhaustion of the post-war boom and the emergence of the subsequent long downturn through precisely this dynamic. It is in conversation with his argument in *The Economics of Global Turbulence* that there is presented in the next part of the first chapter a detailed exposition of the fundamental global macroeconomic context which informed the development of neoliberalism as a set of reflexive political projects. The discussion continues to be informed by Arrighi's guiding explanatory framework, the long downturn being examined as a particular example of the exhaustion of a (in this case US-led) phase of generalised material expansion through the eruption of intensified inter-capitalist competition. Engagement with Brenner's account deepens and enriches Arrighi's analysis insofar as it permits an empirically informed examination of the precise mechanics of the process whereby such increased competition drives the emergence (and persistence) of overcapacity and a consequent reduction in profitability. Instructively, Brenner grounds his understanding of the trajectory of the profit rate in the historical pattern of uneven development of the global economy and the corresponding structure and intensity of international competition. His analysis is deployed to explain how in the period 1965-73 the intensification of competition between earlier-developing and dominant blocs of capital in the US and the UK and later waves of productive investment in Japan and Germany led to the emergence of overcapacity in the international manufacturing sector, making for sharply declining profitability system-wide and propelling the global economy from long boom to long downturn. Building on Brenner's argument, it is demonstrated how the persistence of such chronic over-capacity, rooted in manufacturing but affecting the overall private business economies of the advanced capitalist economies, has been responsible for the maintenance of secularly reduced growth in GDP, investment, productivity and wage growth since the 1970s. Certain key aspects of Brenner's analysis are foregrounded in explaining the failure of earlier-developing higher-cost capitals to adjust to stiffened competition by withdrawal or diversification in line with Schumpeterian theories of 'competitive shakeout'. Explaining that firms possessing fixed capital investments will rather generally find it rational to remain in a product line provided they continue to realise the average rate of profit on their circulating capital, Brenner sketches a theory of a 'malign invisible hand' which describes a self-generating series of steps resulting from the rational actions of individual capitals leading not towards, but away from adjustment.

The third and final key methodological move which structures the discussion in the first chapter is the introduction of Peter Gowan's description of the development of the 'Dollar-Wall Street Regime' (DWSR) as a mode of cognising the transformation of the inter-state system's monetary

and financial architecture. The discussion purposefully nests Gowan's theory within Arrighi's broader framework as a precise structural exploration of how the US has been able to achieve a 'wonderful moment' in the autumn of its systemic cycle of accumulation through "massive, system-wide redistributions of income and wealth from all kinds of communities to the agencies that control mobile capital"¹². It is also productively dovetailed with Brenner's analysis of the shifting burden of chronic overcapacity in the development of the long downturn, providing a complementary explanation of how the US secured and deepened the policy freedom and structural advantages which it has so successfully deployed to redistribute the costs of the crisis. Following Gowan, we are able to understand how the twin monetary and oil price crises of the early 1970s were operationalised to entrench US control over the 'dominant' monetary pole of the global economy as against the relative erosion of its power in the 'determining' productive sphere. The dollar price emerged as a potent weapon of political and economic statecraft as the US was liberated from balance of payment constraints by the transition to the dollar standard, while the relative competitiveness of US capitals was improved by an oil price hike which harmed European and Japanese exporters and for which the US had intensively lobbied OPEC. At the same time, a new pre-eminence was secured for international financial markets (centred around Wall St and London as the largest and most liquid) in absorbing Middle Eastern petrodollars and recycling that liquidity to finance the trade deficits of oil-importing states and weaker economies struggling to deal with the effects of a gyrating dollar on commodity prices. It is explored how the regime secured paradoxical strengthening through the eruption of localised financial crises (prefigured by the evolving context of monetary turbulence) and how the facade-cosmopolitan agencies of the International Monetary Fund (IMF) and World Bank were deployed to capitalise on such crises as opportunities for financially-levered expropriation.

The remainder of the first chapter explores in conversation with Brenner and Gowan the continuing development of the long downturn, noting the recurrent shifting of the burden of over-capacity among the G7 economies around the pivot constituted by rates of exchange within a broader unchanged context of over-capacity in international manufacturing. This latter environment is understood as prefiguring the entrenchment of a sustained asymmetry between the dynamism of the services sector and the stagnation of production in the advanced capitalist economies. The decision of state managers to embrace this pattern, taking decisive action to alter the character and volume of flows of value in the sphere of circulation, and indeed the balance between the latter sphere and that of production, is a key moment in the emergence of neoliberalism as the preferred (set of) political solution(s) to the ongoing crisis. Crucially and in sum, the first chapter by way of an original coupling of the theoretical approaches developed by Arrighi, Brenner and Gowan, charts the fundamental developmental coordinates of the crises of post-war capitalism, locating these

¹² G. Arrighi, *The Long Twentieth Century: Money, Power and the Origins of our Times* (London: Verso, 2010), pp. 373

within the broader historical patterning of world capitalist development and framing the subsequent interrogation of neoliberalism. It does so moreover in a manner which avoids resorting to speculative accounts of epochal transformation, grounding analysis instead in the unfolding of the fundamental competitive relations pertaining between rival state-capitals under changing macroeconomic conditions. The recognition that the animating logic of such relations is transformed from one of fraternity (or relatively collaborative competition) to outright fratricide in the transition between rising or high overall returns and those which are falling or ‘intolerable’, is crucial and is returned to throughout the thesis.

Chapter Two deepens the explanatory framework presented in the first chapter by developing an account of the elementary coupling which underlies an analysis of the global economy as the product of the competitive interaction of rival state-capitals – the functional interrelation of states and capitals. If the first chapter theorises the development of the global economy by surveying the interaction of state capitals as its atoms, the second interrogates the nuclear force of these elementary particles. Dismantling the liberal conception of the fundamental opposition obtaining state and market, the discussion seeks to recover an understanding of the ‘instituted’ nature of market relations, emphasising the structural interdependence of states and capitals and the immanence of state functions to the production and circulation of value. The discussion builds on Tony Smith’s unpacking of the dichotomy between particular and universal interests, which grounds the widely-held understanding of the state as an institutionalised order established to pursue the ‘universal’ interest in the production of public goods and the avoidance of public bads. Smith reminds us that the animating logic of capitalist society is the accumulation of capital, its organising principle the self-valorisation of value and its fundamental subject capital itself (in fact a ‘bizarre pseudo-subject’). This is a crucial corrective to the humanist social ontology which, in underlying much conventional state theory, ultimately powers the assumption that when the state ceases to promote certain ‘human’ goals, this necessarily expresses a loss of integrity or essential weakening relative to other economic and political agencies. Concretising this conceptual work, the discussion details the functional interrelation between states and capitals, emphasising the role of the state in the articulation and enforcement of the property rights presupposed and generated by commodity production and circulation, in the institution of a regime of wage labour and in securing the availability of labour-powers in sufficient quantity and with the skills and capacities appropriate to the extant degree of development of the forces of production. Invoking Aglietta’s account of the role of the state as bearer of the monetary constraint, it is discussed how the effects of the latter are modified and temporarily displaced by the state in ensuring the coherence of the attendant regime of accumulation, while the centrality of public expenditure (and the accumulation of sovereign debt) in leading fixed capital formation and in modulating business cycles is emphasised. There is further detailed the suite of subventionary activity carried on by the state in even the most

‘liberalised’ of regimes, while the role of the state in underwriting the surplus profits obtained through technological innovation by the administration of intellectual property rights is recalled.

In detailing the structural interrelation of states and capitals and the indispensability of state functions to the accumulation of capital, it is emphasised throughout chapter two that these irreducible activities not only survive the developments in the world market which have been commonly cognised in terms of ‘globalisation’, but in certain respects assume greater significance under such conditions. A crucial step in developing this argument is to challenge empirically and methodologically accounts of globalisation which emphasise the mobility of capital and the unbounded character of international financial and monetary flows. Arguing that such accounts are typically ‘all motion and no matter’, the discussion seeks to re-embody an apparently weightless globalised economy through investigation of the materiality and territorial embeddedness of international production chains. Through this re-materialisation of production, continuing corporate dependence on state apparatuses is revealed, the latter operating as the glue which holds together the multi-dimensional social space required for the regular extraction and realisation of surplus value. The empirical researches carried out by Kevin Doogan and Alan Rugman are deployed to concretise the operation of transnational capital within specific processes of domestic economy making and regional integration, the operations of TNCs being revealed as strikingly rooted in the domestic economies of their host states and where internationalised, following the contours of a ‘triadised’ global economy. The role of states as the architects of global economic development is reasserted, while as against the accounts developed by Santos and Twinning of the relativisation of state power in view of the rise to prominence of transnational capital, the functional interdependence and mutuality of interest of TNCs and their related state managers is reiterated.

Chapter One revealed in dialogue with Gowan the creation of a market-based system for the maintenance of US political power underpinned by the interpenetrating interests of Wall Street and Washington. As we shall see, Chapter Three proceeds subsequently to investigate the unfolding within national political systems of the contradictions inherent in hitching state policy to the imperatives of financial accumulation. Within this broad discursive progression, the second chapter interjects to provide a general theoretical underpinning and conceptual clarification of the process by which the intensification of international competition brings about an ever greater strategic and organisational coalescence of states and national capitals. This is pursued in conversation with Nikolai Bukharin’s classical account of the changing structure of capitalism under conditions of inter-imperialist competition. Bukharin’s insight that the internationalisation of economic life and the intensification of competition in the world market leads to a progressive *nationalisation* of capital is invoked as a useful corrective to accounts (developed by Santos and Chimni) of the emergence of a ‘transnational capitalist class’ whose interests circumscribe the power of states and whose activity fundamentally drives the globalisation of the economy. It is argued that in a global

economy characterised by entrenched uneven development, the bourgeoisie is necessarily cut across by national stratifications, while these divisions are deepened in a context of secularly reduced returns as states intervene increasingly aggressively to support the profitability of their respective capitals. In this manner there is further developed the idea emerging from Chapter One – that the extant restructuring of the global economy represents not the decentring of states or sublation of the state-form, but rather expresses a coercive redistribution of power *within* the inter-state system as its dominant agent deploys its resources to structurally modulate the outcome of economic competition. These insights are further explored in the second chapter in the specific context of the emergence of a proto-constitutional regime of rules regulating foreign investment, usefully theorised by Schneiderman. While recognising that the robust protection of the interests of investors restricts the policy horizons of states signatory to regional trade agreements and bilateral investment treaties, it is contended that Schneiderman draws conclusions which are both too strong and of an imprecise character when he, following Santos and Twining, consequently subsumes states within a broader category of ‘globalising actors’. Schneiderman, it is argued, essentialises the contextually-significant redistributive functions of capitalist states and flattens the class antagonisms obtaining domestically in under-developed states (within which there are powerful ‘collaborator’ class interests) in effectively contending that social democratic policy options are primarily debarred by juridical means and are so ruled out against the ‘interests’ of states. It is further pointed out that Schneiderman seeks to deduce ‘global’ transformations from an account of economic globalisation which analytically privileges North-South relations, the latter shifting the centre of gravity of the global economy and being more generally unsound given the historical political heteronomy of the South. At this point there is introduced the pronounced heterogeneity of a neoliberal experience which has entailed social ‘rationalisation’ (from the perspective of capital) attended by a *relative* resilience of welfare regimes in the core economies as compared with the super-exploitation of labour and imperialistic expropriation of public resources in peripheral regions – an asymmetry which continues to structure the account of austerity presented here. In light of the insight that neoliberalism has largely been for “dummies”, the constitutionalisation of investment rules attains an alternative significance, not as expressing a fundamental ceding of power *from* states *to* TNCs but as reflecting the increasingly imperialistic character of regional associations of state capitals under conditions of secular over-accumulation and over-capacity.

In Chapter Three the discussion proceeds to consider the contradictory patterns of economic and political development which have unfolded in the advanced capitalist economies in conversation with the global macroeconomic conditions of the long downturn. While Chapter One revealed the state-political content of the rise to prominence of international financial markets and actors, the third chapter interrogates the social and political content of financialisation within national economies, assessing how the fiscal, monetary and regulative policies of state managers have come to privilege financial profits and entrench the developmental asymmetry obtaining between finance

and industry. The predominance of such policy orientations is explained in view of the shifting balance of forces attending inter- and intra-class relations whose contradictory reproduction has been problematised by the persistence of a chronic crisis of over-accumulation and profitability centred on international manufacturing. It is explained how the relative dynamism of the sphere of circulation, prefigured by the redesigning of the financial and monetary architecture of the inter-state system and increasingly enabling domestic regulatory environments, has propelled finance capital to political predominance within national political systems. The consequences of this rearrangement of the ruling strata are explored in terms of social polarisation and fragmentation and the shifting character of the political power which has come to be reproduced in management of a fracturing body politic. In all of this, it should be emphasised that the relationship between the analysis set out in Chapters One and Three is not one of linear discursive progression from the 'global' to the 'national', but rather one of dialectical unity in determination. The development of the world market prefigures the balance of forces attending domestic civil society relations insofar as it informs rates of return for capital (both fractionally and in aggregate) and incentivises/disincentivises productive investment, the latter in turn crucially informing the rate of employment and structurally underpinning the bargaining power of organised labour. In turn, the national political settlements which emerge as the condensation and concretisation of developing civil society relationships generate imperatives for state managers who deploy state diplomatic, juridical, geo-political and military power to re-modulate competitive relations in the world market.

The argument in the third chapter is advanced by first recalling that the expansion of credit and the formation of fictitious capital has always an irreducible political content insofar as the rate of interest and stock prices are both fundamentally 'irrational expressions'. While embedded within the process of capital accumulation, these indexes do not ultimately refer to embodied labour values (like commodity values) expressing purely a relationship of force between creditor and debtor informed by the context of supply and demand. The key insight developed here is that the interplay of supply and demand does not take place in a vacuum, rather unfolding in the structural context created by state regulative activity. The discussion in Chapter One is here recalled in a different light, it being examined how the supply of and demand for credit internationally has been informed by the redesigned financial and monetary architecture of the inter-state system, effecting a significant system-wide transfer of value to the agencies controlling money capital. In the third chapter it is examined how an analogous process has developed domestically, active shifts in state regulatory orientation modulating the supply of and demand for money capital and underwriting vertiginous financial profitability. Specifically, the retrenchment of affordable public housing provision, the privatisation of transport and utilities and the re-commodification of further and higher education has increased demand for credit as workers attempt to gain access to basic social necessities in a broader context of falling real wages. At the same time, the deregulation of consumer lending increases supply and drives the inflation of house prices and the valorisation of

financial instruments based on the securitisation of these underlying assets. At this point, it may be useful to foreground a methodological homology which characterises the development of the argument in the thesis as a whole. Crucial insights into the patterning of historical capitalist development can be gained through an interrogation of the unfolding of the exploitative relation between capital and labour, the functional and fractious interrelation of productive and financial capital and the competitive interaction of state capitals. The content of these relations is embedded in the process of accumulation in the form of the fundamentally irrational expressions: the *value of labour power*; the *rate of interest*, and; the *tendential gravitation of market prices towards prices of production*. The determination of these three pivots is a simultaneously economic, political and legal process, while states have in each case a crucial role insofar as their regulative frameworks form the structural context within which these relations of force play out. The legal modulation of the reproduction of the capital-labour relation is discussed at length in Chapter 5, while the role of the state in reconfiguring the relationship between production and circulation is examined internationally in Chapter 1 and domestically in Chapter 3. The role of the state in mediating/displacing the operation of the law of value in the determination of market prices appears more implicitly and is only partially developed, although it is discussed how the loosening of the monetary constraint in the transition to the Dollar standard has permitted the US to circumvent the weakening of its capitals' fundamental cost position, while it is elsewhere summarily considered how the competitiveness of the core EU export economies has been institutionally entrenched in the development of the Eurozone.

Chapter Three presents the neoliberal policy consensus as emerging from the reconfiguration of the 'historical bloc' leading-dominating each of the advanced capitalist societies, the latter transformation being both prefigured by and entrenching the asymmetry obtaining between the dynamism of the services sector and the stagnation of industry in the context of a secular crisis of over-accumulation. The concept of the 'historical bloc' is understood – as developed in Gramsci's carceral writings and as usefully clarified in Peter Thomas' recent penetrating exegesis – as the network of alliances obtaining between capital and proximate classes which is the prerequisite for and correlate of its domination of labour. It is argued that the position of finance capital within this formation has progressed from one of *leadership* to one of *domination* as the interests of industrial and financial capital have tended to disaggregate in view of the changing character of financial activity. In conversation with Costas Lapavistas and Paulo dos Santos, it is described how over the past three decades large enterprises have become less dependent on banks for credit, investing out of retained earnings in a context of low productivity growth, or else looking to open markets to obtain finance. In response, banks have re-oriented their activities towards consumer lending and mediating access to financial markets by both corporations and individuals, a move so successful as to increase the national significance of their profits even as they are ejected from the sphere of production. Dos Santos' empirical research is deployed to locate the source of a startling proportion

of financial profits (which have at first glance a seemingly ethereal character) in the direct appropriation of labour revenues. Further, his explication of the particularly exploitative character of the relations banks have come increasingly to enter into with wage-earners locates these interactions in the broader context of wage repression, fiscal retrenchment and welfare (re-)commodification while revealing their irreducible class character. Most significantly however, it is explained by way of a highly innovative application of several determinations and concepts developed by Marx in *Capital* – the distinction between productive and unproductive labour, the rate of profit and the production of surplus value by the relative mechanism – how the changing character of financial activity speaks to an antagonism between productive and interest-bearing capital which lies at the heart of the neoliberal project. It is described how the rents extracted from the financial mediation of labour revenues and the monopoly profits appropriated by the operators of privatised public services reappear as costs of production, the increasing price of wage goods raising the floor of necessary paid labour time for the productive worker and jeopardising the competitiveness of exports. This effect is compounded when state managers favour financial profitability in the development of fiscal and monetary policy, in which case currency devaluation ceases to be the automatic response to internal price rises, this precise dynamic being described by Jim Cuthbert in his analysis of the chronic mismanagement of the British economy. These insights are used to develop an account of finance-driven regimes of accumulation as path-dependent and degenerative, financial profits being grounded not in the production of new values through a dynamic process of productive investment and productivity growth, but on state-inscribed expropriations of values initially realised by labour as wages in their socialised and non-socialised forms. These expropriations represent capital *feeding upon* the fruits of the last healthy cycle of accumulation and militate against the recovery of the productive sector. Furthermore, the form of financial expansion described, entailing a disaggregation of the spheres of production and circulation and an expansion of fictitious capital in abstraction from the production of new value, embeds profound crisis tendencies. Indeed, the financial crisis which erupted in the autumn of 2008, triggered by the collapse of the securitised US sub-prime mortgage market, represented in this light the violent re-assertion of the integral unity of production and circulation.

Having outlined these fundamental economic contradictions at the heart of finance-driven regimes of accumulation, the third chapter proceeds to consider the problematisation of social reproduction by de-industrialisation and the insufficient material integration of the working population into processes of financial accumulation. Drawing on Arrighi's analysis – who himself builds on the work of Kevin Phillips – it is recalled how financial expansions have historically produced corresponding patterns of social polarisation, the social basis of banking and money-dealing being necessarily narrower than that of manufacturing, transport and trade. Particularly useful is Arrighi's description of the 'paradigm case' of late fourteenth and early fifteenth century Florence, when cloth production collapsed and Florentine merchant banks reoriented towards the financial

intermediation of the power struggle maturing in Western Europe. Crucially, this process effected not only a transfer of power from the merchant oligarchy to a rent-seeking aristocracy which reimposed monarchical rule, but also prefigured a fragmentation of wage labour as the interests of the upper and lower strata diverged. Such historical examples frame the subsequent discussion of the patterns of structural unemployment, increasing inequality and pronounced geographical unevenness which have characterised contemporary finance-driven economic development. It is discussed how in Britain the dismantling of the cross-border coal, steel and rail industries represented the collapse of the crucial material basis for the territorial integrity of the British state and the unity of the British working class, prefiguring processes of economic and political regionalisation. It is further described how the demise of these industries has formed the civil society basis for the labour movement's tendential marginalisation in political society, labour-powers migrating from these ramparts of organisational strength to relatively unorganised jobs in the service sector. A more general point is made regarding the fundamental weakening of organised labour in the context of structural unemployment, while it is further argued that the increasing weight of unproductive labour in the advanced capitalist economies has transformed the lived experience of work, presenting particular challenges for the trade union movement.

It is next examined in Chapter Three how the disempowerment of labour under conditions of structural unemployment and the shifting balance of productive and unproductive labour has problematised the leveraging of wage growth by labour-powers in the workplace and the maintenance at a national political level of a regime of progressive taxation. The redistribution of the tax burden resulting from a tax revolt staged by capital and the salaried bourgeoisie is understood in terms of the tendential withdrawal of capital from funding directly the mass reproduction of labour powers in line with its changing productive requirements under shifting strategies of accumulation. There is thus theorised a *de-coupling* and *re-coupling* of accumulation and domestic labour reproduction as the relationship between the public sector and the private business economy is transformed, the former ceasing to provide low-cost productive inputs undergirding industrial profits, becoming instead the terrain for the extraction of state-mandated monopoly rents from the privatisation of public services and the financial mediation of consumption. While the rationality of these transformations from the myopic perspective of financial profitability is asserted, the argument next advances to consider how the unravelling of the Keynesian compromise of productivity-linked wage growth, progressive taxation and the expansion of publicly-funded social provision has necessitated a corresponding transformation in the character of bourgeois political supremacy. In order to understand this transformation there are productively employed certain of the determinations developed by Antonio Gramsci in his carceral writings – specifically those of the *integral state*, *civil society* and *political society*, *hegemony* and *domination*, *passive revolution*, *transformism* and *counter-reformation*. This conceptual apparatus is deployed to interrogate the character of the political crisis which afflicts bourgeois hegemonic

projects in the advanced capitalist states in the neoliberal context. The advantage of Gramsci's approach is that it allows us to dialectically integrate the structural transformations obtaining in civil society in changing macro-economic and class-relational contexts with the shifting character of the attendant regimes of bourgeois supremacy, the latter understood as the mediated political condensation/concretisation of the former civil society transition. By proceeding from an understanding of bourgeois supremacy as an unstable synthesis of hegemony and domination and of the integral state as a unity in diversity of civil society and political society, it becomes possible to obtain crucial insights into the political patterning of historical capitalist development. The changing nature and intensity of bourgeois parliamentary democracy, which can appear in other analyses to arise *ex nihilo*, may then be explained in terms of the shifting equilibrium of consent and coercion and the developing depth and character of the interpenetration of civil and political society. The discussion develops in conversation with Peter Thomas' analysis in *The Gramscian Moment* insofar as the latter provides a detailed account of the development of each of the determinations throughout *The Prison Notebooks*, emphasising the systematicity and internal coherence of the latter as against assertions of their fragmentation and linguistic encoding. Moreover, Thomas' account was selected because it situates Gramsci's thought within the classical Marxist tradition and crucially: emphasises Gramsci's Leninist categorical heritage; identifies the *integral state* as his novel contribution to Marxist political theory; recognises that Gramsci theorised the particularities of the state in the West and East not in terms of a binary opposition, but rather as differences of degree within the more fundamental unity of the international capitalist state-form, and; describes the complementarity (rather than alternity) of the war of position and the war of manoeuvre as interpenetrating strategies in the overthrow of the bourgeois integral state. More generally, a Gramscian approach is preferred insofar as it was necessary to develop an interpretation of the political transformation of the advanced capitalist societies in the neoliberal period in a manner which could be methodologically integrated with the foregoing Marxist analysis of the chronic crisis of over-accumulation and the disaggregation of the interests of financial and productive capital. It is, as Umberto Cerroni has recognised, only with Gramsci that twentieth century Marxist political theory achieved a sufficiently articulated formulation to be able to compete with official political theory, while moreover such development occurred in a relationship of dialectical preservation and renewal with the classical Marxist tradition¹³.

Having introduced the conceptual apparatus mentioned above, it is argued in Chapter Three that in the context of the long downturn and the crystallisation of finance-driven regimes of accumulation, there may be recognised a shift in the balance of consent and coercion underpinning bourgeois supremacy in the advanced capitalist economies and an interrelated re-configuration of the structural interconnection of civil and political society. Capital comes increasingly to *dominate*

¹³ U. Cerroni, *Teoria Politica e Socialismo* (Rome: Editori Riuniti, 1976), p. 151. Referenced in C. N. Coutinho, *Gramsci's Political Thought* (P. Sette-Câmara trans.) (Leiden: Brill, 2012), preface at xv-xvi

without *leading* as its ability to consensually integrate the working masses declines in conversation with the erosion of the materiality of consent represented by the cessation of productivity-linked wage growth, the retrenchment/re-commodification of public services and the weakening of social security provision. The demise of the mass social-democratic parties, the secular decline in voter registration and turnout and the collapse in trade union membership represent the de-socialisation of politics, while the class-particularity of bourgeois economic and political initiatives – once posited as being in the ‘universal’ interest – is starkly revealed. Dictatorial forms of supremacy come to predominate over hegemonic forms (the political apparatus of the state becoming increasingly preeminent as against its civil society correlate) as the machinery of coercion is multiplied and intensified. This latter process is evidenced in the British context in the final part of the third chapter, which thoroughly documents the accumulation of the material means of coercion available to the police and the qualitative transformation of the legal framework within which they are applied. It is further and more tentatively advanced in the third chapter that the shifting character of bourgeois supremacy in the post-war welfarist and later neoliberal periods may be productively approached through the respective application of the Gramscian notions of passive revolution and counter-reformation. While it is admitted that it may not be possible to subsume these developmental periods entirely within this conceptual apparatus, it is asserted that the determinations highlight certain of their attendant dynamics.

A crucial methodological strength of the discussion in the third chapter is that it identifies policy orientations as arising from the interests of classes and class fractions and recognises the contradictions in such policy frameworks as concretisations of inter- and intra-class antagonisms, rather than as expressing the conceptual failures of state managers. Thus neoliberalism is presented as the policy expression of the ascendant financial fraction of the capitalist class, its contradictory character embedding the disaggregation of the interests of finance and production and the declining influence of the latter in the context of chronic overproduction in international manufacturing. This approach avoids therefore attempting to explain the dismantling of the welfare state or the tax revolt of the salaried bourgeoisie by resort to specious notions of the political inscription of a suddenly-predominant individualistic-egoistical philosophy, or of the historical victory of greed over altruism. The analysis further rejects by implication explanations of the emergence of the neoliberal policy consensus as the result purely of a process of iterative techno-managerial reflection and adaption or indeed of an objective theoretical advancement in free market thought which propelled the latter to victory over its Marxist and Keynesian interlocutors. It is in this latter epistemological domain that Chapter 4 makes its intervention, attempting to establish preliminary connections between the political and economic structure of neoliberal capitalism and the methodological shape and substantive content of the economic and social theory which has underwritten its reproduction. Thus, similarly as Chapters 1 and 2 form a couplet, the third and fourth chapters exist in a complementary relation. While Chapter 3 explores the emergence of

neoliberalism as a function of the shifting balance of forces between capital and labour and among the competing fractions of the capitalist class, Chapter 4 explores how this contradictory structure of class relations has reproduced as its mediated expression ideological forms – free market and postmodern – which have rationalised and redeemed neoliberal reform. The fourth chapter therefore makes certain basic arguments about ideology – about how ideas emerge, gain purchase and shape/redeem political action. It asserts the material embeddedness of ideology and makes preliminary connections between emergent global macroeconomic irrationality and the waning theoretical visibility of the totality, between the structural weakening and political marginalisation of organised labour and the postmodern fracturing of left critique.

The discussion in Chapter 4 proceeds firstly by contending with Poulantzas that primary or ‘spontaneous’ forms of the dominant ideology are secreted by the social division of labour and are directly embodied in the state apparatuses and the material practices of power. These ‘primal’ ideological forms are integrated, systematised and elevated to a properly ‘theoretical’ level by the organic intellectuals of the bourgeoisie, whose function in formally articulating this ‘second-order ideology’ is, as Gramsci contended, an essential aspect of their role in the aggregation of a relation of hegemony and the formation of the historical bloc. By way of this discussion there emerges an understanding of the organic existence of the dominant ideology, of its immanence to the social relations of production and the material practices of power by which these relations are reproduced. Having introduced these methodological considerations, the argument moves on to consider the pivotal role of the organic intellectual Friedrich Hayek in the crystallisation of an ideology suitable both to bind together an historical bloc transformed by the domination of finance capital and to rationalise the forms of state intervention required to ‘liberate’ capital from the binds of the Keynesian compromise which had begun to chafe intolerably in the context of an emergent crisis of over-accumulation. Presenting the rise of the Nobel prize-winning Hayek as an index of the centring of a previously peripheral laissez-faire radicalism, and noting his invocation in the re-orientation of the Conservative Party under Thatcher, the chapter proceeds to interrogate Hayek’s theoretical position as articulated in an influential 1968 lecture at the University of Kiel. It is established that Hayek’s free-market position is based crucially on the contention that the ‘truth’ of the economy is to be found at the micro-level, in the embedded information which becomes available to individuals only through the process of market competition, and whose detail and complexity cannot be anticipated or fully comprehended at the macro-level. Hayek therefore posits the primacy of microeconomic theory over macroeconomic theory, arguing that the latter cannot be properly called a theoretical science, being necessarily limited to the derivation of very general statements and pattern predictions which represent an obscure image of reality. In consequence of this macro-level data-deficiency, economic planning must necessarily be inefficient, while further it can only serve a uniform hierarchy of objectives in contrast the diversity of individual interests embodied by a market economy (or ‘catallaxy’).

The discussion considers the implications of Hayek's theory for policy makers, whose role is reduced to securing the conditions under which individuals can effectively pursue their interests, and for economic theorists, who must limit themselves to observing and approximating micro-level interactions if they are to remain within the bounds of properly scientific inquiry. It is further recognised that the acceptance of Hayek's position is entirely incompatible with Marx's understanding of capitalism's macro-irrationality (issuing from the micro-rational behaviour of competing capitals), which becomes not only unprovable, but fundamentally nonsensical. In an attempt to recover the possibility of scientifically comprehending capitalist society in the aggregate, and of rationally intervening therein, the argument next advances a methodological critique of Hayek's position. In this connection, it is emphasised that Hayek establishes a linear relation between the micro and the macro, whereby the 'fine' structure of the economy in its inexhaustible complexity operates as the *cause* producing *effects* at the macro-level, the latter 'coarse' structure exhibiting no regularities beyond those which result from the former micro processes. As against this conception, it is argued that the relationship between micro and macro levels should be recognised as one of mutual interpenetration and constitution, the activity of capitals at the micro level unfolding reflexively in the developing context of the macro, the latter comprising the mediated unity of micro-situations. There is thus recovered an understanding of the movement of *capital* as the competitive interaction of a plurality of *capitals*, the truth of the two levels obtaining in the unity-in-contradiction of both. On this basis, it is insisted that macro-level theorisation can reveal information unavailable to individual economic actors, theoretical reconstruction built on *real* abstractions being capable of identifying the essential contradictions which drive the development of concrete reality. Indeed, the most profound misunderstandings can result from the attempt to analyse the micro whilst failing to map the macro – from studying the organ whilst disavowing the organism. It is then postulated however that it is precisely this type of dislocation which has plagued the development of social theory in capitalist society, as a result of its being structurally underlain by the division of labour, systematising the partial and contradictory conceptions which emerge from a class-inflected social reality. Indeed, it is tentatively advanced that the particular disorientation characterising economic and political thought in the neoliberal period has been conditioned by the political marginalisation of labour, which has discursively dislocated capital from its integrally-opposed other, and by the functional disaggregation of the finance and industry, which veils their fundamental interdependence.

As has been outlined, the first part of Chapter 4 investigates through a discussion of the work of the influential Friedrich Hayek the methodological shape of a free market ideology capable of rationalising the neoliberal strategies employed in attempt to restore profitability in the context of the long downturn. Hayek's theory provides a fertile imaginary within which to justify attacks on working class corporatist power, the dismantling of the structures and institutions of 'Keynesian'

economic management, and even, taking the argument to its logical conclusion, the deconstruction of the whole suite of state subventionary activity which underpinned productive profitability during the long boom. It further argues, as we have seen, that organic intellectuals such as Hayek have played a crucial role in cohering an historical bloc dominated by finance capital, in aggregating its relation of hegemony. The discussion in the next part of the chapter considers in an interrelated manner how the emergence of postmodernism as an intellectual and cultural dominant expresses the *disaggregation* of labour and has operated to disarm left critique in the face of neoliberal reforms. This is explained through examination of the logical interpenetration of certain guiding neoliberal and postmodern ideas. Specifically it is argued that there is a clear parallel between Hayek's dismissal of macroeconomic theory and postmodernism's animating logic of 'incredulity towards metanarratives', this compatibility grounding the analogy obtaining between Hayek's deprecation of the activities of economic managers and the postmodern critique of modern totalising theorists. It is further considered how Fredric Jameson's incisive critique of postmodernism could be equally read as a reply to Hayek insofar as it laments the loss of the visibility of the global dimension and resistance to the concept of totality. Just as for Hayek the truth of the economy is to be found in the fine detail of micro-economic interactions which can only be disfigured by macroeconomic theorisation, for the postmodernist the 'real' is to be found in the variety of authentic local experiences which are constantly threatened by assimilation by the collective and the political. The combined effect of both approaches is to transform economics into the practice of guaranteeing the autonomy of individual actors and to decompose politics into an interminable series of neighbourhood struggles.

The description of the methodological compatibility of certain guiding free market and postmodern ideas is buttressed by an examination of the concrete historical emergence of a constellation of social forces comprising an ascendant class of financiers, the disempowerment of organised labour and the development of a redemptive postmodern cultural dynamic of differentiated consumerism and individual libertarianism. The emergence of this formation is located, following Harvey, in New York's 1970s fiscal crisis, the management of which subsequently provided a blueprint both for Reagan's domestic policy and the 'development model' implemented by way of the IMF in the 1980s. In conversation with Harvey's account of how democratic New York became 'delirious' New York, it is considered how neoliberal ideas have often penetrated common sense in postmodern coding and how the development of an environment of postmodern cultural and intellectual experimentation has operated to redeem neoliberal structural transformations. While it is asserted that this compensatory dynamic can never be wholly adequate, its integrative power is considered, in conversation with Habermas' discussion of Joachim Ritter, in terms of the market-mediated recovery of the continuity of social-historical existence. Following this discussion, the final section of Chapter 4 returns to a basic – and profoundly political – source of compatibility between neoliberal and postmodern thought, which inheres in their shared anti-Marxism. Corey

Robin's account of the primarily anti-Marxist and anti-socialist character of the Austrian school is deployed, while the class particularity of Hayek's intellectual assault on corporatism is revealed behind the supposed neutrality of his theory, which had hitherto been examined in its best light. Postmodernism's fusion with anti-Marxism is described in view of Alex Callinicos' account of the 'tight nexus of knowledge and power' underpinning the postmodern turn among the previously *marxisant* French intelligentsia and his broader theorisation of postmodernism's rootedness in the political odyssey of the disillusioned children of '68. Finally, there is re-asserted the irreducibly political dynamic animating the triumph of neoliberalism and the ascent of postmodernism as a cultural and intellectual dominant. Neither body of ideas has been followed to its logical conclusion, being rather operationalised in service of concrete political imperatives – disciplining very particular forms of corporatist project, disabling projects of national-economy making in quite specific locales and targeting only certain particularly troublesome forms of theoretical 'totalisation'.

The final chapter of the thesis considers theoretically and historically how the state, by way of the legal form, maps the social totality and structures the contradictory reproduction of capitalist social relations in different developmental contexts. It therefore builds upon the foundations prepared in Chapter 2, which problematised the liberal conception of the opposition obtaining between state and market and unpacked the humanist social ontology underpinning much conventional state theory. The second chapter also identified the role of the state in the institution and reproduction of a regime of free wage labour and more broadly in the systematisation and enforcement of the property rights corresponding to the system of generalised commodity production. These functions are subjected to detailed historical investigation and further conceptual clarification in Chapter 5. There further obtains a crucial interrelation with Chapter 3, which examined how the global macroeconomic environment of the long downturn prefigured a shift in the balance of forces from labour to capital and between industry and finance, the interests of the latter being crystallised in a state policy nexus which facilitated the financial mediation of labour revenues and the expropriation of the socialised wage. This conjunctural account of the institutionalisation of particular set of class-relational dynamics, the latter developing in conversation with the fundamental validation/invalidation of domestic social relations at the level of the world market, is a particular example of a process which is subjected to broader theoretical and historical discussion in the final chapter.

The discussion in Chapter 5 is framed by the introduction of three ideal-typical accounts of the development of the law-state – Kelsen's legal positivist state-law identity theory, Weber's analyses of the emergence of the modern bureaucratic state and legal domination from the process of modern specialisation and rationalisation, and Pashukanis' historical materialist commodity-form theory of law. These operate as extremely useful points of reference insofar as they present three

distinct methodological approaches which productively contextualise the ensuing discussion. Kelsen's account posits both the immediate and definitional identity of the state and law and the absolute autonomy of the state *as* a relatively centralised legal order from developments obtaining in other spheres of social life. Such a complete insulation of law from ethical and political influence was for Kelsen – railing against the influence of natural law theory which he saw as encumbering positive law with content of ambiguous metaphysical, theological and political origins – the only direction of development of legal science appropriate to the study of modern law. By contrast, in Weber's analysis the unfolding of independent legal and political rationalities is the result of a specific historical process. Under the initial impetus of the emergence of a specific Western type of 'sober bourgeois capitalism' entailing the rational organisation of free labour, law and politics develop – from an initial close coupling with economic forms as traditional practices – relative forms of autonomy on the basis of the unfolding of their specific rationalising logics. This process culminates in the emergence of a legally legitimised modern bureaucratic state and a formalised, rationalised codified legal system, while the coupling of formal rational law and legal domination builds in a particular tension, their very affinity being the source of an instability whereby the legal sphere tends to collapse into political imperative. In the final branch of the typology there is introduced Pashukanis' historical materialist account of the deep structural interconnection of the legal form with the social relations pertaining to capitalism as a system of generalised commodity production. For him, the legal form emerges quite directly out of the civil society relations of commodity exchange which represent its real foundation, the property relationships constituting the kernel of the legal system being so closely contiguous with the economic structure of society that they are in fact the very relationships of production expressed in legal language. Pashukanis' understanding of the state-form is more ambiguous, receiving differing treatments at various stages of his intellectual development, yet in his most important work the state apparatus is afforded an essentially secondary and derivative role, state power operating only to inject 'clarity and stability' into a legal structure whose preconditions are more deeply rooted.

Having outlined these distinct approaches to the development of the law-state, the relative merits of each are discussed in view of their suitability for the interrogation of the questions addressed in the remainder of the chapter. Kelsen's Pure Theory of Law is discounted on the basis that it doesn't *explain* the emergence of the state and law (or indeed, the state *as* law) or interrogate its interrelationship with economic and political relations, the former being simply *presumed* and the latter disavowed or otherwise considered outwith the proper bounds of legal theory. Weber's analysis is considered to be more promising, especially on account of the relationship he establishes between the increasing sophistication of formal rational law and the rational organisation of free labour. His understanding of the destabilisation of the boundary between politics and law is also important, though it is observed that his account of the historical divergence of law and economics – from an original close coupling – prevents him from acknowledging the

context-driven economic imperatives driving political intrusions into the legal. Ultimately, Weber is unable to grasp the continuing historical contingency and fundamental instability of the autonomy of the legal and political spheres, which tend to collapse into the overriding imperatives of capital accumulation as bourgeois rule is thrown into organic crisis by the operation of the law of value in the world market. Pashukanis' more sophisticated account of the interpenetration of the legal form with capitalist relations of production, together with his precise delineation of the legal form of social regulation from broader conceptions of normative control, make his theory the obvious choice moving forward. However, Pashukanis' ambivalent treatment of the state, which is discussed in historical context and as a function of specific debates within Soviet legal philosophy, is an important weakness, preventing him from appreciating the role of the state in the reconfiguration of domestic class relations in response to the changing dynamics of global capitalist development. Further, it is argued that his largely derivative theory of the state highlights a tendential collapse within his analysis of the dialectic of form and content, whereby an initial account of the emergence of the legal form as the *form of the content* of capitalist social relations later entails the *obliteration* of particular contents. In the third part of the chapter there is pursued a re-animation of this dialectic, insofar as preliminary attempts are made to recouple Pashukanis' appreciation of the legal form with the historical patterning of the content of legal relations, the latter operating as an index of the social and political struggles which drive the contradictory reproduction of capitalist society.

While the first part of Chapter 5 introduces competing approaches to the state-form, the second section interrogates the operation of a dichotomy which both structures the internal articulation of the capitalist state and facilitates its mapping of the social totality – that obtaining between public and private. The discussion proceeds in contradistinction to dominant legal theoretical approaches which postulate the 'public' as existing independently of and prior to a 'private' sphere which it constitutes and demarcates. In this regard the argument is very usefully framed by the introduction of Kelsen's legal positivist approach in the opening part of the chapter, the latter conceiving the state as a centralised legal order whose normative pronouncements regulate human behaviour but which remains itself autonomous from developments in other spheres of social life. Further, the discussion in this section should be seen as a further interrogation – within which the juridical moment is specifically foregrounded – of the liberal opposition between state and market which was problematised in Chapter 2. The argument unfolds in conversation with Marx's account of the capital accumulation, by way of which it is recalled that the reproduction of labour-powers of a quantity and quality appropriate to the stage of development of the forces of production is essential to the capital circuits of individual firms, yet remains outside of their immediate organisational sphere. In this context there is developed an understanding of the operation of the public-private dichotomy as a first-order distinction – within a broader second-order unity of capitalist (re-)production – which facilitates the rationalised reproduction of labour powers in an economy

structured by the association of dissociated private producers. This process is situated historically by the introduction of the process of so-called ‘primitive accumulation’ (preparing the ground for a fuller elaboration in the following section) and through discussion of how the British state restructured social reproduction in the wake of industrial revolution, in response to the developing requirements of military conflict in the early twentieth century and in conversation with the accelerated productive growth and labour scarcity of the post-war long boom. In the final part of this section there is further elaborated the legal mechanism underpinning the functional role of the public/private dichotomy thus described. In this connection, Pashukanis’ understanding of the primacy of legal relations over legal norms is deployed in the development of builds upon Pashukanis’ understanding of the primacy of legal relations is deployed in the development of an innovative understanding of the process by which the constitutive distinction between public and private persons grounds the derivative opposition of public and private law.

The final section of Chapter 5 demonstrates how legal relations come to embody particular political contents representing the condensation of class struggles unfolding in diverse developmental contexts. This represents the culmination of the discussion introduced in the opening section insofar as it develops a theory of the law-state which retains Pashukanis’ crucial appreciation of the legal form while attempting to overcome the obliteration of content occasioned by the collapsing of his dialectic. There is thus developed an understanding of the patterning of particular contents which legal relations come to embed on the basis of the historical unfolding of the very legal form which Pashukanis correctly identifies. The argument proceeds through the introduction of three literary metaphors which each capture from different perspectives the legal modulation of the wage-labour relation. It is emphasised that these are neither clearly delineated nor mutually exclusive – rather they interpenetrate one another, while at different social and historical conjunctures one or other is brought more sharply into focus. The first figure, law as *sword*, illustrates the coercive operation of the law-state in instituting the wage labour relation and in further remodulating it through the devaluation of labour power where necessitated by the operation of the law of value in the world market. This is explored through a detailed discussion of the agricultural revolution in England, during which the direct producers were forcibly severed from the means of subsistence and coercively domesticated into the developing regime of free wage labour. The second figure, law as *shield*, conceptualises the opportunities which arise in different macro-economic and class-relational contexts for labour and groups oppressed under capitalism to operationalise the relative institutional insulation of law, deploying its own structures and logic to embed political victories and impose limits on their subjection by capital. In this context the paradoxical coupling of law’s *restricting* and *enabling* functions leads to the result that struggles within the law may defend labour against the most brutal effects of its exploitation by capital whilst strengthening the foundation upon which future exploitation rests. The final figure, law as *fetter*, recalls that law on account of its structural interconnection with capitalist social

relations embeds the contradiction between their reproduction and the further development of the forces of production. This fundamental aspect of the law-state underpins the process by which crisis (as the eruption of this contradiction between the developing forces of production and capitalist social relations) frames the re-emergence of law as *sword* and further informs the fundamentally unstable character of its operation as *shield*. In sum, the argument in this concluding part of Chapter 5 may be seen to circumvent the unproductive theoretical polarisation obtaining between approaches which consider law to be epiphenomenal and those which pursue its relative autonomy, developing an enriched account of the historical contingency of law's autonomy, the latter expanding and contracting in conversation with the developing macroeconomic and class-relational context.

Key Theorists and Methodological Couplings

Having outlined the structure and methodology of the thesis, it will be useful at this stage to elaborate a little further on the selection of specific theorists and the couplings of different approaches insofar as they may appear unconventional. Thereafter, it will be beneficial to clarify a number of key concepts which are either deployed in a specific manner or whose meaning is not immediately apparent. In the first connection, arguably the most contentious move is the establishment of an interface between Arrighi and Brenner, in view of the sustained and weighty critique of the development of world systems theory which has been registered by Brenner and other proponents of political Marxism. The debate first emerged in the 1970s when Brenner articulated a critique of the first volume of Wallerstein's *The Modern World-System*, a foundational text in the development of the world-systems perspective. Brenner argues that Wallerstein's approach to capitalist development is of a fundamentally Smithian character insofar as it explains the emergence of capitalism in terms of the expansion of trade, the development of an international division of labour and the interrelated specialisation of production, the latter driving labour productivity. Wallerstein, in defining capitalism as production for profit via market exchange, and deriving the transformation of domestic structures of class relations from world-systemic processes of commercialisation, dissolves the specificity of capitalism as a mode of production and fails to properly account for its emergence¹⁴.

Brenner, Wallerstein and Arrighi

For Brenner, following Marx, capitalism is defined by the pursuit of profit through the investment of surplus in the development of the forces of production, thereby increasing the productivity of labour and cheapening commodities. He argues that the generalisation of this dynamic cannot be

¹⁴ R. Brenner, 'The origins of capitalist development: a critique of neo-Smithian Marxism' (1977) 104 *New Left Review* 25

inferred from the development of a trade-based division of labour, since it requires the instantiation of a specific set of property relations, entailing the ‘freeing’ of the direct producers from ownership in the means of agricultural production and subsistence. Brenner argues that the survival of pre-capitalist property forms operates as a fetter to the development of the forces of production insofar as these relations prefigure the strategies employed to increase surplus in response to market opportunities, disincentivising the extraction of surplus by the relative mechanism and incentivising the absolute methods of coercive extension and intensification of labour¹⁵. Brenner posits the primacy of class-relational approaches to labour productivity (and hence to economic growth) over those emphasising the division and specialisation of labour, arguing that beyond the basic advances which can be achieved by separation of function, sustained patterns of increasing productivity have been historically grounded in the innovation of the means of production in conversation with the development of *cooperative* labour – the integration of work activities within units of production. Pre-capitalist relations of production based on the property of the direct producers in the means of production prevent the socialisation of production, ensuring the continued predominance of individualised and unspecialised labour processes. Further, the proletarianisation of the direct producers is, according to Brenner, an essential precondition for the crystallisation of the town/country division of labour and the specialisation of production between agriculture and industry which features so prominently in Smith’s account. Without systematic investment in the forces of production, agricultural productivity will limit the growth of the urban population, while the sufficient urban migration of producers will only be procured in the context of the removal of their access to the means of subsistence and the abolition of the property relations tying them to the countryside¹⁶.

For Brenner then, the historical problem of the emergence of capitalist economic development becomes a matter of the origin of the system of free wage labour, which following Marx he locates and explains in the transformation of the class structure of agricultural production in sixteenth century England. Only through such a detailed interrogation of historically-developed and geographically-situated structures of class relations, which open up or foreclose different patterns of development¹⁷, can it be explained why capitalist production developed *when* and *where* it did. The generalisation of the capitalist mode of production cannot be *assumed*, nor *subsumed* within a broader analysis of the development of the world-market, it being necessary to explain the failure of capitalism to develop under the influence of previous trade expansions. Brenner locates the specificity of early-modern England in the particular ‘rules for reproduction’ of its attendant agricultural property relations – that is, in a dynamic *internal* to feudalism which accounted for its

¹⁵ Brenner, ‘The origins of capitalist development’, p. 36

¹⁶ Brenner, ‘The origins of capitalist development’, pp. 33-37

¹⁷ Brenner, ‘The origins of capitalist development’, p. 38

dissolution¹⁸. In England there obtained an exceptional concentration of land ownership – owner-occupiers holding no more than 25-30 percent of the land – while the tenants who worked the land were subject to conditions of tenure comprising rents responsive to market conditions¹⁹. Further, landlords themselves were unusually subject to market imperatives, being increasingly dependent on the productivity of tenants in the absence of the extra-economic powers to squeeze surplus out of them by coercion. In stark contrast to the contemporary experience in France, where landlords sought to claim increasing shares of a constant or declining output, in England land owners could obtain increasing rents by raising productivity through cooperation with tenants in realising capital improvements on large farms²⁰. It was in this context, of the historically unprecedented dependence of direct producers and landlords on markets for their own self-reproduction, that there emerged a self-sustaining dynamic of productivity growth and the reconfiguration and further concentration of land ownership – the very dynamic of agrarian capitalism²¹.

Brenner's critique of Wallerstein's *The Modern World-System* is well-founded, any attempt to infer or abstractly derive the emergence of a specific structure of class relations from the expansion of international trade, or in Skocpol's words to "[reduce]...socio-economic structure to determination by world market opportunities and technological production possibilities"²², being fundamentally unsound. Marx is clear on this in *Capital* III when he asserts that "every development in commercial capital gives production a character oriented ever more to exchange-value, transforming products more and more into commodities. Even so, this development, taken by itself, is insufficient to explain the transition from one mode of production to the other"²³. Wallerstein's later attempts to finesse his account of the transition from feudalism to capitalism remain unconvincing insofar as they draw a relatively straight line from the disintegration of the 'European historical system', through the imperatives of the 'desperate' seigniorial classes, to their self-transformation into capitalist entrepreneurs²⁴. It is perhaps understandable that Wallerstein continues to struggle to explain the origins of capitalism inasmuch as he remains profoundly conflicted as to what constitutes its *differentia specifica*, the only thing he finds incontestable being its 'hyperbolic growth curves'²⁵. In all of this, it should hardly need stating that the inverse position, which attempts to explain the crystallisation of the capitalist mode of production in national-political isolation from the development of international trade and finance, is equally

¹⁸ R. Brenner, 'Agrarian class structure and economic development in pre-industrial Europe' (1976) 70 *Past and Present* 30. See also Ellen Meiksins Wood's useful discussion in *The Origin of Capitalism: a Longer View* (London: Verso, 2002), pp. 50-53, Chapter 3

¹⁹ Brenner, 'Agrarian class structure and economic development in pre-industrial Europe', p. 73

²⁰ Brenner, 'Agrarian class structure and economic development in pre-industrial Europe', p. 73

²¹ Wood, *The Origin of Capitalism*, p. 53

²² T. Skocpol, 'Wallerstein's world capitalist system: a theoretical and historical critique' (1977) 5 *American Journal of Sociology* 1075 at 1078-9

²³ K. Marx, *Capital: A Critique of Political Economy* Vol. 3 (London: Penguin, 1991), p. 444

²⁴ I. Wallerstein, 'The West, capitalism, and the modern world-system' (1992) 4 *Review (Fernand Braudel Center)* 561. See the discussion in G. Arrighi, 'Capitalism and the modern world-system: rethinking the nondebates of the 1970's' (1998) 1 *Review (Fernand Braudel Center)* 113

²⁵ Wallerstein, 'The West, capitalism, and the modern world-system', pp. 566-580

unproductive. As Perry Anderson reminds us “the idea of capitalism in one country, taken literally, is only a bit more plausible than that of socialism...English landowners could have never started their conversion to commercial agriculture without the market for wool in Flemish towns”²⁶. While the development of the world market does not determine the transition to capitalist production, it most certainly conditions this process, circumscribing interaction and providing important incentives and disincentives, the trick being to “translate these forces into the more specific effects they will have on internal political and economic interactions”²⁷.

Crucially for the purposes of the present discussion, Arrighi confirms the fundamental salience of Brenner’s critique of Wallerstein, being at pains to insist that he has “long been convinced that class relations and conflicts are not reducible to core-periphery relations”²⁸ – that is, to world-systemic axial divisions of labour. Indeed, he argues that much of the comparative research carried out within the world-systems perspective substantiates the conclusion that world capitalism is not a mere outcome of the persistence of world economies, forcing practitioners to unpick Wallerstein’s equation of the two. For Arrighi, the dogmatic insistence of certain world-systems theorists that “almost everything” can be explained on the basis of world-systems phenomena is “one of the most disturbing features of the development or, rather, underdevelopment of the perspective”, speaking to the pathological character of the “nondebate” which developed in the 1970s, the latter becoming more about the defence of research programmes than the pursuit of theoretical advances or original syntheses²⁹. More broadly, insofar as Arrighi’s approach demonstrates a mindfulness of the necessity to explain the emergence and reproduction of what Brenner would define as specifically ‘capitalist’ class relations in a historically and geographically embedded manner, he is not open to the latter’s critique in the same manner as is Wallerstein. The methodological divergence obtaining between Arrighi and Brenner is of different character, relating to the emphasis placed on different analytical registers and the phenomena primarily associated with ‘capitalist’ development. Arrighi, following Braudel and unlike Wallerstein and other world-systems theorists, locates the origins of capitalism not in sixteenth-century England but in the emergence of a system of city-states – as a precursor to the system of nation-states – in thirteenth- and fourteenth-century Italy³⁰. This speaks to a markedly different conceptualisation of capitalism, which for Arrighi inheres not in the emergent socio-economic structure of the leading locales of capitalist production, but in the ‘interstitial’ organisation of long-distance trade and high finance, which had earlier structural analogues. Capitalism, argues Arrighi, originated in the extraterritorial business networks which connected larger territorial organisations to one another and their totality to other ‘worlds’, within

²⁶ P. Anderson, *Spectrum: From Right to Left in the World of Ideas* (London: Verso, 2007), p. 251

²⁷ R. A. Denemark & K. P. Thomas, ‘The Brenner-Wallerstein Debate’ (1988) 1 *International Studies Quarterly* 47 at 64

²⁸ G. Arrighi, ‘Capitalism and the modern world-system: rethinking the nondebates of the 1970’s’ (1998) 1 *Review (Fernand Braudel Center)* 113 at 120

²⁹ Arrighi, ‘Capitalism and the modern world-system’ at 113-114, 120-1

³⁰ G. Arrighi, ‘The winding paths of capital’ (2009) 56 *New Left Review* 61, at 71

which the Northern Italian city states emerged as the ‘centres of gravity’ of the European world-economy, as extraordinary ‘containers’ of wealth and power in the interstices of the European political system³¹. These city states, to which the largest profits accrued, became models of state- and war-making for the larger territorial units through the coercive effects of competition for mobile capital, while the organisation of the inter-city-state system itself anticipated the emergence of the system of sovereign nation states instituted by the Treaties of Westphalia. Further and interestingly, Arrighi hypothesises in conversation with William McNeill that the inter-state politico-military competition pioneered by the Italian city-states continued to be the primary source of the technological and organisational advances which have powered the expansion of the capitalist world-system³².

In view of the above, it may be advanced that the potential difficulty in coupling the analyses of Arrighi and Brenner is not one rooted in incompatible explanations of the same phenomena, as when Wallerstein describes the emergence of sixteenth-century agrarian capitalism as a function of the development of a trade-based division of labour, in contrast to Brenner’s explanation of the transformation of the underlying structure of property relations by class struggle under coercive market conditions. Rather, it is one of the emphasis of *different* phenomena, Arrighi focusing on patterns of *commercialisation* and *territorialisation* in the development of an interstitial network of trade and high finance, Brenner grounding his approach in *proletarianisation* as constituting the emergence of capitalism as a mode of *production*. In this regard, Arrighi’s lack of emphasis on the instantiation of a system of free wage labour should be understood in the context of the ‘third-worldist’ bent of his comparative sociological researches, which through interrogation of the development of sub-Saharan Africa and East Asia have led him to problematise the correlation between proletarianisation and economic growth³³.

It is in general contended that Brenner’s approach to the specificity of capitalism is to be preferred inasmuch as it re-centres class struggle in capitalist development and foregrounds as its historical novelty the particular mechanism by which surplus is produced (the specific form in which surplus labour is extracted). While the development of networks of trade and high-finance is crucial to the emergence of capitalism and conditions its development, it is essential to ground the aggregations of wealth which anchor these networks in the specific class-relational processes by which their underlying value is produced, lest they become free-floating signifiers of power and influence. Further, patterns of underdevelopment characterised not only by the ‘survival’ of ‘pre’-capitalist

³¹ Arrighi, ‘Capitalism and the modern world-system’, pp. 123-128

³² Arrighi, ‘Capitalism and the modern world-system’, p. 128

³³ “The problem with the simple ‘proletarianization as capitalist development’ model is that it ignores not just the realities of southern Africa’s settler capitalism but also many other cases, such as the United States itself, which was characterized by a totally different pattern—a combination of slavery, genocide of the native population and the immigration of surplus labour from Europe” –Arrighi, ‘The winding paths of capital’, p. 64.

relations of production but by the active reproduction of ‘non-capitalist’ social relations may well require a tempering of the most literal interpretations of Marx’s understanding of capitalist development as the bourgeoisie creating a world ‘after its own image’³⁴. This does not however require a re-conceptualisation of capitalism if we understand the latter in terms of the predominance of the capitalist mode of production within a broader *social formation* comprising other modes of production and further sets of social relations irreducible to capitalist class relations. It should perhaps be unsurprising that the global economy, as a *formation of formations* characterised by entrenched uneven development patrolled by political and military power, is capable of reproducing non-capitalist relations of production (including indentured labour and production by independent small-holders) in interconnection with ongoing processes of proletarianisation. Nor is there cause to reconsider the centrality of the formation of a class of free wage labourers, albeit with local variations and particularities, to the cycles of productive accumulation which have underpinned the development of every major capitalist economy. Finally, Arrighi’s approach cannot ultimately be upheld on account of the difficulties presented by his identification of the ‘real home’ of capitalism in the ‘top layer’ of international trade and finance, an ‘anti-market’ layer where, in Braudel’s phrase, “the great predators roam and the law of the jungle operates”³⁵. This layer is conceived, as Arrighi himself admits³⁶, in a fundamentally static opposition to the middling layer of the world market economy, where a degree of automatic coordination linking supply, demand and prices characterises the horizontal communications between different markets. At the bottom of this three-tiered structure is the layer of the ‘non-economy’, or rather of extremely elementary and mostly self-sufficient economies, which is sometimes confusingly referred to as the layer of ‘material life’³⁷. Such a hypostatised understanding of the antithesis of market and anti-market is analytically impoverishing insofar as it fails to account for the dialectical process by which monopoly emerges from the free competition of capitals through the process of concentration and centralisation. Moreover, it cannot apprehend the continuing interpenetration of market and anti-market – monopoly rents representing the extraction of surplus-profits from non-monopolised sectors – nor the inability of anti-market structures to ultimately transcend the operation of the law of value³⁸. A much better position is that which conceives capitalism as a contradictory unity of market and anti-market, the competitive interaction of rival capitals being structured to different degrees by market coordination and anti-market rent-seeking in different developmental contexts. The resilience of anti-market dominance shouldn’t be confused with permanence, it being instructive to observe the profound contradictions

³⁴ Brenner, ‘The origins of capitalist development’, pp. 25-27

³⁵ F. Braudel, *The Wheels of Commerce* (New York: Harper & Row, 1982), pp. 229-230. Referenced in Arrighi, *The Long Twentieth Century*, p. 26

³⁶ Arrighi, *The Long Twentieth Century*, p. 21

³⁷ Arrighi, *The Long Twentieth Century*, pp. 10-11; Arrighi, ‘Capitalism and the modern world-system’, p. 125

³⁸ See Ernest Mandel’s crucial discussion in *Late Capitalism* (J. De Bres trans.) (London: Verso, 1978), Chapter 17

inherent in the attempts even of the US (wielding the greatest resources for world-systemic control ever amassed) to structurally offset the erosion of its capitals' market competitiveness.

Despite the methodological limitations of Arrighi's analysis in *The Long Twentieth Century*, it remains the most important contemporary work devoted to the *longue durée* of world capitalism and supplies crucial insights into the geo-historical patterning of international trade and high finance. Its foregrounding of the competition for mobile capital, the opportunities this presents for profit-making, and its particular significance in periods of transition following the exhaustion of a phase of material expansion, is invaluable. Understanding the present in the *longue durée* and recognising the contemporary financial expansion as symptomatic of a crisis of US hegemony – a simultaneously economic and geopolitical crisis – is essential to understanding the present conjuncture. Moreover, productive syntheses should be sought between Arrighi's work and that of political Marxists like Brenner, it being possible, as Tom Reifer has suggested, to “imagine teasing out a series of geohistorical linkages” between the two bodies of scholarship³⁹. Indeed, such an interface may significantly strengthen a political Marxism which, as Callinicos has rightly observed, has a tendency to attempt to explain social transformation as a result of class exploitation and struggle considered in abstraction from the structural conditions constituted by the contradiction between the development of the forces of production and the prevailing production relations⁴⁰. Class struggle cannot explain its own intensification in periods of ‘organic crisis’ when the very viability of the extant social system is called into question by the maturation of these structural contradictions⁴¹. The world market, as the level at which abstract labour, value, money and capital are ultimately defined⁴², is the domain in which these fundamental contradictions emerge, its development conditioning the interplay of class forces. In providing an explanatory framework for the development of the world market, the world-systems perspective can help to elucidate the geo-historical unfolding of the structural contradictions in conversation with which class struggle drives social transformation. Finally, in any event and howsoever one views the broader potential for synthesis, the work of Arrighi and Brenner is eminently compatible for the more specific purposes in relation to which the coupling is primarily pursued in the present thesis. Both theorists understand the long downturn as driven by a reduction in the rate of profit conditioned by the intensification of competition in a context of emergent over-production or over-accumulation. Brenner's account in *The Economics of Global Turbulence* is deployed to augment Arrighi's analysis, providing a more detailed exposition of the specific process by which such over-production develops and is sustained. It has the additional advantages of resting on a richer

³⁹ T. Reifer, ‘Capital's cartographer’ (2009) 60 *New Left Review* 119 at 128

⁴⁰ A. Callinicos, ‘The limits of ‘political Marxism’’ (1990) 184 *New Left Review* 110

⁴¹ A. Callinicos, ‘The limits of ‘political Marxism’’, pp. 113-114

⁴² See Tony Smith's discussion in *Globalisation: A Systematic Marxist Account* (Chicago: Haymarket, 2009), pp. 189-194

empirical foundation and avoiding the methodological eclecticism which hinders Arrighi's own theorisation.

Of Long Downturns and Neoliberal Expansions

Having contextualised the interface between Arrighi and Brenner and clarified the logic behind the integration of their analyses, it remains to be explained why Brenner's account of the 'long downturn' – as a crisis emerging in the mid 1960s, crystallising in 1973 and remaining to be transcended – has been preferred to competing theories which emphasise one or more 'recoveries' in the ensuing period. David McNally, for instance, observes a 'neoliberal expansion' 1982-2007, entailing "a quarter-century cycle of capitalist growth that transformed and expanded the world economy"⁴³. McNally argues that the 'virulent' form of capitalism which arrived in the wake of the Volker shock of 1979, involving attacks on living standards designed to restore corporate profits and debt-levered 'invasions' of the Global South, secured a 'sustained wave of expansion' which prevailed until 2007⁴⁴. While its growth pattern was based on soaring inequality, rising global poverty and increased human insecurity, it was a growth pattern nonetheless, registering in a rising trend line for profits, a tripling of size of the world economy and the emergence of China as a new centre of accumulation. While McNally admits that profits never recovered to the levels experienced during the post-war Great Boom, he stresses the abnormality of this period of 'unprecedented dynamism' and argues that it should not be used as the definitive benchmark against which to judge the health of the capitalist system⁴⁵. Indeed, McNally contends that by the neoliberal period compares favourably with every phase of capitalist history other than the 'golden age', while making the further methodological point that concentration on national macroeconomic indicators isn't necessarily appropriate in the context of a growth pattern underpinned by wage repression and overseas investment⁴⁶. Further, although McNally accepts that the neoliberal growth wave was a more uneven and volatile one than that of the Great Boom, he points out that its attendant business cycle approximated the 'classic' form – with recessions every seven to ten years rather than the every three or four of the preceding period –, while contending that the expansion had a real basis in the reorganisation of manufacturing, the introduction of new technologies and the development of new systems of labour organisation and intensification⁴⁷. Crucially, McNally introduces a delineation within his understanding of the neoliberal expansion between the period 1982-1997 – whose growth pattern he insists cannot be explained in terms of credit creation – and that obtaining after the onset of the East Asian crisis, when a decade-long credit 'explosion'

⁴³ D. McNally, *Global Slump: The Economics and Politics of Crisis and Resistance* (Oakland: PM Press, 2011), p. 9, Chapter 2

⁴⁴ McNally, *Global Slump*, pp. 25-26

⁴⁵ McNally, *Global Slump*, p. 27

⁴⁶ McNally, *Global Slump*, pp. 37-38

⁴⁷ McNally, *Global Slump*, pp. 39-41

postponed the eruption of a general crisis driven by the emergence of a new pattern of over-accumulation⁴⁸.

McNally is joined by Albo, Panitch and Gindin in understanding the crisis of the 1970s to have been resolved by the neoliberal 'capitalist militancy' of early eighties, the latter theorists arguing that capitalism subsequently went on an 'incredible run' which ended only with the emergence of the present crisis in 2007⁴⁹. For them, the era between the crisis of the 1970s and the Great Recession was one of capitalist dynamism incorporating significant technological revolutions and involving "not just the deepening and expansion of capital, but also the radical restructuring of corporations and firms and indeed of capitalist social relations and culture in general"⁵⁰. Albo, Panitch and Gindin emphasise the revival of profit shares, profit rates and real investment from the 1980s into the 1990s⁵¹ and note the favourability of extant GDP growth in long historical perspective, attributing this revival in fortunes fundamentally, like McNally, to a shift in the balance of class forces. The latter, they contend, has been effected by defeats for the organised labour movement and working class parties, dramatic technological change, industrial restructuring and the imposition of labour market 'flexibility', in the broader context of the intensification of competition occasioned by the incorporation of new regions into the world market⁵².

Panitch and Gindin restate their position in *The Making of Global Capitalism*, reiterating that the profitability crisis of the late 1960s and 1970s came to an end after 1982, when both the US rate of profit and the profit share of national product assumed an upward trend, producing an overall doubling of the mass of non-financial profits 1983-1999⁵³. In a context of low productivity growth, profitability rested on a historically significant pattern of wage repression, there being effected a real terms *reduction* in private sector wages between 1968 and 1999⁵⁴. While recognising that rising profitability had this fundamentally expropriative character, the authors are keen to stress the strong recovery of real investment growth which averaged 6 percent 1983-1999 and the profound dynamism of a manufacturing sector which saw the emergence of entirely new products and technologies⁵⁵. Indeed, US manufacturing recorded productivity growth in excess of the 'golden age' (in contrast to labour-intensive services expansion) driven by restructuring on an astonishing scale and underpinned by strong investment, the latter partially veiled by a reduction in the cost of capital goods⁵⁶. Panitch and Gindin emphasise the centrality of financial expansion to such

⁴⁸ McNally, *Global Slump*, pp. 41

⁴⁹ G. Albo, S. Gindin & L. Panitch, *In and Out of Crisis: the Global Financial Meltdown and Left Alternatives* (Oakland: PM Press, 2010), p. 16

⁵⁰ Albo, Gindin & Panitch, *In and Out of Crisis*, p. 50

⁵¹ Albo, Gindin & Panitch, *In and Out of Crisis*, p. 41

⁵² Albo, Gindin & Panitch, *In and Out of Crisis*, p. 16

⁵³ L. Panitch & S. Gindin, *The Making of Global Capitalism* (London: Verso, 2013), pp. 183-193

⁵⁴ Panitch & Gindin, *The Making of Global Capitalism*, p. 184

⁵⁵ Panitch & Gindin, *The Making of Global Capitalism*, p. 185-186

⁵⁶ Panitch & Gindin, *The Making of Global Capitalism*, pp. 186-189

industrial reorganisation, the overseas capital attracted by the “broadening and deepening” of US financial markets ensuring the availability of cheap credit, with the ten-fold increase in disbursements from venture capital markets being particularly crucial in supporting innovative start-ups⁵⁷. More generally, financialisation is given a different treatment by Panitch and Gindin than by McNally, with the consequence that the former theorists do not draw so sharp a line of demarcation between the neoliberal ‘recovery’ of the 1980s and 1990s and the financial expansion of the 2000s. For Panitch, Gindin and Albo, financial innovation has been crucial to the internationalisation of capital, the development of derivative markets having provided risk insurance in a complex global economy and meaningfully allowed corporations to compare alternative accumulation strategies across time and space⁵⁸. Understanding financial expansion as crucially underpinning the productive growth they highlight in the neoliberal period, they subsequently insist that the financial crisis of 2007-8 was not expressive of a profitability crisis rooted in productive overcapacity, whether as sustained and reproduced since the 1970s (Brenner) or as newly emerging in the late 1990s (McNally). Rather, it should be approached as a product of instabilities internal to the pattern of finance-driven accumulation by which the crisis of the 1970s was resolved – the competitive dynamic obtaining between rival financial actors and markets driving a cycle of increased leverage, loose credit, asset price inflation and the formation of speculative bubbles⁵⁹.

The approaches of McNally and Albo, Panitch and Gindin have important strengths, especially as regards the recovery of an understanding of the dynamic process by which manufacturing has been re-structured, modernised and re-located from less nuanced narratives of industrial decline. The foregrounding of class struggle and the role of a shifting balance of class forces in prefiguring the economic outcomes of the neoliberal period is also crucial. However, Brenner’s account of the ‘long downturn’ is preferred in the present work as it better captures the essential character of the era inaugurated by the eruption of crisis in 1973. That this has been a period of chronic and unresolved crisis is revealed by the fragile, partial and profoundly contradictory character of the relative ‘recoveries’ which have developed within it. As Brenner decisively illustrates, these have not been driven by new phases of expansion built upon the resolution of the underlying crisis, but represent rather primarily the displacement or redistribution of costs within an unchanged secular context of over-capacity and over-production. His analysis of the revival of US industrial fortunes from the 1980s makes clear that export growth was achieved at the direct cost of other advanced economies and resulted overwhelmingly from the devaluation of the dollar, while profitability relied crucially on the redistribution of revenues between the factors of production, i.e. upon practically non-existent real wage growth⁶⁰. Indeed, the fact that US manufacturing profitability

⁵⁷ Panitch & Gindin, *The Making of Global Capitalism*, p. 188

⁵⁸ Albo, Gindin & Panitch, *In and Out of Crisis*, pp. 33, 123

⁵⁹ Albo, Gindin & Panitch, *In and Out of Crisis*, pp. 122-126

⁶⁰ R. Brenner, *The Economics of Global Turbulence* (London: Verso, 2005), Chapter 12

continued to fall substantially short of the levels of the post-war boom despite the high productivity growth and unprecedented real wage repression that Panitch and Gindin observe, speaks precisely to Brenner's conclusion that a persistent crisis of over-production maintained constant downward pressure on prices. Within this international context of intensified competition, Brenner accurately depicts the dynamics of a zero-sum game, whereby competitive advantages for one economy have implied losses for others, the weaker among the developing economies – such as Mexico, Argentina and India – surviving in competition only by inflicting major reductions in living standards⁶¹.

More broadly, Brenner's account illustrates not only that rates of profit and growth remained in the long downturn persistently below those of the long boom, but that economic performance for the advanced capitalist economies, individually and in aggregate, *worsened* business cycle by business cycle from the 1970s through to the mid-1990s. This conclusion, which belies theorisation of the 1980s 'recovery', is further supported by the work of Andrew Kliman, who records a persistently declining rate of profit from the early 1980s (albeit calculated differently to Brenner, using historic rather than current costs of capital investments) and emphasises insufficient destruction of capital as the underlying cause of the stagnation which has prevailed since the 1970s crisis⁶². Brenner observes that this downwards trend in economic performance is only checked from 1995, where unquestionable acceleration followed on from a dismal first half-decade in which US economic performance was worse than any other five-year period in the whole post-war era. As regards the mid-1990s uplift, Brenner rightly emphasises the centrality of the 'wealth effect' of the stock-market bubble – which was responsible for a full quarter of total GDP growth 1995-2000 – while noting that even with this asset-price boost the US economy did no better than in the crisis decade of the 1970s⁶³. Brenner's understanding of the weak foundations of the late 1990s upswing explains why the latter could not result in the transcendence of the long downturn in the context of persistent chronic over-capacity in manufacturing. Indeed, his account of how the increasing penetration of international commodity markets by the East Asian economies worsened over-production, driving a precipitous fall in manufacturing profitability from 1997 and underpinning a dramatic divergence between corporate returns and equity prices, is indispensable to understanding the stock market collapse of 2000-1⁶⁴. Brenner's analysis of the contradictory, wealth- rather than income-driven trajectory of the new millenium's cyclical upturn, which was underpinned by house price inflation as pressure shifted from the equity market to red-hot real estate, is equally on point⁶⁵. More generally, his approach to financial expansion as expressive of the underlying

⁶¹ Brenner, *The Economics of Global Turbulence*, p. 261

⁶² A. Kliman, *The Failure of Capitalist Production: Underlying Causes of the Great Recession*, pp. 6-10, 74-78

⁶³ Brenner, *The Economics of Global Turbulence*, preface at xxv

⁶⁴ Brenner, *The Economics of Global Turbulence*, pp. 267-268, 291-296

⁶⁵ Brenner, *The Economics of Global Turbulence*, pp. 316-322

problems in the sphere of production⁶⁶ and his understanding of financial innovation as primarily a response to interrelated economic turbulence, is to be preferred to Panitch and Gindin's insistence that financial market developments have underpinned a new wave of finance-led productive accumulation. For while venture capital markets may have been crucial to industrial diversification in the US, this represents a specific coupling (conditioned by the ability of a dollar-price wielding US to temporarily straddle the contradictions between productive growth and financial deregulation) within a broader context of the tendential disaggregation of the spheres of production and circulation, corporations investing out of retained earnings and banks re-orienting toward the mediation of labour revenues. More specifically, Albo, Panitch and Gindin's account of the 2007-8 financial crisis as driven by competitive dynamics obtaining within and between financial markets represents only half an explanation. While this process is crucial to asset price inflation, we can only understand why the later phenomenon prefigures the eruption of crisis by reference to the weakness of the underlying economy and the rise of mortgage defaults in the context of stagnant real wages.

Finally, with regard to the appropriateness of deploying the experience of the post-war long boom as a comparator in assessing the subsequent long downturn, McNally and Albo *et al* are of course correct in their identification of the historical abnormality of capitalism's 'golden age'. However, its suitability as a point of reference cannot be defeated on statistical grounds, while further the relevance of the comparison depends substantially on the theoretical tasks one is pursuing. Crises of capitalism do not unfold in the abstract, such that their severity and implications can be determined by reading growth and profit rates against those obtaining during earlier historical crises. Rather crises unfold in the structural context of the contradictory interrelation of the forces and relations of production as they developed in the previous period – their forms of institutionalisation and the political settlements and structures to which they gave rise. Howsoever 'abnormal' were the rates of growth and profit attending the long boom, it is precisely the abnormal class settlements generated in this period, the peculiar political institutions structuring its development, which frame the emergence of neoliberalism. The long downturn is a crisis *in* and *of* the institutions of the 'welfarist' period. Indeed, an interesting consideration concerns whether the relative favourability of economic performance in the neoliberal period in long run historical perspective – emphasised by McNally – requires itself to be explained in reference to the preceding boom. It may be argued that given the fundamentally weak developmental foundation of the neoliberal period, such growth as has been achieved has relied primarily on the expropriation of the labour revenues which grew so propitiously in the prior phase of unprecedented national prosperity,

⁶⁶ See also Michael Roberts contention that a long-run decline in the rate of profit (around which the profit cycle revolves) expresses precisely the increasingly 'unproductive' character of financialised late capitalism – *The Great Recession: Profit Cycles, Economic Crisis A Marxist View* (Raleigh, N.C.: Lulu.com, 2009), pp. 99-100

and on the mobilisation of its great aggregations of wealth and power in extracting rents from the global south. In any event, given that the present thesis seeks to interrogate the role of the capitalist state in structuring the contradictory reproduction of capitalist social relations precisely in the context of the unravelling of the Keynesian compromise, and further to investigate the restructuring of the global economy in view of the crisis of US hegemony entailed by the exhaustion of the long boom's sustained material expansion, the comparison with capitalism's 'golden age' is inherent and Brenner's account indispensable.

Key Concepts

The final task remaining to be completed in this introduction is the clarification of a number of concepts in order to prepare the ground for the ensuing discussion. While these determinations will be further developed and refined throughout the thesis, it will be useful at this stage to set out working definitions. The first of these concepts is 'passive revolution', which is conceived following Gramsci as describing the particular character of bourgeois rule which obtains in a period of organic crisis, when the very foundations of bourgeois hegemony are in doubt. Such contexts necessitate a shift in the equilibrium between consent and coercion which underpins bourgeois supremacy, the ruling class coming to *dominate* without *leading* and to rely increasingly on dictatorial forms of rule. In these periods the bourgeoisie exercises a reduced but persistent capacity of initiative, being able to procure such socio-political transformations as are necessary to entrench both its supremacy and the subalternity of labour, but no longer being able to secure the proactive consent of proximate and opposing classes in an expansionary project. In this moment the integral state's consensual networks of political and cultural elevation ossify into exclusionary defensive trenches as the technical sphere of the bourgeoisie becomes 'saturated', ceasing to expand and indeed starting to disintegrate.

It should be noted that Gramsci initially formulated his understanding of 'passive revolution' in the context of the Risorgimento and its aftermath. However, he later afforded the concept a more general significance in describing the road to modernity trodden in those states which did not experience a radical-popular revolution, rather modernising through state reform from above. In approaching the experience of 'Americanism' or 'Fordism', Gramsci sought to deploy the notion of passive revolution to capture the complex dialectic of restoration and renewal in the attempts of these bourgeois projects to integrate/neutralise certain of the advances of the October revolution, including elements of the planned economy. It is in this latter sense that the present work seeks tentatively to deploy the concept of passive revolution to illustrate certain aspects of the development of the post-war 'welfarist' regimes in the advanced capitalist economies. In this regard, the argument is developed in conversation with Carlos Nelson Coutinho, who explores the restoration-renewal dialectic in terms of the presence of a conservative reaction to the prospect of

radical transformation from below and the answering of a certain number of popular demands through concessions and compromises from above. It is in this light that there are considered certain aspects of post-war social democracy, which entailed the crucial substitution of the interventionist policy of the capitalist state for the direct historical protagonism of the subaltern classes. Structural reforms were undertaken *from above* in fulfilment of the inherent necessity to achieve the organisation of a planned economy, whilst reproducing such objectively socialised production within the fundamental structure of private appropriation. In this manner, the bourgeoisie was able to entrench its own supremacy whilst reproducing the subalternity of labour, the latter imprisoned as an economic-corporative force within the integral state of the capitalist class. Consequently, capitalism was able to ride out an organic crisis occasioned by the inter-war economic collapse and the political challenge of the October Revolution, while the demands of a historically-powerful labour movement were passively integrated in the neutralised form of social rights, collective bargaining, mass consumption and direct state intervention in the economy.

The second concept which may be usefully defined is ‘neoliberalism’, understood as inhering in a set of political projects aimed at displacing from capital to labour and from core to peripheral economies the costs of the crisis which erupted in 1973 and which is yet to be decisively resolved. In their national-political expression these projects have involved the pursuit of political interventions and legislative strategies aimed at securing labour devaluation through disempowering workers, disciplining the organised labour movement and coopting social democratic political parties. The extent to which this has proceeded through direct confrontations with trade unions and the adoption of legal restrictions on the right to organise and strike, or otherwise through the institutionalisation of labour demands within national agreements and the integration/assimilation of union bureaucracies, has been informed in each case by the particular structure of national labour markets and their attendant balance of class forces. In terms of their crystallisation in fiscal and monetary policy, together with the broader re-orientation of state subventionary activity, neoliberal projects display significant variation, as state-capitals have attempted – in what is often a profoundly path-dependent process – to maximise their competitive advantages and minimise their weaknesses in conversation with the developing global macroeconomic environment. In a certain sense therefore, neoliberalism as a set of nationally-differentiated policy packages finds its coherence as much in its common legitimating reference to a hegemonic conjunctural narrative – which locates the cause of the 1970s crisis in unrestrained wage growth and unchecked working class corporatist power – as in its substantive homology.

While bearing in mind the national particularity of neoliberal projects mentioned above, neoliberal governance has generally involved to a greater or lesser extent and in different combination, the following policy measures. Firstly, the tax burden has generally been shifted from capital to labour through reductions in corporation, capital gains and high-band income tax rates, the relaxation of

accounting standards and the permitted or indeed incentivised development of offshore tax havens, combined with the increasing taxation of consumption. Secondly, there may be observed the retrenchment and coercive restructuring of welfare provision captured by the shift from ‘welfarist’ to ‘workfarist’ approaches. Third, there has generally obtained a process of retrenchment and re-commodification of public services including healthcare and education, coupled with the incentivised development of private provision. Fourthly, there has commonly been pursued the privatisation of transport and utility networks, the sale of public housing stock and the abolition of rent controls. Fifth, there has been effected a de-democratisation of monetary and fiscal policy through the privatisation of central banking functions and the creation of public spending auditors and watchdogs. Finally, there has been pursued the de-/re-regulation of finance, typically involving the abolition of capital controls, the removal or erosion of the regulative distinction between commercial and investment banking and the deregulation of consumer lending. The significance of each of the above measures in either expressing or prefiguring a shift in the balance of forces between capital and labour or otherwise operating to shore up corporate profitability, is explored in one way or another throughout the thesis. It may be said in general that the emergence of the neoliberal consensus expresses the rise to political predominance of finance capital, as the leading fraction of the capitalist class in a context of reduced returns in the sphere of production conditioned by chronic over-capacity in international manufacturing. However, certain of the policy measures outlined above, implemented in a certain manner, embed profound contradictions between financial profitability and productive accumulation, as is explored in Chapter 3. Such forms of implementation have tended therefore to be pursued only in contexts where finance capital has obtained an extraordinary political predominance, where the form of integration of the given state into the international monetary and financial system has permitted the straddling of these contradictions, or otherwise where such reforms have been implemented under significant external coercion. As regards the latter point, it may more generally be observed that there obtains a qualitative distinction between projects of neoliberal reform which have been pursued ‘electively’ (or in the relative absence of direct coercion) and those which have been ‘punitively’ imposed. While in all cases neoliberalism has a contradictory class character, the latter projects also embed a further contradiction between on one hand the interests of creditor states and capitals in securing repayment and in restructuring the indebted economy to their advantage, and on the other the interests of domestic capital in pursuing projects of national economy making.

In its international dimension, neoliberalism has involved the extraction of elevated financial rents from states whose finances have been imperilled in the context of the period’s characteristic exchange rate and commodity price turbulence, such rents accruing to states and capitals in control of money capital. Such regularised rents are augmented by the episodic debt-levered expropriation of weaker economies, which has unfolded in operationalisation of developing local financial crises and which has been organised through the facade-cosmopolitan agencies of the IMF and World

Bank. These processes have been prefigured by the redesigning of the inter-state system's monetary and financial architecture, which has transformed the mechanisms by which states gain access to liquidity as well as the terms of such access and the consequences of default (whether prospective or actual). Specifically, private financial markets have assumed a new predominance in inter-mediating international monetary and financial flows, the imperialistic content of this move inhering in the fact that Anglo-American markets predominate on account of being largest and most liquid. Further, given the status of the dollar as international reserve currency, the US has been able through the monetary policy of the Federal Reserve to control rates of interest effective internationally. The process as a whole may be understood as a coercive restructuring of the inter-state system expressing the intensification of competition in the context of the long downturn.

As is immediately apparent, neoliberalism is deeply interconnected with a further process which it is also necessary to define – 'financialisation'. This may be understood most broadly in terms of the structural asymmetry between the dynamism of the sphere of circulation and the relative stagnation of that of production which has come to characterise the development of the advanced capitalist economies. This dynamic is borne out in the increasing proportion of GDP and corporate profits accounted for by financial services and is prefigured by the multiplication of financial actors, the dramatic expansion of their operations, and the increasing extent to which non-financial enterprises have augmented their activities with financial dealings. As is examined in the present work, a crucial dynamic which attends this process of financialisation is the functional disaggregation of banking and industrial capitals, informed by the latter's tendency to increasingly invest from retained earnings in a context of low productivity growth or otherwise to look to private markets for liquidity. The response of banks has been to increasingly orient their activities to consumer lending and mediating individual and corporate access to financial markets. This process crucially represents the expropriation of labour revenues, an especially exploitative dynamic which embeds a profound contradiction between financial profitability and productive growth.

CHAPTER 1

From ‘feral’ markets to regimes of accumulation: the state-political content of financialisation

In this opening chapter I will develop an account of the long historical context of post-war capitalism’s descent into crisis. By way of original coupling of the theoretical approaches developed by Arrighi, Brenner and Gowan – whose precise interrelation has been developed in the introduction – I chart the fundamental developmental coordinates of the crises of post-war capitalism, locating these within the broader historical patterning of world capitalist development. In terms of its significance as regards the thesis more broadly, the argument will prepare the ground for discussion of the specificities of neoliberalism, providing an elementary framing within which consideration of the nature and function of ‘the state’ in financialised late capitalism may be advanced. Crucially, the discussion will provide a corrective to what I consider to be ill-defined and under-substantiated analyses of the declining significance of the institutions and boundaries of the nation state. Indeed, it will be argued that central features of the political and economic regime partially revealed by globalisation theory should be understood in terms of the restructuring of the inter-state system by, and in the interests of, dominant state-capital formations. Through critique the common misreading of contemporary global economic and political developments as unfolding outside of, and in opposition to, the state system, it is revealed how fundamental doubts about the centrality of the state to social life are reflect more discursive discontinuities in the conception of the interrelation of the global, national and local, than they do contemporary material developments.

The rise of popular anger against the Anglo-American financial system is exemplified by the “Occupy Wall Street” demonstrations which, beginning in September 2011, sparked the most significant anti-capitalist movement in the US since the fire which began in Seattle in 1999. Across the Atlantic, protestors bound initially for the London Stock exchange decamped instead to the grounds of St. Paul’s Cathedral, where for a number of weeks from 15 October they – partly as a result of an interesting and productive relationship with the Cathedral – were able to generate a huge amount of publicity and significantly influence public discourse¹. Apart from attesting to the continuing social power of the church in an age and region often considered to be increasingly secular, these events made it clear where the responsibility for the economic crisis is thought to lie.

¹ Even David Cameron was led, on 2 November 2011 to acknowledge that the Archbishop of Canterbury Rowan Williams “Spoke for the whole country” in criticising the irresponsibility and excess of the City of London. The archbishop, writing in connection with the St Paul’s protest, commented that it reflected “...a widespread and deep exasperation with the financial establishment that shows no sign of diminishing”. J. Prickard & Elizabeth Rigby, ‘Cameron backs archbishop on bankers’ *Financial Times*, 2 November 2011. Available at: www.ft.com/cms/s/0/9694785c-0577-11e1-8eaa-00144feabdc0.html#axzz1kUEs1xb6 [accessed 25 January 2012]; R. Williams, ‘Time for us to challenge the idols of high finance’ *Financial Times*, 1 November 2011. Available at: <http://www.ft.com/cms/s/0/a561a4f6-0485-11e1-ac2a-00144feabdc0.html#axzz1kUEs1xb6> [accessed 25 January 2012]

Of course, it is difficult not to be buoyed by the development of a generalised contempt for the speculative wizards of Wall Street. Indeed, as much agitational ammunition as possible should be derived from the wealth accumulated by financial capitalists since the crisis of 1973, not to mention the huge profits and spectacular bonuses which continue to be acquired and awarded by financial institutions, many of which are now publically owned. However, such propagandising will have a necessarily limited ideological and political impact if it is not coupled with a systemic analysis which appreciates the relationship between a bloated and class-parasitical financial system and a real economy suffering from chronic problems of over-accumulation and profitability. Further, a sub-paradigmatic analysis which conceives the present crisis – now widely considered to be the most profound since the Great Depression of the 1930s, if not the deepest crisis capitalism has yet faced – as the result purely of an unregulated financial system sabotaging an otherwise healthy capitalist economy is not merely politically disadvantageous, but theoretically barren. As David Harvey asks in *The Enigma of Capital*, how should the emergence of a consensus – first in the US and the UK, and later becoming hegemonic in the advanced capitalist world – around the virtues of expansive, liquid and unregulated financial markets be explained? While Alan Greenspan's narrative of 'infectious greed' may be sufficient for a popular press which need not distinguish the social from the interpersonal and seeks to construct dubious analogies between state budgets and household finances, it has no place in any serious analysis².

First of all, it is important to remember that finance is embedded in circuits of industrial capital and is indispensable to capital accumulation, i.e. reproduction on an expanded scale. As Marx demonstrates using his – oft misunderstood and misused – reproduction schema in volume II of *Capital*, even under optimum conditions, accumulation requires the asynchronous intertwining of circuits of money, commodity and productive capital, entailing the necessary hoarding of money capital (and related temporary un-exchangeability of stocks of commodities) at different stages of the process³. Thus, the development of the credit system solved an inherent problem insofar as it helped to facilitate productive investment by mobilising stagnant money reserves. Moreover, as the development of the forces of production has increased the technical composition of capital, while the progressive concentration and centralisation of capital has produced corporations of massive scale, the initial capital outlay required for entry into many commodity markets has become substantial. Furthermore, the development of infrastructure such as roads, railways, energy supply networks and telecommunications requires large-scale investment in fixed capital with a very long turnover period. Such enterprises, usually carried out by states – or relatively recently, private consortia – would be impossible without the machinery of the credit system. It may thus be seen that finance, or interest-bearing capital has the potential to assume a powerful directing influence

² D. Harvey, *The Limits to Capital* (London: Verso, 2006), pp. 44-45

³ Marx, K., *Capital: A Critique of Political Economy* Vol. 2 (London: Penguin, 1992), Chapter 21 'Accumulation and Reproduction on an Expanded Scale'

over the operations of industrial capitals, especially insofar as the finance sector becomes dominated by large firms wielding monopolistic or oligopolistic power. However, it remains to be explained why finance experienced such a spectacular rise to power in the last few decades, such that when the economic crisis morphed from credit crunch to sovereign debt crisis via massive publicly-funded bail-outs of the banking sector, financial markets and institutions such as private ratings agencies appear able to bring democratically-elected governments to their knees. In relation to this latter point we return to the central focus of this section, in which we will attempt to deconstruct the narrative that conceives finance capital as escaping the political influence and regulatory purview of state apparatuses. I will attempt rather to situate the extant stage of development of the inter-state system in the context of Giovanni Arrighi's Braudelian long-run historiography, and explain by deploying Peter Gowan's understanding of the "Dollar Wall-Street Regime" the manner in which the US was able to re-design the international monetary and financial system. The resultant regime created a tense mutuality of interest between financial markets and US (and to some extent UK and EU) capitals and state managers and operates to reinforce US political hegemony against a backdrop of declining productive competitiveness relative to East Asia. Of course, this mechanism was from the offset deeply contradictory, and while the US was initially able to internalise its benefits and externalise its risks and consequences, the latter now threaten the very core of the regime.

Systemic Cycles of Accumulation

Giovanni Arrighi, in *The Long Twentieth Century*, develops an ambitious historiography charting the intertwined development of what Charles Tilly has called "the two interdependent master processes of the [modern] era: the creation of a system of national states and the formation of a worldwide capitalist system"⁴. Deploying the interpretative scheme of the second and third volumes of Fernand Braudel's *Capitalism and Civilization*, Arrighi perceives in the history of capitalist development the emergence, maturation and eventual decline of four distinct but overlapping 'systemic cycles of accumulation'. Each cycle occupies a successive 'long' century in the *longue durée* of capitalist expansion and consists in a pattern of major capitalist development which is of systemic significance, yet which is centred upon a distinct geographical location. During each cycle, the governmental and business agencies of the central power develop structures and deploy strategies aimed at reproducing and consolidating their wealth and power, whilst consequently (and indeed purposively) altering fundamentally the structure of the inter-state system. In other words, each systemic cycle of accumulation is characterised by "a fundamental unity of the primary agency and structure of world-scale processes of capital accumulation"⁵. Between these cycles which are, at least in their stable, continuous stages relatively short, there

⁴ C. Tilly, *Big Structures, Large Processes, Huge Comparisons* (New York: Russell Sage, 1984), p. 147. Arrighi, *The Long Twentieth Century*, preface at xi

⁵ Arrighi, *The Long Twentieth Century*, p. 6

erupt long periods of crisis, restructuring and reorganisation which result in the reconstitution of the world-economy on new and enlarged foundations⁶. It is primarily in an attempt to understand the development of one of the latter periods, the economic crisis of the 1970s and specifically the rise to prominence of its financial aspects in the 1980s, that Arrighi undertakes the study.

Arrighi, in an approximate and preliminary periodisation, identifies four systemic cycles of accumulation: a Genoese cycle, spanning the fifteenth to early seventeenth centuries; a Dutch cycle, unfolding from the late sixteenth through most of the eighteenth century; a British cycle encompassing the latter half of the eighteenth century until the early twentieth, and; a US cycle, beginning in the late nineteenth century and continuing into the extant period of financial expansion⁷. Each cycle, whilst progressively shorter than the preceding one, nonetheless lasts longer than a century (hence the notion of the ‘long century’), whilst Arrighi’s analysis seeks to discover through comparative analysis both patterns of recurrence and evolution and anomalies which may lead to a disjuncture with previous tendencies. The progression of these cycles describes the alternation of phases of continuous change with phases of discontinuous change, reflected in fundamental breaks in the strategies and structures of world-scale processes of capital accumulation⁸. Arrighi refers cumulatively to these latter institutions and practices by which leading state-capital formations promote, organise and regulate the expansion and restructuring of the global capitalist economy as ‘regimes of accumulation’. These regimes, in themselves emerging, consolidating and ultimately disintegrating, are the motors of – and leave their indelible imprint upon – the development of capitalism as world system, such that the latter must be understood as absolutely dependent for its emergence and expansion on state power. Indeed, capitalism could not have gotten off the ground as a putative world system had not the coalescence of dispersed commercial and mercantilist capital been facilitated by the fusion of state and capital in Europe⁹. Further, Arrighi emphasises that it is specifically *inter-state* competition and the consequent emergence of concentrated power in the hands of particular blocs able to form a hegemonic alliance with rising states which has operated to propel the capitalist economy through phases of material expansion¹⁰.

Arrighi’s reading of the changing shape of the inter-state system through the cycles of accumulation he describes is based upon the recognition that historically, the governance of a system of sovereign states – the exercise of ‘world hegemony’ – has necessarily involved fundamental transformative action, a significant structural re-modulation of the system itself¹¹. In order to achieve such a feat, the hegemonic state-capital formation must be hegemonic in the dual

⁶ Arrighi, *The Long Twentieth Century*, p. 1

⁷ Arrighi, *The Long Twentieth Century*, pp. 5-6

⁸ Arrighi, *The Long Twentieth Century*, pp. 6, 9

⁹ Arrighi, *The Long Twentieth Century*, p. 12

¹⁰ Arrighi, *The Long Twentieth Century*, p. 13

¹¹ Arrighi, *The Long Twentieth Century*, p. 28

sense of being dominant and of exercising sufficient ‘intellectual and moral leadership’ to project the realisation of its own interests as being the motor force of universal expansion. The history of the modern state system has thus been one of formation and expansion on the basis of recurrent fundamental restructurings led and governed by successive hegemonic states¹². According to Arrighi, the force driving such transformation is the recurrent contradiction between on the one hand an “endless” accumulation of capital and on the other, the comparatively stable organisation of political space, this opposition expressing the contradictory (yet intertwined) logics of capitalistic and territorial expansion¹³.

By way of his analysis of successive cycles of accumulation, Arrighi is able to identify certain patterns in the long run of capitalist development. For instance, he recognises that each capitalist state which has successively come to be hegemonic has encompassed in its metropolitan domain a larger territory and a wider variety of resources, while controlling internationally networks of power and accumulation of greater scale and scope, than its predecessors. Thus it may be said that the historical expansion of capitalist power has been associated with “the formation of political structures endowed with ever-more extensive and complex organisational capabilities to control the social and political environment of capital accumulation on a world-scale”¹⁴. Arrighi also concludes that each systemic cycle of accumulation (encompassing a successive long century) displays a similar structure consisting of three distinguishable periods. The first of these entails a phase of financial expansion which expresses the full expansion and contradictions of the old regime whilst providing the conditions for the development of the new regime as an integral aspect thereof. Next, there emerges a period of consolidation and development of the new regime of accumulation through the profitable promotion and instigation of the material expansion of the entire world-economy. Finally, we encounter a second period of financial expansion expressive of the limitations of the fully developed regime, these latter contradictions enabling and being exacerbated by the emergence of competing regimes, of which one will ultimately become dominant¹⁵. It is therefore clear that far from being a contemporary anomaly, financial expansion is a recurrent tendency of historical capitalism from its earliest beginnings. Moreover, developing Braudel’s observations, Arrighi understands financial expansions as a sign of the maturity of a particular phase of capitalist development, recognising that they operate to temporarily restore the fortunes of the leading capitalist agency of the epoch, yet ultimately result in a change of leadership in the centre of capital accumulation on a global scale. The beginning of a financial expansion might therefore be designated the ‘signal crisis’ of the dominant regime of accumulation, such expansion both allowing its organisers to prolong their leadership of the world economy, yet simultaneously prefiguring the coming ‘terminal crisis’ of the regime, entailing its ultimate

¹² Arrighi, *The Long Twentieth Century*, pp. 29-32

¹³ Arrighi, *The Long Twentieth Century*, p. 34

¹⁴ Arrighi, *The Long Twentieth Century*, pp. 14-15

¹⁵ Arrighi, *The Long Twentieth Century*, pp. 219-220

collapse and supersession¹⁶. Phases of financial expansion are therefore, historically speaking, coincidental with periods of agentic and structural transformation of world-scale processes of capital accumulation¹⁷.

According to Arrighi, the central factors which animate the process of financial expansion – the ‘autumn’ of a particular phase of capitalist development¹⁸ – emerge from the intensification of inter-capitalist competition which is the result of the preceding phase of material expansion (what might presumably be designated ‘summer’). Drawing both on Adam Smith’s version of the tendency of the rate of profit to fall and upon John Hicks’ understanding of the dynamics of mercantilist expansion and contraction, Arrighi attempts to explain the fact that, historically, the stagnation of material expansions of the capitalist world-economy have always been accompanied by an escalation of competitive struggles¹⁹. Both Smith and Marx viewed the expansion of trade and production as inseparable from a continual increase in competition among its agencies, albeit that the latter introduced the complicating and countervailing factor of progressive concentration of capital. The impact of such intensification of competition upon profitability is subsequently explained by Arrighi through a (somewhat opaque) fusion of changing capital value-compositions and unfavourable alterations in supply-and-demand relations. Accumulation as recapitalisation of surplus in expanded means of production is accompanied in the competitive context by labour-saving technological innovation. The latter, whilst productive for a temporary period of surplus-profits for the innovator, results over time in an increased organic composition of capital (ratio of fixed to variable capital) in the sector, leading consequently – all other factors remaining stable – to reduced profitability. Moreover, the myopic and uncoordinated expansion of the scale of production in different enterprises, in a finite spatial domain limited by the organisational capabilities of the agency of expansion, leads ultimately to a situation of overaccumulation²⁰. At this point, the aggregate supply of commodities by all producing capitals is greater than effective demand in the marketplace, such that the realisation of the capital values congealed in such commodities cannot be effected in total by any one capital without rendering un-exchangeable a portion of the commodity stock of other capitals. Consequently, no further accumulation is possible without reducing the average rate of profit. Arrighi understands the process generally as one of the material expansion of the global economy coming up against the limits of the particular organisational structure on which it was based, whilst – following Marx in *Capital* III – noting the changing competitive dynamic between rival capitals in the transition between rising or high overall returns and those which are falling or ‘intolerable’. An initial practical identity of interest structured by a relatively ‘cooperative’ competition dissolves in the latter environment into a

¹⁶ Arrighi, *The Long Twentieth Century*, postscript at 371-3

¹⁷ Arrighi, *The Long Twentieth Century*, p. 87

¹⁸ F. Braudel, *Civilization and Capitalism, 15th-18th Century* vol. III (New York: Harper and Row, 1984), p. 246

¹⁹ Arrighi, *The Long Twentieth Century* pp. 168-169, 227-246

²⁰ Arrighi, *The Long Twentieth Century* p. 230

fratricidal competitive struggle, as competition is transformed from a positive-sum to a zero-sum or even negative-sum game²¹. From a juridical perspective, the function of law in mediating the competitive interaction of capitals assumes an altogether different orientation at times of high/rising returns than in periods of falling/intolerable profitability, structuring in the first instance a tense but productive fraternity, whilst in the latter emerging as an arsenal for the zealous protection of market positions and shares, proprietary distribution networks and the rents associated with technological innovation which accompanied the now destabilising division of labour. As will be developed later, the situation is somewhat analogous to a matter discussed in Chapter 5 – that of law’s role in mediating the relation between capital and labour in different macroeconomic environments, operating in times of rising productivity and healthy profitability (and presuming a particular balance of political forces) to structure a certain mutuality of interest, whilst in times of stagnation or crisis becoming once more a weapon of class warfare wielded by capital.

It is in the context of intensified inter-capitalist competition and reduced average profitability described above that Arrighi rationalises the withdrawal of capital from production in favour of financial speculation. We are reminded that the logic of capital is one of the endless expansion of money capital, not the extensive and technological development of the forces of production as an end in itself. Thus, at the point in which the returns which can reasonably be expected from re-investment of surplus in commodity production begin to be outstripped by those associated with financial dealings, it becomes rational for well-placed capitals to short their circuits of money capital, redirecting surpluses into the sphere of circulation²². Indeed, the latter course of action is often incentivised by the coincidence of diminishing returns in production and trade with the synchronous expansion of demand for money capital as states seek liquidity to finance the increasing budget deficits which ensue from the slowdown in trade and production²³. In turn, the “supply” conditions required to meet such demand are provided by the fact that in conditions of squeezed profitability in the productive economy, capitals are predisposed to keep a growing proportion of their incoming cash flow in liquid form. It might be said in general therefore, that the development of a crisis of over-accumulation results in the re-assertion of the fundamental contradiction between the self-expansion of capital and the material expansion of the world-economy²⁴. The result of the entire process is to effect “massive, system-wide redistributions of income and wealth from all kinds of communities to the agencies that control mobile capital”²⁵. Capitals in the centre of the unravelling systemic cycle of accumulation are generally best placed – as a result of their location at the commanding heights of the extant trade and monetary system – to displace this contradiction through financial investment, and to thereby gain from developing

²¹ Arrighi, *The Long Twentieth Century* pp. 231, 233

²² Arrighi, *The Long Twentieth Century* pp. 235-237

²³ Arrighi, *The Long Twentieth Century* pp. 372-373

²⁴ Arrighi, *The Long Twentieth Century* pp. 372-373

²⁵ Arrighi, *The Long Twentieth Century* p. 373

world-systemic instability²⁶. Moreover, it will often be the case that capitals attached to the dominant bloc which drove the initial material expansion will have among the more mature investments in fixed capital infrastructure, such that they will be especially vulnerable to competition from new, lower-cost manufactures in a context of intensified competitive struggle. The re-orientation towards finance may be sufficient to produce a ‘wonderful moment’²⁷ of vertiginous profitability upon a narrow basis (and for a narrow section of the population at the centre of the regime), yet is ultimately likely to be short-lived in view of the fact that a reversal from trade and production to ‘eclecticism’ constitutes a de-coupling of the interests of dominant state-capitals from the material development of the global economy and a surrendering of leadership in relation thereto.

The dynamic thus schematised provides an elementary mechanical understanding of the developmental pattern which emerges from Arrighi’s comparative analyses of successive systemic cycles of accumulation – that of financial expansion arising subsequent to phases of material development and the latter’s attendant intensification of competitive struggle. It provides a guiding explanatory framework for the analysis of recurrent financial expansions, from the withdrawal of the Dutch from commerce around 1740 to become “the bankers of Europe” and the retreat of the Genoese commercial diaspora to rule over European finances for some seventy-years from 1560, to the financial deployment during and after the Great Depression of 1873-96 of the British surpluses produced by the industrial revolution and the contemporary financialisation of US capital following the malfunction of Fordist-Keynesian regime²⁸. It thereby provides the preliminary basis for our present argument – that the extant period of financial expansion should be understood not in terms of the decentring of the state relative to the rising prominence of finance capital, but rather as a response of dominant state-capital formations to the weakening of the structural basis in production and trade of their systemic cycle of accumulation. This response consists in an attempt, through a re-orientation toward finance and a purposive restructuring of the international financial and monetary regime, to nevertheless retain economic and political dominance. The growing power of finance capital has been facilitated by state actors whose interests largely interpenetrate with those of the financiers, as both a motor for and response to the dynamism of the sphere of circulation vis-à-vis that of production in advanced capitalist economies. Moreover, dominant state-capitals have deployed their mastery of the international financial and monetary apparatus both to extract a substantial rent from more dynamic regions of the global economy and to render subservient socio-economically weaker states in order to secure access to peripheral markets and obtain ownership of devalued fixed capital infrastructures. In this sense, global financial markets have been the coercive lever behind a process of neoliberalism which has entailed both the appropriation of the wealth of the periphery and social rationalisation in the core, processes which reveal the entrenched uneven

²⁶ Arrighi, *The Long Twentieth Century* p. 241

²⁷ Arrighi, *The Long Twentieth Century* p. 178

²⁸ Arrighi, *The Long Twentieth Century* p. 373

development characterising the inter-state system (rather than the weakening of the state *qua* state) and require for implementation efficient repressive apparatuses. Below, we will discuss the specificities of this project through an engagement with Peter Gowan's understanding of the Dollar Wall Street Regime, after first considering more concretely the dynamics of the present economic conjuncture.

The Limit of Post-War Material Expansion

Robert Brenner, in his *Economics of Global Turbulence* provides an excellent empirically-grounded overview of the contradictory development of the global economy beginning with the 1965-73 transition between post-war long boom and emergent long downturn²⁹. Brenner recognises that, fundamentally, the long boom was driven by the achievement between the late 1930s and late 1940s of elevated rates of profit in the US, Europe and Japan and the maintenance of such healthy profitability in the following two decades. Conversely, what catalysed the descent of the global economy into an extended period of stagnation punctuated by recurrent bouts of financial turbulence was the sharp fall in profitability for the advanced capitalist economies considered both individually and together between 1965 and 1973. This crisis first expressed itself in the US, but quickly encompassed Western Europe and Japan, whilst expanding from its initial sectoral focus in manufacturing to affect the private economy as a whole³⁰. Despite processes of neoliberalisation and financialisation, there has not subsequently been achieved a decisive recovery of the profit rate either secularly or in the US, Western Europe or Japan considered separately. In a manner thoroughly compatible with Arrighi's understanding of the maturation of phases of material expansion of the global economy and their collapse into financial speculation, Brenner grounds his understanding of the trajectory of the profit rate in the historical pattern of uneven development of the global economy and the corresponding structure and intensity of international competition. The period 1965-73 was characterised by the intensification of competition between earlier-developing and dominant blocs of capital in the US and UK and later-emerging waves of productive investment focused on Japan and Germany, joined subsequently by parts of East Asia. This dynamic brought about stepped-up downward pressure on prices and rendered impossible the valorisation of large swathes of sunk fixed capital. The consequent emergence of over-capacity in the manufacturing sector internationally made for sharply-declining profitability system-wide, propelling the global economy from long boom to long downturn³¹. The persistence of such chronic over-capacity, rooted in manufacturing but affecting the overall private economies of the advanced capitalist economies has been responsible for the maintenance of secularly reduced GDP, investment, productivity and wage growth since the 1970s³². Across all of these macro-economic

²⁹ R. Brenner, *The Economics of Global Turbulence* (London: Verso, 2005)

³⁰ Brenner, *The Economics of Global Turbulence*, preface at xx

³¹ Brenner, *The Economics of Global Turbulence*, pp. 37-40, preface at xxi

³² Brenner, *The Economics of Global Turbulence*, preface at xxiv

indicators, economic performance in the US, EU and Japan has worsened, business cycle by business cycle since the end of the post-war boom, whilst there have emerged substantially higher rates of unemployment and recessions of much greater severity³³.

Considering in greater detail the dynamics thus outlined, Brenner charts the progressive penetration between 1965 and 1973 of the world market by German and Japanese goods which were lower-priced than their American and British counterparts, having been produced by the combination of relatively advanced production techniques and relatively low-cost labour power. Japanese and German manufacturers were thus able to wrest significantly increased shares of the world market from their competitors, whilst imposing upon the market relatively reduced prices³⁴. Competing capitals were consequently faced with reduced prices for their commodities without similarly reduced production costs – a situation which compelled some to withdraw and others to accept significantly reduced profit rates. Effectively, capitals in the earlier-developing blocs, especially those based in the US, were revealed to have over-invested insofar as the entry of lower-cost competitors prevented them from securing the established rate of return on their placements of capital and labour³⁵. The aggregate result for the G7 economies was the emergence of over-capacity and over-production leading to a reduced average rate of profit, insofar as there was insufficient demand to enable higher-cost firms to valorise their capital outlays at their former rates of profit. For Brenner, the failure of higher-cost manufacturers to withdraw from product lines where they faced stiffened competition and sufficiently diversify their investments was the condition under which the reduced rate of profit catalysed the long economic downturn³⁶. The behaviour of such capitals, which generally preferred to withdrawal the option of retaining their market-shares at the expense of reduced profit rates, highlights for Brenner an attendant dynamic of over-production not adequately captured by neo-classical theories of the competitive “shakeout” of higher-cost firms. For economists such as Joseph Schumpeter, over-capacity constitutes merely a transitional moment of disequilibrium to which capitals will promptly adapt by leaving the line, duplicating the productive advance of the innovating cost-cutter or otherwise reducing production costs. Such actions would, in the short term, lead to the restoration of the previously established rate of profit in the line. Brenner recognises that in reality, however, capitals possessing fixed capital investments will find it rational to remain in a product line despite the entry of lower-cost competitors provided that they continue to realise the average rate of profit on their circulating capital (i.e. their recurrent advances of raw materials and labour power). Whilst their fixed capital investments are inflexible costs in relation to which they are forced to accept reduced rates of return, such higher-cost capitals cannot be assumed to scrap these means of production unless and until competition from lower-cost manufacturers prevents them from securing the average rate of

³³ Brenner, *The Economics of Global Turbulence*, p. 99, preface at xxv

³⁴ Brenner, *The Economics of Global Turbulence*, p. 99

³⁵ Brenner notes that between 1965 and 1973, the return realised by US manufacturers on their capital stock declined by over 40 percent - *The Economics of Global Turbulence*, p. 99

³⁶ Brenner, *The Economics of Global Turbulence*, pp. 99-101

return even on their circulating capital³⁷. Sunk fixed capital thus operates both as a barrier to exit and as a deterrent to the entry of lower-cost competitors, since the latter may only increase their market share by coercing incumbents to yield by scrapping, requiring the imposition of prices so substantially below those prevailing as to reduce below average the rate of profit of higher-cost capitals on their circulating capital.

Brenner identifies further dynamics which may militate against the adjustment of higher-cost firms in the context of over-production. First of all, fixed capital placements tend to be vulnerable to the entry of competing low-cost manufactures on account both of the enormous expenditure entailed in their development and implementation and due to the fact that such capital investments generally proceed in the form of waves constituting “large, technically interrelated developmental blocs”³⁸. The technological development of the production process carried on by one capital depends upon the availability of inputs to its process and demand for its outputs, such that effective networks of fixed capital placements tend to perpetuate themselves at a particular technological level, with attendant problems of inertia and upgradability. The magnitude of capital invested in plant and machinery constitutes a significant barrier to exit for those firms involved, whilst the entrenched technological infrastructure formed by the interrelation of multiple units in a productive system operates to delay and deter the entry of lower-cost rivals. Consequently, such competitors will often prefer to develop new geographical regions, circumventing direct competition and perfecting their technological and organisational productive forms in relative isolation. When these producers expand their operations to such a degree that they are able to profitably penetrate occupied markets in addition to supplying newly-developing ones, markets become unified, direct competition erupts and the full extent of over-capacity is revealed³⁹. In this manner, geo-political boundaries and the situatedness of fixed capital operates to modulate competitive relations such that they proceed neither by the pure calculus of cost-effectiveness, nor in line with orthodox theories of competitive ‘shakeout’. Moreover, the capitals revealed as higher-cost in newly unified markets have rational reasons to remain in their present lines of production. As we have already mentioned, most can be expected to continue in production for so long as they are able to realise an average rate of profit on their circulating capital, forcing newcomers to further reduce prices below the average rate of profit to gain market share, thus contributing to the further reduction of the aggregate rate of profit. Additionally, through many years of business in particular lines, the firms of the older bloc will have accumulated valuable information about markets, formed favourable relationships with suppliers and purchasers and developed technical know-how, all of these advantages being rendered redundant by withdrawal and diversification. This dynamic was at play in the specific context of the emergence of overcapacity in manufacturing in the period 1965-73, when uncompetitive US firms had particular reason to remain in their established product lines given

³⁷ Brenner, *The Economics of Global Turbulence*, pp. 29-32

³⁸ Brenner, *The Economics of Global Turbulence*, pp. 32-3

³⁹ Brenner, *The Economics of Global Turbulence*, pp. 33-34

their vast accumulation of proprietary intangible assets⁴⁰. In such a context, higher-cost firms may well seek not to withdraw but to defend their markets by speeding up innovative investment in fixed capital, provoking their cost-cutting competitors to themselves accelerate technical change and worsening the existing over-capacity and over-production. Finally, Brenner identifies further factors working against adjustment to over-production such as: the difficulty of diversification in situations of declining demand growth caused by the decelerated growth of discretionary incomes which must follow the decreased investment and wage growth accompanying falling profitability; the entry of still lower-cost producers who cannot ultimately be deterred by falling profitability, and; the availability of credit to firms with relatively high costs and low profits, facilitating their survival and the perpetuation of over-capacity and depressed aggregate profitability.

For Brenner then, the emergence of crisis in the period 1965-73 constitutes a particular instance of a general tendency whereby technological innovation in search of surplus profits results in reduced aggregate profitability in a particular sector of the economy. The likely outcome is at least some fall in profitability for the economy as a whole, since while capitals external to the lowered-profit line gain on account of the reduced costs of their inputs, capital is not usually able to entirely prevent some of the benefit accruing to labour due to an increase in real wages on account of the reduced prices⁴¹. It is important to remember in all this that the explanation Brenner is advancing for the emergence of the crisis, grounded in the development of over-capacity and over-production on account of the irruption onto the market of lower-cost Japanese and German goods, is completely incompatible with supply-side explanations which focus on the failure of wage growth to pare down in tandem with declining productivity growth. Indeed, Brenner provides a thoroughly convincing conceptual and empirical critique of such ‘profit squeeze’ analyses, whilst basing his own theory not on a supposed vertical maldistribution of wealth/power between capital and labour, but more soundly upon the destructive effects of unplanned horizontal competition between capitals⁴². His attempt to explain the emergence and development of the secular downturn is thus a sketch of a theory of a ‘malign invisible hand’ (the counterpart to Smith’s benign one) which describes a self-generating series of steps resulting from the myopic, profit-maximising actions of individual capitals leading not towards, but away from adjustment⁴³. In essence, it is an attempt to develop concretely an account of the tendency of producers to seek to deploy more and more advanced means and methods of production without regard for existing investments and their requirements for realisation, the result being decreasing aggregate profitability due to reduced prices in the view of downwardly inflexible costs⁴⁴.

⁴⁰ Brenner, *The Economics of Global Turbulence*, p. 100

⁴¹ Brenner, *The Economics of Global Turbulence*, p. 31

⁴² Brenner, *The Economics of Global Turbulence*, Chapter 1

⁴³ Brenner, *The Economics of Global Turbulence*, pp. 25-26

⁴⁴ Brenner, *The Economics of Global Turbulence*, p. 26

Brenner provides a great deal of data to document the emergence of the long downturn in the US in the years after 1965. Between that year and 1973, the rates of profit in the manufacturing and private business sectors fell by 40.9 percent and 29.3 percent respectively, charting a trajectory which would not reach its nadir until the early 1980s⁴⁵. This despite a fall in the annual growth of real compensation to 2.3 percent as compared with 2.6 percent for 1958-65 and 3.1 percent for 1950-58, coupled with an increased rate of annual labour productivity growth, which reached 3.3 percent compared with 2.9 percent between 1950 and 1965. Indeed, in terms of their own cost-effectiveness, US manufacturers performed extremely well in the period 1965-73, with labour productivity growth up roughly 10 percent, real wage growth continuing to fall and capital productivity being maintained. As previously emphasised, the fall in profitability nevertheless suffered resulted not from an upward pressure on costs, but on the downward pressure on prices effected by the entry onto the market of lower-cost Japanese and German competition⁴⁶. In a context of rapid material expansion of the global economy, with world exports growing 42 percent faster 1963-73 than they did in the previous decade, international competition intensified and the lower-cost, later-developing producers in Japan and Germany invaded markets previously dominated by the US and the UK⁴⁷. This is reflected in the 33 percent drop in the US share of the manufacturing exports of the main industrial countries – from 24 percent in 1958-65 to 18 percent in 1965-73. Likewise, the increasing penetration of the US home market by foreign-made steel, automobiles, machinery and consumer electronics finds its statistical verification in average annual rates of import growth of 19.1 percent between 1965 and 1970⁴⁸. In the initial phase of the crisis, then, US producers experienced a dramatic fall in profitability on account of the rise of over-capacity and over-production for the advanced economies in aggregate, whilst the weakening of returns in the US provoked, due to its share of global output, a reduction in the aggregate rate of return for the G-7 of 25 percent⁴⁹. However, the weakening of US economic performance driven by sharply decreasing manufacturing profitability proceeded (to begin with) in parallel with increasing rates of profit in Japan and Germany, as the latter proceeded into the final phases of their respective post-war booms. Thus, while US manufacturers were suffering the onset of a crisis of profitability, the Japanese economy reached the apex of its incredible post-war explosion, growing at an average rate of 14 percent between 1965 and 1970, driven by an annual rate of export growth averaging 17.2 percent. The contradictory nature of such expansion is revealed by the fact that some 54 percent of Japanese export growth 1963-71 derived from its increasing share of the world market, with only 46 percent being achieved through the growth of that market, while virtually the entirety of Japan's relative gain being made at the direct expense of the US and the UK⁵⁰. The German economy followed a similar – though far less steep – trajectory, harnessing labour intensification

⁴⁵ Brenner, *The Economics of Global Turbulence*, p. 101

⁴⁶ Brenner, *The Economics of Global Turbulence*, pp. 102-109

⁴⁷ Brenner, *The Economics of Global Turbulence*, pp. 110-111

⁴⁸ Brenner, *The Economics of Global Turbulence*, p. 113

⁴⁹ Brenner, *The Economics of Global Turbulence*, p. 117

⁵⁰ Brenner, *The Economics of Global Turbulence*, p. 117-119

achieved by employers' attacks, the large-scale recruitment of foreign workers and the collusion of the trade union movement in wage repression to achieve labour productivity growth averaging 5.7 percent 1965-9 and export growth of 10 percent in the same period⁵¹.

The foregoing analysis of the emergence of crisis between 1965 and 1973 might seem at first sight something of a diversion. However, an understanding of the development of over-production and over-capacity in manufacturing – resulting in the reduction of aggregate profitability for the advanced capitalist economies – is essential to understand the subsequent processes of financialisation and the restructuring of the international financial and monetary regime. In the remainder of this section, I will seek to concretise – by way of an analysis of the unfolding crisis and the reflexive policies of dominant state-capitals thereto – the import of such developments, which brought to new prominence international financial markets. In so doing, I will seek to confirm our present hypothesis that these processes should not be understood fundamentally in terms of a weakening of state power in the face of financial multinationals and 'feral' markets. Rather, they must be recognised as reflective of a purposive redesigning of the interstate system by dominant state capitals in response to the rising challenge to their fundamental economic supremacy.

The Dollar-Wall Street Regime

The weight of the emergence of over-production and over-capacity in international manufacturing between the mid 1960s and early 1970s fell initially upon the shoulders of US manufacturers, whose costs were high relative to their competitors in Japan and Germany. However, the US as the world's largest economic and military power was unlikely to allow such an arrangement to persist and indeed moved decisively to reconstitute the dominance of its capitals. A key mechanism in this project was the institution of a new international monetary regime which would enable the US to wield 'monocratic' power over international monetary affairs⁵². The context in which such monetary re-engineering had to be undertaken was one of mounting speculative pressure on the dollar driven by the implosion of the US trade balance, the latter occurring on account of the collapse of US exports and the progressive penetration of its home market by foreign goods as explained above. In the late 1960s, the US economy was kept afloat in the face of falling profitability by growing federal deficits and the provision of cheap credit, which when coupled with the fiscal and monetary austerity of the Japanese and German export-driven models exacerbated the emergent structural trade imbalances. The consequent growth of substantial US current account deficits in parallel with major German and Japanese surpluses produced a

⁵¹ Brenner, *The Economics of Global Turbulence*, pp. 120-121

⁵² P. Gowan, *The Global Gamble: Washington's Faustian Bid for World Dominance* (London: Verso, 1999), p. 19

succession of speculative runs on the dollar and ultimately, a world money crisis⁵³. The collapse of the Bretton Woods system as the somewhat inevitable consequence of such enormous downward pressure on the dollar and corresponding upward pressure on the deutschmark and yen has often been presented in terms of defeat for US capitalism. However, Peter Gowan's insightful analysis of the policy decisions of the Nixon administration during the international monetary crisis reveal the latter's officials as deploying "far more strategic insight...than most political scientists would credit any government with"⁵⁴. Indeed, US state actors and capitals were able to shape the end of dollar-gold convertibility and the oil crisis of 1973 into moments of the re-entrenchment of US economic and political dominance.

The dismantling of the Bretton Woods system began in earnest in 1968 when the US reneged on its commitment to sell gold to private parties at the set rate of \$35 per ounce, such a guarantee remaining for central banks at a formal, hypothetical level. This 'two-tier' system was itself abolished in August 1971 when President Nixon formally suspended the convertibility of dollars into gold as part of his 'New Economic policy', thereby completing the demonitisation of gold and moving the world economy onto a pure dollar standard, with the latter currency becoming a purely fiat money⁵⁵. The advantages of dollar seigniorage for US capital and state managers were substantial, especially when coupled with the new role carved out for private financial markets at the time of the oil price rise of autumn 1973. Far from the mainstream narrative which conceives the price rise as the result of anti-US and anti-Israeli policy around the Yom Kippur war, Gowan recognises the key role of the Nixon administration in influencing the oil states, the US having lobbied OPEC to greatly increase its oil prices for a full two years before it did so. The rationale behind this manoeuvre was based initially upon the recognition that the increased oil price would harm the competitiveness of European and Japanese exporters heavily dependent upon oil from the Middle East. However, there is evidence from at least 1972 that additionally, the US planned for the enormous increase in the dollar earnings of oil states ('petrodollars') to be recycled through US private banks, insofar as they could not be absorbed by the oil states' own productive sectors⁵⁶. The consequently swollen international financial markets, centred around Wall Street and its London satellite, would have an immediate role to play in financing the trade deficits of non oil-producing states, which emerged on account of the soaring costs of their oil imports. Subsequently, Nixon took steps to 'liberate' the enriched financial markets from the control of central banks through the abolition of capital controls in 1974 and by incentivising initially reluctant US banks to recycle petrodollars to countries in the South. The upshot is that private finance assumed a role in

⁵³ Brenner, *The Economics of Global Turbulence*, p. 122

⁵⁴ Gowan, *The Global Gamble*, p. 21

⁵⁵ Gowan, *The Global Gamble*, pp. 19-20; Brenner, *The Economics of Global Turbulence*, pp. 125-8

⁵⁶ Gowan, *The Global Gamble*, p. 21

international monetary relations of a qualitatively different nature and scale than it occupied under Bretton Woods⁵⁷.

The complementary coupling of the two moves we have just discussed – the instantiation of the dollar standard and the instituted pre-eminence of private financial markets – formed the basis of the international financial and monetary system Gowan has called the “Dollar-Wall Street Regime” (DWSR). The fundamental strategy of the Nixon administration in fashioning the DWSR after the abandonment of the Bretton Woods system was to create a market-based or structural system for the maintenance of US political power in the context of increasing competition in commodity markets⁵⁸. The US recognised that dollar seigniorage, combined with the operation of expanding financial markets as a ‘political multiplier’ of treasury moves with the dollar, could secure mastery over the “dominant” pole of the capitalist economy in a context of the relative erosion of its power in the “determining” productive sphere⁵⁹. Indeed, for Gowan, the DWSR may be regarded as the “central nervous system” of globalisation, giving the lie to the narrative of the latter process as a purely techno-economic force separate from (and inimical to) state-political controls⁶⁰. Moreover, the process of financialisation is revealed not as simply a gathering of economic momentum exogenous to the state, being rather directed and structured by institutional design, the latter operating both to determine the shape of the money-capital pole of the economy and also the effective balance between the money- and productive-capital poles. The operation of the DWSR and the consequent redistribution of the costs of the secular crisis of over-accumulation and profitability, as well as the unfolding of the tensions and contradictions inherent in the regime, will now be explored in greater detail.

The key privileges afforded the US by the DWSR were: liberation from the balance of payment constraints which attended the Bretton Woods system and which continue to limit the macro-economic policy of other states, and; unparalleled flexibility in the devaluation and revaluation of the dollar, the dollar price emerging as a potent weapon of political and economic statecraft. Under Bretton Woods, the credit-worthiness and currency stability enjoyed by a state was dependent principally upon the status of its current account, whilst the balance of payments deficit which the US could accumulate was ultimately limited by the guarantee of dollar-gold convertibility. These restraints started to chafe with the emergence of over-accumulation in international manufacturing between 1965 and 1973, as US capitals suffered a crisis of profitability and the US trade balance collapsed. As American gold reserves became insufficient to cover the dollar surpluses held by states such as Germany and Japan on account of their progressive penetration of the US market and increasing shares of international commodity markets, it was necessary for the US either to suspend

⁵⁷ Gowan, *The Global Gamble*, pp. 21-22

⁵⁸ Gowan, *The Global Gamble*, p. 23

⁵⁹ Gowan, *The Global Gamble*, pp. 12-15

⁶⁰ Gowan, *The Global Gamble*, pp. 4, 30

the free convertibility of the dollar or undertake structural adjustment to rein in its deficit. Choosing the former option, the Nixon administration sought to circumvent the US's fundamental economic weaknesses by instantiating private international financial markets as the nexus mediating international currency exchange, replacing the oversight previously exercised by the IMF and national central banks. Thus, the currency stability of different national monies came to depend additionally upon the state's creditworthiness in international private financial markets⁶¹. The partiality of this ostensibly neutral reform is revealed when for 'international' we read 'Anglo-American' and we remember the status of the dollar as international reserve currency. In effect, the new regime allowed the US to decide quite freely upon the price of the dollar, and to direct proceedings in financial markets through the Treasury and Federal Reserve, whilst other States became increasingly dependent upon developments in such markets for the management of their international monetary relations⁶². Free from the hardship of earning dollars abroad, and with its imports and exports in dollar-denominated markets relatively insulated from exchange-rate fluctuations, the US thus inaugurated a period of financial turbulence, with profound consequences for those states with economies pivoting on the price of certain commodities and dependent upon access to financial markets.

Gowan is critical of the use of the descriptor 'global' in relation to financial markets, insofar as it obscures the 'power dimension' of US financial dominance. Instead, the system should be recognised as a compartmentalised one dominated by Wall Street and its offshore servicing centre in the City of London⁶³. The principal beneficiaries of financial market deregulation were therefore financial operators in New York and Washington, especially the large internationally-oriented US commercial banks. Such 'liberation' also unleashed a competitive dynamic between rival financial sectors, which effectively allowed the US, as regulator of the largest, most liquid and thus most competitive market, to prefigure the operative levels of financial regulation internationally. Indeed, competitive pressure from Wall Street not only urged the isomorphic restructuring of domestic financial markets, but also their progressive penetration by New York and London based actors⁶⁴. Crucially, Gowan recognises that states retain the necessary capacities to regulate and restrict the activities of financial actors, displaying at various conjunctures remarkable success in reigning in problematic behaviour, such as with the Basle Accord in 1988. However, such projects are dependent upon US support, whilst conversely deregulation in New York would corrode regulative regimes elsewhere, as competing operators sought both to evade statutory restrictions and lobby for liberalisation⁶⁵. A similar domino-effect could be seen in the case of interest rates, as Treasury moves with domestic rates largely dictate the cost of credit internationally. This latter area in particular gave the US administration a great deal of leverage over the productive activities of

⁶¹ Gowan, *The Global Gamble*, p. 23

⁶² Gowan, *The Global Gamble*, p. 24

⁶³ Gowan, *The Global Gamble*, pp. 26-27

⁶⁴ Gowan, *The Global Gamble*, pp. 26-27

⁶⁵ Gowan, *The Global Gamble*, pp. 28-29

foreign capitals and the macro-economic policy of states dependent upon funding from financial markets. The credit environment, shaped by a US government more committed to serving the interests of its own capitals than maintaining price stability internationally, would determine the viability of capital investments and public expenditures alike. Indeed, Washington's dominance within the regime and the global economy afforded it relatively unfettered freedom of policy choice, such that the history of US dollar policy within the regime, whilst rational from the perspective of US capital, has been cavalier as regards the global economy, wild fluctuations in the dollar price and in commodity markets having catalysed recurrent financial crises in the global periphery. Somewhat paradoxically, these latter crises have functioned not to weaken the operation of the regime, but rather to strengthen it, intensifying the coupling of domestic financial markets with Anglo-American ones, and deepening the penetration of US financial (and non-financial) corporate influence in the affected regions. This has been achieved through a re-imagination of the Bretton Woods organisations, the International Monetary Fund (IMF) and World Bank (WB), as levers for the redistribution of the risks of lending to weaker states: from US banking and financial systems/operators to the populations of the borrower countries⁶⁶. This strategy was pioneered during the Latin American financial crisis which began as the US Treasury imposed between 1979 and 1983 a harsh monetary austerity on the global economy. It essentially involves the leveraged imposition of 'structural adjustment' programmes which through fiscal reform and market liberalisation aim both to guarantee the repayment of debts to creditor institutions and more broadly to re-engineer the domestic economy in the interests of US financial and productive capitals⁶⁷.

The DWSR, considered holistically from its institution to its staggered reproduction and entrenchment through crisis, is revealed as an incredibly complex and potent weapon of US economic and political statecraft. The US, deploying its diplomatic and military influence in the Middle East, was able to procure a substantial increase in the price of crude oil, placing pressure on the public finances of states dependent upon imports from that region. The petrodollars generated by this process were recycled through Anglo-American financial markets, which were set to work (with the required coercion from the Treasury) in supplying credit to states placed in difficulty by the oil shock. Concurrently, the dismantling of the monetary system established at Bretton Woods moved the world economy onto a pure dollar standard, allowing the US to straddle its fundamental economic weaknesses by running huge deficits and using the dollar price to redistribute the costs of the emergent crisis of over-production. The effect of US government procured gyrations in the dollar price was an extreme volatility in currency exchange and commodity markets, wreaking havoc with state finances, particularly those of states dependent upon the export of a small number of commodities. Moreover, Treasury moves with US interest rates determined the cost of borrowing in international financial markets, which oscillated dramatically between the over-

⁶⁶ Gowan, *The Global Gamble*, p. 29-30

⁶⁷ Gowan, *The Global Gamble*, p. 30

supply and violent contraction of credit. Consequently, projects involving productive investment or public expenditure would appear viable at one moment (even marginally so, but encouraged by the availability of extremely cheap credit), only to become impossible the next. These forms of instability promoted the strengthening and entrenchment of the regime in a regular manner by encouraging states to build up foreign reserves in dollars to stabilise their currencies and to hedge against currency fluctuations by investing in a burgeoning range of foreign exchange derivatives⁶⁸.

The regime received additional *irregular* strengthening through the periodic outbreak of localised financial crises, which propelled forward the coupling of domestic financial markets with Wall Street and allowed the US productive sector access to devalued fixed capital and relatively inexpensive labour-powers. The unfolding of these latter processes, whereby control of financial flows and thus of macroeconomic policy is progressively wrested from the control of state agencies in the affected localities, has been interpreted by some theorists in terms of the leakage of power *from states to* financial markets, often as a symptom of a more generalised decentring of the state in the world economy. Rather, given what we now know about the onset of the long downturn with the emergence of crisis between 1965 and 1973, and of the development of the DWSR as an innovative political and economic response driven by the US as the dominant state-capital, an alternative explanation is required. Instead of the decentring of *the state* as a moment in the production and circulation of (surplus-) value and therefore in the accumulation of capital, what has occurred should be understood principally in terms of a redistribution (and polarisation) of power and influence *within* the state system. Whilst the capitalist state always exists within a plurality of competing states, the relations between the latter are in a process of constant transformation which tends towards uneven development, rather than convergence. As the rates of growth of productive investment and effective demand in the global economy fall, a fratricidal struggle develops between myopic state-capitals interested in their own accumulation. In such an event, the vastly asymmetrical allocations of economic, political and military advantage obtaining between states at different stages of development are likely to accentuate and entrench extant polarisations of wealth and power. In our present connection, as the post-war period of material expansion of the global economy stagnated, the competitive dynamic obtaining between rival state-capitals in the manufacturing sector intensified and was transformed in character from a positive- to a zero- or even negative- sum game, in which states could procure growth in their productive sectors only by increasing market-share at the cost of competitors. In such a struggle, states will deploy any and all the competitive advantages they possess – in the instant case the low unit labour costs of German and Japanese manufacturing came up against US military and financial pre-eminence. The construction of the DWSR allowed the US to improve its cost position by increasing the price of oil as a productive input for its competitors and by radically devaluing the dollar whilst escaping the consequences which would have attended such a move under the Bretton Woods system. Further,

⁶⁸ Gowan, *The Global Gamble*, pp. 33-34

the expanded role of Anglo-American financial markets allowed the US to appropriate a substantial rent from more productively dynamic regions of the global economy and to gain control over the macroeconomic policy and access to the markets of weaker states insofar as they struggled to adapt to international monetary instability. In all of this, the embedded centrality of the state to processes of value production and circulation has not at all been diminished. The state-political content of financial markets has, recognises Gowan, been obscured by ‘ideological blinkers’ entrenched in the academic division of labour between political science and economics⁶⁹. If we are to hope to understand the unfolding dialectical relation between states and the world market, we must dispense with these blinkers.

The US’ ‘Wonderful Moment’: the DWSR and the Development of the Long Downturn

It will now be necessary to attempt to combine the work of Brenner and Gowan in an assessment of how the policy freedom afforded the US by the DWSR affected the development of the long downturn which began with the emergence of crisis in the mid 1960s. This will help to further situate the process of financialisation within the interstate system of competing state-capitals against a background of international over-production and over-capacity. Subsequently, in Chapter 3 I will attempt to draw out the interrelation between the state-driven transformation of the international monetary and financial system and the changing domestic articulation of financial and productive sectors in the advanced capitalist economies. In so doing, I will engage with the commonplace observation of domestic state “capture” by corporate and especially financial interests in the neoliberal context. This apparent transformation will be explained in terms of a shift in power between capital and labour which has resulted from a combination of objective and subjective factors prefigured by the erosion of the manufacturing base and a transition to a regime of accumulation centred on finance.

As has been discussed, the weight of the emergent crisis of over-capacity and over-accumulation between 1965 and 1973 was borne initially by US capitals insofar as they had relatively higher-costs than their competitors in Germany and Japan. In the early stages, juxtaposed with the onset of crisis in the US was the final maturation of the long boom in Germany and Japan, whose capitals captured shares in export markets previously held by the US (and the UK), whilst deepening their penetration of the US home market. Between autumn 1965 and summer 1970, Japanese GNP increased at an average rate of 14 per cent, while manufacturing output grew 15.8 per cent annually. Such significant export growth was enabled by (and indeed was the condition for further) productivity advances, as Japanese manufacturers were able to combine high rates of productive investment (21.1 per cent in the private business economy between 1955 and 1961) with relatively low wage growth. Such conditions led to a 20 per cent increase in rate of profit in manufacturing at

⁶⁹ Gowan, *The Global Gamble*, p. 30

precisely the time when profitability in the US was in freefall⁷⁰. In Germany, the combination of cost-cutting, labour intensification and an agreement made between Social Democratic government and the trade-union movement to repress wages produced an annual rate of export growth of 10 per cent 1965-69, coupled with a recovery in profitability of 7.5 per cent⁷¹. This balance of forces, however, could not hold. The collapse in US exports had a hugely detrimental impact upon its trade balance, producing a concomitant explosion of its payments deficit which created ultimately unbearable pressure to reorder international rates of exchange⁷². The dismantling of the Bretton Woods system thereby prefigured was a crucial moment in the construction of the DWSR as discussed above. The latitude afforded by the regime allowed the US to maintain a low-dollar policy, which forced a significant realignment of relative costs between the competing advanced capitalist economies. Japanese and German capitals were forced to accept reduced rates of profit if they were to maintain their market shares, such that the costs of international over-capacity and over-production (which was not, of course, transcended) came to be more evenly distributed⁷³. A key moment in this process was the signing of the Smithsonian Agreement in December 1971, which in responding to mounting pressure to re-order rates of exchange effected a devaluation of the dollar against gold, the mark and the yen by 7.89 percent, 13.5 percent and 16.88 percent respectively⁷⁴. This agreement was however only a partial sedimentation of an underlying process which continued apace, as the Nixon administration maintained its pursuit of policies of Keynesian stimulus which resulted in the exponential growth of US balance of payments deficits and the export of inflation to Germany and Japan, driven by the flight of capital from dollars in search of marks and yen. These latter currencies recorded successive new high-water marks against the dollar in 1973, while their revaluation amounted cumulatively to 50 percent between 1969 and 1973 for the mark and 28.2 percent for the yen in the period 1971-73⁷⁵. Such significant dollar devaluation effected a reordering of relative costs internationally, the competitiveness of US manufacturing improving in proportion to the reduction in relative wages brought about by the descent of the dollar, the increasing cost of imports and the decline of living standards. This process – expressed in an average annual reduction of US relative unit labour costs in manufacturing of 9.5 percent between 1971 and 1973 – procured a sharp turnaround in fortunes inasmuch as the spectacular decline in US manufacturing profitability recorded between 1965 and 1970 was arrested and even partially reversed, while the US trade balance moved back into the black⁷⁶. However, the dismantling of the Bretton Woods system and the emergence of the DWSR could effect only a re-ordering of relative costs between competing state-capitals within an unchanged broader international context of over-capacity and over-production. The only possible remedy would be the

⁷⁰ Brenner, *The Economics of Global Turbulence*, pp. 117-120

⁷¹ Brenner, *The Economics of Global Turbulence*, pp. 120

⁷² Brenner, *The Economics of Global Turbulence*, p. 127

⁷³ Brenner, *The Economics of Global Turbulence*, p. 142

⁷⁴ Brenner, *The Economics of Global Turbulence*, p. 128

⁷⁵ Brenner, *The Economics of Global Turbulence*, pp. 128-9

⁷⁶ Brenner, *The Economics of Global Turbulence*, p. 129

destruction of capital (both as value and as a social relation) on a massive scale. This was mitigated against both by the logics discussed above concerning the rationality for higher-cost capitals to remain in their established lines of production and by the unwillingness of the Nixon administration and its Berlin and Tokyo counterparts to countenance the political and economic costs of such adjustment. The recovery of US manufacturing could therefore be only at the direct cost of German and Japanese capitals, which began to 'shoulder the burden' of the international profitability crisis between 1969 and 1973. In this period, German manufacturing profitability fell by 30 percent, firms being unable in an intensely competitive context to raise their prices in proportion to increasing relative costs without ceding market share, while also suffering reduced export growth. Meanwhile, Japanese manufacturing lost much of its competitive advantage as a result of sharp yen revaluation, descending into crisis as a result of two downwards steps in profitability, occurring 1970-71 and 1972-73⁷⁷.

The oil crisis which developed 1974-5 dealt a further blow to a Japanese economy which was heavily dependent upon imports from the Middle East. While increased energy costs had of course a less severe impact upon the oil-rich US, they lead across the advanced capitalist world to accelerating inflation and a further dip in profits, which was combated by the imposition of monetary tightness. This later move induced marked deflation, reduced profitability and catalysed what was at that point the greatest recession since the 1930s. In this fashion the advanced capitalist world entered a twenty-year period in which profitability in manufacturing and private business would remain below the already-diminished level of 1973 for the US, Germany, Japan and the G-7 in aggregate. This long downturn, which today still remains to be transcended, registered in substantially reduced rates of growth of capital stock, labour productivity and international trade. Concurrently, average unemployment in the G-7 economies more than doubled from 3.1 percent in the period 1960-73 to 6.5 percent for 1973-1995, while governments retrenched social provision. Disciplined by a fraying safety net and a growing reserve labour army, the balance of power shifted in favour of capital and workers were forced to accept falling wages as employers attempted to displace the cost of the crisis⁷⁸. Between 1973 and 1979, real wage growth in manufacturing in the G-7 countries averaged 1.4 percent and fell further to 0.5 percent 1979-89, compared with some 4.4 percent between 1968 and 1973. Similarly as regards the socialised wage, the growth of real government final consumption expenditures fell from 3.2 percent 1973-79 to 2.4 percent 1973-1979 and further to 2.2 percent 1979-89. These processes, prefigured by the attendant structural conditions, were specifically enabled in the US by direct attacks on labour organisation and in Japan by agreements between unions and employers to restrain wage growth and increase productivity⁷⁹.

⁷⁷ Brenner, *The Economics of Global Turbulence*, pp. 133-144

⁷⁸ Brenner, *The Economics of Global Turbulence*, pp. 145-147

⁷⁹ Brenner, *The Economics of Global Turbulence*, pp. 147-149

The sharp downwards adjustment of wages failed to revive profitability in manufacturing, which suffered a further significant fall in the G-7 countries in the 1970s, seemingly contradicting the profit-squeeze theory of the persistence of the long downturn. The private business economy outside of manufacturing however, relatively isolated as it was from international competition, was able as a result of wage repression to recover from the relatively minor reduction in profitability it suffered before 1973. Thus, between 1973 and 1978 and despite the deep recession 1974-75, the G-7 non-manufacturing profit rate fell only 4 percent compared with some 25 percent for manufacturing, whilst the former sector was able by the 1980s to surpass its 1973 profit rate. Moreover, the private business economy outside of manufacturing was able to consistently achieve rates of output, employment and capital stock growth greater than or equal to pre-1973 rates throughout the long downturn⁸⁰. The employers' offensive that followed hot on the heels of the outbreak of crisis was able, therefore, to restore growth and profitability in the non-manufacturing sectors, but could not lift the global economy out of the long downturn, which was driven by chronic over-capacity and over-production in the manufacturing sector. The divergence in growth rates and profitability between the manufacturing and service sectors in the advanced capitalist economies was a tendency which would develop throughout the remainder of the twentieth century and into the new millennium. Incumbent high-cost productive capitals in the US, Japan and Germany chose to accept reduced profitability and defend proprietary intangible assets and invest in new means of production rather than exit product lines, while the ever-increasing share of export markets seized by the newly industrialising countries (NICs) in East Asia exacerbated over-capacity. There occurred therefore a migration of capital in the US, UK, Germany and Japan from the productive sector to that of services – particularly finance, insurance and real estate – in search of improved profitability⁸¹.

While the persistence of over-capacity and over-production in manufacturing continued to fetter the growth of the global economy and as the West in aggregate continued to cede market share to the fundamentally more competitive developing economies of the East, the burden of over-capacity shifted among the G7 economies, pivoting around the axis constituted by rates of exchange. In an attempt to overcome the 1974-75 recession governments returned to loose monetary policy and deficit spending, while the Carter administration exploited the DWSR to maintain a low dollar policy and maximise the competitiveness of US capitals vis-à-vis their international competitors⁸². The improvement in US relative costs brought about by dollar devaluation, the highly successful project of wage-repression in the US and the oil price hike allowed US exports to grow at an average of 5.8 percent between 1973 and 1979. Nevertheless, manufacturing profitability continued to fall – some 25 percent during the oil crisis and remaining even in 1978 some 12 percent below its 1973 level. The accumulation of fiscal deficits and the connected growth of private indebtedness

⁸⁰ Brenner, *The Economics of Global Turbulence*, pp. 151-152

⁸¹ Brenner, *The Economics of Global Turbulence*, pp. 154-156

⁸² Gowan, *The Global Gamble*, p. 40

had provided a monetary form of Keynesian demand stimulus which once again prevented worsening over-capacity from producing its ultimate catharsis, as debt creation and loose monetary policy helped to bail the world economy out of the recession of 1974-75 and kept the wheels turning through the rest of the decade. The tenability of such temporary solutions was necessarily limited however, as deficit spending prevented the shakeout of high-cost capitals, stimulated inflation and placed such pressure on the dollar as, even with the buffer provided by the DWSR, to threaten its status as international reserve currency⁸³. By 1979, the US was ready to abandon Keynesianism and lead an international volte-face in favour of inflation-busting monetary austerity and fiscal restraint⁸⁴.

Beginning 1979-1980, the governments of the G7 imposed an unprecedented monetary tightness combined with harsh fiscal austerity designed to discipline wage growth, shakeout uncompetitive capitals previously subsidised by deficit spending and reduce state expenditure⁸⁵. The Atlantic alliance formed between Reagan and Thatcher was able to construct a hegemonic narrative of the crisis which laid the blame for weak economic performance punctuated by recurrent recessions at the door of irresponsible trade unions, high wages, restrictive regulation and burdensome taxation. The crisis was, supposedly, a supply side one – thus, the appropriate remedy was to remove ‘political’ impediments to business in the form of labour organisation and government intervention. As revolutionary a figure as Thatcher or Reagan, Federal Reserve Chairman Paul Volker dramatically increased interest rates and adopted a strong dollar policy in sharp contrast to the freefalling greenback of the early years of the Carter presidency. Effectively, the Fed was attempting to return to dominance one pole of functionality of the money commodity as against its opposing other – that of money as a measure of value in opposition (within a dialectical unity) to money as a means of circulation⁸⁶. While loose monetary policy had lubricated circulation at the cost of inflation as the erosion of the national money, Volker’s policy aimed at restoring the dollar as a stable measure of value. The latter orientation would favour the financial sector inasmuch as controlling inflation secured returns for interest-bearing capital, while it would in contrast erode the international price position of US productive capitals. Logically enough, then, Volker’s monetary policy met with Reagan’s moves to deregulate the banking and financial sectors, and significantly reduce corporate tax rates in order to stimulate the valorisation of stock market values⁸⁷. Here then is another example of a shift in the character and volume of flows of value in the sphere of circulation, and indeed of the balance between the latter sphere and that of production, arising as a

⁸³ Brenner, *The Economics of Global Turbulence*, pp. 157-9, 271

⁸⁴ Brenner, *The Economics of Global Turbulence*, pp. 168, 170, 184-186

⁸⁵ Brenner, *The Economics of Global Turbulence*, pp. 187

⁸⁶ K. Marx, *Capital: A Critique of Political Economy* Vol. 1 (London: Penguin, 1990), Chapter 3; Gowan, *The Global Gamble*, p. 40

⁸⁷ Gowan, *The Global Gamble*, p. 40; Brenner, *The Economics of Global Turbulence*, pp. 187, 276

result of the deliberate action of state managers pursuing particular strategies of accumulation in a developing macro-economic and political context.

While Reaganite monetary tightness and fiscal austerity was designed to catalyse a competitive dynamic that would cleanse the US economy of high-cost, low-profit firms, the pulling of these macro-economic levers proved to be like using a roller brush to paint a delicate watercolour. The induced reduction in aggregate demand did push many high-cost firms to the wall, effecting some degree of rationalisation of US manufacturing, yet it indiscriminately endangered cost-effective firms, while removing the purchasing power required to enable producers to move into new lines of production. Further, the result internationally was to push a fragile global economy into what was at that point the deepest recession since the 1930s, such that a backtracking Federal Reserve began to loosen the supply of credit, while the Reagan administration, elected on an austerity ticket, embarked upon the most extensive programme of deficit spending ever seen⁸⁸. It was these record-breaking US fiscal deficits which, in a re-run of the mid-1970s, pulled the global economy out of the recession of the early 1980s. If, like Brenner, we insist on applying to this policy the descriptor 'Keynesian', it must be remembered that this was Keynesianism only for the rich – combined with Reaganite supply-side measures to weaken organised labour, restrain wage growth and cut taxation, the measures effected an enormous upwards redistribution of wealth, whilst the accumulation of public debt meant the effective alienation to investors of significant claims upon the surplus produced by the future exploitation of American labour⁸⁹. Reagan's policies certainly hurt working people and did help to produce a sustained cyclical upturn, but could not instigate a new cycle of capital accumulation inasmuch as it did not alter the underlying conditions of over-capacity and over-production in manufacturing which prefigured a zero-sum game for exporters in saturated markets⁹⁰.

While the 1980s saw the US government embrace the financiers domestically, Reagan also oversaw in the international sphere an extensive and intensive expansion of the DWSR. First of all, the US launched a campaign for the removal of capital controls in all the advanced capitalist countries, which achieved in the space of a decade the liberalisation of financial movements in Holland, Denmark, Italy, France and Japan, as well as playing a pivotal role in the creation of the European Single Market. Such developments facilitated huge inward flows of liquidity into US financial markets, these being necessary to avoid crippling US domestic interest rates arising as a consequence of the continuing high dollar policy⁹¹. Additionally, when the Latin American and East Central European debt crises broke (catalysed by the Federal Reserve's high dollar and interest rate policies), the Anglo-American financial nexus was paradoxically strengthened due to

⁸⁸ Brenner, *The Economics of Global Turbulence*, pp. 187-188

⁸⁹ In this regard, Marx's category 'fictitious capital' is of explanatory value – see K. Marx, *Capital: A Critique of Political Economy* Vol. 3 (London: Penguin, 1991), pp. 595-601

⁹⁰ Brenner, *The Economics of Global Turbulence*, pp. 188-89

⁹¹ Gowan, *The Global Gamble*, p. 40

capital flight from affected countries and those fearing contagion. Further, in a financial form of Naomi Klein's 'Shock Doctrine', the US began to capitalise upon the crises as an opportunity to increase the penetration of its capitals in these regions, using the affected states' indebtedness as a lever to pry open domestic financial regimes and export markets. The US also encouraged crisis-bound states to construct domestic stock markets and remove capital account controls, creating playgrounds for US-based speculators. All of these activities would be institutionalised and ideologically legitimated by the re-invention of the International Monetary Fund (IMF) and World Bank (WB) – cast initially into the wilderness by the development of the DWSR – as 'facade-cosmopolitan' agencies working to advance the interests of US capital⁹². Beginning with the project of generalised structural adjustment launched at the IMF/WB meeting in October of 1985 in Seoul, these organisations came to function as defenders of the integrity of the international financial system – a system dominated by the US through exploitation of the DWSR. Debt-ridden Latin American state-capitals had become dependent upon financial markets for shelter from the commodity price and exchange rate turbulence prefigured by the move to the dollar standard and for relief from the sky-rocketing prices resulting from the oil crisis. Now, the only available route out of the immediate debt crisis would lead them into a decaying orbit around the core of the Anglo-American financial system, its irresistible gravitational force leading ultimately to the surrendering of control over domestic fiscal and monetary policy. States were forced to sell off public assets including privatised utilities and to liberalise their capital accounts in order to earn foreign currency with the aim of rebalancing current accounts and to attract inward flows of hard-currency funds. The numerous abstract rules and norms of neoclassical economics provided a rich resource for rationalising these processes, inasmuch as there could always be selectively emphasised parts of the domestic regime which were incompatible with one or other of these mantric prescriptions⁹³.

Gowan describes the stilted and contradictory development of the DWSR in terms of a 'dialectics of progress through blundering gambles'⁹⁴ - clearly, this is not some unfolding of a meticulously prepared master-plan. Yet, as we have seen, neither can the deepening of international financial relations and the correspondingly central role played by financial markets and actors in mediating flows of capital internationally be understood in technocratic isolation from the antagonistic development of the inter-state system. The global economy, as a continuously developing and contradictory unity of production and circulation, is both the product of the interactions of competing state-capitals and the shifting context within which these capitals and state managers seek reflexively to (re-)orient their activities. The lessons learned by the Reagan administration – that the instability accompanying the new international financial and monetary regime could be productive inasmuch as localised crises provided opportunities for financially-levered

⁹² Gowan, *The Global Gamble*, p. 41

⁹³ Gowan, *The Global Gamble*, p. 42

⁹⁴ Gowan, *The Global Gamble*, p. 42

expropriation – were not lost on the incoming George H. W. Bush. The neoliberal experiments conducted in Latin America, now possessing the legitimacy of a ‘global development paradigm’, were rehearsed again in Eastern Europe amidst the ruins of the USSR. US financial operators acquired huge quantities of devalued Russian assets, earned stratospheric returns trading East European public debt in the bond markets and received large injections of flight capital of often dubious origin⁹⁵. Additionally, and perhaps even more crucially, territories ceded by the US’ biggest international rival were drawn into a relation of debt dependence with Wall Street. Moreover, such dependence was mediated increasingly by short-term loans and debt securities which were insecure in comparison with the long-term syndicated bank loans that had characterised the initial recycling of petrodollars to the global south⁹⁶.

The DWSR which Clinton inherited in 1993 had already sustained itself for two decades and had been successful in increasing the influence of Wall St in the global economy and in eroding the regulative barriers obtaining between national financial systems and US-dominated international financial markets. Additionally, the evolving regime had found an increasingly central role for the IMF as a public authority charged with imposing the interests of the regime and supervising the effects thereof in the affected states of Latin America and Eastern Europe. Unwilling (and indeed unable) to rest on its laurels, the Clinton administration sought to radicalise the DWSR as an increasingly dynamic weapon of national economic statecraft and as a mode of instituting new restrictions on the domestic policy of states⁹⁷. In order to understand the ‘radical activism’ of the Clinton regime, Gowan seeks to develop a rough analytical framework suitable to understand ‘national interests’ – especially those of a dominant state-capital – in contemporary capitalism. In doing so, he addresses the commonplace assumption of mainstream political economy that international regimes coordinating national policies are essentially technical responses to regulative requirements operating within a fundamental context of ‘deep harmony’ between the economic interests of state-capitals⁹⁸. For Gowan, this very Eden of free and equal exchange elides a competitive reality better understood by a re-emergent neo-mercantilist scholarship as grounded in a political struggle for national prosperity between hierarchically-organised states each seeking to manipulate its external environment for national advantage in trade⁹⁹. However, whilst the neo-mercantilist view correctly understands the development of the international division of labour as a path-dependent process obtaining between competing states whose strategic action modifies the theoretically posited ‘normal’ operation of international markets, it fails to account for the varieties and degrees of fratricide and fraternity that exist between permanent economic warfare and the idealised cooperation of the mainstream model. For Gowan, the development of a more nuanced model would require the conscientious explication of the social mediations connecting the

⁹⁵ Gowan, *The Global Gamble*, p. 42

⁹⁶ Gowan, *The Global Gamble*, pp. 41, 43

⁹⁷ Gowan, *The Global Gamble*, p. 43

⁹⁸ Gowan, *The Global Gamble*, pp. 60-61

⁹⁹ Gowan, *The Global Gamble*, p. 62

‘economic’ and the ‘political’ as emphasised by the concept of *capitalism as a social system*¹⁰⁰. Proceeding on this basis and with the ultimate goal of analysing the development of the DWSR under Clinton, he outlines a number of ‘conceptual rules of thumb’ for identifying the interests of powerful capitalist states and addressing how these may be institutionally articulated in regimes of international competition and cooperation.

Fundamentally, Gowan observes that as regards economics, the national interest must be understood as the national *capitalist* interest, inasmuch as capitalists are the economically-sovereign social group owning productive labour and thereby mediating the access of elected politicians to productivity and growth. State managers must serve the particular interests of the employers of capital in order to create and sustain the economic conditions necessary to ensure (narrowly) electoral success and (broadly) the fiscal and political integrity of the state domestically as well as its competitive position internationally. The fortunes of a state and its capitals are essentially intertwined inasmuch as the latter’s position in international markets informs the state’s trade balance and, by extension and in the long run, its capacity to maintain order at home and project its military and diplomatic power abroad. Beyond this fundamental symmetry however, at any particular time state interests and those of capitals (organised both as warring individual firms and rival fractions) are not un-problematically convergent, while much will depend on global macro-economic conditions and the related structure and intensity of domestic and international competition. Gowan is correct to emphasise the role of top civil servants¹⁰¹ in ascertaining and presenting the strategic interests of the state, their technical expertise and secure tenure enabling them to provide long-term perspectives in relative isolation from the cyclical imperatives of the political system. However, in my view he likely understates the extent to which national interest formation remains an open-ended discursive process undertaken among different fractions of the capitalist class, allied classes and contextually influential sections of the organised working class, or otherwise by the ideological and political representatives of these groups.

Given the highly-monopolised character of the productive sectors in advanced capitalist economies, states are required domestically to facilitate the concentration and centralisation of capital, as well as to provide a vast range of infrastructural and labour-training support services for monopolistic companies¹⁰². In the international context, states are charged – in view of the developmental trajectory of global commodity markets and the cost position of their capitals therein – to intervene systematically to secure the strategic objectives of their monopoly capitals. Such activity being an essential requirement in conditions of monopolistic rivalry, the state is tasked particularly with using its geo-political influence to: secure access to raw materials important as productive inputs; to control international markets in intensely competitive contexts; and to make available sources of

¹⁰⁰ Gowan, *The Global Gamble*, p. 63

¹⁰¹ Gowan, *The Global Gamble*, p. 65

¹⁰² Gowan, *The Global Gamble*, pp. 63-64

both highly skilled labour in high productivity sectors and of cheap labour for labour-intensive processes¹⁰³. However, far from being a full-spectrum war of one against all for materials, markets and labour-powers, this struggle is structured by an uneven international ‘division of capital’ whereby states develop path-dependent regimes of accumulation built upon different combinations of sectoral strengths. Thus, in a manner dependent upon developing macroeconomic and competitive conditions, states enter into more or less formalised associations based on their degrees of ‘capital fit’¹⁰⁴, e.g. an economy specialising in machine tools and automobile manufacture may become symbiotically intertwined with another possessing competitive advantages in finance or agriculture. Of course, such forms of ‘international cartelisation’ are fundamentally unstable, inasmuch as competitive relations between associated states can quickly slide in nature from positive-sum to zero- or even negative-sum on account of stagnating effective demand and/or monetary tightness.

Having sketched the conceptual outlines of an understanding of ‘national interests’ in the context of highly integrated and oligopolistic global markets, Gowan is in a position to identify the key strategic interests of the United States as the dominant capitalist state and to begin to understand the on-going reflexive re-configuration of the DWSR. To begin with, the world map is for the dominant capitalist state transfigured from an atlas identifying geographical boundaries and geological curiosities to a cartograph of capitalist geo-strategic priorities. Of particular import to a leading state-capital is: control over economically strategic raw materials, such as fossil fuels, minerals and rare metals; secured access to presently and prospectively crucial labour pools, and; command over the key markets for value realisation, especially in relation to strategically significant sectors. Consequently, even in a period marked by the geographical expansion and integration of financial and productive networks, really big markets remain confined to North America, Western Europe and Japan, wherein also resides the bulk of skilled labour. It is imperative therefore for the leading state to entrench its influence in these limited areas, whilst training a speculative eye on developing regions. Practically, the dominant state-capital would seek rationally to secure the ‘institutional openness’ of core markets and labouring populations to the operations of its capitals – by negotiating preferential tariff regimes, seeking to integrate domestic financial markets with Wall street and ensuring that local regulative regimes facilitate FDI and hostile takeovers – and to maintain privileged access to (or to otherwise control the supply of) essential raw materials. The remaining mass of the earth’s population and territory is then relegated to merely auxiliary significance, becoming the subject of extraordinary attention only insofar as it is necessary to prevent systemic contagion arising from localised political or military disturbances¹⁰⁵.

¹⁰³ Gowan, *The Global Gamble*, p. 65

¹⁰⁴ Gowan, *The Global Gamble*, p. 66

¹⁰⁵ Gowan, *The Global Gamble*, p. 67-68

CHAPTER 2

States, Capitals and the Regionalisation of Production

States and Capitals

In this second chapter I will deepen the explanatory framework presented in Chapter 1 by developing an account of the elementary coupling which underlies an analysis of the global economy as the product of the competitive interaction of rival state-capitals – the functional interrelation of states and capitals. If the first chapter theorises the development of the global economy by surveying the interaction of state capitals as its atoms, this second chapter interrogates the nuclear force of these elementary particles. In doing so, I will seek to problematise the liberal conception of the fundamental opposition obtaining state and market, in order to recover an understanding of the ‘instituted’ nature of market relations and to emphasising the structural interdependence of states and capitals and the immanence of state functions to the production and circulation of value. This liberal conception may be seen to compromise the work of Boaventura de Sousa Santos, who in a discussion of the literature on ‘economic globalisation’, imports mostly uncritically the received wisdom on the rising prominence of MNCs and the concomitant usurpation of the nation state as the driving force behind global political and economic processes. According to Santos, MNCs – or for him, transnational corporations (TNCs) – have as a result of the globalisation of production and financial markets risen “to a new and unprecedented pre-eminence as international actors”¹. Indeed, TNCs should be regarded as the primary apparatus of a ‘transnational capitalist class’, the emergence of which has contributed to the nation-state losing “its traditional centrality as the privileged unit of economic, social and political initiative”². This corporate transnational bourgeoisie, operating through a network of institutions – including the IMF, World Bank and US corporate law firms – clustered around TNCs as its nucleus, has thus become the “principal actor in the globalization of the economy”³. William Twining, whilst hypothesising that nation-states might have more “staying power” than Santos suggests⁴, considers their continuing significance in terms of their being “*among* the most powerful kind of actors” in an increasingly diversified global arena characterised by a general (if not inevitable) decline in the importance of national and societal boundaries⁵. It seems then that for Santos and Twining, while the state may remain an important actor in a globalised (or globalising) capitalist system, its role has been relativised by the emergence of competing actors or networks thereof. Thus, the extent to which the state may be said to fulfil the function of *directing* or *framing* international economic processes has been to some degree diminished, with investment, production and trade being

¹ B. de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization and Emancipation* 2nd Edn. (London: Butterworths, 2002), p. 178

² Santos, *Toward a New Legal Common Sense*, p. 168

³ Santos, *Toward a New Legal Common Sense*, p. 183

⁴ W. Twining, *Globalisation & Legal Theory* (Cambridge: Cambridge University Press, 2000), p. 238

⁵ Twining, *Globalisation & Legal Theory*, pp. 8-9

increasingly carried on across (and in *defiance* of) jurisdictional boundaries. In my view, this narrative – which appears elsewhere in a less measured, even hyperbolic form – is problematic insofar as it fails to understand, far less to describe, the connections between MNCs as economic actors and the developing architecture of the inter-state system. In this model, MNCs appear as de-moored from the solid foundation of state power which allow their international projection, whilst their continuing dependence on juridical power to lubricate each moment of their capital circuits is veiled. As a consequence, globalisation (at least in this respect) may appear to be a technocratic process taking place in isolation from, and often in opposition to, the state system. My own view is substantially different insofar as I consider dominant state-capitals to be the central agency behind global developments in the epoch of financialised late capitalism, while there exists and is reproduced a profound (though sometimes tense) mutual penetration of interests between internationally-acting capitals and the international and domestic interests of their related state managers. In the opening chapter I attempted, drawing on Marxist political economy and world systems theory, to explain the present contingent structure of the international system by historically contextualising the extant state of global capitalist development. Within the framework of that discussion, I will in the present chapter map conceptually the dynamic relation between states and capitals and plot its contemporary unfolding.

An initial problem which confronts an attempt to theorise the import of MNCs is definitional – what degree of geographical diffusion of activity is required before a capital may be regarded as trans- or multi-national? In characteristic fashion, many globalisation theorists neglect to define exactly what they mean by an MNC – indeed, neither Santos nor Twinning establish working criteria. The gravity of what might otherwise be considered to be merely a semantic problem is revealed when we consider Kevin Doogan’s findings that even amongst the largest of MNCs, the domestic economy provides the key market and base of operations. Strikingly, the average “transnationality index” for the top 100 MNCs has been since the 1990s only 50%, meaning that the domestic activities of even the largest MNCs – which account disproportionately for overseas employment, asset ownership and sales – are equally as important as their combined international activities, while of the 14.85 million employees of those corporations, some 7.37 were employed in the home country⁶. Moreover, studies of the distribution of domestic and global activities of US MNCs have shown that the ratio between the two spheres of activity has been the subject of only extremely minor variation in the decades between 1977 and 2006, despite this period being the key point of reference for much theorisation of globalisation⁷. Further research has suggested that corporate ‘globalisation’ may be better understood as ‘regionalisation’ insofar as such internationalisation follows the ‘triadisation’ of the global economy effected by advanced

⁶ K. Doogan, *New Capitalism? The Transformation of Work* (Cambridge: Polity, 2009), p. 72. Sourced from the United Nations Conference on Trade and Development (UNCTAD) World Investment Reports 2001, 2004 and 2006, available at: www.unctad.org [accessed 15 October 2011]

⁷ K. Doogan, *New Capitalism?*, p. 74

accumulation in North America, Western Europe and East Asia. Alan Rugman has shown that to the extent that MNCs operate outwith their home market, they do so overwhelmingly on a *regional* rather than truly *global* basis, with 320 of the 380 largest firms in the world averaging 80% of their sales within their home region⁸. Further, as of 2001, only 9 enterprises met the criteria specified by Rugman as necessary for the firm to be characterised as truly ‘global’ – that of achieving at least 20% of sales in each of the triad regions but less than 50% in any one region⁹.

In addition to the revealing data produced by such researches, the methodology employed by Doogan, Rugman and others is instructive insofar as it re-couples the unbounded, fluid motion which characterises many accounts of globalisation with the materiality and territorial embeddedness of internationally networked production. It is no surprise for Rugman, grounded as his approach – based upon transaction cost economics – is in the practicalities of networked production, that eight out of the nine corporations he reveals as most genuinely ‘global’ deal in the manufacture and distribution of computer and electrical equipment, given the high value to weight ratio of such products¹⁰. It is perhaps trivial, but nonetheless vital to remember that however footloose and mobile capital may appear, it must ultimately refer to spatially and temporally bounded processes of production whereby variable and circulating capital are combined with fixed capital infrastructure in such a manner as to produce a socially viable (competitive) product in view of the coercive operation of the law of value in the global market. This is, as we have explored, is the case regardless of whether capital is one step (in the case of finance capital) or two steps (securities markets) removed from the productive processes of the real economy.

The re-embodiment of the apparently weightless economy described by many globalisation theorists reveals a primary avenue of corporate dependence upon, and interconnection with, state apparatuses. States, as the concentrated distillate of social power, harness in most territories unrivalled resources for the regulation of territory and population and are the glue which holds together the multi-dimensional social space required for the regular extraction and realisation of surplus value. While there are undoubtedly zones in which corporations, through the deployment of private security forces, internalise many of functions necessary to protect processes of resource extraction and commodity distribution, fundamental problems of efficiency and practicality arise when these are dissociated from a rationalising and legitimising juridico-political framework. Moreover, the revelation of the residual, and central, importance of the home market to the operations of even the largest MNCs, combined with an acknowledgement of regional-specificity of international networks of production, concretises the operation of transnational capital within

⁸ A. Rugman & A. Verbeke, ‘Towards a theory of regional multinationals: a transaction cost economics approach’ (2005) 1(Special Issue) *Management International Review* 5

⁹ A. Rugman, ‘Globalization and regional international production’ in J. Ravenhill (ed.), *Global Political Economy* (Oxford: Oxford University Press, 2004), p. 264 See discussion in A. Callinicos, *Imperialism and Global Political Economy* (Cambridge: Polity, 2009), pp. 202-3

¹⁰ A. Rugman, ‘Globalization and regional international production’, p. 284

specific processes of domestic economy-making and regional integration. Tony Smith, in his “systematic Marxist account” of Globalisation, provides a valuable discussion of the centrality of state regulatory and disciplinary capacities to corporate ‘globalisation’. To begin with, Smith reminds us that the state is an integral part of the social relations of capital, rather than existing outside those relations. It is thus necessary to unpack liberal commonsense assumptions regarding the antagonism between state and market – assumptions which when transposed into the international sphere have helped to generate the supposed opposition between states and MNCs. The most basic function fulfilled by the state in ensuring the reproduction of capital accumulation is the legislation and enforcement of the property rights which are presupposed and generated by commodity production and circulation¹¹. The necessity of ensuring the protection of these rights is not diminished by the internationalisation of production – indeed, the issue may be seen to become all the more acute in the case of the insertion of capitalist enterprise into social contexts structured by mixed modes of production, where local populations haven’t necessarily been generationally disciplined into regimes of wage labour. Further, Smith emphasises the role played by the state in the institution and maintenance of the stability of the national monetary regime, highlighting additionally the role played by public debt in fuelling accumulation¹². Michel Aglietta, in his classic work *A Theory of Capitalist Regulation* explicates the role of the state as bearer of the monetary constraint in modifying and temporarily displacing the effects of the latter in order to ensure the coherence of the extant regime of accumulation¹³. Following Aglietta, we should recognise the crucial role of the state in guaranteeing the authority of the central bank as lender of last resort and enforcing the currency of the central money it issues¹⁴. This situation is not fundamentally altered by policy decisions to place central banks such as the Bank of England on more or less independent organisational footings, which should in any event be seen as effecting a re-articulation rather than a substantial weakening of the relationship between government and central banks. Moreover, the centrality of public spending to capital accumulation in the context of the development of business cycles should be acknowledged, with Aglietta’s understanding of the incursion of public debt as a mode of securing consumption (and by implication, social cohesion) in light of the malfunction of the fordist regime of accumulation being particularly pertinent¹⁵. Aglietta’s point is negatively reinforced by the impact of the sovereign debt crisis upon financial markets and the likelihood that austerity measures will catalyse a descent into a new period of economic contraction.

To return to Smith, in addition to the general role played by the state in securing the property rights presupposed and produced by generalised commodity production, the state performs a specific function in mediating by contractual regulation the alienation of that commodity which forms the

¹¹ T. Smith, *Globalisation: A Systematic Marxist Account* (Chicago: Haymarket, 2009), p. 222

¹² Smith, *Globalisation*, pp. 222-3, fn. 3

¹³ M. Aglietta, *A Theory of Capitalist Regulation: The US Experience* (London: Verso, 2000), pp. 328-379

¹⁴ Aglietta, *A Theory of Capitalist Regulation*, p. 349

¹⁵ Aglietta, *A Theory of Capitalist Regulation*, p. 427

pivot of the process of accumulation – labour. As will be discussed more fully in the following chapter, the state plays a crucial role in instituting the regime of wage labour and subsequently securing the continued availability of labour-powers in sufficient quantity and with the ability to work with the requisite degree of productivity. This latter task, whilst being an essential precondition for accumulation, lies outwith the circuit describing the motion of any individual industrial capital, and is generally accomplished either entirely or predominantly outside of its organisational domain. The MNC operating in an overseas territory is therefore reliant upon the state apparatus to regulate employment relations in such a manner as to balance accumulation and social cohesion, whilst more broadly coordinating social reproduction by the regulation of households and communities and the administration of the penal system¹⁶. Such a regulatory function will tend in periods of general overaccumulation to obtain an especially dynamic and coercive character, state apparatuses being the lever for the eradication of traditions and customary rights necessitated by the subsumption of ever greater depths of the natural and social world within circuits of accumulation¹⁷. Another state function required by progressive accumulation is the regular revisiting of categories of legal personality and permissible organisational and contractual forms in line with the developing concentration and centralisation of capital.

In addition to those mentioned above, Smith considers several further state functions which have seemingly survived the latter's relativisation under conditions of globalisation. Specifically, the state continues to play a central role in the discovery and implementation of technological advances by providing support for education and training, funding for infrastructure and research, whilst also instituting strategic partnerships with business for specific projects¹⁸. Indeed, Smith argues that the states which are most often held up as neoliberal success stories – such as Korea, Taiwan and China – may be better understood as having generated growth through the adoption of a 'catalytic' or 'developmental' state form. This involves the strategic nurturing of key sectors of industry through the provision of extremely cheap credit, the institution of protective regimes of tariff and non-tariff restrictions on trade, robust restrictions upon Foreign Direct Investment (FDI) and the regulation of inflows of financial capital in order to maintain local control of banks and key firms¹⁹. While innovation is a key competitive weapon in the global market, enabling the appropriation of surplus profits, it is also the central component of Marxist theories of overaccumulation and the financial crises which are symptomatic thereof. It is in relation to such crises that Smith recognises a further role of the state, insofar as the latter in accordance with its ideological and political orientation can affect the unfolding of the crisis, deploying counter-cyclical relief measures or – as

¹⁶ Smith, *Globalisation*, pp. 223-6

¹⁷ Smith, *Globalisation*, pp. 226

¹⁸ Smith, *Globalisation*, pp. 227-8

¹⁹ Smith, *Globalisation*, pp. 88-96

is pertinent in the present context – displacing the cost of the crisis onto working people, the unemployed, the elderly and other disadvantaged groups²⁰.

Beyond specific functional delineation, Smith makes a more fundamental argument about the nature of the capitalist state, returning to the starting point that the state forms an integral part of the social relations of capitalist society, the organising principle of which is the self-valorisation of value. Proceeding from this foundation, Smith unpacks the dichotomy between particular and universal interests which grounds the widely-held understanding of the state as an institutional order established to pursue the ‘universal’ interest in the production of public goods and avoidance of public bads. For him, the operation of this dichotomy obfuscates the fact that the animating logic of capitalist society is the accumulation of money capital, while the location of the capitalist state in the sphere of the ‘universal’ is incompatible with its role in reproducing the fundamental social relation of capitalist society – the wage-labour relation – and the antagonisms which accompany it²¹. For Smith, the only truly ‘universal’ interests in capitalist society are those of the accumulation of capital, while the particular interests which are represented in any given state formation are the product of the discursive, reconciliatory interaction of different class fractions led by a dominant fraction of the capitalist class. For Smith, this latter alliance, understood in terms of the Gramscian concept of ‘ruling bloc’, operates primarily in the institutional setting provided by the state apparatus. Thus, it may be said that a further function of the state is to provide the discursive and organisational framework for the negotiation and institutionalisation of the reconciled inter- and intra-class interests of the ruling bloc with regard to the management of crucial preconditions for continued accumulation²².

By way of the functional elaboration of the immanence of the state-form to capitalist relations of production, Smith provides a powerful corrective to the analysis of the state ‘decentred’ by globalisation. However mobile we perceive finance capital to be, however numerous are the exit options for industrial capital embedded in a particular locality, however developed is the regionalisation of production chains and however dense are networks of international trade – the reproduction of capitalist social relations in any environment requires the fulfilment of the essential functions of capitalist states described by Smith. Indeed, the operation of state apparatuses is necessary to facilitate the progressive internationalisation of commodity production and exchange. FDI presupposes the existence of a robust regime of protection for foreign investors in the host state, while cross-border subcontracting arrangements require legal regulation and the adjudication of disputes. Further, state fiscal and monetary policy provides a mediating framework for flows of commodities and investment, the management of the relation between national currencies and the

²⁰ Smith, *Globalisation*, pp. 228

²¹ Smith, *Globalisation*, pp. 228-232

²² Smith, *Globalisation*, pp. 230-2

international reserve currency(-ies) being especially crucial²³. Moreover, state regulation fundamentally shapes the balance of power in the workplace, both in terms of the direct mediation of the wage-labour relation and more broadly with regard to state policy on foreign trade, foreign investment and immigration, these latter decisions determining the extent to which local labour-power is subject to the disciplining force of the law of value in the global market.

The State & Foreign Investment

It is with recourse to patterns of foreign investment and the development of generalised and apparently obligatory parameters in relation thereto that many commentators seek to articulate their conception of the weakening of state boundaries and apparatuses. Familiarly, the ideological consensus of the neoliberal period propounds a development model presupposing the lowering of tariff and non-tariff barriers to trade, the reduction of state economic activity by the privatisation of assets and the liberalisation of public services and the incentivisation of foreign investment through the maximisation of the rate of exploitation and the guaranteeing of returns. David Schneiderman, in *Constitutionalizing Economic Globalisation*²⁴, provides a useful analysis of the formation of an international “regime” of investment rules which privileges the interests of foreign investors and operates to disable state-led development models and expansive welfare provision. Schneiderman considers regional trade agreements such as the North American Free Trade Agreement (NAFTA) and the web of some 2500 Bilateral Investment Treaties (BITs) and their associated arbitration agreements which have grown up under the framework of the WTO as forming an interlocking network of rules and institutions which entrench free-market economics and debar redistributive policy options – in effect, a proto-constitutional neoliberal “investment rules regime”²⁵. In the context of the coercive global political and economic environment thus conceived, one can understand the emergence of a narrative of weak, relativised states rendered subservient to all-powerful transnational corporations, the latter enslaving local populations and expropriating natural resources under the noses of impotent governments. However, such an understanding collapses the power and resource asymmetries existing between different state-capital formations (and structured by processes of uneven and combined development at a global level) under the undifferentiated plural “states”, while flattening vastly divergent experiences of economic reforms into a monolithic conception of “neoliberal economic globalisation”. In reality, the period inaugurated and framed by the harsh monetary discipline imposed on the world by the US in 1979 has been characterised by heterogeneity insofar as it has entailed the super-exploitation of labour and expropriation of public resources in peripheral regions, whilst its implications for core economies may be better understood in terms of ‘social rationalisation’. The latter should be considered fundamentally in terms of the

²³ Smith, *Globalisation*, pp. 235-6

²⁴ Schneiderman, D., *Constitutionalizing Economic Globalisation: Investment Rules and Democracy's Promise* (Cambridge: Cambridge University Press, 2008)

²⁵ D. Schneiderman, *Constitutionalizing Economic Globalisation*, pp. 2-3

offsetting of reduced rates of profit by systematic wage repression facilitated by attacks on organised labour, the redistribution of the cost of labour reproduction onto labour itself by way of the re-commodification of otherwise relatively resilient welfare regimes, and generalised class parasitism exemplified by the re-orientation of commercial banking activities towards workers' revenue²⁶.

Moreover, while the received wisdom of neoclassical economics is that the minimisation of state intervention and the opening of markets to free competition will bring generalised prosperity, states with the power to choose have been selective in their implementation of the prescribed policy options which they themselves have presented as being in the universal interest. As Arrighi has noted, the unilateral measures of trade liberalisation undertaken by the US in the neoliberal period have been very limited, reflecting the historically "anti-free-tradist" thrust of US hegemony. The US strategy has been one rather of "bilateral and multilateral intergovernmental negotiation of trade liberalisation, aimed primarily at opening up other states to US commodities and enterprise"²⁷. Essentially, and somewhat unsurprisingly, the US approach has been to promote liberalisation in relation to markets and product lines in which it has a competitive advantage, while preferring protectionism where its capitals would be vulnerable to more competitive, lower-cost foreign enterprises. As Callinicos has recognised, neoliberalism has proved to be for "dummies"²⁸, being imposed by the core upon peripheral states in the context of (and reproducing) the latter's dependence upon international financial markets, with the core being reticent to itself adopt such reforms. Such a pattern inaugurates a vicious circle for the socio-economically weakened neoliberalised states, which become increasingly vulnerable to fluctuations in global currency and commodities markets, the latter producing localised economic crises which are subsequently used as leverage by the core to appropriate devalued assets and further exploit peripheral markets.

The experiential asymmetry of foreign investment in the neoliberal period undermines the narrative of the weakening of state power relative to MNCs, being suggestive rather of the position which is advanced here – that neoliberal economic globalisation describes from one angle a global inter-state system redesigned by and in the interests of dominant state-capitals led by the United States. David Schneiderman, it must be said, makes a better attempt than most to recover the agency of the state in structuring economic globalisation. However, his conception, similar to that of Santos and Twining, is ultimately one in which states are subsumed within a broader category of "globalising actors"²⁹. In contrast, the position I hold and seek to develop here is that states remain *the* principal organisers of global capitalism. In my view, the position held by Schneiderman, Santos and

²⁶ P. L. dos Santos, 'On the content of banking in contemporary capitalism' (2009) 17 *Historical Materialism* 180-213

²⁷ G. Arrighi, *The Long Twentieth Century: Money, Power and the Origins of our Times* (London: Verso, 2010), p. 72

²⁸ Callinicos, A., *Bonfire of Illusions: The Twin Crises of the Liberal World* (Cambridge: Polity, 2010), p. 9

²⁹ D. Schneiderman, *Constitutionalizing Economic Globalisation*, p. 7

Twining rests partly upon an analysis which privileges North-South relations in the analysis of economic globalisation. While this approach is in some respects desirable insofar as it is this dynamic which is so often responsible for the most deplorable human consequences of capitalist accumulation, it tends to be analytically disorienting insofar as it shifts the centre of gravity of the global economy. While it is certainly the case that core states in their negotiations with peripheral economies are likely to exploit the attendant power asymmetry to secure favourable terms for their investors, thus constraining the policy options of the host state, the great proportion of FDI occurs between advanced capitalist economies. Kevin Doogan, utilising the data published by the United Nations Conference on Trade and Investment (UNCTAD), noted that in 2000 some 80% of FDI flowed into or between the advanced economies, while in 2005 the United Kingdom's 18% share of global FDI inflows represented five and a half times the total investment received by African states. Moreover, it should be recognised that in general and even in the era of 'corporate globalisation', overseas investment remains a marginal economic activity, with world FDI flows accounting in 2004 for a mere 8% of global domestic investment³⁰. Accordingly, it is arguable that any attempt to theorise a profound restructuring of the global economy on the basis of North-South FDI arrangements would be methodologically unsound. Additionally, it would seem logically flawed to ground an analysis of the decentring of the state in economic relations upon the restricted policy options of governments in under-developed peripheral regions of the global economy which have in recent history (whether conceived as post-, neo- or directly colonial) not known much political or economic autonomy. As previously argued, the experience of neoliberalism and the implications of inward FDI for advanced capitalist economies are much different than for the periphery.

Beyond conjunctural analysis, it is difficult to overstate the importance of conceptual theorisation of the structural interdependence between states and capitals and the immanence of state functions to the production and circulation of value, both in its money and commodity forms. The state maintains a legal environment appropriate to generalised commodity production, providing the juridical and ultimately coercive power which guarantees the property rights generated and reproduced thereby. State power lubricates wage-labour and commodity exchange relationships, regulating the power of organised labour and securing a rate of exploitation that balances profitability, social reproduction and the maintenance of structures of consent. States have a central role in the reproduction of labour-powers in sufficient quality and quantity by the provision of healthcare, welfare and education. State agencies maintain and guarantee the money commodity which mediates exchange, altering the quantity of supply in response to fluctuations in the velocity of circulation and setting base rates of interest in an attempt to manage inflation and stimulate demand where necessary. The state provides protection for intellectual property rights,

³⁰ Doogan, *New Capitalism?*, pp. 67-69; UNCTAD World Investment Report 2005 (New York: United Nations, 2005) and preceding years

underwriting the surplus profits obtained by technological innovation and, by extension, that productive expenditure itself. Indeed, successful states tend to nurture strategically important industries by the provision of tax subsidies, the deployment of protective tariff structures and the supply of liquidity and resource inputs into research and development circuits. States regulate the value of their national monies relative to the international exchange currencies, weighing the interests of their export industries against the imperative of holding down wages by the import of cheap wage goods. States enter into bilateral, regional and global negotiations on trade and investment in an attempt to guarantee favourable conditions for their capitals, while providing the military power which ultimately secures the value of overseas investments. Powerful states use their military might both defensively and offensively to secure access to crucial raw materials and low-cost labour-power in unstable (or, often strategically de-stabilised) regions. In short, it is necessary to transcend the liberal misunderstanding of the opposition between private and public, representing respectively the realms of market competition and anti-market institutionalised altruism. The state is embedded in circuits of capital accumulation, while markets arise not organically, requiring for their construction and reproduction coordinated and sustained governmental action. Following Polanyi and more recently Doogan, it is imperative to reclaim the market as ‘an instituted process’³¹.

Back to Bukharin

As discussed above, far from diminishing in the epoch of globalisation, state functions remain crucial and in certain cases acquire even greater centrality. Indeed, it is even arguable that the place to begin in this context is not with Hardt and Negri’s neo-Kautskyite ultra-imperialist conception of *Empire*, but with Nicolai Bukharin’s 1915 recognition that the internationalisation of economic life leads to a progressive *nationalisation* of capital, entailing the further organisational integration (and we may add ideological coalescence) of the state apparatus and nationally-based capitals. For Bukharin, in the epoch of finance capital and imperialist politics, the state, having always acted as “defender and protector” of the ruling classes of its country, now assumes “colossal importance”³². As is well known, the empirical basis of Bukharin’s researches led him to focus unduly on the developmental specificities of German capitalism, while his analysis of the supersession of competition in the national sphere by increasingly intense and militarised international competition is a little overstated. Further, as John Rees notes in his introduction to the 2003 edition of *Imperialism and World Economy*, Bukharin’s articulation of the state as agent for an increasingly concentrated and centralised national bourgeoisie is over-simplistic, since it fails to account for the continuing function of the state as an institutional site for the mediation of the imperatives of different fractions of the capitalist class and their reconciliation with the interests of proximate and

³¹ Doogan, *New Capitalism?*, p. 9

³² Bukharin, N., *Imperialism and World Economy* (London: Bookmarks, 2003), pp. 130-1

competing classes³³. However, there is much about Bukharin's analysis which is of value and may be considered to be prescient in light of contemporary developments.

Bukharin's understanding that the development of huge corporations, the rise of state-capitalist trusts and the cartelisation of national industries would lead to an increasing subordination of parliament to the interests of a centralised national bourgeoisie conducted by a leading financial fraction is instructive. Further, his recognition that the increasingly severe demands imposed by the operation of the law of value in the world market would necessitate progressively intensive state intervention in different spheres of social life in order to rationalise reproduction is particularly apposite. Moreover, Bukharin's understanding that the international bourgeoisie is organised into 'national' groups wedded to the military power of their respective states is useful in our connection. Indeed, this position would seem to be supported logically by our recognition of the overwhelming importance of domestic investment and production, even amongst the biggest MNCs. Further, Bukharin's recognition that the internationalisation of economic life leads to a *sharpening* of the conflict of interest between these various national groups³⁴ is a crucial corrective to Santos' analysis of the emergent agency of a 'transnational capitalist class'. Santos is joined by B. S. Chimni in charting the development of a transnational capitalist class (TCC) and attributing to it the role of protagonist in the development of globalisation³⁵. For Chimni, the present period of 'global imperialism' has led to the formation of a TCC integrating the international fractions of national capitalist classes and being driven primarily by international finance capital³⁶. It is my contention that both Santos and Chimni underestimate the national stratification of the bourgeoisie, whose divergent interests map onto the entrenched uneven development of the global economy. A partial explanation for the latter theorists' disorientation may be located in their primary deployment of the North:South lens in their analysis of imperialism. In contrast, while Bukharin notes that an intensifying scramble to exploit the resources of underdeveloped regions of the global economy is characteristic of imperialist politics, the advantage of his (and later Lenin's) thesis is the location of its centre of gravity in the inter-imperialist relations existing between advanced capitalist economies.

It is important to emphasise that in attempting to conceptualise the relationship between states and MNCs, we constantly confront an analytical bias which is generated by the liberal understanding of the state decoupled from class relations. Implicit in much theorisation of the decentred state is an assumption that a state is *strong* when it deploys a robust protective regime of labour regulation, maintains a system of redistributive taxation and offers generous welfare provision for citizens. Conversely, it is assumed that a state is *weak* when it practices fiscal discipline, privatises assets

³³ Bukharin, *Imperialism and World Economy*, introduction at p. 6

³⁴ Bukharin, *Imperialism and World Economy*, p. 60

³⁵ B. S. Chimni, 'Prolegomena to a class approach to international law' (2010) 21(1) *European Journal of International Law* 57

³⁶ Chimni, 'Prolegomena to a class approach to international law' at 67

and services previously within the public domain and provides tax breaks and other incentives to foreign multinationals in return for investment. However, as we have already seen, the “strong” state functions of progressive taxation, welfare provision and labour regulation are only one portion of a whole gamut of responsibilities the state has in relation to the institution of a market economy and the reproduction and accumulation of capital. Moreover, it is not remotely the case that the default orientation of the state is to protect labour and subsumed classes from the worst excesses of the capitalist system, operating in furtherance of some disembodied “universal” interest. From David Schneiderman’s analysis, one might be forgiven for thinking that the main obstacle preventing weaker states – say, in sub-Saharan Africa – from redistributing wealth and land resources in order to tackle poverty is the international investment rules which debar such options. In reality, the state in any period cannot be properly understood in abstraction from the balance of class forces operative in society, this in turn being structured by the objective conditions of the domestic economy in the context of the global market. The *ratio* of the capitalist state, speaking economically, is ultimately the furtherance of capital accumulation. However, in order not merely to invert the liberal position, this underlying *raison d’être* does not find its political distillation simply in securing by brute force the egregious exploitation of labour and pillaging of natural resources. In advanced capitalist society, capital rules in general by a combination of consent and coercion and to some degree *in* combination with proximate classes against labour. Thus, the state becomes the primary institutional site for capital’s construction of an alliance of class forces over which it can exercise *hegemony* as a necessary correlate to its *domination* of labour³⁷. The specific structure of capital’s hegemony and the operative balance between consent and coercion is dynamic and subject to a discursive process obtaining between subjective political actors, framed by objective economic conditions. Thus, as we have seen, in the specific context of the post-war long boom, tight labour markets in the US and UK undercut the function of the reserve labour army to discipline the wages and conditions of employed labour, while the latter seized this opportunity – and that provided by the ideological framework produced by the war effort – to organise politically. Additionally, healthy rates of profit and productivity growth conditioned by the competitive advantage enjoyed by the US and the UK provided the material basis for concessions to this movement which was growing in size and militancy. All of these factors coalesced to generate a structure of consent which ensured a solid basis for the healthy maintenance and reproduction of labour-powers in a context of relative labour scarcity, while providing material gains for labour, in effective return for the domestication of labour demands within a system of reformist collective bargaining and the maintenance of capitalist property and production relations³⁸. However much capitalists and their apologists relied upon such reforms to ground the legitimacy of their system, they remained in a profound sense defeats for capital, as was

³⁷ P. D. Thomas, *The Gramscian Moment: Philosophy, Hegemony and Marxism* (Chicago: Haymarket, 2010), pp. 161-165

³⁸ Remember Conservative MP Quintin Hogg’s famous statement in 1945: “If you do not give the people social reform they are going to give you social revolution”. C. Jones & T. Novak, *Poverty, Welfare and the Disciplinary State* (Oxford: Routledge, 1999), p. 123

later borne out when they were revealed as an effective ceiling for the rate of exploitation and thus a competitive disadvantage in relation to the emergence of lower-cost manufactures in the East.

Law is a process through which is articulated the specific relational dynamics of consent and coercion generated in the political apparatus. Regulation glues together allied classes and engages the threat and actuality of coercion by the state apparatus against labour and oppressed groups, sustaining the structure of capital hegemony in a manner which seeks to concretise relations of production and reproduction, whilst delaying and otherwise controlling the unfolding of their internal contradictions. Law thus seeks to modulate the temporal horizon. In *Capital* II, Marx emphasises the importance of the temporal dimension to capitalist reproduction through surplus extraction, realisation and investment, it being of particular relevance in cases of capitals with long turnover periods and large amounts of ‘sunk’ fixed capital. Moreover, in relation to the territorial logic of the state, it is clear that a reliable and sustainable flow of revenue generated by taxation of principally variable capital (wages) and also surplus value is required in order to ground the accumulation and development of means of destruction. Additionally, it must also be mentioned that in the UK at least, law is specifically – both formally and substantively – part of the materiality of the hegemonic relation existing between capital and the beneficiaries or rentiers of the now-skeletal feudal regime, whilst also operating as a discursive horizon to ground conversations between capital and “traditional” intellectuals decoupled (or relatively so) from the fundamental classes. The case of international law is analogous to the domestic situation insofar as legal regimes are structured by the hegemonic alliance of leading state-capitals and the domination of weaker formations, while the enactment and enforcement of particular provisions reflect clearly the extant balance of economic and geo-political forces. Moreover, the situation tends to be more clearly cognised at this level, with analysis of inter-governmental organisations such as the UN being somewhat less fetishised and mythologised than the welfarist traditions of advanced capitalist states, and the critical traditions of legal realism and *Realpolitik* having more purchase. The ostensible distinction between these two legal realms is that in the international sphere there is no “third party” enforcer of legal imperatives – yet, on close reflection, it would be wise not to make too much of this. For the capitalist state is not a third party in the sense that it can be considered to be substantially decoupled from the fundamental class antagonisms of capitalist society. Affirming Gramsci’s notion of the *integral state*, the state should be conceived as a dialectical unity of political society and civil society, whilst being concentrically underlain by the antagonistic economic relations of generalised commodity production³⁹. To return to the purported decentring of states in globalisation, it is somewhat peculiar to argue that because weaker states have restricted freedoms of action relative to more powerful ones, that *the* state as such is becoming an outmoded agency. In addition to the arguments made above in relation to the continuing centrality of the state, we should be clear that the inter-state system presupposes imperialistic economic and geopolitical

³⁹ Thomas, *The Gramscian Moment*, pp. 137-43

competition between states, which tends towards uneven development as 'free' competition tends towards monopoly.

Once we understand that law is generated by the antagonistic interaction of class forces in the economic and political arenas, we further recognise that individual legal provisions, and indeed cumulatively the whole orientation of the legal system in a particular epoch, cannot survive the sweeping currents of social unrest and political mobilisation which arise from a fundamental reconfiguration of the balance of class forces. Law is not, of course, an efficient transmission mechanism for public opinion, adjudication systems being generally – and in the older parliamentary systems particularly – insulated in archaic procedural catacombs and staffed overwhelmingly by the privileged, whether of old or new money. However, ultimately the legal outposts of aged political settlements will be overrun by the rising tides, discarded like a moulted snake's skin, to be replaced by new arrangements which map more closely onto developing economic and political realities.

CHAPTER 3

Neoliberalism as Economic and Political Crisis

In this third chapter I will consider the contradictory patterns of economic and political development which have unfolded in the advanced capitalist economies in conversation with the global macroeconomic conditions of the long downturn. While the first chapter revealed the state-political content of the rise to prominence of international financial markets and actors, in this section I proceed to interrogate the social and political content of financialisation within national economies. In so doing I assess how the fiscal, monetary and regulative policies of state managers have come to privilege financial profits and entrench the developmental asymmetry obtaining between finance and industry. The predominance of such policy orientations is explained in view of the shifting balance of forces attending inter- and intra-class relations whose contradictory reproduction has been problematised by the persistence of a chronic crisis of over-accumulation and profitability centred on international manufacturing. It is further explained how the relative dynamism of the sphere of circulation, prefigured by the redesigning of the financial and monetary architecture of the inter-state system and increasingly enabling domestic regulatory environments, has propelled finance capital to political predominance within national political systems. The consequences of this rearrangement of the ruling strata are then explored in terms of social polarisation and fragmentation and the shifting character of the political power which has come to be reproduced in management of a fracturing body politic.

I Neoliberalism as crisis of production

It is clear that the period of the long downturn – which began with the emergence of a crisis of over-accumulation and profitability in 1965-1973 and continues today – has been a period of profound economic, political and social crisis for the advanced capitalist world. In the US, EU and Japan, economic performance measured by such macro-economic indicators as GDP growth, investment, productivity and wage growth has worsened business cycle by business cycle since the 1970s¹. This fundamental crisis of capitalist production, driven by over-capacity in international manufacturing, but affecting the overall private economies of the advanced capitalist countries, has found episodic expression in a series of financial, monetary and state fiscal crises, the greatest of which began with the Great Recession of 2008-9 and persists in the form of the Long Depression. These crises have been generally catalysed by the bursting of bubbles inflated by the expansion of credit and the formation of fictitious capital, both of which have permitted in the advanced capitalist countries the forced extension of capitalist reproduction beyond the limitations imposed

¹ R. Brenner, *The Economics of Global Turbulence* (London: Verso, 2005), preface at xxiv-xxv

by the fundamental relations of production². The accumulation of sovereign debt (representing the alienation of future tax revenues) has allowed state-capitals to buy without selling in the world market, asset-price inflation has permitted homeowners to borrow (alienation of future wage revenue) to continue spending despite generalised wage repression, while the inflation of equity prices has fuelled accumulation despite a chronic crisis of profitability. In sum, the explosion of credit and fictitious capital (which must have as its consequence the deviation of prices from underlying values) has facilitated a profound disarticulation – mapped out geographically in connection with the uneven development of the forces of production – of the financial and monetary cycles of the economy from the production of commodity values. As we have seen, this decoupling (which has prefigured a period of extreme economic turbulence) has not occurred in technocratic isolation from the inter-state system, representing rather from one perspective the result of the conscientious project of state-capitals representing aged blocs of productive capital to obtain control over the dominant (financial and monetary) sphere of the global economy in response to their weakening competitive position in the determining (productive) sphere. Indeed, the expansion of credit and the formation of fictitious capital has at all times a thoroughly political content inasmuch as both the rate of interest and stock prices are both “irrational expressions” – nonetheless embedded within the process of capital accumulation – which rather than referring ultimately to embodied labour values (like commodity prices) express purely a relationship of force between creditor and debtor informed by the context of supply and demand. As Perelman has noted, there is here a parallel between the market values of financial assets and those of non-produced real assets such as land. Just as land rent expresses nothing more than the ability of the land-owner to wrest a certain quantity of surplus value (unpaid labour) realised by the capitalist, the rate of interest is simply the price achieved by the creditor for the use of her money capital³.

Internationally, the state-political content of the expansion of fictitious capital and the accumulation of sovereign debt is not limited to the role states and their capitals play as creditors and debtors. Rather, it is essential to recognise that the international monetary and financial system itself, as the formal product of the interaction of competing state-capitals, constitutes the underlying structure for the interplay of the forces of supply and demand of money capital. Needless to say, this structure does not have the character of a level playing field. Indeed, as I shall explore in depth in Chapter 3, the interaction of three factors crucially informs the variegated structural positions of competing state-capitals: the historical departure of oil prices from underlying values as a result of the cartelisation of production in the Middle East (achieved in conversation with US geopolitical strategy); the emergence of the Dollar as the de-metallicised, fiat money of the global economy, and; the strategic centring of private financial markets in the mediation of international monetary relations, coupled with the dominant position of Anglo-

² For an insightful excavation of Marx’s provisional (but crucial) theory of fictitious capital, see M. Perelman, *Marx’s Crises Theory: Scarcity, Labour and Finance* (New York: Praeger, 1987), Chapter 6

³ Perelman, *Marx’s Crises Theory*, 195-197

American markets as the largest and most liquid. These three factors in combination have had a profound effect upon the supply of and demand for credit internationally, these forces reflecting changing relations of domination and dependence within the inter-state system. Historically elevated oil prices have destabilised the state finances of economies dependent upon energy imports, whilst negatively impacting the cost-position of their exports given the primacy of crude oil and its derivatives to industrial production. Simultaneously, the increased surpluses of the oil-producing states of the Gulf Cooperation Council (GCC), unable to be fully absorbed into domestic productive economies, have come to be recycled through Anglo-American financial markets. Thus demand meets supply as Anglo-American financial institutions come to mediate the deficit spending of states imperilled by high oil prices, these finance capitals thereby capturing as profits part of the surplus-value extracted from the working populations of these destabilised economies. To this arrangement is added the further destabilising factor of turbulence in international currency exchange and commodity markets, driven crucially by the effect of US Federal Reserve shifts in domestic interest rates (deployed rationally in the interests of US capital) upon the extant rates of interest in international financial markets. A sudden interest rate hike, such as that represented by the 'Volcker shock' of 1979, could impose a severe monetary austerity on the global economy, forcing structurally weakened economies to default on their debt obligations. As has been much discussed, such crises represent an opportunity for creditor states and their capitals to negotiate restructurings of the debtor state's economy and financial system in addition to the restructuring of its debt. The resulting deals are likely in any event to involve the wresting of an increased proportion of future debtor state revenues by the creditor states and their capitals, whilst further prizes available individually or in combination include: preferential access to domestic markets for the creditor's exports, such markets becoming more or less 'sheltered' from competition; the fire sale of de-valued fixed capital investments and public assets, and; the more general opening of the domestic economy to the foreign direct investment (FDI) and the removal of barriers to inward and outward monetary flows. These latter concessions represent the more direct access of foreign capital to domestic labour powers (and the value they produce) and to the mediation of the non-socialised portion of the wage (such as through the privatisation of public services), as opposed to 'merely' the socialised portion of labour revenue represented by the debtor state's tax base. Finally, it is important to recall that while such profound restructurings are extraordinary opportunities emerging from state fiscal crises, the fundamental context of economic turbulence characterising the dollar epoch produces secularly increased financial profits, as states and capitals seek to 'hedge' against fluctuations in commodity prices and exchange rates through all manner of financial instruments. It is in relation to this structural context that we should seek to explain the explosion of fictitious capital, instead of (or in addition to) the conjunctural ambition and technological 'genius' of the financiers.

While the above analysis highlights certain of the central dynamics animating the changing character of relations between state-capitals within the dollar zone, we may observe that similar patterns have emerged in the eurozone. Indeed, the project of European monetary integration can be understood in one register as a project to institutionalise the openness of European markets to the core EU export-economies and to entrench the competitiveness of the latter vis-à-vis the weaker economies of the eurozone. In sum, we may recognise the period of the long downturn as one of heightened imperial competition between rival state-capitals who have attempted to respond to the crisis of over-accumulation and profitability in international manufacturing by adopting a (financially and monetarily driven) ‘beggar thy neighbour’ policy, asserting a progressively exploitative dominance in their respective geographical spheres of influence. However, such intensified imperial aggression reveals not only an increasing polarisation of power and wealth within each node of the global economic ‘triad’, but also reflects the exacerbation of contradictions and distortions *within* the domestic economies of the leading state-capitals. For the long downturn has seen a reconfiguration of the ‘historical bloc’ leading-dominating each of the advanced capitalist societies – a shift driven by and further compounding specific forms of political crisis⁴. As productive capital has suffered falling returns, capitalists have turned in response to the sphere of circulation in search of profitability, investing in financial assets of various kinds and of more or less speculative character⁵. Since the 1970s, there has been in the advanced economies an asymmetry in the development of production and circulation, the financial sphere in particular growing relative to the rest of the economy and experiencing greater dynamism in employment growth and profitability as compared with a stagnating productive sector⁶. While the fundamental drivers of financial expansion are to be found in the unfolding of structural changes in the relations of production in the context of the long downturn, it has been enabled and entrenched by an active shift in state regulative orientation. The shifting centre of gravity of the advanced capitalist economies has found expression in powerful political forces animating the deconstruction of systems of financial regulation – including crucially the firewall separating investment and commercial banking activities – developed in view of the experience of the Great Depression of the 1930s. The crucial point for our present connection is that finance capital has become progressively the *dominant* fraction of the capitalist class and thus also the predominant force within the historical bloc – that network of alliances between capital and proximate classes which is the prerequisite for and correlate of its domination of labour. In this respect it is important to note that the distinction between financial and industrial/commercial capital is primarily a *functional* one rather than one necessarily embodied in two completely discrete sets of economic agents. While there will have been to different degrees (and dependent upon particular national circumstances) an

⁴ For an account of the lineage of the concept of ‘historical bloc’ in Gramsci’s *Prison Notebooks*, see Thomas, P. D., *The Gramscian Moment: Philosophy, Hegemony and Marxism* (Chicago: Haymarket, 2010)

⁵ See C. Lapavistas, ‘Financialisation, or the search for profits in the sphere of circulation’ (2009) *Research on Money and Finance* Discussion Paper 10 (available at: <http://www.researchonmoneyandfinance.org/media/papers/RMF-10-Lapavistas.pdf>)

⁶ Lapavistas, ‘Financialisation, or the search for profits in the sphere of circulation’ at p. 9

actual replacement of leaders of finance for those of industry in privileged sites of state policy formation and administration, often a fair degree of personal and organisational continuity will have been maintained against a backdrop of changing *strategies of accumulation*. For since the 1970s, non-financial capitals finding there to be insufficient investment opportunities in the productive sector for their surpluses, have increasingly diversified into financial activity.

Those familiar with early-twentieth century analyses of the transition from classical ‘market’ capitalism to that of state-monopoly capitalism⁷ will note that the predominance of finance capital in national regimes of accumulation is not a novel idea. Bukharin recognised that state power had become “the domain of a financial oligarchy”⁸ which managed production in a context where the process of concentration and centralisation of capital had resulted in the organisation of industry into a small number of giant firms dominating increasingly cartelised domestic markets and requiring access to credit to enable large-scale investment. There was in other words “a very strong tendency towards transforming the entire national economy *into one gigantic combined enterprise under the tutelage of the financial kings and the capitalist state*”⁹. Finance capital sought to increase the profits of monopoly enterprises both through influencing domestic state policy and by advocating imperial aggression to capture markets, secure access to raw materials and open spheres of capital investment against a backdrop of a sharpening conflict of interest between increasingly *nationalised* blocs of capital in an increasingly *internationalised* productive economy¹⁰. However, the macro-economic conditions obtaining when Bukharin was writing were much different from those of the long downturn, within which I would argue there has occurred a profound re-configuration of the relationship between industrial and financial capital in the advanced capitalist economies. While Bukharin describes the interrelated development of monopoly-capitalist trusts and finance capital, there operating a (no doubt still tense) mutuality of interest between the two in the pursuit of economic and military imperialism, these interests have become substantially dis-articulated in those economies which have experienced long-term industrial decline. As David Harvey recalls, conflicts often surfaced in the 1960s between financiers and manufacturing corporations in the US, only for such tensions to disappear during the 1970s as large firms became increasingly financial in their orientation. By 1980, it was common for capitals to offset losses in production with gains from credit and insurance operations or speculation in currency and futures markets¹¹, while significantly *US Steel* changed its name to *USX*, Chairman James Roderick explaining that “X stands for money”¹². In the UK, the interests of finance capital had already won out, as was dramatically exemplified by a Thatcher government which accelerated industrial

⁷ Cf N. Bukharin, *Imperialism and World Economy* (London: Bookmarks, 2003); V. I. Lenin, ‘Imperialism: the Highest Stage of Capitalism’ in *Essential Works of Lenin* (H. M. Christman ed.) (New York: Dover, 1987), pp. 177-270

⁸ Bukharin, *Imperialism and World Economy*, p. 111

⁹ Bukharin, *Imperialism and World Economy*, p. 75 [emphasis in original]

¹⁰ Bukharin, *Imperialism and World Economy*, pp. 60-61

¹¹ D. Harvey, *A Brief History of Neoliberalism* (Oxford: Oxford University Press, 2005), p. 32

¹² Cited in Harvey, *A Brief History of Neoliberalism*, p. 32

closures, redundancies and reorganisation, substantially withdrew state subsidies for industry and abolished much of the government funded skills training by closing the majority of the Industry Training Boards and privatising the Skillcentres, the latter mostly entering receivership within three years as the state withdrew funding¹³. At the same time, there continued a project of financial deregulation which had begun in earnest with a package of ‘Competition and Credit Control’ reforms brought forward the Bank of England in 1971. These reforms allowed banks to fix their own interest rates on deposits and loans and to thereby compete with building societies and foreign banks for new deposits, while the ending of exchange controls in 1979 allowed firms to borrow abroad and use retained earnings from overseas activities and in turn the Buildings Societies Act 1986 permitted building societies to lend for non-housing purposes and to become banks with their members’ agreement. Such a shift in policy orientation enabled and accelerated the growth of the financial and business services sector, whose contribution grew as a proportion of British GDP from 3.9 percent in 1954, through 6.5 percent in 1964, 11.1 percent in 1974, 13.2 percent in 1984 to 19.2 percent in 1994¹⁴.

The Social Content of Financialisation

Crucial to an understanding of the disaggregation of financial and industrial capital is recognising that during the last three decades, large enterprises have become progressively less dependant upon banks for credit, investing instead out of retained earnings in a context of low productivity growth, or else looking to open markets to obtain finance¹⁵. In response, banks have sought alternative means of obtaining profit, re-orienting their activities towards consumer lending and mediating access to financial markets by both corporations and individuals¹⁶. In an insightful investigation, Paulo dos Santos has revealed both the extent of this re-orientation and its underlying social content. Across the OECD countries, bank-lending has declined in importance, as represented by rises in bank non-interest income as a proportion of total bank revenues: in the US from 24.9% in 1980 to some 40.7% in 2005; from 14.9% to 33.2% in Spain, and; in France from 22.6% in 1990 to 62.2% in 2005. At the same time, bank-lending has changed dramatically in composition as lending to enterprises has declined, such that by 2006 some 40.7% of resident bank lending in the UK was to individuals as against only 11.6% in 1976¹⁷. Surprisingly, at precisely the same time as the activities of banks have become relatively dissociated from direct investment in the productive sector – coming instead to mediate worker’s consumption and the access of investors to financial markets – the significance of their profits in the advanced economies has *substantially increased*.

¹³ E. Hobsbawm, *Industry and Empire: From 1750 to the Present Day* (London: Penguin, 1999), pp. 312-314

¹⁴ Hobsbawm, *Industry and Empire*, pp. 305-308

¹⁵ C. Lapavistas, ‘Financialised capitalism: crisis and financial expropriation’ (2009) 17 *Historical Materialism* 114-148; C. Lapavistas, ‘Financialisation, or the search for profits in the sphere of circulation’

¹⁶ P.L. dos Santos, ‘On the content of banking in contemporary capitalism’ (2009) 17 *Historical Materialism* 180-213

¹⁷ dos Santos, ‘On the content of banking in contemporary capitalism’, pp. 183-184

For instance, bank profits as a proportion of GDP rose in the US from 0.72% in 1980 to 1.62% in 2005, from 0.53% to 1.35% in (West) Germany and from 0.84% to 1.77% in Spain over the same time period¹⁸.

For dos Santos, the relations banks have come increasingly to enter into with wage-earners as regards consumer- and mortgage-lending as well as the provision of pension-related saving services have a particularly exploitative character. In this connection, he recalls that as regards lending to capitalist enterprises, the interest payments the latter makes to the bank occur generally in the systemic context of an increased turnover achieved through the mobilisation of idle money to functioning circuits of capital. Thus, under normal conditions interest-bearing money capital loaned to an enterprise helps to generate the source of its own repayment with interest. More fundamentally, the social relation obtaining between lending bank and borrowing enterprise is one between social equals inasmuch as they both enter the transaction “on the basis of a profit-making calculus”, one which is generally in the case of the borrower informed by access to financial advice (whether in-house or contracted out)¹⁹. In contrast, lending to individuals has a distinctly exploitative social content insofar as money loaned for mortgages or consumption does not ordinarily generate the value from which it is to be repaid with interest. Interest-payments represent rather the appropriation of value borrowers have acquired independently of the loan – a form of direct appropriation revealed starkly by the practice (common in Latin America) of deducting loan payments directly from payrolls. The relation between bank and individual borrower can be seen to be fundamentally unequal inasmuch as one party is a financial specialist seeking to maximise profits, while the other is a wage earner who (often acting ‘irrationally’ by the standards of economic analysis) is trying to secure access to consumption. Such iniquitous social character is expressed numerically in the high relative profitability of individual lending, which accounted in 2006 for 42.8% of HSBC’s profits whilst occupying only 29.4% of its total assets. Incidentally, such figures include (often controversial) money-dealing fees such as credit and account-service charges, which represented 27.9% of Barclays’ and 30.5% of Bank of America’s total revenue in 2006. Moreover, we should remember that the structural context within which such exploitative relations have proliferated is one of wage repression, fiscal retrenchment and welfare (re-)commodification, such that much of the increased demand for credit represents in large part the efforts of wage-earners to obtain access to increasingly-privatised basic social necessities. The growing costs of education to the individual student and her family, of housing in a context of reduced public provision and of energy as crude oil prices rise and services are privatised have resulted in increasing household indebtedness²⁰. Add into the picture the hugely profitable banking activities of fund management, which in relation to pension schemes represents the mediation of future retirement-consumption and what you have – according to Santos – is the “unprecedented”

¹⁸ dos Santos, ‘On the content of banking in contemporary capitalism’, p. 188

¹⁹ dos Santos, ‘On the content of banking in contemporary capitalism’, p. 190

²⁰ dos Santos, ‘On the content of banking in contemporary capitalism’, pp. 190-195

transfer of value from households to the financial sector, a “large and systematic [appropriation] of value drawing on individual income”²¹.

Productive and Unproductive Labour

While these insights are telling in themselves, their primary relevance for our purposes is the manner in which they speak to the unravelling of the previously-articulated interests of financial and industrial capital and the connected privileging of the former in the new finance-driven regimes of accumulation. In order to draw this out, we must first return to the distinction Marx draws between ‘productive’ and ‘unproductive’ labour, which refers not to the abstractly social or moral worth of particular types of labour, but rather to the matter of whether or not they directly produce new value and thereby augment the mass of surplus-value appropriated by capital. As Mandel neatly expresses it in his introduction to *Capital* Volume 2, for Marx

only that labour which either adds to or is indispensable for the realization and conservation of a commodity’s *use-value* adds to the total amount of abstract social labour embodied in that commodity (is productive of value)²²

Consequently, from the perspective of total social capital all value originates in the sphere of production, such that the forms of labour which may be considered *productive* are those involved in the creation of new commodities as well as in such storage and transportation as is socially necessary for the conservation and realisation of their use-values²³. In contrast, labour pertaining to the sphere of circulation, facilitative of those activities of buying and selling commodities already produced, is *unproductive* insofar as it does not create any new value. Rather, the expenditure of such labour simply enables those formal metamorphoses (between commodity-capital and money-capital) of already existing values which are essential to the process of reproduction as a whole²⁴. Thus, the profits realised by commercial and interest-bearing capital represent acquired portions of the surplus-value extracted by industrial capital during the production process. This is not under ordinary conditions a mere one-sided expropriation, for the specialised functions of commercial and interest-bearing capital facilitate the realisation of surplus-value even if they do not in themselves directly create it. Retailers shorten the circulation time of commodities, thereby reducing the turnover time of industrial capital and facilitating an increase in the rate of profit realisable on the basis of a given quantity of invested capital. Further, these merchants enable the

²¹ dos Santos, ‘On the content of banking in contemporary capitalism’, pp. 193, 210

²² K. Marx, *Capital: A Critique of Political Economy* Vol. 2 (London: Penguin, 1992), introduction at p. 45. Cf Marx, *Capital* Vol. 2, pp. 209-11, 225-6; K. Marx, *Capital: A Critique of Political Economy* Vol. 3 (London: Penguin, 1991), Chapters 16 & 17

²³ It is important to recall that Marx is not hereby drawing a distinction between ‘material’ and ‘immaterial’ forms of labour, since a commodity is any thing (corporeal or incorporeal) which satisfies human needs of whatever kind – K. Marx, *Capital: A Critique of Political Economy* Vol. 1 (London: Penguin, 1990), Chapter 1

²⁴ Marx, *Capital* Vol. 3, pp. 392-393

metamorphosis of produced commodities at a cost which is less than what which would be incurred if the industrial capital was to perform such activities itself, such that cumulatively there is reduced the part of total social capital applied to the circulation process, while that portion applied to production is correspondingly increased²⁵. In the case of interest-bearing capital, the loaning of money capital to capitalist enterprise enables its expanded reproduction on a scale which would be impossible on the basis of the money capital possessed by the owners and managers of those enterprises themselves. Indeed, as Marx demonstrates in *Capital* Volume 2, accumulation as expanded reproduction *requires* a recurring disequilibrium between different sectors of the economy, such that the continuity of the production process *depends* upon “discontinuity or desynchronization of the turnover cycle of money capital, productive capital and commodity capital”²⁶. Firms at different intervals require to buy without selling, or else to invest in new means of production whose value will only be realised over a long time-period – banks and other financial actors enable these activities (and consequently, accumulation) on a scale otherwise unimaginable by the mobilisation of idle money-capital (and progressively the unoccupied money capital of all social classes²⁷). However, a theme which runs throughout Marx’s analysis is an understanding of the manner in which interest-bearing and productive capital can under certain conditions become disaggregated, the spheres of production and circulation being decoupled as capital is gripped by a speculative euphoria, seeking to bypass the sphere of production and make money directly out of money²⁸. In this context, the emergence of crisis is the violent re-assertion of the integral unity of the spheres of production and circulation²⁹.

We can in light of the above discussion conclude that the process of financial expansion in the decades since the emergence of the long-downturn cannot in itself have produced new value. Moreover, as the activities of the largest financial institutions have become progressively dissociated from productive investments, they to an increasing extent fail even to *refer* to processes of value production, or at least to such of these processes as occur domestically. Internationally, the newly central role of financial markets in mediating international monetary flows and in funding state fiscal deficits represents in value terms the appropriation of a portion of the surplus-value extracted from the working populations of those state-capitals. The *imperial* nature of such activity is revealed by the interconnected predominance of Anglo-American financial markets and the particular structure of the international monetary and financial system, which is discussed at length in the first chapter. Domestically, as we have seen, the banks have responded to a reduced demand for loanable money capital by increasingly orientating their operations towards the appropriation of

²⁵ Marx, *Capital* Vol. 3, Chapter 16

²⁶ Marx, *Capital: A Critique of Political Economy* Vol. 2 (London: Penguin, 1992), introduction at p. 19

²⁷ Marx, *Capital* Vol. 3, p. 528

²⁸ “This explains why all nations characterised by the capitalist mode of production are periodically seized by fits of giddiness in which they try to accomplish...money-making without the mediation of the production process” – Marx, *Capital* Vol. 2, p. 137. This particular sentence was introduced by Engels in the second (1893) edition.

²⁹ Marx, *Capital* Vol. 1, p. 209

labour revenues, a move so successful as to increase the significance of their profits even as the banks are ejected from the sphere of production. It is at this point that certain specific forms of antagonism between productive and interest-bearing capital internal to the neoliberal project appear in sharpest relief. For while under normal conditions the operations of interest-bearing capital facilitate an increase in the rate of profit for productive capital and accelerate its accumulation, it can be seen that the financialisation of worker's consumption operates conversely to *limit* the rate of profit and *retard* productive accumulation. To understand this, we should recall that the rate of surplus-value (otherwise known as the rate of exploitation) is determined by the ratio of surplus-value (unpaid surplus labour, s) to variable capital (paid necessary labour in its value form variable capital, v , in its money form *wages*)³⁰, expressed $\frac{s}{v}$. To obtain the rate of profit one adds to the denominator constant capital (c)³¹, representing the value congealed in the means of production including land, plant and raw materials, such that the fraction becomes $\frac{s}{c+v}$. The primary mechanisms by which the individual capitalist will seek to increase her rate of profit are by increasing the rate of surplus-value (the ratio of unpaid to paid labour) and by increasing the productivity of the labour process by investing in new means of production, which will generally cause the ratio of constant capital to variable capital (otherwise known as the *organic composition of capital*) to rise. It is only in the former case that the rate of surplus-value realised (provided it can actually be *realised* by the sale of the produced commodities) by total social capital rises, since the latter actually proportionately expels living labour as the source of value from the production process. The additional profit accruing to individual capitals as a result of productive investment as such (without the complementary hiring of additional labour powers) represents in value terms rather the appropriation of a portion of the surplus-value (which becomes for the appropriator *surplus-profit*) extracted by less productive capitals. Marx demonstrates that such appropriation is achieved within a particular sector by the improved cost- and (if necessary) price-positions of innovating capitals and in terms of the economy as a whole by the tendential adjustment of market prices towards *prices of production*³².

The Degenerative Nature of Finance-Driven Regimes of Accumulation

In neoliberal regimes of accumulation generally and under austerity in particular, the primary mode of shoring up profitability has been through labour devaluation, since productive investment has fallen in the context of a secularly reduced rate of profit and the interrelated de-regulation of finance. In value terms, this represents an increase in the rate of surplus-value, which can be achieved *absolutely* by the extension of the working day and/or intensification of the labour process

³⁰ Marx, *Capital* Vol. 1, Chapters 9 & 18

³¹ Marx, *Capital* Vol. 3, Chapter 2

³² Marx, *Capital* Vol. 3, Chapter 10

or *relatively* by the reduction of the labour time required to reproduce the value of labour power³³. As Marx explains, the value of labour power is determined by the total value of those commodities which are required to reproduce the labour-power of the worker at a particular level of productivity and at a historico-politically determined standard of living. The determination of the value of labour-power contains therefore a “historical and moral element” which emerges out of a process of political struggle, such that it can vary widely in different contexts for similarly productive types of labour, provided that it is not reduced (at least for an extended period) below the level of basic subsistence, nor increased to such a degree that no surplus value can be extracted³⁴. National regimes of accumulation driven by productive capital have historically been able to increase the rate of profit by reducing the value of labour power through the reduction in the value of wage goods – either by importing the latter from low-cost production zones or by cheapening their production at home through mechanisation. For instance, the value of the labour-power of a worker employed by Microsoft in the US may be reduced if she can obtain cheap clothing manufactured in Malaysia and consumer durables produced by extremely efficient firms in Japan. By such means and given particular structures of competition internationally it is possible for the rate of exploitation to rise at the same time as the general standard of living of the working population improves within a given national economy. While the socially-necessary labour time required to reproduce the labour of our freshly-clothed Microsoft worker may decrease, she may simultaneously be forced to work more intensively by technological innovation in her own workplace, or for longer outside of it as smartphones and tablets bring office life to the commuter train and dinner table. When we consider the transformation (or perhaps, degeneration) of post-war fordist regimes into finance-driven neoliberal regimes, we recognise the emergence of dynamics which offset the aforementioned processes reducing the value of wage-goods, tending therefore to make it more difficult for productive capital to raise the rate of surplus-value by the relative mechanism. The consequence of the de-regulated explosion of the financial mediation of workers’ consumption (especially at exploitative rates of interest and involving other inequitable terms of business) is that while households can spend more than they earn in the immediate term, over the medium and longer term they must actually spend *less* than they earn, for they must repay loans with interest. As future wage revenue is alienated and considering that loans for consumption do not in general directly result in higher future wage revenues³⁵, workers will find their standard of living squeezed. Consequently, the value of labour power is reduced without increasing the rate of surplus-value for productive capital (the proceeds accruing instead to finance), while for industry to increase its profitability real wages must be further reduced, such reductions perhaps becoming progressively more difficult politically to effect. Essentially, as greater proportions of labour

³³ Marx, *Capital* Vol. 1, Chapters 11 & 12

³⁴ Marx, *Capital* Vol. 1, pp. 274-277, quotation from p. 275

³⁵ The exception to this may be indebtedness incurred to fund further and higher education, although the preponderance of graduates working in low-paid service sector jobs is in itself enough to suggest that the link between FE/HE study and higher wage revenues may be weakening in a context of structural youth unemployment.

revenue are directed towards the servicing of debt, the wage rate at which the politically-determined basic standard of living can be achieved is increased and the minimum floor of necessary paid labour time for the productive worker is increased.

Further, insofar as housing, energy, transport and communications are wage-goods, the structure of provision of these commodities will in large part determine the wage rate at which labour-powers can be reproduced at a given standard of living. In a period of material expansion, healthy profitability and (particularly) given tight labour markets, it becomes in the interest of total social capital to rationalise the reproduction of labour-powers, ensuring that no more capital than is necessary is engaged in this process and the surplus extracted from it is no greater than the average rate obtaining in the economy³⁶. It may be rational as necessitated by competition from low-cost export economies and as enabled by a particular domestic balance of class forces for the rate of surplus-value extracted from state-organised reproduction to approach zero, or indeed even for state enterprises to run at a loss³⁷. However, neoliberalism has brought the large-scale privatisation of transport and utilities, leading to often dramatic rises in their cost at the point of access and without commensurate reductions in their strain on the tax base (that is, without reducing the proportion of socialised wages for which they account). Under neoliberalism, charges for transport and utility services (which in large part represent natural monopolies) attain increasingly the character of a state-authorised *rent* upon householders and commuters as prices depart from underlying values and the profits of private service providers increase dramatically. Similarly and perhaps most crucially, the effect of the de-regulation of mortgage-lending combined with the retrenchment of social housing provision has led to historically significant increases in rents and asset-prices, dramatically increasing the cost at which labour-powers can be reproduced at a given standard of living. Cumulatively, the processes of financial de-regulation and public service re-commodification which are so characteristic of neoliberalism accelerate powerful dynamics which – themselves emerging out of a profitability crisis in manufacturing – militate *against* the recovery of the productive sector. These state-authorised bonanzas of profitability in circulation and in social reproduction, enabled politically by the weight of capital ejected from the production process as industry declines, represent from a broader perspective the dismantling of a nationally rationalised system of labour reproduction. The profits realised by finance capital and by those firms providing

³⁶ See Ernest Mandel's discussion of what he terms 'subventionary' state activity involving the subsidization of private capital by the transfer of responsibility for the indirect costs of the production and realisation of surplus-value to the state – E. Mandel, *Late Capitalism* (J. De Bres trans.) (London: Verso, 1978), pp. 552-557

³⁷ In the 1950s, the notion of 'social profitability' described the rationale behind having state-run industries operate at a loss in order to support through their low-cost productive inputs the profitability of the rest of the economy – Hobsbawm, *Industry and Empire*, p. 225. In general, Chapters 12 and 13 of this text usefully illustrate the dual significance of the public sector – as social service provider and wealth re-distributor and also as a (conjuncturally-significant) subsidiser of the private business economy and engine of technological development.

re-commodified public services appear again as *costs* for productive capital, whose relative decline is thereby accelerated.

Moreover, as the state's fiscal and monetary levers come progressively to be pulled in the interests of financial profitability, rising internal price levels may cease to be counter-balanced by currency devaluation as would be rational in a productively-driven economy. Jim Cuthbert, whose refreshingly straight-talking report provides a useful empirical analogue to our largely conceptual discussion, notes that in the late 1970s, the late 1980s and roughly from 2002-2008, the sterling exchange rate was allowed to appreciate at the same time as UK internal price levels were rising significantly. Whilst a strong currency operated to protect the value of financial assets by controlling inflation, these three periods did substantial damage to the competitiveness of the wider UK economy and broadly coincided with the significant worsening of its current account balance. Such periods represent particular moments within a long run decline – beginning 1972 – in the UK's general international competitiveness, which has been further punctuated by marked short-term fluctuations in competitiveness. For Cuthbert, these effects are conditioned by the startling growth of UK financial assets and liabilities relative to GDP and the “chronic long-term mismanagement of the economy” as policy-makers have taken decisions to benefit and protect the financial sector, without sufficient regard for the wider economy. Worryingly, Cuthbert concludes this model of economic development, which has amounted to the UK becoming something like a “very large bank”, is unsustainable and presents the likelihood of further potentially catastrophic crisis as a weakened underlying economy and reduced tax-raising capacity of the state become insufficient to support a crisis-prone financial sector³⁸.

It may be seen in light of the above discussion that finance-driven regimes of accumulation have a strongly path-dependent character, since the financial imperatives driving state fiscal and monetary policy as well as public sector liberalisation in a period of productive decline operate to further entrench the asymmetric development of production and circulation. Indeed, such regimes are crucially degenerative inasmuch as they involve the domestic economy adopting an increasingly introverted orientation, turning away from direct competition in global commodity markets and *folding in* upon itself. Profitability comes to rely not upon the production of new values through a dynamic process of productive investment and productivity growth, but on state-inscribed expropriations of values initially realised by labour as wages in socialised and non-socialised forms, these expropriations representing capital *feeding upon* the fruits of the last healthy cycle of accumulation. Further, in their international aspect, such regimes of accumulation can be regarded as parasitical inasmuch as the interests of the financialised state-capital become progressively de-

³⁸ J. Cuthbert, ‘The mismanagement of Britain: a record of the UK's declining competitiveness – and its implications’ *Jimmy Reid Foundation* Report, April 2013. Available at: <http://reidfoundation.org/portfolio/the-mismanagement-of-britain-a-record-of-the-uks-declining-competitiveness-and-its-implications> [accessed 11 September 2013]

coupled from the further material expansion of the global economy. Its interests are increasingly served rather by the strategic deployment of past accumulations of unpaid labour and of means of destruction to manipulate the price system and to control the supply and demand of money capital to secure inflated *rents* from more productive regions of the global economy.

At this point, some caution is required to distinguish between the purely economic and more broadly political implications of neoliberal reforms. At first sight, financialisation and public service retrenchment may seem to recklessly privilege the short-term myopic interests of finance as against the short- to medium-term imperatives of productive accumulation, whilst perhaps sacrificing along with them the health of the current account and fiscal balance for the foreseeable future. However, it is of course ultimately in the interests of total social capital to de-value (and dis-empower) labour-power vis-à-vis capital in general, while financialisation has proven to be an expedient mode of achieving this end and finance capital its capable agent. The transfer of household incomes to financial institutions has effectively reduced real wages whilst causing the increasing divergence between the latter and rising living costs to appear in terms of profligate household spending. Moreover, as regards declining industrial powers operating trade in goods deficits, financialisation of consumption makes sense insofar as it is preferable for labour revenues (which might be considered from the perspective of capital to be historically inflated following the long boom) to be appropriated by domestic finance capital than for them to be spent on imported wage goods. Ultimately, financially-levered labour-devaluation could create the conditions for a new cycle of accumulation, provided of course that at some point state fiscal and monetary policy can be reoriented towards facilitating productive investment and protecting re-incarnated industries in the new reduced-cost labour environment. The difficulty becomes then (if the reader will indulge this degree of speculation) identifying precisely how and by what agency the imperatives of productive accumulation can dethrone the entrenched dominance of finance.

1. Neoliberalism as political crisis

It is appropriate now having outlined some of the specific economic dynamics of the crisis of advanced capitalism in the long downturn to proceed to discuss the more particularly *political* forms of crisis which have emerged in the same developmental context. To begin with, it is useful to remember that in seeking to understand the political implications of a rise of finance in the context of the exhaustion of a period of material expansion of the global economy, there are historical examples upon which to draw. Kevin Philips, in assessing the influence of finance in the 1980s United States, Edwardian Britain, periwig Holland and Spain in the Age of the Genoese has noted a tendency towards social polarisation. According to Philips, preoccupation with finance and tolerance of debt, as “apparently typical of great economic powers in their late stages”, has significant implications for the lower and middle social strata of the financialised power.

Finance cannot nurture a [large middle] class, because only a small elite portion of any national population – Dutch, British or American – can share in the profits of bourse, merchant bank and countinghouse. Manufacturing, transportation and trade supremacies, by contrast, provide a broader national prosperity in which the ordinary person can man the production lines, mines, mills, wheels, mainsails and nets³⁹.

Giovanni Arrighi augments Phillips' analysis in his reading of the rise and fall of a succession of *systemic cycles of accumulation* based around shifting geographical centres of productive accumulation. Indeed, for Arrighi the paradigm case of "social polarisation under the cumulative impact of a financial expansion" is Renaissance Florence, from which perspective "all subsequent financial expansions have been variations on a script first played out in the Tuscan city-state"⁴⁰. High finance, Arrighi explains, is in its modern, capitalist form a Florentine invention which came of age in the latter fourteenth and early fifteenth centuries at the close of a Eurasian trade expansion which had begun in the late thirteenth century⁴¹. Florence's financial pre-eminence was built upon the networks of high finance embedded in the dense web of transactions created by her wool trade, coupled with the continuing importance of her role in mediating 'trade in religion' on Rome's account, the latter involving the collection of papal dues and such 'invisible exports' as pilgrimages, indulgences and dispensations⁴². When the growth of the wool trade began to slow and its returns fell, Florence's merchant banks re-oriented towards providing the supply of mobile capital required to meet the demand of the developing power struggle between the territorialist states of Western Europe. The leading Florentine business enterprises, naturally indifferent as to whether the self-expansion of their capital was effected through manufacture of commodities or by way of fuelling the developing rivalries of an increasingly fractious world-economy, diverted cash surpluses from productive investment to the financing of domestic and foreign public debts⁴³. The consequence was a de-industrialisation of Florence which was at first gradual in the early years of the fourteenth century (as manufacturers began to concentrate on high-value items) and then 'spasmodic' between 1338 and 1378. Cloth production fell from over one hundred thousand pieces in 1308 to twenty thousand in 1378 and never again rose above thirty thousand in the fifteenth century⁴⁴. The consequences for the cloth workers whose very existence tended to become redundant – and indeed for the population as a whole, around one third or some thirty thousands of which lived by the wages of the industry – were profound. The political rule of the merchant classes was destabilised as the lower strata of wage labour demanded higher wages, the

³⁹ K. Phillips, *Boiling Point: Republicans, Democrats and the Decline of Middle-class Prosperity* (New York: Random House, 1993), pp. 194, 197. Cited in G. Arrighi, *The Long Twentieth Century: Money, Power and the Origins of our Times* (London: Verso, 2010), p. 325

⁴⁰ Arrighi, *The Long Twentieth Century*, pp. 325-6

⁴¹ Arrighi, *The Long Twentieth Century*, pp. 92-93, 97

⁴² Arrighi, *The Long Twentieth Century*, pp. 97-98

⁴³ Arrighi, *The Long Twentieth Century*, pp. 102-105

⁴⁴ Arrighi, *The Long Twentieth Century*, p. 102

maintenance of production output and the right of independent organisation – a struggle whose high point was the seizing of state power in revolt of the *Ciompi* in 1378.

The axis capital-labour was not the only one along which antagonisms ripened in Renaissance Florence however, there developing an increasing fragmentation *within* Florentine wage-labour, the upper strata of which, in contrast to the impoverished lower strata, were flourishing as their skilled labour produced high-quality goods to meet the demand of a European world-economy which increasingly transferred surplus capital to conspicuous consumption in addition to arms expenditure. The upper-guild workers were indeed crucial to the swift repression of the 1378 revolt and while they were quickly escorted from influence thereafter, the livelihoods of this privileged labour aristocracy found robust protection as the lower strata – stripped of all protection and rights of organisation – were cast adrift as a floating mass of surplus labour⁴⁵. In parallel, the weight of influence within the Florentine ruling class shifted decisively from trade to finance as there emerged select capitalist elements which, having been ejected from the process of production, became a rent-seeking aristocracy. In 1434 the House of Medici, which had emerged propitiously from the great crash of the 1340s, took advantage of Florence's fiscal crisis by taking over the republic and establishing de facto monarchical rule, thereby ending a half-century of oligarchic rule by the city's merchant elite. The Medici had their moment during the Hundred Years' War, as increasingly commercialised warfare between two powers of practically equal means presented fabulous opportunities for commercial and financial intermediation. Once hostilities ceased however, the Medici soon disappeared from European high-finance, while Florentine enterprise was left structurally de-coupled from the subsequent material expansion of the world-economy⁴⁶.

The finance-driven regimes of accumulation which have emerged in the advanced capitalist economies during the long downturn have brought with them pronounced forms of social polarisation. De-industrialisation has resulted in the persistence of structural unemployment as the services sector has failed to absorb the working masses which once mined coal, smelted steel and populated automotive production lines⁴⁷. The subsection of the working population which can be materially integrated into processes of financial accumulation seems much narrower than that previously employed productively by industry, much as Phillips and Arrighi concluded. Moreover, financialisation has had consequences not only for the level of employment, but also for its

⁴⁵ Arrighi, *The Long Twentieth Century*, pp. 102-5

⁴⁶ Arrighi, *The Long Twentieth Century*, pp. 105-11

⁴⁷ Apart from persistent unemployment, the marked increase in income and wealth inequality in most, if not all, of the advanced economies is well documented. For an initial assessment of the striking acceleration of wealth concentration in the hands of the top percentile of US earners since 2007, see E. Saez, 'Striking it richer: the evolution of top incomes in the United States', 3 September 2013. Available at: <http://elsa.berkeley.edu/~saez/saez-USstopincomes-2012.pdf> [accessed 11 September 2013]. For the underlying research methodology, see T. Piketty & E. Saez, 'Income Inequality in the United States, 1913-2002' in A. B. Atkinson and T. Piketty, *Top Incomes Over the Twentieth Century: a Contrast between Continental European and English Speaking Countries* (Oxford: Oxford University Press, 2007)

geographical organisation and indeed for the very character and lived experience of work. Financial accumulation is typically centred around urban business districts, coupled with gentrified zones of high-end cafes, restaurants and nightclubs as well as the complementary residential areas of leafy suburbs and commuter towns. Outside of these islands of prosperity lie the silent dockyards, rusting industrial belts and eerie rectilinear jungles of the forgotten extractive villages and towns which formed the backbone of capitalist society during the long boom. Focusing on Britain, the state-capital most rudely denuded of her industrial base, the dismantling of the cross-border coal, steel and rail industries represented the collapse of the crucial material basis for both the territorial integrity of the British state and for the national unity of the British working class. In combination with the regulative off-shoring of the City of London⁴⁸, these processes have prefigured dynamics of regionalisation formally articulated in devolution movements in Scotland, Wales and (thus far less successfully) the North of England. As regards the labour movement, the destruction of the industries representing its key ramparts of organisational strength, accompanied by the migration of labour-powers into unprotected service sector jobs (where union density is generally lower, productivity growth almost non-existent and the prospects for wage growth correspondingly poor) has formed the civil society basis for its tendential marginalisation in political society. The weakening of organised labour must be primarily understood in the context of a shifting balance of class forces as structural unemployment brings to bear the disciplinary force of the industrial reserve labour army upon those employed, while the erosion of the UK's international cost-position has led capital to pursue a strategy more aggressive than accommodating. However, the character of work in a financialised economy presents particular challenges to the trade union movement which have not as yet been effectively overcome. In this regard, it is contended that the increasingly *unproductive* nature of labour in the advanced capitalist economies is not a matter merely for scholarly contemplation, but part of the *lived experience* of labour. On an automotive production line, a labourer might have a part in assembling several hundred cars per day, each of a value represented by x thousand pounds, while the worker's annual salary might amount to $0.9x$ ⁴⁹ or perhaps optimistically after promotion to a supervisory position $1.5x$. The work process thereby offers a clear window onto the process of value production and surplus-value extraction – the relations of production can be quite viscerally grasped. In contrast, financial accumulation presents

⁴⁸ Nicholas Shaxson describes a “layered hub-and-spoke array of tax havens centred on the City of London” which accounts for almost half of all international bank assets – N. Shaxson, *Treasure Islands: Tax Havens and the Men Who Stole the World* (London: The Bodley Head, 2011), p. 15. See R. Palan, R. Murphy and C. Chavagneux, *Tax Havens: How Globalisation Really Works* (Ithaca, NY: Cornell University Press, 2009), p. 11

⁴⁹ This figure is based on the contemporary example of Toyota UK's Burnaston plant in Derbyshire, which produced 109,502 vehicles in 2012 – some 300 per day assuming the plant operated every day of the year. Accounting for the different proportions in which different models were produced and taking a mean value based on the prices of different sets of specifications, each car retailed at an average of £20,906 in 2013 prices. Compare the basic salary of £19,200 per annum of a production team vacancy advertised through the recruitment agency Blue Arrow. Toyota UK Facts and Figures 2013, available at: <http://www.toyotauk.com/toyota-in-the-uk/overview-of-toyota-in-the-uk.html> [accessed 20 August 2013]; Toyota Range Price List August 2013, available at: www.toyota.co.uk [accessed 20 August 2013]; Blue Arrow Toyota vacancies, available at: <http://www.bluearrow.co.uk/toyota> [accessed 20 August 2013].

the self-valorisation of value in its most abstract and irrational form – an IT technician, call centre operator, security guard or cleaner employed by a multinational bank or an associated hedge fund witnesses money made from money in relative disconnection from her own labour-process. As we have discussed, much of the value thereby appropriated does in fact originate elsewhere – from surpluses extracted from labour in other states and from the financialisation of labour revenues at home. Without over-stressing the point, there is likely to be a generalised experiential distinction between performing labour directly productive of value and labour ‘merely’ facilitative of the appropriation of value produced at a different place in time and/or space. The problem of how to unveil the underlying value relations is one with which the trade union movement and political progressives must continue to grapple.

‘The Unravelling of the Keynesian Compromise’

While the shifting balance between productive and unproductive labour in the advanced economies, within a broader context of stagnant investment, has created a new problem at workplace level in terms of how organised labour might leverage wage increases in abstraction from rising productivity, this puzzle is re-presented at a national political level. The crisis of over-accumulation and profitability in international manufacturing (whose dynamics have been explored in Chapter 1) has led to the disintegration of the post-war regimes of accumulation based crucially upon collective bargaining and progressive taxation – what Duménil & Lévy call ‘the gradual unravelling of the Keynesian compromise in its early more egalitarian configuration’⁵⁰. Neoliberalisation produced zones of untrammelled market freedoms and vertiginous profitability in privatised public services and de-regulated airlines, telecommunications and finance, while systematic attacks on organised labour enabled long-run wage repression. At the same time, a veritable tax revolt has been staged by capital and the salaried bourgeoisie, represented both by reductions in the official high-bracket income tax rates, capital gains taxes and corporation tax and further by the development of an extensive industry dedicated to tax avoidance, outright tax evasion and all the activities which populate the expansive ‘grey area’ in between⁵¹. David Harvey recalls that the reduction of the top personal tax rate in the US from 70 to 28 percent was billed as ‘the largest tax cut in history’⁵², while Duménil and Lévy recognise the effect had upon the apportioning of the tax burden by the Bush administration’s phasing out of the estate tax and the diminution of taxation on investment income and capital gains as the taxation of labour revenue has

⁵⁰ G. Duménil & D. Lévy, ‘Neoliberal income trends: wealth, class and ownership in the USA’ (2004) 30 *New Left Review* 105 at 128

⁵¹ “There are offshore lawyers who sit in their offices all day, doing little more than dreaming up deviant new flavours of trusts” - Shaxson, *Treasure Islands*, p. 45. Chapter 6 of Shaxson’s book explores the construction of the UK’s ‘spider’s web’ of offshore jurisdictions incorporating its overseas territories, crown dependencies and ultimately the City of London itself; chapter 7 charts the US’ trajectory through initial regulatory hostility to the provision of a range of secrecy services at federal and state levels.

⁵² Harvey, *A Brief History of Neoliberalism*, p. 26

been maintained⁵³. Cumulatively, the top 0.1 percent of US taxpayers achieved the reduction in their effective tax rate from 60 percent in 1960 to 33 percent in 2007 as their income grew precipitously⁵⁴, leading billionaire Warren Buffett to discover that he was paying a lower tax rate than his receptionist, indeed the lowest among his office staff⁵⁵. In the UK, corporation tax rates fell from a 52 percent main rate and 42 percent small companies' rate in 1973, through 35 percent and 25 percent respectively in the mid-1980s to a 23 percent main rate and 20 percent small-companies' rate in 2013⁵⁶. Further, after Gordon Brown's 1999 budget, a starting rate of 10 percent applied to profits under ten thousand pounds, while marginal relief reduced to somewhere between 10 and 19 percent the rate applicable to profits between ten and fifty thousand pounds. The process culminated in 2002, when the starting rate was reduced to zero, causing a 45 percent surge in incorporations and a growing controversy around the issue of tax avoidance by small businesses which led ultimately to the abandonment of the starting rate in 2006⁵⁷. As regards personal taxation, the top rates of 83 percent on earned income and 98 percent on unearned income were reduced by Chancellor Geoffrey Howe in 1979 to 60 percent and 75 percent respectively, while all rates above 40 percent were completely abolished by Nigel Lawson in 1988⁵⁸. Such tax reforms, in the context of a neoliberal globalisation characterised by relaxed capital controls, may have a domino-like corrosive effect upon the tax regimes of other states insofar as they generate competitive downward pressure on the tax rates on capital as the 'mobile factor' of production. However, in a fascinating working paper, Özlem Onaran and Valerie Boesch have revealed how the effects of exposure to globalisation⁵⁹ upon the Implicit Tax Rates (ITR) on capital, labour and income and the share of total public expenditures dedicated to social protection are crucially modulated by the economic and political institutions of different forms of welfare regime. Thus, Onaran and Boesch conclude that the ITR levied on capital has fallen in the 'liberal regimes' of the UK and Ireland, while the ITR on labour has increased, partly to fund the *increase* in social expenditures occasioned by the social and political implications of globalisation⁶⁰. In contrast,

⁵³ G. Duménil & D. Lévy, 'Neoliberal dynamics: towards a new phase?' in K. van der Pijl, L. Assassi and D. Wigan (eds.), *Global Regulation: Managing Crises after the Imperial Turn* (New York: Palgrave Macmillan, 2004), pp. 41-63

⁵⁴ C. Collins, A. Goldberg & S. Pizzigati, *Wealth for the Common Good* Report: 'Shifting responsibility: how 50 years of tax cuts benefitted the wealthiest Americans' (April 2010). Available at: www.ips-dc.org/files/1675/ShiftingResponsibility.pdf [accessed 18 September 2013]. Referenced in Shaxson, *Treasure Islands*, p. 24

⁵⁵ Shaxson, *Treasure Islands*, p. 24

⁵⁶ HMRC Statistics Table A.6 'Rates of Corporation Tax'. Available at: <http://www.hmrc.gov.uk/statistics/ct-receipts/table-a6.pdf> [accessed 18 September 2013]

⁵⁷ Department of Trade and Industry (DTI) Report 'Companies in 2002-3', July 2003. Available at: <http://www.dti.gov.uk/files/file10724.pdf> [accessed 18 September 2013]

⁵⁸ Institute for Fiscal Studies 'Summary of main tax measures introduced in each budget since 1979'. Available at: <http://www.ifs.org.uk/fiscalFacts/taxTables> [accessed 18 September 2013]

⁵⁹ Measured using multi-dimensional KOF indices which account not only for trade, FDI, portfolio investments and restrictions on trade and capital flows but also for the political and social dimensions of globalisation

⁶⁰ Of course, increased expenditure is not at all incompatible with a qualitative decline in public service provision in a context of structural unemployment and especially given the tendency towards re-commodification.

ITRs on capital have been rising in the ‘social-democratic’ regimes of Sweden, Denmark, Finland and Norway, although the ITRs applicable to labour (in general significantly higher than in the liberal regimes) have also risen as social expenditure has remained fairly stable. Different again is the experience in the Central and Eastern European New Member States (CEENMS), since social protection expenditures have fallen dramatically in the Baltic states and have also decreased substantially in the ‘post-communist European’ regimes of Bulgaria, Czech Republic, Hungary, Poland, Slovakia and Croatia. At the same time, in both the Baltic states and the post-communist regimes ITR levied on capital have fallen, while regressive taxes upon consumption have risen⁶¹.

It can be seen therefore that the shift in the balance of productive and unproductive labour in the finance-driven regimes of the advanced capitalist economies, against the background of the historical disempowerment of labour in a context of structural unemployment, problematises the leveraging of wage growth by labour-powers in the workplace and the maintenance at a national political level of a regime of progressive taxation. In this regard, the tax revolt staged by capital and high-income earners – while doubtless inviting of moral reprehension – cannot be explained away in terms of the political inscription of a suddenly-predominant individualistic-egoistical philosophy in abstraction from the changing strategies of accumulation and interconnected structures of social reproduction. Rather, we should understand the startling redistribution of the tax burden partly as a result of a significant *decoupling* of accumulation and domestic labour reproduction reflected in a reconfiguration of the relationship between the public sector and the private business economy. Industrially-dynamic regimes which *produce* much of the value realised by their capitals domestically require a continuous (indeed continually increasing) supply of labour-powers replete with a broad range of skills. In contrast, in finance-centric regimes much of the value *realised* by capital is produced elsewhere (in time and/or space), while the associated processes of financial intermediation require a domestic labour-force of different size and composition. Finance capital, with its requirements for market analysts, hedge fund managers, tax lawyers and accountants can productively integrate into its circuits of accumulation only a relatively narrow and disproportionately highly-skilled sub-section of the working population, along with the labour-powers necessary to lubricate the consumption of this strata. Outside of this, there exists a reduced incentive to reproduce the residual mass of labour-powers at a high level of productivity, such that in a context of structural unemployment the requisite political balance of forces may effect progressively the transfer of the cost of social reproduction onto labour. The production and maintenance of an over-qualified workforce relative to the labour requirements of capital represents a pure loss for social capital, at least insofar as it is funded directly by taxation and indirectly by the valorisation of the socialised portion of the wage. It is rational therefore for the provision of education, healthcare and welfare to become in the context of finance-driven

⁶¹ Ö. Onaran & V. Boesch, ‘The effect of globalization on the distribution of taxes and social expenditures in Europe: do welfare state regimes matter?’ University of Greenwich Business School Working Paper WERU3. Available at: <http://gala.gre.ac.uk/id/eprint/9768> [accessed 18 September 2013]

accumulation to be linked more directly to gainful employment through re-commodification and localised corporate-sponsorship in abstraction from a degenerating system of mass-provision. Thus the relationship between the private and (formerly-) public sector is crucially re-configured in the transition from 'Fordist' to 'post-Fordist' regimes of accumulation. In the first case, the centrally-administered and rationalised reproduction of labour-powers is efficient from the perspective of total social capital insofar as it reduces the proportion of such capital tied-up in reproduction and subsidises the private sector through the provision of labour-powers at a price close-to, at or below cost, thereby underpinning domestic capital's international cost position. As such regimes degenerate however and capital's requirements for labour-powers decrease quantitatively and change qualitatively, what had represented from capital's perspective an investment in an essential productive input becomes rather a waste expenditure. In response, capital withdraws from funding directly the mass reproduction of labour powers through lobbying for reductions in business taxes, constructing mechanisms for the avoidance/evasion of taxation and even succeeds in appropriating through re-commodification portions of socialised labour revenue dedicated to public service provision. In the latter case, the privatisation of public services represents a form of accumulation by dispossession which produces a short-term and localised spike in profitability (a shot in the arm to an ailing economy), whilst in the medium to long term causes internal price rises which ultimately reduce the competitiveness of the domestic economy and which (as we have seen) are unlikely to be offset by currency devaluation.

The Shifting Character of Bourgeois Supremacy

Moreover, at the same time as a shift in the strategy for wealth production has reconfigured the process of social reproduction, so too has the form of reproduction of political power and the very character of that power been transformed. In order to understand this transition, we may make productive use of certain of the determinations developed by Antonio Gramsci in his carceral writings. Firstly, we should approach what Peter Thomas has identified as Gramsci's key political concept⁶² and his novel contribution to Marxist political theory⁶³, the notion of the *integral state*. The latter term expresses Gramsci's understanding of the mutual interpenetration and reinforcement of 'political society' and 'civil society' within a unified and indivisible state-form⁶⁴. The state in its integral form is not limited to the machinery of government and legal institutions of 'state' understood in a narrow sense, representing rather a dialectical unity in diversity of the 'moments' of civil and political society⁶⁵. For Gramsci, 'civil society' is the terrain upon which social classes compete for social and political leadership over other classes, its ensemble of

⁶² Thomas, *The Gramscian Moment*, p. 174

⁶³ Thomas, *The Gramscian Moment*, p. 137

⁶⁴ Thomas, *The Gramscian Moment*, p. 137

⁶⁵ Thomas, *The Gramscian Moment*, p. 137; C. N. Coutinho, *Gramsci's Political Thought* (P. Sette-Câmara trans.) (Leiden: Brill, 2012), p. 83

organisms (“the Church, the trade unions, the schools etc”⁶⁶) constituting “the ‘private’ apparatus of ‘hegemony’”⁶⁷. Such hegemony or political leadership is “protected by the armour of coercion” – it is guaranteed by such “‘direct domination’ or command”⁶⁸ as is exercised through the juridical institutions of political society, amounting ultimately to the control of the legal monopoly of violence⁶⁹. So articulated, these two diverse but unified spheres, this “equilibrium between political society and civil society”⁷⁰ composes the state understood integrally, as “the entire complex of practical and theoretical activities with which the ruling class not only justifies and maintains its dominance, but manages to win the active consent of those over whom it rules”⁷¹. Further, we can recognise that in articulating his understanding of the integral state, Gramsci is also describing that which must amount to the same thing – the character of bourgeois political supremacy, understood as a synthesis of hegemony (leadership) and domination (coercion). For him, the capitalist class exercises hegemony insofar as it is able to lead a consensual alliance of proximate classes as the correlate of and necessary condition for its coordinated coercive domination of labour as an opposing class. Thus, just as civil and political society are understood as two methodologically distinguished spheres of a unitary state, hegemony and domination are understood in this fashion as strategically differentiated forms of a unitary political power, as two poles existing in an unbalanced, shifting equilibrium⁷².

Gramsci’s understanding of the integral state represents a critical inheritance of Hegel’s theory of the modern state, which “transcended pure constitutionalism and theorised the parliamentary State with its party system”, incorporating political and syndical associations as its “‘private’ weft”⁷³. It should also be understood as a further concretisation in response to determinate historical experience of Marx and Engels’ affirmation of the class-nature of every state phenomenon, their fundamental ‘desacralisation’ and de-fetishisation of the state by the location and explanation of its apparent autonomy in the immanent contradictions of civil society as a whole⁷⁴. As such, Thomas has argued that Gramsci’s development of Marxist state theory should not be understood either conceptually or historically in terms of the ‘expansion’ of the state into a society dogmatically asserted to have once been located ‘outside’ it. Rather Gramsci’s elaboration is *conceptually* a reassertion of the originally ‘expansive’ formulation found in Hegel and Marx as against its instrumental neo-Kantian limitation and *historically* a recognition of the nineteenth century

⁶⁶ A. Gramsci, *Lettere dal Carcere* (A. A. Santucci ed.) (Palermo: Sellerio, 1996), pp. 458-9. Reproduced in A. Gramsci, *Selections from the Prison Notebooks* (Q. Hoare & G. Nowell-Smith eds.) (New York: International Publishers, 1971), p. 56f. Referenced in Coutinho, *Gramsci’s Political Thought*, p. 81

⁶⁷ Gramsci, *Selections from the Prison Notebooks*, pp. 12, 261

⁶⁸ Gramsci, *Selections from the Prison Notebooks*, pp. 12, 263

⁶⁹ Thomas, *The Gramscian Moment*, p. 137

⁷⁰ Gramsci, *Selections from the Prison Notebooks*, p. 56f

⁷¹ Gramsci, *Selections from the Prison Notebooks*, p. 244

⁷² Thomas, *The Gramscian Moment*, pp. 163-165

⁷³ Gramsci, *Selections from the Prison Notebooks*, p. 251. See Coutinho, *Gramsci’s Political Thought*, pp. 79-80; Thomas, *The Gramscian Moment*, preface at xxii, pp. 175-181

⁷⁴ *Gramsci’s Political Thought*, pp. 78-79

experience of the increasing sophistication of the *internal* articulation and condensation of social relations within a given state-form⁷⁵. Pursuing this historical register, it is important to locate the emergence of Gramsci's conception of the integral state in his analysis of the 'long nineteenth century', founded on social developments in continental Europe and focused especially on the region's leading nation-state, France. In the period extending from the French Revolution to 1848, according to Gramsci, the French bourgeoisie undertook a class project of an unprecedented and thoroughly revolutionary nature, entailing a fundamental transformation of "the nature of the political and its concrete institutional forms"⁷⁶. The victorious bourgeoisie were at this time capable of uniting French society as a whole behind the universal claims of its own particular class project, in a process of social and political 'education' and elevation. The ruling class, able to present itself as the bearer of "all the intellectual and moral forces...needed to organise a complete and perfect society" expanded its class sphere 'technically' and ideologically, posing itself as "an organism in continuous movement, capable of absorbing the entire society, assimilating it to its own cultural and economic level"⁷⁷. The institutionalisation of this project produced a state-form of a qualitatively new type insofar as it unified 'civil society' and 'political society' in a relationship of mutual interpenetration and reinforcement. The capitalist state became thus not merely a repressive apparatus of coercion, but also a web of social relations embedded in all levels of society and operating for the production of consent⁷⁸.

However, the advent of Europe-wide revolts in 1848 and later the Paris Commune marked a period of transition in which the balance of class forces and the machinery of consent underlying the expansionary, universalising bourgeois project descended into crisis. For Gramsci, the crisis was of such profundity as to place the very foundations of bourgeois hegemony in doubt – it was in his terms an *organic crisis*⁷⁹. As the entire social formation was thrown into turmoil, bourgeois hegemony shifted in character from an 'optimistic magnanimity' attended by a proportionate balance of consent and coercion to a 'cantankerous parasitism' resting on 'coercive consent'⁸⁰. The bourgeoisie, no longer a revolutionary class, presided in an increasingly despotic fashion insofar as it *dominated* without *leading*, whilst the class-particularity of its universalist claims was starkly illuminated. Gramsci came to refer to the nature of the bourgeois hegemonic project in such a period of organic crisis in terms of *passive revolution* or *revolution without revolution*, denoting on the part of the bourgeoisie a significantly reduced but persistent capacity of initiative, an ability to procure such socio-political transformations as are necessary to entrench both its own supremacy and the subalternity of labour, but without the capability of securing the proactive consent of

⁷⁵ Thomas, *The Gramscian Moment*, pp. 139-140

⁷⁶ Thomas, *The Gramscian Moment*, p. 143

⁷⁷ Gramsci, *Selections from the Prison Notebooks*, pp. 271, 260. Referenced in Thomas, *The Gramscian Moment*, p. 142.

⁷⁸ Thomas, *The Gramscian Moment*, pp. 141-143, p. 137

⁷⁹ Thomas, *The Gramscian Moment*, p. 145

⁸⁰ Thomas, *The Gramscian Moment*, p. 145

proximate and opposing classes in an expansionary project. To be clear, in an epoch of passive revolution the bourgeois project is able to endure and indeed to deliver in some sense real progress, yet the bourgeoisie – as it has become ‘saturated’, ceases to expand and indeed starts to disintegrate⁸¹ – suffers a significant loss of initiative and mobilising capacity. It is the lot of the bourgeoisie in such contexts to attempt to preserve by the adoption of a defensive orientation its increasingly tyrannical reign over a stagnating and disenchanting social order⁸². In this moment the bourgeois integral state reaches its zenith, whilst its underlying character is revealed – bourgeois freedom is transformed by dialectical inversion into its opposite, while the consensual networks of political and cultural elevation (always selectively functional) ossify into exclusionary defensive ‘trenches’⁸³.

The immediate focus of Gramsci’s application of the concept of *passive revolution* was the *Risorgimento* and its aftermath, during which time the Italian bourgeoisie attempted to consolidate its power through the absorption of (principally) leading figures of subaltern classes and oppositional social movements and (laterally) entire organisations into the state apparatus and its ‘representative’ organs in civil society. By such means, understood respectively in terms of molecular and organic *transformism*, the ruling class sought not directly to expand its own project but to inhibit the development of competing perspectives by co-opting the political and cultural representation of the popular masses, thereby excluding the latter from all effective historical protagonism⁸⁴. The aim of such efforts is, pursuant of a logic of disintegration (and displaying the character of Jesuitical manipulation), to forestall the cathartic moment in the development of a subaltern class – to prevent the maturation of the emergent working class project from its ‘economic-corporative’ moment to a truly ‘hegemonic’ stage⁸⁵. Whilst Gramsci originally used the concept of passive revolution as an important criterion of interpretation in his analysis of the *Risorgimento*, he later afforded it a more general significance in describing the road to modernity trodden in those states which did not experience a radical-popular revolution – that characterised by state reform and modernisation from above. Passive revolution was a tool for interpreting entire historical periods – it captured the pacifying and incorporating nature of bourgeois hegemony in the epoch of imperialism, and was further deployed with reference to Fascism and (with less certainty) to ‘Americanism’ or ‘Fordism’. With regard to the latter regimes, Gramsci attempted to understand the complex dialectic of restoration and renewal which animated the attempts of these bourgeois projects to integrate/neutralise certain of the advances of the October revolution, including elements of the planned economy⁸⁶. Coutinho emphasises that this restoration-renewal dialectic is

⁸¹ Gramsci, *Selections from the Prison Notebooks*, p. 260

⁸² Thomas, *The Gramscian Moment*, p. 145; D. Losurdo, Antonio Gramsci: dal Liberalismo al “Comunismo Critico” (Rome: Gamberetti, 1997), p. 155

⁸³ Thomas, *The Gramscian Moment*, p. 148

⁸⁴ Coutinho, *Gramsci’s Political Thought*, p. 103

⁸⁵ Thomas, *The Gramscian Moment*, pp. 150-152

⁸⁶ Coutinho, *Gramsci’s Political Thought*, pp. 100-105

central to the concept of passive revolution as such, inasmuch as it implies the presence of both a conservative reaction to the prospect of an effective and radical transformation from below (restoration) and the acceptance of a certain number of popular demands, which are answered from above by means of compromises or concessions made by the ruling classes (renewal)⁸⁷. Such ambivalence distinguishes *passive revolution* from the final determination which it is necessary to highlight for our purposes – that of *counter-reformation*, which describes moments of restoration pure and simple, when the moment of the old prevails over the moment of the new⁸⁸.

Welfarism as Passive Revolution; Neoliberalism as Counter-Reformation

Having so introduced the Gramscian interpretive criteria of *integral state*, *civil society* and *political society*, *hegemony* and *domination* (leadership and coercion), *passive revolution* (revolution-restoration), *transformism* (molecular and organic) and *counter-reformism*, we are much better placed to understand the character of political crisis which afflicts the bourgeois hegemonic projects of the advanced capitalist states in the neoliberal context. At the highest level of generality, this conceptual apparatus – especially when related to its moment of emergence in the historical analysis of nineteenth century Europe – allows us to recognise the profound formal and substantive fluidity of the bourgeois hegemonic project in more and less favourable historical conditions. Its development is attended in different contexts by different degrees of leadership and dictatorship, charts trajectories of expansion or stagnation and operates in different proportions by the progressive integration or casuistic assimilation of subaltern classes and perspectives. Proceeding simply from the understanding of bourgeois supremacy as an unstable synthesis of hegemony and domination and of the integral state as a unity in diversity of civil society and political society, we may recognise that the precise balance obtaining between consent and coercion is subject to contextual variation, while the latter finds expression in the changing character and intensity of the interpenetration of the civil and political terrains. Gramsci's approach provides then a mode of integrating dialectically the structural transformations obtaining in civil society in changing macro-economic and class-relational contexts with the shifting character of attendant bourgeois hegemonic projects, the latter understood as the mediated political condensation or concretisation of the former civil society transition. By way of such an examination of the articulation and re-articulation of the relations obtaining between the fundamental and subsumed classes, in both their economic and political content (and crucially for our purposes in the evolving context of the world market as the domain of the ultimate social validation/invalidation of those relations) we may hope to find explanations of the changes in the nature and intensity of bourgeois parliamentary democracy that appear in other analyses to arise *ex nihilo*.

⁸⁷ Coutinho, *Gramsci's Political Thought*, pp. 101

⁸⁸ Coutinho, *Gramsci's Political Thought*, Appendix Two at pp. 157-158

More specifically, following Gramsci's provisional reflections on 'Americanism' or 'Fordism' and considering contemporary work by Buci-Glucksmann and Therborn⁸⁹ as well as Coutinho, we may affirm the utility of the concept of *passive revolution* in understanding the political dynamics underpinning the construction of the post-war 'welfarist' regimes in the advanced capitalist economies. We may recognise this form of old-style social democracy as displaying precisely the dialectic of *renewal* and *restoration* which animates a period of *passive revolution* inasmuch as structural reforms were undertaken *from above* in fulfilment of the "inherent necessity to achieve the organisation of a planned economy"⁹⁰ whilst reproducing such objectively socialised production within the fundamental structure of private appropriation. In this manner, the bourgeoisie was able to entrench its own supremacy whilst reproducing the subalternity of labour, the latter imprisoned as an economic-corporative force within the integral state of the capitalist class. Consequently, capitalism was able to ride out an organic crisis occasioned by the inter-war economic collapse and the political challenge of the October Revolution, while the demands of a historically-powerful labour movement were passively integrated in the neutralised form of social rights, collective bargaining, mass consumption and direct state intervention in the economy. The contradictory and class-inflected nature of the Keynesian compromise which emerges from this substitution of the interventionist policy of the capitalist state for the direct historical protagonism of the subaltern classes – the placation of the demands of labour within the system of reproduction of bourgeois supremacy – is captured by Michal Kalecki's 1943 analysis of the 'Political aspects of full employment'⁹¹. Kalecki recognised that the consensus which had emerged around the efficacy of preventing large-scale unemployment during a slump by means of debt-financed public investment met peculiarly with the persistence (even *heightening*) of opposition to the *maintenance* by state intervention of full employment during the subsequent upturn. The key to this seeming contradiction lay at the heart of the Keynesian compromise, understood as a mode of controlling the social and political consequences of crisis-ridden capitalist economic development whilst protecting the role of capital as the dominant factor of production driving such development. Deficit spending could be used to insulate the bourgeois hegemonic project (both as such and in its liberal parliamentary configuration) from the political implications of the mass unemployment which accompanied cyclical downturns and which had been revealed in all its explosive power by both the revolutionary period following October 1917 and also by the rise of fascism. However, the economic imperative of stable growth and profitability had ultimately to remain subservient to the political necessity of defending the commanding heights of the economy from the advance of organised labour, which threatened in a period of relative strength to wrest increasing control over surplus extraction and investment. As against this advance, the coercive force of the reserve labour

⁸⁹ C. Buci-Glucksmann & G. Therborn (eds.), *Le Défi Social-Démocrate* (Paris: Maspero, 1981)

⁹⁰ Gramsci, *Selections from the Prison Notebooks*, p. 279

⁹¹ M. Kalecki, 'Political aspects of full employment' (1943) 13(4) *The Political Quarterly* 322

army – underpinning the efficacy of the ‘sack’ as disciplinary measure⁹² – remained an indispensable lever.

Returning to the period with which we are most directly concerned, we may recognise that the close of the post-war long boom and the emergence of the long downturn was the prefiguring context in which emerged, through a series of interrelated and mediating processes, a change in the character and form of bourgeois hegemony in the advanced capitalist economies. As there crystallised a new regime of accumulation centred on the financial sector and driven by finance capital as the emergent leading/dominant fraction of the capitalist class, there materialised an interrelated shift in the balance of leadership/domination underpinning the bourgeois political project and a re-configuration of the structural interconnection of civil and political society. Following Coutinho’s tentative lead, it is contended that this neoliberal age is best understood not in terms of *passive revolution* but rather as *counter-reformation*⁹³. Neoliberalism is not animated by a dialectic of restoration and renewal within which capital acquiesces to certain subaltern demands whilst entrenching its own dominance – rather it is a moment of restoration pure and simple involving a dramatic upwards redistribution of wealth and a dismantling of the civil rights and social protections accumulated during the period of passive revolution bookended by Americanism and the welfare state⁹⁴. The neoliberal project is characterised by a demonstrative prevalence of the old over the new, the “vast preponderance of conservation (or even restoration) in the face of any novelties, however timid”, ‘reforms’ in areas such as social security, labour-law, criminal justice and the privatisation of formerly public enterprises and assets representing the attempt “to radically suppress the victories of the political economy of labour”⁹⁵.

Neoliberalism represents from one perspective the crucial degeneration of bourgeois hegemony: the erosion of the ability of the capitalist class to lead society forward in a historical process of genuine social and political elevation; the dismantling or exclusionary re-configuration of the civil society institutions which once constituted an ‘organic passage’ into the expanding technical sphere of the capitalist class⁹⁶; the de-socialisation of politics represented by the disintegration of the mass social-democratic parties, the secular fall in voter registration and turnouts and the collapse in trade union membership, and; the stark revelation of the class-particularity of bourgeois economic and political initiatives. The worker learning of soaring stock prices on the *FTSE 100* no longer recognises the identity of her interests and those of capital – howsoever affective the relevant news coverage – for increasing asset values have long since ceased to represent productivity growth positively articulated with rising wages and job market buoyancy, reading rather as an index of

⁹² Kalecki, ‘Political aspects of full employment’ at p. 326

⁹³ Coutinho, *Gramsci’s Political Thought*, Appendix Two

⁹⁴ Coutinho, *Gramsci’s Political Thought*, Appendix Two at pp. 160-161

⁹⁵ Coutinho, *Gramsci’s Political Thought*, Appendix Two at p. 161

⁹⁶ Gramsci, *Selections from the Prison Notebooks*, p. 260

domestic parasitism and international imperialism. Capital is increasingly unable to secure rising standards of living in an upturn, to effectively subsidise social reproduction in a slump, to guarantee a dignified retirement or appropriate care for the disabled and temporarily incapacitated. This profound erosion of the *materiality of consent*⁹⁷ has been accompanied by a multiplication and intensification of the *machinery of coercion*. In the UK, at the same time as there has registered a long run decline in political party and trade union membership, accompanied by an “unprecedented fall in public trust in government, the media, corporations and other central institutions in British society”⁹⁸, the material means of coercion available to the police in the maintenance of public order have accumulated, while the legal framework within which these may be applied has been qualitatively transformed.

An Expanded Machinery of Coercion – The Emergence of the Police State

Hobsbawm has noted the expansion and militarisation of a police force which increased by thirty-five percent 1971-2007 (making for 34 police officers per ten thousand citizens, as opposed to 24.4), as well as the significant expansion of the private security industry⁹⁹. In 1978, Tom Bowden recognised a generalised increase in the role of the police in the maintenance of public order throughout Europe since the disturbances of 1968, noting specifically in the British context that there had developed an increasing coordination between police and military activities in public order matters subsequent to the confrontations of the 1972 miners’ strike¹⁰⁰. Following a Cabinet Office Committee review of internal security in the spring of the latter year, there were introduced three schemes of coordinated police-military action grouped under the collective term Military Aid to the Civil Authorities: provision was made for military assistance in combating armed terrorism under the Military Aid to the Civil Power (MACP) scheme, thereby placing military units such as the Special Air Service on a permanent alert and call to the police; Military Aid to the Civil Community (MACC) provided for military relief in the aftermath of a natural disaster or major incident, and finally; Military Aid to the Civil Ministries (MACM) – now Military Aid to other government departments – enabled the deployment of the military to maintain services and supplies during protracted industrial disputes¹⁰¹.

⁹⁷ Nicos Poulantzas explains that “the relation of the masses to power and the State – in what is termed among other things a *consensus* – *always possesses a material substratum*” – *State, Power, Socialism*, introduction at p. 31

⁹⁸ Adrian Cousins has usefully synthesised a significant amount of statistical data in ‘The crisis of the British regime: democracy, protest and the unions’. Available at: <http://www.counterfire.org/index.php/theory/37-theory/14906-the-crisis-of-the-british-regime-democracy-protest-and-the-unions> [accessed 8 October 2013]

⁹⁹ E. Hobsbawm, *Globalisation, Democracy and Terrorism* (London: Abacus, 2007), pp. 141, 149

¹⁰⁰ T. Bowden, ‘Guarding the state: the police response to crisis politics in Europe’ (1978) 5 *British Journal of Law and Society* 69

¹⁰¹ Bowden, ‘Guarding the state’ at 83

In parallel as the interpenetration of police and military activities deepened, there occurred a restructuring within the police forces with the expansion of a 'squads' system of intelligence sections and specialist armed response units tasked primarily with countering terrorism but possessing a creeping remit which came in effect to include the more general maintenance of public order. The operations of Special Branch have long been shrouded in secrecy, escaping largely the evaluative purview even of parliament, while the police more generally have remained "the cinderellas of political science"¹⁰². In February 1975, the Minister of State for Home Affairs John Harris explained to the Lords that the "subversive activities" with which Special Branch was concerned were those "which threaten the safety or wellbeing of the State, and which are intended to undermine or overthrow Parliamentary democracy by political, industrial or violent means", before mentioning by name such subversive organisations as the Communist Party of Great Britain, the International Marxist Group and the International Socialists¹⁰³. This definition was reiterated by Home Secretary Merilyn Rees in the Commons in April 1978 in response to concerns raised by Robin Cook that forms of legitimate political activity might fall under it, Rees adding that "The Special Branch does an excellent job. I think that it would be wrong to bring the political aspect of their work into this matter...it is something which, quite properly, one does not talk about"¹⁰⁴. All this confirms Tony Bunyan's assertion that "An historical study of the [Special] Branch (and other agencies) shows only one consistent criterion – for 'subversive' read 'all those actively opposed to the prevailing order'"¹⁰⁵. Bunyan's organisation *Statewatch* has reported the expansion of Special Branch from some 1,638 officers in 1978 to at least 4,247 officers by 2003, arguing consequently that "domestically the political police – Special Branch and MI5 – are more intrusive in every day political activity than at any other point in British history"¹⁰⁶.

As regards armed response units, the infamous Special Patrol Group (SPG) had been formed in 1965 and by 1972 was on twenty-four hour heavily-armed patrol in London, while the Merseyside and Greater Manchester police forces created analogous units in 1974 and 1977 respectively. The SPG – which grew from four units to six and later to eight before being replaced in 1987 by the Territorial Support Group (TSG) – was implicated in a number of controversies, not least the death of protestor Blair Peach at a 1979 Anti-Nazi League demonstration in Southall. With regard to the latter incident – a *cause célèbre* revealing something of a world of political policing generally shielded from public knowledge and accountability¹⁰⁷ – a series of internal reports compiled by Commander John Cass in 1979 and 1980 were released by the Metropolitan Police in April 2010.

¹⁰² Bowden, 'Guarding the state' at 70

¹⁰³ HL Deb 26 Feb 1975, vol 357, cols 946-949

¹⁰⁴ HC Deb 06 April 1978, vol 947, cols 618-620

¹⁰⁵ T. Bunyan, *The History and Practice of the Political Police in Britain* (London: Quartet, 1977), p. 134

¹⁰⁶ Statewatch report, 'Special Branch more than doubles in size: analysis of the Special Branch's role in conducting surveillance for MI5 and on public order', September 2003. Available at: <http://www.statewatch.org/news/2003/sep/SB.pdf> [accessed 17 October 2013]

¹⁰⁷ R. Reiner, 'Tony Bunyan "The History and Practice of the Political Police in Britain"' (Book Review) (1980) 13 *Crime and Social Justice* 55

These revealed that Peach had almost certainly been killed by an SPG officer and that a number of SPG officers had lied to Cass in order to cover up the actions of their colleagues, whilst further documenting Cass' unearthing of a stash of unauthorised weapons (including illegal truncheons, knives, crowbars, a whip and a three foot wooden stave) as well as Nazi regalia during a raid on SPG headquarters¹⁰⁸. The replacement for the SPG, the TSG, has itself become quite notorious, such that its own management team identified in 2009 that public complaints against its officers had become unacceptably high¹⁰⁹. A 2012 Independent Police Complaints Commission (IPCC) review concluded that the TSG had historically generated higher numbers of recorded complaints of excessive force and oppressive behaviour than their Territorial Policing colleagues, whilst highlighting that a disproportionate number of such complaints came from people of a black and minority ethnic (BME) background and in the majority of cases related to unplanned stop-and-search encounters¹¹⁰. The IPCC review followed the publication by the Guardian in 2009 of the results of a Freedom of Information (FOI) request which had revealed that since August 2005 there had been lodged 5,241 complaints against TSG officers, of which only 9 had been substantiated – a situation which led Jenny Jones of the Metropolitan Police Authority (MPA) to conclude that the TSG was “practically immune” from criticism¹¹¹. Particularly visible incidents involving the TSG have included: the alleged brutal beating of Anthony Abramson in June 1997, an attack which apparently only ceased when the victim pretended to be unconscious¹¹²; the perpetration in December 2003 by six TSG officers (who together had already been the subject of seventy-seven complaints) of a prolonged, gratuitous attack on Babar Ahmad which the Metropolitan Police Commissioner admitted in March 2009 constituted “grave abuse amounting to torture”¹¹³, and; the death of Ian Tomlinson during the 2009 G20 summit protests in London, in relation to which the Metropolitan Police admitted to using “excessive and unlawful” force¹¹⁴.

¹⁰⁸ P. Lewis, ‘Blair Peach killed by police at 1979 protest, Met report finds’ *The Guardian*, 27 April 2010. Available at: <http://www.theguardian.com/uk/2010/apr/27/blair-peach-killed-police-met-report> [accessed 17 October 2013]. Commander Cass' reports, along with others by two former Detective Chief Inspectors are available at: http://www.met.police.uk/foi/units/blair_peach.htm [accessed 17 October 2013]

¹⁰⁹ Independent Police Complaints Commission (IPCC), *Metropolitan Police Service Territorial Support Group: a review of complaints data and IPCC cases 2008-2012*, December 2012, at p. 17. Available at: www.ipcc.gov.uk [accessed 18 October 2013]

¹¹⁰ IPCC, *Metropolitan Police Service Territorial Support Group*, pp. 9-11

¹¹¹ P. Lewis & M. Taylor, ‘Scotland Yard riot squad faces calls to end “culture of impunity”’ *The Guardian*, 6 November 2009. Available at: www.theguardian.com/politics/2009/nov/06/police-scotland-yard-riot-squad [accessed 18 October 2013]

¹¹² See V. Dodd, ‘Police beat up man then lied on oath, police told’ *The Guardian*, 5 October 1999. Available at: www.theguardian.com/uk/1999/oct/05/vikramdodd [accessed 18 October 2013]

¹¹³ F. Murphy, ‘Babar Ahmad’s principled stand shames the IPCC’ *The Guardian*, 5 June 2011. Available at: <http://www.theguardian.com/commentisfree/2011/jun/05/babar-ahmad-metropolitan-police-ipcc> [accessed 18 October 2013]. Statement from Fiona Murphy (Babar Ahmad’s solicitor), 18 March 2009. Available at: <http://www.freebabarahmad.com/press-and-media/press-releases/item/33-statement-from-fiona-murphy-babar-ahmads-solicitor-18/03/09> [accessed 18 October 2013]

¹¹⁴ M. Taylor, ‘Ian Tomlinson’s family win apology from Met police over death in 2009’ *The Guardian*, 5 August 2013. Available at: <http://www.theguardian.com/uk-news/2013/aug/05/ian-tomlinson-apology-met-police> [accessed 18 October 2013]

The findings of the IPCC review mentioned above are in many respects unsurprising, insofar as allegations of institutional racism and public opposition to what has been perceived as gratuitous deployment of stop and search powers have accompanied at every juncture the development of political policing in the long downturn. The Notting Hill Carnival riot of 1976 was sparked by an expansive police stop and search operation which was perceived to involve the arbitrary harassment and arrest of young black people, while the Brixton uprising of 1981 broke out amidst “Operation Swamp 81” which “flooded” the Lambeth area with police officers under instruction to question suspects “persistently and astutely”¹¹⁵, there being in the ensuing confrontations “little doubt that the police regarded all blacks as potential rioters”¹¹⁶. In September 1985 riots returned to Brixton after the shooting by police of Dorothy “Cherry” Groce during a raid on her home, an incident followed a week later by the eruption of the Broadwater Farm riot following the death of Cynthia Jarrett in disputed circumstances during a similar raid. In 1999 the Macpherson inquiry into the Metropolitan Police’s investigation of the murder of Stephen Lawrence reported that the case had been marred by institutional racism¹¹⁷, while the following decade saw in fact an *increasing* disparity in stop and search rates for black people as opposed to the white population¹¹⁸. The anger and resentment bred by such persistent coercive intrusion into the lives of an increasing sub-section of the working class which faces almost complete social exclusion in the context of structural unemployment, wage repression and public service re-commodification/retranchment was all too apparent in the riots of August 2011. Thousands of people resident disproportionately in the most deprived areas of England¹¹⁹ and expressing in great number frustration regarding disrespectful and discriminatory policing in their communities¹²⁰ took to the streets in disturbances

¹¹⁵ R. Behrens, ‘The Scarman report: II – a British view’ (1982) 53(2) *The Political Quarterly* 120 at 125-156

¹¹⁶ Hobsbawm, *Globalisation, Democracy and Terrorism* at p. 150

¹¹⁷ W. Macpherson of Cluny, Sir, *The Stephen Lawrence Inquiry: Report of an Inquiry* (London: Stationary Office, 1999), para. 46.1. Available online at: www.archive.official-documents.co.uk/document/cm42/4262/4262.htm [accessed 24 October 2013]

¹¹⁸ Black people were in 1999 six times more likely to be stopped and searched under Section 1 of the Police and Criminal Evidence Act 1984, while by 2006/7 they were seven times more likely – House of Commons Home Affairs Committee, *The Macpherson Report: Ten Years On* HC 427 (2009), p. 4. See also V. Dodd, ‘Minorities stopped disproportionately in decade after Macpherson report’ *The Guardian*, 22 April 2013. Available at: www.theguardian.com/law/2013/apr/22/ethnic-minority-britons-stop-search-white [accessed 24 October 2013]

¹¹⁹ Of two thousand riots cases processed by the magistrates courts by December 2011, 58 percent of those appearing identified their residential location as being within the 20 percent most deprived areas in England – S. Rodgers, ‘England riots: was poverty a factor?’ *The Guardian*, 6 December 2011. Available at: www.theguardian.com/news/datablog/2011/aug/16/riots-poverty-map-suspects [accessed 25 December 2013]. Of those suspected rioters arrested in the West Midlands, six out of ten (61 percent) were unemployed, while of those arrested by the Metropolitan Police, 40 percent were unemployed and 28 percent students – Home Office, *An Overview of Recorded Crimes and Arrests Resulting from Disorder Events in August 2011*, October 2011, at p. 18. Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/116257/overview-disorder-aug2011.pdf [accessed 25 October 2013]

¹²⁰ Of the 270 people interviewed during the study jointly conducted by The Guardian and the London School of Economics and Political Science, some 85 percent said policing was an “important” or “very important” factor in why the riots happened, while a full 73 percent of interviewees had been stopped and searched in the previous twelve months – P. Lewis, T. Newburn *et al.*, *Reading the Riots: Investigating England’s Summer of Disorder* (London: The Guardian and LSE, 2011), at pp. 18-19. Available at: eprints.lse.ac.uk/46297 [accessed 25 October 2013]

which – described by the Metropolitan Police as “unprecedented in the capital’s history” – affected twenty-two out of thirty-two London boroughs and later spread to other areas including Gloucester, Liverpool, Nottingham and Birmingham. There was a certain familiarity about the incident which represented the riots’ proximate cause – the police shooting of Tottenham resident Mark Duggan in circumstances obscured by the circulation of misinformation¹²¹, followed by the failure to officially inform Duggan’s family of the death¹²² and the perceived failure of the police to respond adequately to community concerns or issue an apology.

The Duggan shooting should be seen in the broader context of an historical increase in police deployment of firearms, as well as in connection with the controversy surrounding the Metropolitan Police’s ‘shoot to kill’ policy – formerly codenamed ‘Operation Kratos’ – which involves shooting suspected suicide bombers in the head without warning and resulted on 22 July 2005 in the death of the misidentified Jean Charles de Menezes. Tony Bunyan noted the doubling of the number of occasions on which officers were issued with guns between 1970 and 1972, these figures being 1,072 and 2,237 operations respectively and further highlighted the re-equipping of officers with more powerful weaponry – including the L39A1 high-velocity rifle which had been rejected by the New York police on account of being too dangerous for use in urban areas – following the report of a Home Office working party in 1972¹²³. By comparison, in 2010/11, there were 17,209 operations in which firearms were authorised, the annual average between 2002 and 2011 being 17,778 operations¹²⁴. Moreover, CS incapacitant spray was introduced in 1996 and had by 1998 been used more than ten thousand times¹²⁵ despite the death of asylum seeker Ibrahima Sey¹²⁶ in the first month of the weapon’s trial period and the Association of Chief Police Officers’ (APCO) January 1996 recognition of health risks and the lack of comprehensive research¹²⁷; there has been subsequently recorded the occurrence of ‘adverse’ symptoms such as blisters and dermatitis whilst

¹²¹ The IPCC admitted to leading journalists to the erroneous belief that shots had been exchanged between Duggan and the police in the immediate aftermath of the incident – IPCC, ‘Release of information in early stages of Mark Duggan investigation’, 12 August 2011. Available at: <http://www.ipcc.gov.uk/news/release-information-early-stages-mark-duggan-investigation> [accessed 25 October 2013]. Such misinformation was circulated uncritically by the media, which has also been criticised for portraying Duggan as a “well known gangster” despite his lack of a criminal record – N. Abbey, ‘How the media shamefully manipulated Mark Duggan’s death’ *The Voice*, 8 October 2011. Available at: www.voice-online.co.uk/article/how-media-shamefully-manipulated-mark-duggans-death [accessed 25 October 2013]

¹²² The IPCC admitted in February 2012 that neither it nor the Metropolitan Police had informed Mr Duggan’s parents of their son’s death – IPCC, *Report of the Investigation into a Complaint Made by the Family of Mark Duggan about Contact with them Immediately After His Death*, 27 February 2012. Available at: www.ipcc.gov.uk [accessed 25 October 2013], at p. 3

¹²³ Bunyan, *The History and Practice of the Political Police in Britain*, p. 93

¹²⁴ Home Office, ‘Statistics on police use of firearms in England and Wales 2010-11, July 2012. Available at: www.gov.uk/government/publications/statistics-on-the-police-use-of-firearms-in-england-and-wales-2010-to-2011 [accessed 28 October 2013]

¹²⁵ ‘UK safety fears prompt CS spray review’ *BBC News*, 24 September 1998. Available at: <http://news.bbc.co.uk/1/hi/uk/179451.stm> [accessed 28 October 2013]

¹²⁶ Inquest report, *Death in Police Custody: Report on the Death of Ibrahima Sey* (London: Inquest, 1997). Available at: <http://inquest.gn.apc.org/pdf/Ibrahima%20Sey%20briefing.pdf> [accessed 28 October 2013]

¹²⁷ Inquest report, *Death in Police Custody*, at p. 3

noting the persistence of effects more than six hours after exposure¹²⁸. Further, a perhaps yet more controversial weapon, the taser, was introduced in 2004 for the use of authorised firearms officers and their deployment widened to some thirty thousand non-firearms officers in 2008, while the 2011 riots have led the Metropolitan Police to undertake work “on the use of more assertive tactics in a public order context”, including the potential use of water cannon and Attenuating Energy Projectiles (AEPs) or ‘baton rounds’¹²⁹.

Essentially, what is being argued is that the crystallisation in the context of the emergence of the long downturn of a regime of accumulation dominated by finance capital has engendered economic conditions (characterised by structural unemployment, wage repression and public service re-commodification) in relation to which sections of the working class have tended to withdraw from civil society organisations and have become tendentially alienated from parliamentary politics. In this regard, the reconciliation – often rationalised in terms of the ‘Third Way’¹³⁰, or for the German Social Democrats *die neue Mitte* – of social democratic parties to a neoliberal policy horizon is crucial, while the question of whether certain of these processes might be productively approached using the Gramscian notion of *transformism*¹³¹ is interesting, yet beyond the scope of the present work. In any event, it is contended that the relation by which increasing proportions of the working population are bound to the hegemonic bloc represented by the alliance of capital and proximate classes obtains a progressively more coercive character as the means of consensual integration erode. The above discussion has highlighted the increasing size of the police force, its deepening interconnection with the military, the expansion of intelligence operations and riot control squads and the increasing deployment of firearms and other less-lethal weaponry to exemplify the accumulation of the means of coercion. Much more could be drawn from the explosion of Closed-Circuit Television (CCTV) and the developing sophistication of intelligence operations including the activity of Forward Intelligence Teams (FITs), while the introduction of Anti-Social Behaviour Orders (ASBOs) as a form of systematic petty intrusion into working-class social reproduction¹³² and the very fact of the increased rate of incarceration is significant¹³³.

¹²⁸ E. Euripidou, R. MacLehouse & A. Fletcher, ‘An investigation into the short term and medium term health impacts of personal incapacitant sprays. A follow up of patients reported to the National Poisons Information Service (London)’ (2004) 21 *Emergency Medical Journal* 548

¹²⁹ Metropolitan Police Service, *4 Days in August: Strategic Review into the Disorder of August 2011*, March 2012, paras 6.5-6.7 Available at www.met.police.co.uk [accessed 28 October 2013]

¹³⁰ “...adapting Lenin’s maxim that ‘the democratic republic is the ideal political shell of capitalism’, we could say that the Third Way is the best ideological shell of neo-liberalism today” – P. Anderson, ‘Renewals’ (2000) 1 *New Left Review* 1, at p. 7. See A. Callinicos, *Against the Third Way* (Cambridge: Polity, 2001)

¹³¹ Coutinho has opined that “transformism as a political phenomenon is not exclusive to processes of passive revolution, also having possible connections with processes of counter-reformation” – *Gramsci’s Political Thought*, Appendix Two at p. 162

¹³² See A. Rutherford, ‘An elephant on the doorstep: criminal policy without crime in New Labour’s Britain’ in P. Green & A. Rutherford (eds.), *Criminal Policy in Transition* (Oxford: Hart, 2000)

¹³³ While the prison population in England and Wales has risen steadily since the early 1940s, there was a marked increase in the mid to late 1980s and following a marginal reduction in the early 1990s, a dramatic rise thereafter – House of Commons Library, *Prison Population Statistics* (2009) Standard Note: SN/SG/4334, p. 3. Available at: www.parliament.uk/briefing-papers/sn04334.pdf [accessed 29 October 2013]

The expanding and developing role of policing in the long downturn has been accompanied by the facilitative development of the legal apparatus commanded by police forces. Following the miner's strike of 1984-5, in relation to which it was widely believed that the police operated as "an organised force of strike-breakers" – a position described Sarah McCabe and Peter Wallington as "an exaggerated, but not fundamentally erroneous, view of the situation"¹³⁴ – police powers were strengthened by the enactment of the Public Order Act 1986. Similarly as the Public Order Act 1936 authorised the expanding role of the police in controlling unemployment marches and anti-fascist demonstrations (as well indeed as enforcing the de-militarisation of the British Union of Fascists) during the Great Depression, the 1986 Act clarified and crucially expanded the powers of the police to control civil unrest in the context of the long downturn. In particular, section 5 of the 1986 Act significantly increased the discretionary powers of the police (and threatened to reinforce a "do as I say" policing style¹³⁵) insofar as it aimed in terms of the White Paper to tackle minor nuisances such as kicking over dustbins and swearing at people in bus queues¹³⁶. The startlingly vague section, which A.T.H. Smith considered "comes perilously close to offending against the requirements of due process"¹³⁷ provides that:

A person is guilty of an offence if he:
 (a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
 (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,
 within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

The 1986 Act also gave parliamentary approval to police powers to prohibit and regulate processions (which now required six days' written notice) and expanded powers to control these processions as well as the location, duration and size of public assemblies of more than twenty people¹³⁸. Further, s.13 of the Act enabled chief police officers to apply to a local authority for an order banning all public processions in a district for up to three months. Subsequently, the Criminal Justice and Public Order Act 1994 introduced a s.14A into the 1986 Act, providing that a chief officer of police may apply to the local council for an order prohibiting for a specified period "trespassory assemblies" which he reasonably believed were intended to be held on a piece of land

2013]. Consequently, the prison population was seen to rise by 98% between June 1993 and June 2012, driven by "tougher sentencing and enforcement outcomes, and a more serious mix of offence groups coming before the courts" – Ministry of Justice, *Story of the Prison Population: 1993-2012 England and Wales*, January 2013. Available at: <https://www.gov.uk/government/publications/story-of-the-prison-population-1993-2012> [accessed 29 October 2013]

¹³⁴ S. McCabe & P. Wallington, *The Police, Public Order and Civil Liberties: Legacies of the Miners' Strike* (London: Routledge, 1988), p. 3

¹³⁵ McCabe & Wallington, *The Police, Public Order and Civil Liberties*, p. 117

¹³⁶ White Paper, Home Office and Scottish Office, *Review of Public Order Law* Cmnd 9510 (1985). Referenced in A.T.H. Smith, 'The Public Order Act 1986. Part 1: the new offences' 1987 *Criminal Law Review* 156, at p. 164

¹³⁷ Smith, 'The Public Order Act 1986', at p. 164

¹³⁸ Public Order Act 1986 ch. 64, ss11-14

to which the public had no or only a limited right of access. Additionally, s.2 of the Protection from Harassment Act 1997, which had been originally intended for use in relation to incidences of stalking, began to be redeployed in the prosecution of protestors¹³⁹. These statutory powers were complimented by “immensely broad and bewilderingly imprecise powers” available under the common law doctrine of breach of the peace, which Helen Fenwick has recognised as having had a long history of deployment in relation to public protest. Being largely dependent upon police perceptions informed by unpublished guidelines, and thereby handing the police an “extraordinarily wide discretion”, Fenwick argues that the doctrine is an unsuitable basis for striking the sensitive balance between the protection of the freedoms of expression and assembly and keeping the peace in cases of mass protest¹⁴⁰.

An interrelated matter is the development of anti-terrorism legislation from the introduction of measures intended to deal with members and supporters of the Irish Republican Army (IRA) following its bombing campaign of the early 1970s to the frantic legislative wave which swept through the British legal system as in many others subsequent to the World Trade Centre attack of 11 September 2001. I say interrelated because the dilution of constitutional rights, even in respect of a restricted category of legal persons and in specified circumstances, is likely to have the consequence of destabilising the structure of liberties more generally enjoyed in a given jurisdiction – history does not look kindly upon populations who surrender basic rights in respect of enemies of the state. Further, the enactment of anti-terror legislation may be considered a key moment in the developing articulation between the shifting foreign policy imperatives engendered by the changing position of the advanced capitalist economies in the global division of capital and the development of repressive powers (and modes to ideologically rationalise these) suitable to manage the necessarily coercive domestic realities of finance-driven accumulation. The terror threat constituted the permanent state of emergency¹⁴¹ which justified a substantial extension of police powers and a corresponding curtailment of civil liberties¹⁴². Finally, many of the new anti-terror powers and terror-related offences are framed in extreme breadth and have been quite regularly used to discipline protest movements, partly illustrating the substantial conceptual and tactical continuity that obtains in the handling of terror suspects and so-called ‘domestic extremists’. Indeed, according to Mark Curtis, “Britain has been leading the international

¹³⁹ See R. Furlong, ‘The law of public protest’ (2011) 175 *Criminal Law and Justice Weekly* 733 at 734

¹⁴⁰ H. Fenwick, ‘Marginalising human rights: breach of the peace, “kettling”, the Human Rights Act and public protest’ 2009 *Public Law* 737

¹⁴¹ C. Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (G. Schwab trans.) (Chicago: University of Chicago Press, 2005); G. Agamben, *State of Exception* (K. Attell trans.) (Chicago: University of Chicago Press, 2005)

¹⁴² Human Rights Watch reported in 2002 that “the anti-terror campaign led by the United States is inspiring opportunistic attacks on civil liberties around the world”, explaining that “some countries, such as Russia, Uzbekistan, and Egypt, are using the war on terror to justify abusive military campaigns or crackdowns on domestic political opponents” while “in the United States and Western Europe, measures designed to combat terrorism are threatening long-held human rights principles” – Human Rights Watch, ‘Anti-terror campaign cloaking human rights abuse’, 17 January 2002. Available at: <http://www.hrw.org/news/2002/01/15/anti-terror-campaign-cloaking-human-rights-abuse> [accessed 28 November 2013]

community in promoting a legal definition of terrorism that may stifle domestic political dissent”¹⁴³.

With regard to specific enactments, the Prevention of Terrorism (Temporary Provisions) Acts (PTAs), through several iterations suspended *habeas corpus* between 1974 and 2001, the juxtaposition of such longevity with the Acts’ avowal of temporariness capturing neatly the logic of *permanent exceptionality*¹⁴⁴. The PTAs introduced on the British mainland the twin ‘noncoercive’ strategies of detention without charge and the proscription of specified organisations which had been central components of anti-terrorism legislation in Ireland from the 1920s onwards¹⁴⁵. Under the PTAs, it became a criminal offence to be a member of a ‘proscribed organisation’ as specified by the Secretary of State or otherwise to solicit or invite support for such an organisation, or to assist in the organisation of its meetings, these offences carrying a maximum penalty of ten years’ imprisonment and an unlimited fine¹⁴⁶. It became further an offence to provide financial assistance for terrorism or to proscribed organisations¹⁴⁷ or indeed to show public support for such organisations by wearing clothes or displaying articles which would arouse ‘reasonable suspicion’ that you were a member or supporter thereof¹⁴⁸. The PTAs also introduced ‘exclusion orders’ by which the Secretary of State could prohibit persons suspected of being involved (or seeking to become involved) in the commission, preparation or instigation of acts of terrorism from being in, or entering Great Britain, Northern Ireland or the United Kingdom, unless such persons were citizens of those jurisdictions and had been ordinarily resident there for three years¹⁴⁹. Persons suspected of any of the offences above or of failing to comply with an exclusion order could be arrested and detained for forty-eight hours without charge, or on application to the Secretary of State, for up to seven days in total¹⁵⁰. The powers provided by the PTAs were placed on a permanent foundation and further extended by the Terrorism Act (TA) 2000, which broadened the definition of ‘terrorism’ itself from the “use of violence for political ends” of the PTAs to include the use or *threat* of ‘action’ where this is designed to influence the government or intimidate the public and to advance a political, religious or ideological cause. Activities which would constitute action in this sense are those involving serious violence, the endangerment of life or the health and safety of the public, and even serious damage to property or serious interference with or disruption of an electronic system¹⁵¹. TA 2000 also gave British courts a near-universal jurisdiction to try suspected terrorists in view of action taking place outside of the United Kingdom and directed

¹⁴³ M. Curtis, *Web of Deceit: Britain’s Real Role in the World* (London: Vintage, 2003), p. 89

¹⁴⁴ See J. Ip, ‘Sunset clauses and counterterrorism legislation’ (2013) *Jan Public Law* 74

¹⁴⁵ B. Brandon, ‘Terrorism, human rights and the rule of law: 120 years of the UK’s legal response to terrorism’ (2004) *Criminal Law Review* 981 at 982

¹⁴⁶ Prevention of Terrorism (Temporary Provisions) Act 1989 ch. 4 (repealed), ss1, 2

¹⁴⁷ PTA 1989, Part III

¹⁴⁸ PTA 1989, s3

¹⁴⁹ PTA 1989, ss5-7

¹⁵⁰ PTA 1989, s14

¹⁵¹ Terrorism Act 2000 ch. 11, s1

against other governments¹⁵² and people, enabling the proscription of international organisations – meaning in effect the addition of groups of Islamic origin to the Irish terrorist groups which had previously been the exclusive targets of proscription¹⁵³. Further, and perhaps most controversially, TA 2000, s44 conferred upon police the power to make authorisations specifying an area or place within which for a period of up to twenty-eight days pedestrians, drivers and their vehicles could be stopped and searched without the usual requirement of reasonable suspicion that an offence had been committed¹⁵⁴. Section 44 powers, couched in such breadth as almost to invite abuse, came to be regularly used as a mode of disciplining and restricting peaceful protest¹⁵⁵, their deployment producing remarkably few terror-related arrests¹⁵⁶ and coming to resemble more “a general stop and search without suspicion power – not specifically linked to counter-terrorism measures, but used disproportionately on ethnic minority groups, peaceful protestors and photographers”¹⁵⁷. In 2011, the operation of sections 44-47(1) of TA 2000 was suspended and replaced by a new section 47A re-introducing the requirement of ‘reasonable suspicion’ following the decision of the European Court of Human Rights in *Gillan and Quinton v United Kingdom*¹⁵⁸ that the powers unlawfully interfered with the right to privacy in violation of Article 8 of the European Convention on Human Rights (ECHR).

Subsequent to 11 September 2001 and redoubled by the London bombings of 7 July 2005, there unfolded a legislative furore which profoundly transformed the landscape of UK counter-terrorism law and which according to David McKeever illustrates on the part of the British Government “at best, ambivalence towards the current legal framework for the protection of human rights”¹⁵⁹. There have been created a significant number of new terrorism related offences (numbering forty between 2000 and 2005), often so vaguely defined as to offend against the principle of legal

¹⁵² Ben Brandon has noted that crucially, there is no requirement in TA 2000, s1 that the government against which such action is directed be democratic or legitimately established, nor is there any distinction made between groups which target exclusively military targets and those that attack civilians. Such a definition of ‘terrorism’ protects therefore ‘any foreign government however oppressive’ and criminalises “potentially all liberation movements whether or not those groups are fighting against undemocratic regimes that do not respect human rights” - ‘Terrorism, human rights and the rule of law’ at 988-990

¹⁵³ TA 2000, s1(4); Brandon, ‘Terrorism, human rights and the rule of law’ at 987-989

¹⁵⁴ TA 2000, ss44, 46. Section 45 gave constables the power to seize and retain any article which he ‘reasonably suspects is intended to be used in connection with terrorism’

¹⁵⁵ See Joint Committee on Human Rights, *Demonstrating Respect for Rights? A Human Rights Approach to Policing Protest* HC 320-I (London: Stationary Office, 2009)

¹⁵⁶ A. Travis, ‘No terror arrests in 100,000 police counter-terror searches, figures show’ *The Guardian*, 28 October 2010. Available at: <http://www.theguardian.com/uk/2010/oct/28/terrorism-police-stop-search-arrests> [accessed 17 November 2013]

¹⁵⁷ *From War to ‘Law’: Liberty’s Response to the Coalition Government’s Review of Counter-Terrorism and Security Powers* (London: Liberty, 2010). Available at: www.liberty-human-rights.org.uk/pdfs/policy10/from-war-to-law-final-pdf-with-bookmarks.pdf [accessed 17 November 2013], p. 49

¹⁵⁸ *Gillan and Quinton v United Kingdom*, no. 4158/05, ECHR 2000

¹⁵⁹ D. McKeever, ‘The Human Rights Act and anti-terrorism in the UK: one great leap forward by parliament, but are the courts able to slow the steady retreat that has followed?’ (2010) *Public Law* 110 at 139

certainty¹⁶⁰, while the definition of ‘terrorism’ itself – already following TA 2000 so broad as to “cast doubt on whether the police and security service attention could ever be directed at all the possible activities that come within its ambit”¹⁶¹ – was enlarged by the Terrorism Act (TA) 2006 to encompass threats/actions aimed at influencing an international governmental organisation¹⁶². TA 2006 made it an offence to *encourage* terrorism by publishing (in print or online) a statement likely to be understood as a direct or indirect encouragement or inducement to the commission, preparation or instigation of acts of terrorism, provided that the person publishing the statement intended such encouragement/inducement or was otherwise reckless as to whether it would have that effect¹⁶³. Such statements include those glorifying the commission of acts of terrorism, it becoming further under section 2 an offence to disseminate publications of the same character or those which would be useful in the commission/preparation of terrorist acts. In this regard, it is important to remember once again that on account of the broad definition of terrorism in effect, statements or publications produced in reference to resistance to any regime, anywhere in the world and howsoever constituted, potentially fall foul of TA 2006, ss1-2, even if the actions encouraged amount only to sabotage as in the offences tried in the infamous ANC *Rivonia* trial¹⁶⁴. TA 2006, s5 also made it an offence to engage in any conduct in preparation for the commission of acts of terrorism or assisting in such commission, irrespective of whether this preparation related to any particular acts or acts of terrorism more generally. McKeever has criticised this latter provision on account of its moving beyond the basic principles of English criminal law, which finds punishable only such action as constitutes an ‘attempt’ to commit an offence, thereby requiring more than mere preparation. It is doubtful whether the criminalisation of these “precursor offences” can be justified given the dilution of the definition of terrorism to include *threats* to damage *property*¹⁶⁵.

The anti-terrorism regime was further reinforced by the extension of the maximum period of pre-charge detention for persons suspected of terrorism from seven to fourteen¹⁶⁶ and later to twenty-eight days¹⁶⁷, Tony Blair’s New Labour government having argued for a full ninety days in 2006 and including in the Counter-Terrorism Bill 2008 a forty-two day provision which was defeated in the Lords. Moreover, the Anti-terrorism, Crime and Security Act (ATCSA) 2001, described by Adam Tomkins as “surely the most draconian legislation Parliament has passed in peacetime in

¹⁶⁰ In *A v HM Treasury* [2008] EWHC 869 (Admin); [2008] 3 All E.R. 361, the court held in relation to anti-terrorism asset freezing that the very wide definition of “economic resources” made it impossible for members of the designated person’s family to know whether they were committing an offence. Referenced in McKeever, ‘The Human Rights Act and anti-terrorism in the UK’, at 116, fn40

¹⁶¹ N. Whitty, T. Murphy & S. Livingstone, *Civil Liberties Law: The Human Rights Act Era* (Oxford: OUP, 2001), p. 127. Referenced in McKeever, ‘The Human Rights Act and anti-terrorism in the UK’, at 116

¹⁶² Terrorism Act 2006 ch. 11, s34

¹⁶³ TA 2006, s1

¹⁶⁴ McKeever, ‘The Human Rights Act and anti-terrorism in the UK’ at 128

¹⁶⁵ McKeever, ‘The Human Rights Act and anti-terrorism in the UK’ at 119

¹⁶⁶ Criminal Justice Act 2003 ch. 44, s306

¹⁶⁷ TA 2006, ss23-24

over a century”¹⁶⁸, provided for the indefinite detention without charge of any foreign national certified by the Secretary of State as a ‘suspected international terrorist’ who nonetheless could not be deported¹⁶⁹. Following the House of Lord’s – rather restrained – decision of December 2004¹⁷⁰ that ATCSA 2001, Part 4 was incompatible with ECHR, Article 5 when read together with Article 14 – thereby holding indefinite detention without charge to be unlawful on account of discriminating between British nationals and foreign nationals, rather than due to its infringing the right against arbitrary detention as such – it was replaced by a regime of ‘control orders’ under the Prevention of Terrorism Act (PTA) 2005. This empowered the Secretary of State (or the court where derogation from the ECHR is required) to make an order imposing obligations on any individual for the purposes of protecting the public from a risk of terrorism, such obligations being any considered necessary to prevent the individual’s involvement in terrorism-related activity¹⁷¹. Section 1(4) includes in particular: prohibitions on movement; the restriction of association or communication with specified persons or persons in general; restrictions in respect of the individual’s place of residence and on the persons she receives there; requirements in relation to the electronic monitoring of her movements and communications; and the requirement to report to a specified person at specified places/times. The absurd situation created by PTA 2005 was summed up concisely by Victoria Brittain¹⁷²:

the rounding up, imprisonment and indefinite house arrest of a number of Muslim men resident in the UK, in a situation analogous to Guantánamo. Held for years without charge, under restricted regimes of twelve to twenty-four hour curfews, with virtually no access to the wider world and kept in ignorance of the alleged evidence against them, the impact on them and their families has been devastating.

There were to be yet further human rights casualties of the legislative war on terror: the Serious Organised Crime and Police Act 2005 made it illegal to hold even a static demonstration within one kilometre of Parliament Square and in other designated areas including Downing Street and Whitehall without police authorisation following the provision of six days written notice¹⁷³; the Extradition Act 2003 – implementing the UK-US extradition treaty of the same year – allowed for the removal to the US of persons living and working in the UK on account of alleged offences committed in the UK and on the basis only of ‘reasonable suspicion’ as opposed to *prima facie*

¹⁶⁸ A. Tomkins, ‘Legislating against terror: the Anti-terrorism, Crime and Security Act 2001’ (2002) *Public Law* 205 at 205

¹⁶⁹ Anti-terrorism, Crime and Security Act 2001 ch. 24, s23 (repealed)

¹⁷⁰ *A and Others v Secretary of State for the Home Department, X and Another v Secretary of State for the Home Department* [2004] UKHL 56; [2005] 2 A.C. 68. In the Lord’s decision, Lord Hoffmann’s dissenting opinion at paras 96-97) that “Terrorist violence, serious as it is, does not threaten our institutions of government or our existence as a civil community...the real threat to the life of the nation...comes not from terrorism but from laws such as these” represented a ray of light in a pitch dark night.

¹⁷¹ Prevention of Terrorism Act 2005 ch. 2, s1

¹⁷² V. Brittain, ‘Besieged in Britain’ (2009) 50(3) *Race and Class* 1, abstract. For a sobering investigation of the reality of life under a control order, see the documentary *Taking Liberties* (London: Revolver Entertainment, 2007)

¹⁷³ Serious Organised Crime and Police Act 2005 ch. 15, ss132-138; Serious Organised Crime and Police Act (Designated Area) Order 2005 no. 1537

evidence, and; the House of Lords in *A v Secretary of State for the Home Department (No.2)* held in relation to the ATCSA 2001 detention regime that with reference to the inadmissibility of evidence obtained by torture, the standard of proof to be applied by the Special Immigration Appeals Commission was whether on the balance of probabilities the information relied upon by the Secretary of State was obtained by torture¹⁷⁴. In relation to the latter majority judgment, Lord Bingham of Cornhill opined in dissent that “It is inconsistent with the most rudimentary notions of fairness to blindfold a man and then impose a standard which only the sighted could hope to meet”, while Lord Nicholls of Birkenhead argued that the majority decision “...would largely nullify the principle, vigorously supported on all sides, that courts will not admit evidence procured by torture”¹⁷⁵.

The extension of the apparatus of coercion and its correlative legal machinery described above is presented in support of the proposition that the political project of the British bourgeoisie has come in the context of the long downturn to be underpinned increasingly by coercion. The interventions of police – as well as of social workers and Jobcentre Plus employees as such public services become in a context of structural unemployment and labour devaluation themselves increasingly coercive – appear progressively less as concretisations and confirmations of consensual civil society relations, but as *external encroachments*. For that increasing proportion of the working class whose mode of civil society integration may be defined only negatively, as *exclusion* (yet which simultaneously plays a *positive* load-bearing role in relation to the sharpening contradictions of the civil remainder), the stable public sector employ of representatives of the state is from a different world, while the atomising, individualising logic of bourgeois legality tends to falter on the rocks of social immobility. These developments, necessitated by the reduced capacity for consensual integration presented by a finance-driven regime of accumulation – and mirrored elsewhere in the advanced capitalist world in proportion as economies have become financialised and as otherwise mediated by national particularities – represent from a certain perspective a crucial decline of bourgeois hegemony. Capital rules most effectively when it can in great proportion consensually integrate the subaltern classes; the increasing pre-eminence of the state as narrowly defined in opposition to its civil society correlate – the preponderance of dictatorial forms of supremacy to the detriment of hegemonic forms¹⁷⁶ – marks a significant, if only prospective, weakening of the regime.

Labour's Parallel Crisis

However, political leadership is not a zero-sum game, such that the waning of one leading class' capacity of initiative and ability to generate pro-active consent does not automatically result in the

¹⁷⁴ *A and Others v Secretary of State for the Home Department (no.2)* [2005] UKHL 71; [2006] 2 A.C. 221

¹⁷⁵ [2006] 2 A.C. 221 at 273, 278

¹⁷⁶ Coutinho, *Gramsci's Political Thought*, Appendix Three at p. 178

equal and opposite ascent of a rival class. Indeed, we may recognise that the British labour movement – in a manner again demonstrative, with certain peculiarities, of a secular trend in the advanced capitalist world – has been experiencing its own interrelated conjunctural crisis. Similar to the experience of financialisation in Renaissance Florence described by Arrighi, the decline of manufacturing and the turn to financial strategies of accumulation has in the UK tended to harden stratifications within the working class. Hobsbawm has noted that the return of mass unemployment in the 1970s and 1980s, combined with the neoliberal undermining of welfare policies and ‘corporatist’ systems of industrial relations, led to the revival of the old Victorian division between the ‘respectable’ and ‘unrespectable’ poor¹⁷⁷. Between 1973 and 1988 there was shed 35% of the British manufacturing workforce (some 1.8 million jobs being lost in the first half of the 1980s alone), leaving pockets of residual strength in the high-value chemicals, pharmaceuticals and armaments sectors¹⁷⁸. In relation to this changing job market, there diverged the fortunes of: on the one hand workers possessing the monopolisable skills indispensable to high-tech production, the education and corporate-familial connections required for the management of financial rents, or otherwise occupying supervisory roles which assumed increased significance in the context of labour de-valuation and intensification, and on the other; the sections of labour forced during subsequent contractions out of manufacturing jobs and into relatively low-paid and un-organised service sector employment. In Thatcher’s Britain, the disparity between the incomes of the top and bottom quintiles of workers outstripped that of the late 19th century¹⁷⁹, while the labouring elite tended to secede from the Labour party and came increasingly to resent their effective subsidisation of a growing section of the working class – in relation to which the derogatory term ‘underclass’ gained currency¹⁸⁰ – who became structurally unemployed and therefore dependent upon welfare. Such segregation was reflected geographically in the flight of the skilled and upwardly mobile from inner cities to satellite towns, leaving the former urban areas to become the ghettoised “settlements of the marginal, the socially problematic and welfare dependent” or otherwise to be (more or less successfully) gentrified¹⁸¹.

Such fermented divisions were further expressed in the changing composition of the trade union movement, which suffered a 37.7 percent fall in membership between 1979 and 1994¹⁸² as the Thatcher and Major governments legislated to restrict union activity and otherwise maintained a

¹⁷⁷ E. Hobsbawm, *Age of Extremes: The Short Twentieth Century, 1914-1991* (London: Abacus, 1995), pp. 307-308

¹⁷⁸ K. Williams, J. Williams & C. Haslam, ‘The hollowing out of British manufacturing and its implications for policy’ (1990) 19(4) *Economy and Society* 456 at pp. 461-467

¹⁷⁹ Hobsbawm, *Age of Extremes*, p. 308

¹⁸⁰ Owen Jones has described how in the context of “the Thatcherite assault on many of the pillars of working class Britain” whereby “the power of working class people has been driven out of workplace, the media, the political establishment, and from society as a whole”, there has developed a pernicious culture scapegoating the socially excluded via “the chav caricature [which] has obscured the reality of the working class majority” – *Chavs: the Demonization of the Working Class* (London: Verso, 2012), preface at x, pp. 247-249

¹⁸¹ Hobsbawm, *Age of Extremes*, pp. 308-9

¹⁸² Reflecting a reduction in total membership from 13,289,000 to 8,278,000 – Hobsbawm, *Industry and Empire*, p. 304

militantly anti-union position. This fall reflected an increasingly disorganised private sector, whose union density by 1995 was only 21.3 percent as opposed to a public sector density of 61.4 percent¹⁸³. According to government statistics, by 2012 union density in the private sector had decreased to only 14.4 percent as against 56.3 percent in the public sector, while unionisation of the workforce in aggregate stood at 26 percent¹⁸⁴. In fifteen years from 1980 the blue-collar organisations among the largest ten British unions suffered a decline in membership from 4.8 to 2.7 millions, as by contrast public sector strength remained relatively resilient and became concentrated following the 1993 UNISON merger in what was then the biggest trade union in the country¹⁸⁵. The trade union movement came therefore quite inevitably to represent disproportionately the perspectives and interests of public sector workers, whose job security, conditions and pay (despite coming under sustained attack in the neoliberal context) compared favourably with the majority of non-supervisory workers in the private sector. This dynamic has been dutifully seized upon by conservative commentators, whose conclusion that public sector pay and conditions should be levelled down – whilst quite obviously regressive – is powerful because it has some limited basis in objective reality. It may be seen then, that in parallel with the erosion of the hegemony of capital's historic bloc, transformed by the increasing domination of finance capital and correspondingly unable to consensually integrate subaltern classes *en masse*, the political leadership of organised labour – and consequently the prospects for working class catharsis – have been crucially undermined in the context of economic crisis and industrial decline by the cessation of highly-skilled workers, decreasing private sector unionisation and the domination of the (weakened) union movement by public sector workers in conversation with a co-opted New Labour. In consequence, as the coalition government elected in 2010 pursues a determined project of austerity, the prostration of a trade union movement directed by an isolated public sector leadership is all too apparent, while the frustration of the growing ranks of the disenfranchised and completely un-represented finds only unstructured and episodic expression as in the riots of August 2011. In this connection, one is reminded of Gramsci's reflection that in consequence of the absence of a "unitary popular initiative" in the development of Italian history, "this development took place as the reaction of the dominant classes to the sporadic, elementary and non-organic rebelliousness of the popular masses"¹⁸⁶.

¹⁸³ Hobsbawm, *Industry and Empire*, p. 304

¹⁸⁴ Department for Business, Innovation & Skills, *Trade Union Membership 2012: Statistical Bulletin* (London: Stationary Office, 2013). Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/204169/bis-13-p77-trade-union-membership-2012.pdf [accessed 27 November 2013], p. 5

¹⁸⁵ Hobsbawm, *Industry and Empire*, p. 232

¹⁸⁶ A. Gramsci, *Further Selections from the Prison Notebooks* (D. Boothman ed.) (London: Lawrence & Wishart, 1995), pp. 373-4. Referenced in Coutinho, *Gramsci's Political Thought*, p. 101

CHAPTER 4

Redeeming the Crisis – the Formation Flights of Neoliberalism and Postmodernism

Having outlined the crisis tendencies embedded in the political and economic structure of neoliberal capitalism, it falls now to connect this structure to the methodological shape and substantive content of the contemporary economic – and more broadly, social – theory which attempts to represent it and in turn underwrites its affirmative reproduction. Crucial in this regard is the recognition of the material rootedness of ideology in the social processes through which social relations are reproduced¹ - the fact of, in Poulantzas' terms, the secretion of primary and 'spontaneous' forms of the dominant ideology by the social division of labour and the direct embodiment of these in the state apparatuses and the practices of power². When in our present connection we refer to contemporary economic theory, we speak therefore of a "second-order ideology" which has already been "constituted, systematised and formulated by the organic intellectuals of the bourgeoisie"³. It is immediately apparent then the crucial role which intellectuals play in the systematic integration and scholarly elevation to a properly 'theoretical' level of the conceptions of individual capitalists emerging directly from their concrete experience of the social processes through which are reproduced (in a necessarily context-dependent manner) the fundamental relations of capitalist production (and through which their capital is reproduced *as capital*). This formalised articulation of the dominant ideology is an essential aspect of the role which Gramsci recognised as being fulfilled by intellectuals "in the aggregation or disaggregation of a relation of hegemony, and in the formation or conservation of an 'historic bloc'"⁴. An organic intellectual who played a pivotal role in the formulation of an ideology suitable to understand and further entrench the forms of state intervention necessary to reproduce capitalist relations of production under the rule of an historic bloc transformed by the domination of finance capital in the context of the long downturn was Friedrich August Hayek. The rise to prominence of this Austrian School economist, who had been marginalised in a post-war world whose trajectory through state-managed capitalism he described in terms of 'the road to serfdom', is an index of the centring of a previously-peripheral *laissez-faire* radicalism which replaced the post-war consensus around Keynesian economic management with a generalised acknowledgment of the efficiency and desirability of the unfettered market. Hayek, who would share the Nobel Memorial Prize for Economic Sciences with Stockholm School adversary Gunnar Myrdal in 1974, grasped the mantle as Keynesianism (at least intellectually) crumbled in the face of the emergence of a crisis of over-accumulation and profitability between 1965 and 1973, the latter eroding the developmental

¹ On the distinction between 'social relations' and 'social processes' and an understanding of 'social phenomena' as the unity-in-determination of both, see G. Carchedi, *Behind the Crisis: Marx's Dialectics of Value and Knowledge* (Chicago: Haymarket, 2012), chapter 1

² N. Poulantzas, *State, Power, Socialism* (P. Camiller trans.) (London: Verso, 1980), pp. 66-67

³ Poulantzas, *State, Power, Socialism*, p. 66

⁴ Coutinho, *Gramsci's Political Thought*, p. 45 (Coutinho's words)

context in which macro-economic management had produced results in the advanced capitalist world. Hayek's critique of corporatism and his visceral distaste for trade union 'monopoly' was of especial utility for politicians who sought to generalise a supply-side 'profit-squeeze' analysis of the economic crisis and deconstruct 'political' impediments to market efficiency. Margaret Thatcher, British flag-bearer of the Anglo-American neoliberal axis, became a devotee of Hayek, whose *Constitution of Liberty* she strategically produced in direct confrontation with the 'wets' in the Conservative Party's Research Centre in 1975, proclaiming in relation to the volume "this is what we believe"⁵.

In a timely 1968 intervention, Hayek had given a lecture at the University of Kiel entitled 'Competition as a discovery procedure'⁶. Moving onto the offensive, Hayek argued that economic planning was necessarily inefficient insofar as it suffered from a data deficit, being unable to discover (far less deploy) factual information revealed only by the process of competition. The outcomes of competition are unpredictable and unknown in advance, such that it is only through the competitive process as such that there can be disclosed the particular content of transitory circumstances unavailable to any general *theory* of the market⁷. The latter can predict only the type of structure or abstract order that will result from the process of competition, whilst participatory engagement in the process itself is necessary to reveal a greater level of detail about such contingencies as what use-values – at any given moment – can be sold as commodities and what values (understood as an expression of relative scarcity) these will have. Such information is transmitted to individual participants via price signals in relation to which they reflexively orient their behaviour, discovering further facts about *themselves* (their particular skills and abilities) which again cannot be fully known in advance⁸. The discovery by individuals of embedded information during competitive interaction is the motor of the process of spontaneous *adjustment* whereby the market reorders itself in response to changing circumstances. For Hayek, this form of economic order has crucial advantages, insofar as it allows for the gathering and deployment of the knowledge possessed by all the individual participants – knowledge which in a society based on an advanced division of labour is widely diffused and cannot be known to any centralised bureaucracy. Furthermore, according to Hayek a spontaneous market order can serve the "particular objectives of all its participants in all their diversity and polarity", in contrast to a consciously managed economy which must serve a uniform hierarchy of objectives. Indeed, this distinction is so pivotal for Hayek that he suggests its terminological demarcation – since an 'economy' presupposes the direction of effort toward a uniform order of objectives, a spontaneous

⁵ R. Cockett, *Thinking the Unthinkable: Think-tanks and the Economic Counter-revolution, 1931-1983* (Waukegan: Fontana, 1995), pp. 173-174. Referenced in K. R. Hoover, *Economics as Ideology: Keynes, Laski, Hayek and the Creation of Contemporary Politics* (Lanham: Rowman & Littlefield, 2003), pp. 208-209

⁶ Hayek, F. A., 'Competition as a discovery procedure' (2002) 5(3) *The Quarterly Journal of Austrian Economics* 9

⁷ Hayek, 'Competition as a discovery procedure', at p. 11

⁸ Hayek, 'Competition as a discovery procedure', at p. 13

market order, as a complex structure consisting of many individual economies, is better described as a ‘catallaxy’⁹.

According to Hayek, managed economies face a debilitating disadvantage inasmuch as they disable the very process – competition – by which participants in an economy discover information about that order and realise their own set of skills and abilities in adjusting to such discovered facts. These economies are necessarily fettered by the ignorance of their managers relative to the totality of diffused knowledge acquired by individuals in a catallaxy. The planned economy, dedicated to the fulfilment of a uniform set of objectives, debars the process by which the enterprising individual discovers a mode of providing consumers with better or cheaper goods, catalysing a process of necessary adjustment on the part of her competitors. The crux of Hayek’s argument is therefore epistemological, resting on the claim that innovation is most likely realised through the competitive activity of entrepreneurs constantly searching for unexploited opportunities, while knowledge of the self is most profoundly disclosed in the process of necessary adjustment to changed circumstances. This argument has profound implications not just for managed economies, but for economic theory in general. Indeed, Hayek makes an impassioned case for the primacy of microeconomic theory over macroeconomic theory, arguing that not only is the latter less ‘scientific’ than the former, it can “in the strictest sense...make no claim to the name of a theoretical science”¹⁰. This moment in Hayek’s argument is of far greater import in our present connection than the fact of his call to arms against the entrenched ‘rigidities’ impairing market functionality, which when viewed as one part of a never-ending iterative oscillation between interventionist and laissez-faire orientations is blinding in its banality. Hayek’s critique of macroeconomics and his denunciation of any attempt to manage economic processes at such a level of generality resonates thematically with the guiding logics of many ‘postmodern’ texts. Using the suggestive descriptors ‘fine’ and ‘coarse’ to denote different levels of analytical abstraction, Hayek argues that the ‘truth’ of the economy is to be found at the micro-level, since “the coarse structure of the economy can exhibit no regularities that are not results of the fine structure, and...those aggregates or mean values, which alone can be grasped statistically, give us no information about what takes place in the fine structure”¹¹. The concrete data produced at the micro level is, we are told, too diverse and complex to be adequately acknowledged at the macro level, such that macroeconomic theory is necessarily limited to the derivation of very general statements or ‘pattern predictions’ useful solely for generating predictions in the absence of sufficient information and expressed in statistics – “aggregates and averages” – which represent an “obscure” image of reality¹². Hayek thereby argues for a linear contemplation of the micro and the macro, whereby the fine structure of the economy in its inexhaustible and unfathomable complexity operates as the

⁹ Hayek, ‘Competition as a discovery procedure’, at pp. 13-14

¹⁰ Hayek, ‘Competition as a discovery procedure’, at p. 11

¹¹ Hayek, ‘Competition as a discovery procedure’, at p. 11

¹² Hayek, ‘Competition as a discovery procedure’, at p. 12

cause producing *effects* at a macro-level which can only be crudely and figuratively understood by statistical data and speculative projections which fail to grasp the detail of micro-economic processes.

The implications of Hayek's argument for the budding economic theorist are profound, since her role can be no more than to observe and approximate economic interactions and behaviours at the micro-level, whilst perhaps indulging herself – in a vacation from science proper – in macro-economic speculation, proposing general predictions as rules of thumb in a context of data-deficiency. The policy-maker fares little better, resigned as she is to guaranteeing “conditions under which any randomly selected individual has prospects of pursuing his goals as effectively as possible”¹³. Any more ambitious, purposeful intervention would be hopelessly ineffective inasmuch as it, implemented from a position of near-blindness, necessarily distorts the process by which actual information about its object is gathered and utilised. Such ‘political’ intervention inevitably: inhibits the discovery of techniques for producing better and cheaper goods; truncates the individual's process of self-discovery by removing the moment of coerced adjustment by which her particular merits and demerits are revealed, and; substitutes for the diversity and polarity of individual goals a (implied) uniform system of objectives. To accept Hayek's argument then, is to admit that rational human behaviour is possible only at the micro-level of individual object-oriented behaviour – there can be no broader scientific comprehension of the structure of society nor rational intervention therein, beyond the exceedingly-modest (yet itself immediately problematical) task of ensuring the conditions under which rational individuals can pursue their goals. As radical as this argument is, it has nevertheless become mainstream in the last four decades, generalised on the political right, accepted in practice by formerly social-democratic politicians and organisations and recited in transposed form – as a “left harmony to the neoliberal chorus”¹⁴ – by a browbeaten and self-disciplining postmodern left.

If the acceptance of Hayek's position is inhibiting to the policy-maker, it is thoroughly devastating to projects of systematic critique and the activity of political agents seeking to actualise such critique. If we are unable to construct more than minimally useful understandings of macro-economic processes, then the Marxist understanding of capitalism's macro-irrationality (issuing from the micro-rational behaviour of capitals) is not only unprovable, but indeed fundamentally nonsensical. If we are unable to *know* capitalism in the aggregate, what could it mean to say that it was *irrational*? However, thankfully for all of us who are more optimistic about the possibility for human societies to meaningfully and beneficially manage economic activity (though not ultimately *capitalist* economic activity) in the aggregate, Hayek's understanding of the interrelation of multi-

¹³ Hayek, ‘Competition as a discovery procedure’, at p. 14

¹⁴ This phrase is borrowed from Kevin Doogan. K Doogan, *New Capitalism? The Transformation of Work* (Cambridge: Polity, 2009)

scalar economic processes seems to be quite seriously flawed. For one can only truly understand the relation between the micro and macro levels as one of mutual interpenetration and constitution, the activity of capitals at the micro level unfolding reflexively in the developing context of the macro, the latter comprising the mediated unity of micro-situations. Indeed, it would be perfectly possible to stand Hayek's macro-scepticism on its head and argue that the capitalist who acts on price signals at the micro level looks only *through a glass, darkly* at a refracted image of economic facts which have their essential truth in their macro-level completeness. However, our goal is not to replace one form of reductionism with another, but rather to recover an understanding of the movement of *capital* as the competitive interaction of a plurality of *capitals*, the truth of the two levels being found in the mediated unity of both.

It is of course the case that there is a level of detail in micro-economic activity which is left behind in the process of abstraction, yet it cannot be the case that such abstraction is synonymous with obfuscation, since a theoretical reconstruction built upon *real* abstractions can reveal the essential contradictions which drive the development of determinate reality. Moreover, to criticise macroeconomic theory on the basis of its data deficiency relative to the hypothetical totality of information available in every micro-situation taken together is to miss the point – macroeconomic theory (as with any form of theoretical enquiry built on abstraction) is capable of revealing truths of a calibre unavailable to she who stares only at her shoelaces. To state as Hayek does that “the coarse structure of the economy can exhibit no regularities that are not results of the fine structure” is not to prove that macroeconomic inquiry is of a secondary importance or that macroeconomic ‘facts’ are but dull reflections of microeconomic realities. Human consciousness may be recognised as the product of electro-chemical processes in the brain, yet the former is not thereby reducible to the latter, nor is the best way to understand a person's psyche necessarily to chart in detail the totality of synaptic pathways connecting her many billions of neurons. This is the old adage of the whole being more than the sum of its parts, or better – the whole is the transformed (and transforming) unity-in-contradiction of its parts. Such a reintroduction of motion and contradiction is necessary to recover the Marxist notion of alienation, designating the process whereby the self-conscious activity of human beings produces social forces which escape their control, rising to face them as alien externalities. The most profound misunderstandings may result from an attempt to analyse the micro whilst abandoning any attempt to cognitively map the macro, from studying the organ whilst disavowing the organism, from poring over detail without acknowledging its context. Unfortunately, such dislocations are structurally embedded in the development of social theory in capitalist society, of capitalist society's self-understanding. Indeed, as we shall see, the present disorientation characterising economic and political thought in late capitalism (articulated in a tight nexus of neoliberal and postmodern ideas which undercuts political debate) has developed in a context of the specific spatial and discursive dislocation of capital from its integrally-opposed

other, labour and of finance capital from its - functionally differentiated, yet systematically integrated – commercial and industrial brethren.

Returning to the central thrust of the present section, we may recognise that the peculiar framing of Hayek's articulation of the neoliberal rejection of the managed economy nods suggestively towards the logical interpenetration of certain guiding neoliberal and postmodern ideas. We require now to draw out in greater detail this interface, which crucially drives the discursive conjuncture of late capitalism, before attempting to relate this epistemological environment with the changing economic and political structure of the period – that is, to map out the historical conditionality of the emergence of those ideas. To begin with, there is a clear parallel between Hayek's dismissal of macroeconomic theory as the crude, unscientific approximation of economic processes which exist as a multitude of micro-level activities of unmanageable detail and complexity and postmodernism's animating logic of "incredulity toward metanarratives"¹⁵. Hayek's economic managers operate necessarily on the basis of a reductive theory which fails to account for the complexity of micro-economic processes, such that they thereby frustrate the diverse interests of individual economic actors in their assimilation to a set of uniform objectives. Similarly, from a postmodern perspective, the modern totalising theorist is guilty of reducing the diversity and relativity of the lived experiences of a multitude of groups to a set of abstract determinations which ultimately embody certain privileged perspectives and serve particular interests. Indeed, Fredric Jameson, in a critique of postmodernism which may be read equally as a reply to Hayek, notes the loss in the postmodern context of the "global dimension" which is "very precisely the dimension of economics itself, or of the system" and argues for vigilant attention to be paid to "the waning of the visibility of that global dimension, to the ideological resistance to the concept of totality"¹⁶. For the neoliberal, the truth of the economy is to be found in the fine detail of micro-economic interactions which can only be disfigured by the macroeconomic theorisation of managers pursuing certain goals; for the postmodernist, the 'real' is to be found in the variety of authentic local experiences which face the constant threat of assimilation by the collective and the political, the latter "as unreal, as a space onto which subjective and private obsessions are noxiously projected"¹⁷. The effect in each case is to locate social reality in a multitude of discrete local situations, transforming economics into the practice of guaranteeing the autonomy of individual economic actors and decomposing politics into "a properly interminable series of neighbourhood issues"¹⁸.

David Harvey notes that neoliberalism has "proved more than a little compatible with that cultural impulse called 'post-modernism'", explaining that "[neoliberalism] had to be backed up by a practical strategy that emphasised the liberty of consumer choice, not only with respect to

¹⁵ J. F. Lyotard, *The Postmodern Condition: A Report on Knowledge* (G. Bennington & B. Massumi trans.) (Minneapolis: Minnesota Press, 1984), introduction at xxiv. Referenced in A. Callinicos, *Against Postmodernism: A Marxist Critique* (Cambridge: Polity, 1989), p. 3

¹⁶ F. Jameson, *Postmodernism, Or, The Cultural Logic of Late Capitalism* (London: Verso, 1991), p. 330

¹⁷ Jameson, *Postmodernism*, p. 335

¹⁸ Jameson, *Postmodernism*, p. 330

particular products, but also with respect to lifestyles, modes of expression, and a wide range of cultural practices”. In other words, “neoliberalization required both politically and economically the construction of a neoliberal market-based populist culture of differentiated consumerism and individual libertarianism”¹⁹. For Harvey, the arrival of post-modernism as a cultural and intellectual dominant was both central to (and an expression of) the active construction of consent for neoliberalism as the displacement of embedded liberalism. At the same time as neoliberalism – often in postmodern coding – penetrated common-sense understandings and came to be regarded as the ‘natural’ way for the social order to be regulated, a wedge was driven between movements organised in pursuit of social justice and those based upon the realisation of individual freedoms. As Harvey explains “neoliberal rhetoric, with its foundational emphasis upon individual freedoms, has the power to split off libertarianism, identity politics, multi-culturalism, and eventually narcissistic consumerism from the social forces ranged in pursuit of social justice through the conquest of state power”²⁰. Even the geographer, Harvey locates spatially the emergence of this particular constellation of social forces, regulatory policy and cultural expression, identifying 1970s New York as its epicentre. In a manner recalling Arrighi’s exploration of the capture of Florence by the House of Medici, Harvey explores how financial institutions seized the opportunity presented by New York’s fiscal crisis to launch a coup against the city’s democratically elected government. De-industrialisation and a process of suburbanisation had produced an ‘urban crisis’ in the 1960s as social unrest exploded in impoverished inner city areas, requiring expanded public employment and provision backed by federal funding. However, when Nixon imposed fiscal austerity in the early 1970s, a growing budget deficit had to be funded by financial institutions, a conglomeration of which – led by Walter Wriston of Citibank – pushed the city into technical bankruptcy in 1975. The terms of the subsequent bail-out – which placed new institutions in charge of the city budget and made bondholders preferential creditors – necessitated public sector redundancies and wage freezes as well as service cuts and the imposition of tuition fees for higher education. Further, New York’s municipal unions were required to invest their pension funds in city bonds, creating a dynamic whereby demands over present wages and conditions were set against the security of their pension entitlements²¹. The New York fiscal crisis may be regarded retrospectively as an early and significant battle in a new war, the mechanisms of crisis management being symptomatic in the words of Robert Zevin of “an emerging strategy of disinflation coupled with a regressive redistribution of income, wealth and power”²². Providing a blueprint for Regan’s domestic policy (which William Tabb described as “the New York scenario...writ large”) and the ‘development’ model implemented through the IMF in the 1980s,

¹⁹ Harvey, *A Brief History of Neoliberalism*, p. 42

²⁰ Harvey, *A Brief History of Neoliberalism*, pp. 40-41

²¹ Harvey, *A Brief History of Neoliberalism*, pp. 44-45

²² R. Zevin, ‘New York City crisis: first act in a new age of reaction’ in R. Alcalay and D. Mermelstein (eds.), *The Fiscal Crisis of American Cities: Essays on the Political Economy of Urban America with Special Reference to New York* (New York: Vintage Books, 1977), pp. 11-29. Referenced in Harvey, *A Brief History of Neoliberalism*, p. 45

the New York crisis established the primacy of bondholders' returns and the integrity of financial institutions over the well-being of citizens, whilst emphasising the primary role of government in guaranteeing a favourable investment climate²³.

If the management of New York's fiscal crisis blazed the neoliberal trail in the dismantling of the city's social and physical infrastructure and in the emasculation of the city government, labour movement and working class more generally, the triumphant elites further led the way in the promotion of a cultural climate suitable to rationalise and redeem these structural transformations. Simultaneously as the city economy was restructured around financial activity, business services and the media, its leading firms and institutions promoted the city as a tourist destination and cultural centre, a gentrified Eden of diversified consumerism gathered under the freshly penned "I Love New York" logo. A neoliberalising New York became "the epicentre of postmodern cultural and intellectual experimentation" as lifestyle diversification and the development of niche consumer markets compensated for the destabilisation of social reproduction. As the "narcissistic exploration of self, sexuality, and identity became the leitmotif of bourgeois urban culture", 'delirious New York' erased the collective memory of democratic New York. The consumptive production of a demographically small yet culturally predominant subsection of the population working in finance, business services and the media took centre stage as the city's working-class and immigrant populations retreated into the shadows, brutalised by an increasingly mean civic culture, their progressive criminalisation and the cocaine and AIDS epidemics of the 1980s and 1990s²⁴. One may be inclined to doubt the adequacy of this compensatory dynamic given the profundity of that which is lost in the marginalisation of working class organisation and the retrenchment of universal public services, while no doubt there persists alongside consumerist euphoria a lingering unease, an unsettling anxiety about the direction of travel and that which is left behind. However, it would be foolish to entirely discount the integrative power of a market-based populist culture, whose purchase we may begin to locate – following Habermas' discussion of Joachim Ritter – in the process by which the modern world decouples and re-couples historical orders with social being. Modernity in the first place represents the end of previous history, as it abstracts its own evolutionary dynamism from the historical transmission of tradition and breaks the forces of tradition in their objective, social validity. The second, complementary movement involves the recovery of history by the subjective, privatised powers of belief and expression. The realisation of personal freedom becomes the mechanism by which the outwardly interrupted continuity of history becomes inwardly rejoined, how the subject locates herself as an historical person, a participant in historical traditions of religion, aesthetics and ethical life which have been objectively dissected. The market mechanism thereby comes to mediate – most obviously but not exhaustively in the consumption of 'roots' culture, of 'heritage' clothing and of 'folk', 'urban' and

²³ Harvey, *A Brief History of Neoliberalism*, p. 48

²⁴ Harvey, *A Brief History of Neoliberalism*, pp. 47-48

‘street’ music – a social-historical existence no longer accessible by other means; viewed in this light, the instruction against consumerism issued by romantic anti-capitalists of many varieties requires of the instructed nothing less than her social suicide and historical self-dissolution²⁵.

Perhaps the most basic level at which the compatibility of neoliberal and postmodern thought becomes visible is in their shared anti-Marxism. Hayek was of course a principled critic of corporatism, while the rigidities at which he takes specific aim (the political impediments he most despises) reveal that his main preoccupation is with working class corporatism. The final section of his 1968 lecture is wholly given over to a call to arms against wage inflexibility, yet there cannot in contrast be found a single mention of the profound rigidities represented by the transfer of property by inheritance, the arbitrary hierarchies produced by private education or the manifold practices by which associations of capitals suspend and supersede market competition. Corey Robin describes the primarily anti-Marxist and anti-socialist character of the Austrian school as a whole, recalling Wieser’s 1891 contention that “The most momentous consequence of the theory...is, I take it, that it is false, with the socialists, to impute to labor alone the entire productive return”²⁶. As for postmodernism, Alex Callinicos has identified its fusion with post-Marxism following the 1976-7 denunciation of Marxism by the ex-Maoist *nouveaux philosophes*, the latter marking the transition of the French intelligentsia – largely *marxisant* since the Popular Front and the resistance – into the ranks of social-democracy and neoliberalism²⁷. The crushing implosion of the French Communist Party in the face of Mitterrand’s revived Socialist Party was the specific context in which there played out the more generalised disillusionment of the “children of ‘68”, whose political odyssey is for Callinicos crucial to the widespread acceptance of the idea of the ‘postmodern epoch’ in the 1980s²⁸. Amidst the retreat of Western labour movements and the disintegration of the far left in Europe at the end of the 1970s, postmodernism – “of interest primarily as a symptom of the current mood of the Western intelligentsia”²⁹ – came to express the contradictory class position of an upwardly mobile group of intellectuals who, decoupled from labour in the context of the emergence of a split-level economy, progressively replaced the political content of ‘resistance’ with a stylised aestheticism prefigured by the ‘over-consumptionist’ dynamics of the Reagan-

²⁵ J. Habermas, *The Philosophical Discourse of Modernity: Twelve Lectures* (F. Lawrence trans.) (Cambridge: Polity, 1987), pp. 71-72

²⁶ C. Robin, ‘Nietzsche’s marginal children: on Friedrich Hayek’ *The Nation*, 7 May 2013. Available at: www.thenation.com [accessed 25 June 2013], p. 6. Incidentally, Robin also reveals a contradiction in Hayek’s work between the value agnosticism he expresses in *The Road to Serfdom* and his later contention in *The Constitution of Liberty* that old money secures more reliable sensibilities, claiming as he does there that “the grosser pleasures in which the newly rich often indulge have usually no attraction for those who have inherited wealth” – (Chicago: University of Chicago Press, 2011), p. 192. Our present purposes will be best served if we take Hayek’s contentions as to the radically relative nature of value and his repeated invocations of liberty in good faith, leaving at this moment to one side the evidence presented by Robin that freedom is for Hayek in reality a contingent and instrumental good, useful primarily insofar as it produces in the idle rich the “heroic legislator[s] of value”.

²⁷ Callinicos, *Against Postmodernism*, pp. 4, 85, 165

²⁸ Callinicos, *Against Postmodernism*, p. 168

²⁹ Callinicos, *Against Postmodernism*, p. 9

Thatcher era³⁰. Whilst this type of micro-sociological critique cannot replace a substantive conceptual interrogation of any given intellectual trend, it is important to bear in mind the “particularly tight nexus of knowledge and power” – focused around the *École Normale Supérieure* and the lifelong relationships of friendship and competition formed between *normaliens*³¹ – at play in the emergence of the postmodern turn. Moreover, to fail to locate the essential *political* movement animating a triumphant neoliberalism and the ascent of postmodernism as a cultural dominant is to crucially misunderstand these projects. No neoliberal political project has ever really countenanced the abandonment of all forms of strategic macroeconomic management – rather the notion of the “free market” is best understood as a spectre which has been used to discipline very particular forms of corporatist project – namely labour movements in the West and would-be projects of bourgeois national economy-making elsewhere. Similarly, postmodern theory as a “search and destroy” operation has most often targeted only certain forms of ‘totalisation’ found to be particularly confining or unsatisfying, such that it has in reality represented in Jameson’s words only a “very modest or mild apocalypse”³².

³⁰ Callinicos, *Against Postmodernism*, pp. 162-171

³¹ A. Callinicos, *Social Theory: A Historical Introduction* 2nd Edn. (Cambridge: Polity, 2007), p. 312

³² Jameson, *Postmodernism*, introduction at xiv

CHAPTER 5

Juridification and social transformation: legal mapping and the unity of capitalist (re-)production

In this final chapter I develop a theoretical and historical account of how the state, by way of the legal form, maps the social totality and structures the contradictory reproduction of capitalist social relations in different developmental contexts. The ensuing discussion builds upon the foundations prepared in Chapter 2, which problematised the liberal conception of the opposition obtaining between state and market and unpacked the humanist social ontology underpinning much conventional state theory. The discussion is also importantly related to the argument which unfolded in Chapter 3, which examined how the global macroeconomic environment of the long downturn prefigured a shift in the balance of forces from labour to capital and between industry and finance, the interests of the latter being crystallised in a state policy nexus which facilitated the financial mediation of labour revenues and the expropriation of the socialised wage. In the following pages I develop a more general theoretical and historical account of this process by which the law-state institutionalises particular sets of class-relational dynamics, the latter developing in conversation with the fundamental validation/invalidation of domestic social relations at the level of the world market.

I Theorising the Law-State

A specific appreciation of the state-form is essential to any theorisation of the role of law in the emergence and reproduction of capitalist social relations. In societies founded on private ownership of land and productive resources, coercion is embedded in and presumed by their fundamental economic relations inasmuch as the ownership of a thing by one person entails by definition the exclusion of others. The nature of such ‘embeddedness’ is important. The fundamental character of compulsion in capitalist society is economic, the mass of direct producers being propelled by their displacement from the means of production time and again into the waiting arms of the minority owners. Yet of course this basic situation is not a ‘natural’ or trans-historical state, emerging rather out of a definite process of historical development entailing the deployment of extra-economic compulsion, that is political force. Thus the ‘economic’ compulsion operative in capitalist society is but the transposed form of the earlier ‘original sin’ of primitive accumulation, such historical violence being the recurrent condition for the reproduction of relations of exploitation by means of the ostensibly peaceable and consensual exchange of commodities in the marketplace. Moreover, coercion of a political character is not only present in capitalist society by means of its absence (and thereby relegated to capitalism’s pre-history), but is continually recalled in the necessary adjustment and readjustment of the content of its exploitative relations of production in view of the requirements of the technologically and organisationally dynamic process of capitalist development. The mode by which such content is realised, the *form* of articulation of political

power, is of great importance in mapping the interpenetration of the economic, political and legal moments in the process of capitalist reproduction.

Much of the disciplinary activity required to effect the reconfiguration of the content of the relations of production is deployed by the individual owners of the means of production themselves, who employ a staff of managers to oversee and regulate the labour process of the direct producers and develop such modes of education and training as are necessary to mould labour-powers to their specifications. Yet the fundamental political conditioning of the mass of labour-powers is in advanced capitalist society performed in significant part by state institutions, while the enforcement of the employer's right to extract from the labour time purchased the greatest possible quantity and quality of labour is insofar as physical violence is concerned largely transferred to the state as a third-party. Indeed, it might be said that the essential novelty of political development in capitalist society consists in the progressive consolidation in a centralised state apparatus of a monopoly over the legitimate use of physical force. How this situation develops *from* the fundamental relations of production in civil society (or depending upon one's basic theoretical orientation, appears *above* and *against* the same or is even constitutive thereof) and the nature of the subsequent interaction of the coercive force thereby concentrated with these basic productive relations are the fundamental questions animating discussion of the state-form.

In orienting ourselves it will be useful to introduce in rudimentary form three basic approaches to these questions: that pursued by the positivist school of legal philosophy, most notably by Hans Kelsen; that emerging from an analysis of modern specialisation and rationalisation as exemplified by Max Weber's reading of the development of the bureaucratic state, and; those approaches grounded in the historical materialist method of interpreting the development of the state and law. With regard to the final branch of this typology, the discussion will begin with an appraisal of the legacy of the Bolshevik jurist Evgeny Bronislavovich Pashukanis before proceeding to consider how the contradictions of his understanding of law and the state as concretely expressed may be overcome on the basis of the fulfilment of the very method which he correctly pursues.

Kelsen's State-Law Identity Theory

Kelsen, in his *Pure Theory of Law* sets out to deconstruct the – for him, entirely untenable – dualism between state and law which is assumed by traditional legal theory and which has come to dominate modern legal science. For him, this opposition has no logical basis, being rather the necessary product of the ideological operation by which the state as a “bare fact of power” is transformed into a legal institution justified by reference to an external order of right¹. According to Kelsen, the state is rather identical with law – the state *is* a relatively centralised legal order

¹ H. Kelsen, *Pure Theory of Law* (Berkeley: University of California Press, 1967), pp. 284-286

possessing organs which, in accordance with a specific division of labour, create and apply the norms constitutive of that order². In support of this proposition, Kelsen argues that the central elements traditionally considered to compose the state – its people, its territory and its ‘power’ – can be comprehended only in terms of the validity and spheres of validity of a legal order³. As regards the state’s population, Kelsen explains that there exists no criterion which unites all individuals belonging to a state whilst excluding all others except the fact that their behaviour is regulated by the same legal order; the population can be conceived only as “the personal sphere of validity of the national legal order”. Similarly the state territory does not exist as a natural, geographic unity, but is composed of the space enclosed by its juridical frontiers, intersected as it may be the high seas or the territories of other states; the state territory is determined solely by the *spatial* sphere of validity of the national legal order. In relation to so-called ‘state power’, Kelsen holds that the relationship designated thereby can be distinguished from other power relationships only on account of its being legally regulated, i.e. by its having a normative character. Insofar as those individuals exercising such power are authorised to do so by creating and applying legal norms, state power is nothing other than the validity of an effective national legal order. From this perspective, the repressive machinery of prisons, guns, policeman and soldiers are merely ‘dead objects’ which are transformed into tools of state power only insofar as they are deployed in accordance with orders issued by the government as normative authority.

The problem which immediately arises for Kelsen’s approach is the appearance of the state itself as a legal person, as a subject of rights and obligations within the order with which it is apparently identical. The apparent re-emergence of the dualism of state and law at this moment is discounted by Kelsen on the grounds that the state does not exist in reality as an acting legal person, but appears as such only metaphorically, as an auxiliary construction of legal thinking. For him, the attribution to the state of a given function is merely a mode of expression of the referral of this function to the unity of the legal order which determines it. Consequently, Kelsen holds that any action determined by the legal order can be imputed to the state as the personification of the order as a whole, such imputation signifying only the determination of that action within the legal order constituting the state community⁴. Conversely, any action which is not authorised by the legal order – which is in violation of the law – is not attributable to the state, a wrong-doing state being a contradiction in itself. Since the state can do no wrong, illegal actions become the preserve of individuals or organisations operating outside of the sphere of legal behaviour authorised by the state⁵.

² Kelsen, *Pure Theory of Law*, pp. 286-287

³ Kelsen, *Pure Theory of Law*, pp. 287-290

⁴ Kelsen, *Pure Theory of Law*, pp. 290, 292-293

⁵ Kelsen, *Pure Theory of Law*, p. 305

Kelsen's state-law identity theory necessarily leaves open only an internal, self-referential form of legitimation whereby the 'individual' norms created by acts of administration, judicial decisions and legal transactions are justified by reference to 'higher' general norms produced in the manner determined by the constitution. In turn, the reason for the validity of these general norms can only be located in the validity of a further norm which is still higher yet. In order to avoid slipping into an infinite regression, Kelsen asserts the operation of a *presupposed* final and highest norm, the basic norm (*grundnorm*) to which the validity of all the norms in a given legal system may be traced⁶. This basic norm constitutes the unity of the multiplicity of norms belonging to a given coercive order, being the common source of validity of all such norms. It may therefore be seen that for Kelsen the state appears as a self-generating relatively centralised legal order which cannot be justified by reference to any external system of norms or principles. Its emergence may not be located in any given constellation of economic or political relations, since the state as a legal order exists as a hierarchy of norms within which the movement of validation and determination proceeds from the basic norm as the presupposed highest norm, through the constitutionally-regulated general norms to the individual norms created by judicial decisions and individual contracts. The state is in Kelsen's reading *prior* to the legal norms produced by the interaction of private individuals and the source of their normativity. The 'law-ness' of a legal norm, which is for Kelsen a matter simply of whether a formally undifferentiated authoritative command is binding, consists in its authorisation by the state, such validation occurring either *statically* by way of the subsumption of the norm's particular content under the more general content of higher norm, or *dynamically* on account of its creation by an identified norm-creating authority as stipulated by the basic norm⁷. In the latter case, which is most relevant to the creation of law by nation-states insofar as they are considered sovereign, the validity of a norm depends only on whether it was the outcome of a properly applied procedure. Since the state 'creates' legal rules by an act of will, grounded ultimately in a presupposed prior utterance which by design may not be historically or politically interrogated, the question of the efficacy of a given rule is a purely procedural question.

To summarise, essentially in Kelsen's view the state and law are identical, while the state *as* a relatively centralised legal order is related to social life more generally only in the unidirectional manner of its normative pronouncements operating to regulate human behaviour. The state enjoys autonomy from developments in other spheres of social life, or else the character of the influence the latter have on law's form and development have no bearing on the theory of law as such. Such a complete insulation of law from ethical and political influence was for Kelsen – railing against the influence of natural law theory which he saw as encumbering positive law with content of ambiguous metaphysical, theological and political origins – the only direction of development of legal science appropriate to the study of modern law.

⁶ Kelsen, *Pure Theory of Law*, pp. 193-195

⁷ Kelsen, *Pure Theory of Law*, pp. 195-196

Weber's broad project, outlined succinctly in the introduction to *The Protestant Ethic and the Spirit of Capitalism*, was a historical sociology of the emergence of modern Western rationality in a plurality of forms. In his account, this process was fundamentally driven not by capitalism as such – understood in terms of the “pursuit of... forever renewed profit, by means of continuous, rational, capitalistic enterprise”⁸ – which he considers to have existed in all civilised countries, but by the particular form – peculiar in quality and extent – which developed in the Occident and nowhere else⁹. For Weber, the essential novelty of this type of capitalism inheres in the rational capitalistic organisation of (formally) free labour, the development of which finds only ‘suggestion’ elsewhere. The predominant features of this form include, in addition to rational industrial organisation calibrated to regular market exchange and free from irrationally speculative activity, the separation of business from the household (expressed legally by the delineation of corporate and personal property) and the normalisation of rational book-keeping¹⁰. Ultimately, these specificities could be traced back to the rational organisation of labour in the form of a mass of un-indentured wage labourers, since according to Weber only on this basis was the precise calculation required for the rationalisation of enterprise possible.

Weber argues that the emergence of in the West of this type of “sober bourgeois capitalism” both depended on the existence of modern science for the calculability of technical factors and further stimulated the latter's development. At this point Weber is anxious to avoid conceiving a causal relation between specifically Western capitalist development and increasing scientific sophistication, although he is clear that it was only in the Occident that there emerged the “rational, systematic and specialised” pursuit of science carried on by trained, specialised personnel¹¹. Indeed, much is made of the predominance of science in Western culture and with it the tendency for the state and economic life to become entirely dependent upon a trained organisation of officials. The difference resided in the unparalleled tendency in the West to make technical *use* of accumulated scientific knowledge, this trait being rooted not solely in the economic system but also in the specific forms of Occidental law and administration, which were peculiarly formalised¹². In turn, these specific legal and administrative forms of rationalisation are traced back to the broader phenomenon of the peculiar rationalisation of Western culture. It is with reference to the latter that Weber stresses the essentially *plural* nature of rationalisation in Western society – the existence of the process as a *plurality* of rationalisations which unfold in different ‘departments’ of life, pursuing divergent values and ends and even appearing to one another as *irrational*. In attempting

⁸ M. Weber, *The Protestant Ethic and the Spirit of Capitalism* (T. Parsons trans.) (London: Routledge, 2001), author's introduction at xxxi-xxxii

⁹ Weber, *The Protestant Ethic*, at xxxiii-xxxiv

¹⁰ Weber, *The Protestant Ethic*, at xxxv

¹¹ Weber, *The Protestant Ethic*, at xxxvii, xxx

¹² Weber, *The Protestant Ethic*, at xxxviii

to explain these forms of rationalisation, Weber recalls the centrality of economics, insisting that we “above all” take account of economic conditions, yet is once more keen to stress the opposing influence had upon economic relations by other modes of social rationalisation¹³.

Central among the forms of rationalisation discussed by Weber, then, are those obtaining within the spheres of law and political administration. His reading of legal rationalisation is set out primarily in the section on the sociology of law in *Economy and Society*, in which he reaffirms his fundamental position that rationalisations of economic behaviour – which in attaining the form of a market economy produce increasingly complex conflicts of interests – have *stimulated* the systematisation of law and *intensified* the institutionalisation of the polity but have not determined the specific *form* of either process¹⁴. Indeed, Weber maintains that “modern capitalism prospers equally and manifests essentially identical economic traits under legal systems containing rules and institutions which considerably differ from each other...”¹⁵ At the same time and perhaps a little contradictorily, he argues that aspects of law, conditioned by political factors and the internal structure of legal thought, have exercised a “*strong* influence” on economic organisation¹⁶. The essential point however is that the process of Western legal development has been animated by its own particular internal logic of specialisation and rationalisation. Weber is clear that the direction of rationalisation pursued in a given legal system is conditioned *directly* by “intra-juristic” conditions, i.e. by the particular qualities of the technically trained specialists who in their professional work shape the law, and only *indirectly* by general economic and social conditions¹⁷. Thus we return once more to the crucial significance of the body of trained specialists, whose decisive cooperation is the *conditio sine qua non* of the elaboration of law as a rational constellation of rules applied consciously in deciding particular cases¹⁸. Through the work of these legal professionals, the body of law undergoes specific processes of *formalisation* and *rationalisation* in addition to a necessary codification. In this regard, *rationality* refers to the generality of the rules employed by the system (their universal application) and the systematic character of the legal order – in other words the degree of internal consistency of the legal system. *Formality* is by distinction a measure of the degree in which the criteria deployed in reaching legal decisions are intrinsic to the legal system itself, relating therefore to the extent of formal articulation of the system’s norms and its autonomy from political or religious institutions and influences. For Weber, the history of Western law is a history of the increasing rationalisation of legal thought and the triumph of formal rational law.

¹³ Weber, *The Protestant Ethic*, at xxxviii-xxxix

¹⁴ M. Weber, *Economy and Society: an Outline of Interpretive Sociology* (G. Roth & C. Wittich eds.) (Berkeley: University of California Press, 1978), p. 655

¹⁵ Weber, *Economy and Society*, p. 890

¹⁶ Weber, *Economy and Society*, p. 655 (emphasis mine)

¹⁷ Weber, *Economy and Society*, p. 776

¹⁸ Weber, *Economy and Society*, p. 775

In view of the above, it may be recognised then that while for Kelsen the law-state is by definition immediately and necessarily autonomous from developments in other spheres of social life, Weber understands the unfolding of a particular, independent legal rationality as a specific historical process. This may be more clearly understood with reference to his discussion of the different modes of norm creation which are typical of legal systems in different stages of development. In contrast to Kelsen, Weber recounts that Law is produced not solely by imposition from above, but may also emerge out of customary practice. Indeed, he maintains that at certain stages in history the notion that legal rules could be intentionally created as ‘norms’ – that they could be the product or even the possible subject matter of legal enactment – was completely unknown¹⁹. Traditionally, Weber argues, actions which constituted in the first instance just plain habit could by way of a process of psychological ‘adjustment’ later be experienced as binding. Still later, in accordance with an awareness of the generalisation of this conduct among a particular group, it could be incorporated as ‘consensus’ into people’s more or less conscious expectations, the final stage being the imposition of coercive enforcement²⁰. While such a process of emergence of legal rules from regularised practices might be thought to give rise to a rigid, unchanging body of norms, Weber argues rather that such law-making may possess a degree of innovation insofar as new lines of conduct are pursued by individuals interested in the protection of their interests in the context of changing external conditions, or else simply concerned with more effectively advancing them under existing conditions. These new behavioural practices might produce new consensual understandings and ultimately generate new types of customary behaviour²¹. With regard to such practices, interested parties could achieve enforcement by way of self-help, the individual deemed to be ‘in the right’ in view of the operative consensus obtaining the aid of others in procuring compliance on an obstinate party. The supersession of this informal means of enforcement by the formal institutional ‘legal’ guarantee of the relevant norm would therefore represent merely the exchange of functional equivalents²². In sum, it may be seen that for Weber, in accordance with particular modes of norm creation predominant at particular stages of legal (under-)development, the body of law exists simply as a collection of regularised social practices (with all their economic and political contents) which on account of psychological adjustment, the formation of consensus and the application of coercive enforcement, have been transmuted into legal norms. At this stage, the legal, political and economic spheres have yet to be differentiated – they remain closely coupled.

From the historical condition of customary norm-creation thus described, Weber traces the development of law and procedure through a logical (if not in all cases historical) series of stages:

¹⁹ Weber, *Economy and Society*, p. 760

²⁰ Weber, *Economy and Society*, p. 754

²¹ Weber, *Economy and Society*, p. 755

²² Weber, *Economy and Society*, p. 756

charismatic revelation by ‘law prophets’ – “the parent of all types of legal ‘enactment’”²³; adjudication on a case-by-case basis and adherence to precedent; imposition by enactment of secular or theocratic powers, and; systematic elaboration and specialised administration of justice by formally educated professionals²⁴. The latter stage, characteristic of modern Western legal systems, is the point of arrival of a process of maturation of a specific logic of legal rationality and the crystallisation of a certain autonomy of the law from broader social processes. The different forms of norm creation are also articulated with the changing character of political authority, representing moments in the development of the system of political domination which, while intensified by the emergence of the system of rationally organised free labour, unfolds in accordance with its own rational logic. An understanding of such political rationalisation is developed in Weber’s ‘Politics as a Vocation’ lecture, in which he begins by defining the state in the modern context as “the form of human community that (successfully) lays claim to the *monopoly of legitimate physical violence* within a particular territory”. Although the right to use violence may be delegated to other individuals or organisations, the source of this right is the state alone, while ‘politics’ becomes purposeful activity aimed at obtaining a share of power or reconfiguring the distribution thereof²⁵. The state as a relationship of political domination is founded on the legitimate use of force, while the operative mode of establishing such legitimacy assumes various forms which Weber approaches by the identification of three ideal types. The first of these, customary or ‘traditional’ authority is exercised by old-style patriarchs and patrimonial rulers and undergirded by habitually reproduction of sanctified immemorial traditions. Secondly, ‘charismatic’ authority is wielded by persons of an exemplary character, who in possessing extraordinary leadership qualities and grace inspire a personal devotion and trust translatable into compliance with the normative patterns she ordains. The final form of authority, which is the predominant mode of legitimation of the modern state, is a rationalistic form founded on a belief in the competency of authority to issue commands under the enacted rules and in turn a recognition of the legality of those rules²⁶.

If the form of legitimation of the political domination exercised by the modern state assumes a rationalistic legal form, the development of its specific internal organisation is animated by a rationalising logic under which formally trained specialists operate in demarcated spheres of authority as part of a rule-bound hierarchy²⁷. This modern, ‘bureaucratic’ form of state originates in the monarchical dispossession of the ‘private’ agents of administrative power who, in the type of political organisation subdivided into estates which was typical of the feudal period, own independently the means of administration. Interestingly, Weber draws an analogy between this

²³ Weber, *Economy and Society*, p. 761

²⁴ Weber, *Economy and Society*, p. 882

²⁵ M. Weber, ‘Politics as a Vocation’ in D. Owen & T. B. Strong (eds.), *The Vocation Lectures: ‘Science as a Vocation’; ‘Politics as a Vocation’* (Indianapolis: Hackett, 2004), at p. 33

²⁶ Weber, ‘Politics as a Vocation’, p. 34; Weber, *Economy and Society*, p. 215

²⁷ Weber, *Economy and Society*, pp. 217-223

process and the development of a capitalist enterprise through the progressive expropriation of the independent producers – indeed, we may playfully (if incautiously) extend this metaphor to conceive of feudal administrators as *formally subsumed* within the logic of state power, *real subsumption* obtaining in the transition to the modern state with the separation of its administrators from the material resources of administration²⁸. The administrative staff of the modern state, bound to it by belief in its legal legitimacy as well as by material reward and social prestige, form a highly-trained, specialised apparatus whose technical activity becomes increasingly indispensable for the operation of the national economy. There develops a power struggle between a specialised officialdom which comes to play the predominant role in the execution of everyday business and the elected political leader who tended to become something of a dilettante, the pursuit of this struggle driving the formation of such institutional innovations as the ruler's cabinet of personal confidants²⁹. The struggle was re-configured in the context of emergence of parliamentary democracy, which necessitated the emergence of a single parliamentary leader who stood atop what became the sole decisive political force – the *party* which could command a majority in parliament³⁰.

In Weber's account, the processes of rationalisation obtaining in the legal and political spheres are articulated by an emergent affinity between formal rational law and legal domination. The political domination of the state is legitimised on account of its authority being *competent* under the enacted rules, while this system of rules, having assumed under a specific logic of legal rationalisation a deductive rigor in its formal qualities combined with an increasingly rational technique in procedure, operates simultaneously to restrict the operation of state power. There is however a tension in this relation insofar as the legal system, on account of the disintegration of natural law, has dispensed with the *external* reference to a given substantive body of norms or principles, retaining 'metajuristic' axioms which even at their most convincing appear too subtle to effectively ground the system. In consequence, legal positivism advances 'irresistibly', a de-sanctified law coming to be regarded as merely the product – or indeed means – of compromise between political interests³¹. Political bureaucracy is oriented to law *instrumentally* – legal means serving political ends – such that the law-state relation comes to attain a lop-sided character, law becoming increasingly transparent to political power. The demarcation of legal and political spheres – upon which legal domination is based – is thereby radically de-stabilised and tends to collapse. Indeed, the political manipulation of law, driven by the influence of commercial and industrial pressure groups and by the desire to expeditiously settle individual cases, injects new forms of particularism

²⁸ Weber, 'Politics as a Vocation', pp. 36-37

²⁹ Weber, 'Politics as a Vocation', pp. 44-46

³⁰ Weber, 'Politics as a Vocation', p. 49

³¹ Weber, *Economy and Society*, p. 874

into law and thereby tends to roll back the process of rationalisation and formalisation³². Formal rational law is revealed to be an inherently unstable form.

In sum then, while for Kelsen the law-state possessed a definitional autonomy from other spheres of social life, under Weber's reading law and politics in a process of historical development (catalysed but not determined by the emergence of sober bourgeois capitalism) develop, from an original close coupling with economic forms as traditional practices, relative forms of autonomy on the basis of the unfolding of their specific rationalising logics. This process culminates in the emergence of a legally legitimised modern bureaucratic state and a formalised, rationalised codified legal system, while the affinity of the two emerges precisely as the mechanism by which the legal sphere tends to collapse into political imperative.

Pashukanis' Legacy

The most sophisticated Marxist theory to infiltrate Western legal philosophy is that propounded by Pashukanis, whose recognition of the deep structural interconnection of the legal form with the social relations pertaining to capitalism as a system of generalised commodity production represented a significant advance in the materialist analysis of the juridical. While Pashukanite thought is currently experiencing something of a revival in specific relation to international law³³, his work has more generally operated as a bridge between critical legal theory and the critique of political economy developed by Marx, primarily in *Capital*. Indeed, in his major theoretical work, *The General Theory of Law and Marxism*³⁴, Pashukanis seeks to emulate the dialectical approach pursued by Marx in his magnum opus, inasmuch as he first isolates the most fundamental and abstract legal categories, investigating their inner relation before proceeding to introduce further derivative determinations in a process of rising from the abstract to the concrete level of social phenomena. It is no surprise that for Pashukanis the 'cell-form' of law³⁵ – the legal subject – is simultaneously the juridical correlate of the commodity owner, given that the commodity is in *Capital* the elementary form in which is condensed all the contradictory dynamics of capitalist development. Such an approach of identifying and interrogating the basic building blocks of the legal form marked a departure from crude, instrumentalist attempts to posit the direct correspondence of the content of particular laws and legal institutions with the material interests of the bourgeoisie. It allowed Pashukanis to sharply delineate the legal from other spheres of social life and further to distinguish the particularly legal modulation of social relationships from social regulation more generally. As is more fully explained in the following two sections of this chapter,

³² Weber, *Economy and Society*, pp. 882-889

³³ See C. Miéville, *Between Equal Rights: a Marxist Theory of International Law* (Leiden: Brill, 2004); S. Marks (ed.), *International Law on the Left: Re-examining Marxist Legacies* (Cambridge: Cambridge University Press, 2011)

³⁴ E. B. Pashukanis, 'The general theory of law and Marxism' in P. Beirne, & R. Sharlet (eds.), *Pashukanis: Selected Writings on Marxism and Law* (London: Academic Press, 1980)

³⁵ C. J. Arthur, 'Towards a materialist theory of law' (1977) 7 *Critique* 31 at 35

the essential novelty of legal regulation lay for Pashukanis in the opposition of individual private interests, the legal moment commencing when – with the emergence of controversy – such individualisation and opposition begins. If, for instance, the legal regulation of the movement of trains might assume the form of a law on the liability of rail carriers, thereby structuring their relation between passengers and freight shippers, the *technical* regulation of the same would be premised on a unity of purpose, assuming the form of the railway timetable³⁶. For Pashukanis, the historical relativisation of the legal form through its clarification and distinction from modes of social regulation more generally was the key to escaping from the narrow bourgeois horizon within which legal categories are held to be of universal significance in abstraction from the historically contingent generalisation of commodity production and exchange.

Pashukanis' contribution to the development of a properly historical and materialist understanding of law is without parallel. However, the specific conception of the state-form operative in his work is more uncertain, reflecting both the contradictions of his intellectual development and the particular historical and political context in which his ideas fermented. *The General Theory* was in part a rejoinder to Piotr Stuchka, the founder of Soviet legal philosophy and later the leader of the 'moderate' wing of the commodity exchange school in the Communist Academy, who had since at least 1919 been arguing for the revolutionary role of 'Soviet' law in the period of transition from capitalism to communism³⁷. For Stuchka, Soviet law could be distinguished from bourgeois law by the particularity of its social content, its situation within the broader context of the dictatorship of the proletariat and its putatively active role in the construction of this project of political supremacy – in a certain sense then, the content of Soviet law came to overdetermine its form. By contrast, for Pashukanis, to hold that Soviet law had transcended the bourgeois legal form and required for its analysis the identification of new generalising concepts, was to tear that form from the definite historical conditions of its development and to proclaim its immortality. Reiterating his commitment to the basic Marxist conception of the 'withering away' of law, Pashukanis emphasised that the transition to developed communism entailed not a transition to new forms of law, but the withering away of law in general – "the gradual disappearance of the juridic element in human relationships"³⁸. Thus insofar as Soviet economic policy was implemented by means of the legal form, the project – which Pashukanis' went as far as to describe as 'proletarian state capitalism' – necessarily remained wedded to the narrow bourgeois horizon³⁹, the situation being akin to that formulated by Lenin in *The State and Revolution* as the persistence of bourgeois law without the bourgeoisie⁴⁰.

³⁶ Pashukanis, 'The general theory of law and Marxism', pp. 58-60

³⁷ See Pashukanis, *Selected Writings on Marxism and Law*, Editors' Introduction at pp. 21-22

³⁸ Pashukanis, 'The general theory of law and Marxism', pp. 46-47

³⁹ Pashukanis, 'The general theory of law and Marxism', p. 89

⁴⁰ Pashukanis, 'The general theory of law and Marxism', p. 27fn9; V. I. Lenin, 'The state and revolution' in H. M. Christman (ed.), *Essential Works of Lenin: "What is to be Done?" and Other Writings* (New York: Dover, 1987) at p. 346

The debate between Pashukanis and Stuchka turned fundamentally on the role of state and law in the lower phase of communism, i.e. on the proper relationship of the dictatorship of the proletariat to its law and to law in general⁴¹. While we may wish to side with Pashukanis on the question of the character of the Soviet regime and the necessarily bourgeois form of Soviet law as against Stuchka's conception of its particular, revolutionary quality, the stark formulation adopted by Pashukanis in his most important work is unable to account for the role of the state, as the formal centralised concentration of civil society relations, in the restructuring of capitalist relations of production in different stages of capitalist development. In *The General Theory* Pashukanis identified an essentially derivative role for the state inasmuch as conceived the legal form as emerging quite directly out of the civil society relations of commodity exchange which constitute its real foundation. For Pashukanis, the property relationships which form the kernel of the legal system are so closely contiguous with the economic structure of society that they are in fact the very relationships of production expressed in legal language. From such definite relationships of production and property the political superstructure including the state apparatus emerges as a "secondary, derivative element", state power operating only to "[inject] clarity and stability" into a legal structure whose preconditions are more deeply rooted⁴². While Pashukanis revisits the question in his 1929 *Economics and Legal Regulation*, appearing to 'correct' this 'defect' in his earlier work in view of the increasing significance of state regulation in economic development presupposed by the emergence of the imperialist stage of capitalist development⁴³, it is unclear whether such statements reflect genuine intellectual development or merely represent political forbearance in an increasingly coercive context. In any event the latter formulation, quite apart from the question of the role of the state in the construction of socialism, is better equipped to interrogate the crucial functioning of the bourgeois state in catalysing, concretising and generalising the reconfiguration of the content of domestic class relations in response to the changing dynamics of global capitalist development.

China Miéville has recently challenged the idea that the Pashukanis of *The General Theory* may be seen to develop an understanding of the 'derivation' of the bourgeois state. Miéville stresses that what Pashukanis demands is not a *necessary*, but a *sufficient* theory of the bourgeois state, such that while he uses the language of 'derivation' his theory is not a 'strong' derivationist one⁴⁴. Indeed, it is recalled that for Pashukanis public authority is actually contingent to the legal form, the existence of external coercive force operating to guarantee and safeguard the legal relation but in no way *constituting* its legal-ness⁴⁵. While Miéville's argument is relatively convincing as far as it goes, and further unfolds with an eye particularly on the analysis of international law, it is

⁴¹ Pashukanis, *Selected Writings on Marxism and Law*, Editors' Introduction at p. 23

⁴² Pashukanis, 'The general theory of law and Marxism', pp. 66-68

⁴³ E. B. Pashukanis, 'Economics and Legal Regulation' in P. Beirne, & R. Sharlet (eds.), *Pashukanis: Selected Writings on Marxism and Law* (London: Academic Press, 1980), pp. 237-240

⁴⁴ C. Miéville, *Between Equal Rights: a Marxist Theory of International Law* (Leiden: Brill, 2004), pp. 124-125

⁴⁵ Miéville, *Between Equal Rights*, pp. 128-130

contended that Miéville's reception of Pashukanis is a little too generous, reading in as it does understandings of the dialectical interrelation of form and content in the development of capitalism which are only suggested by Pashukanis' method rather than being concretely present in his analysis. It is the case that the discussion in *The General Theory* proceeds to a certain stage dialectically insofar as it conceives the emergence of the legal form in terms of the crystallisation of *the form of the content* of the specific exploitative relations which come to predominate in the transition to capitalist society, the legal norm emerging effervescently from the concrete multiplicity of legal relations through which it is woven. However, in my view this dialectic later tends to collapse at the stage of the emergence of law in its fully developed form, the articulation of this form entailing the negation or *obliteration* of particular contents. Pashukanis' incompletely dialectical approach is borne out in what Beirne and Sharlet recognise as the implicit emergence of a 'dual state' in terms of which the political operations of the state in pursuing the particular context-driven imperatives of the capitalist class become dissociated from the legal state as third-party guarantor of impersonal commodity exchange⁴⁶. Thus Pashukanis comes to delineate the state as the organisation of class domination, which operates on the principle of naked expediency (*raison d'état*) and admits of no legal interpretation, from the state as guarantor of the market, such authority appearing "as law and only law"⁴⁷. It is contended that these limitations in Pashukanis' exposition may be traced back ultimately to his decision to focus on the sphere of commodity circulation rather than proceeding from the basis of the capitalist economy as a contradictory unity of production and circulation. This perspective, I would argue, prevents him from fully apprehending the role of law in the production and reproduction of capitalist social relations, especially as far as this process entails the reproduction of political leadership and domination. It is only much later in 1932 – when the more general process of emasculation of the original insights of Pashukanis' theory was undoubtedly in evidence – that he concedes that the productive sphere is determinate in the final analysis and re-conceptualises the unity of form and content⁴⁸.

A Re-animation of the Form-Content Dialectic?

The primary relevance of Kelsen's Pure Theory of Law is from the perspective of the present work the manner in which it clearly demonstrates the dependence of a positivistic jurisprudence, in attempting to explain the development of law, on the postulation of a pre-existing political authority whose constitution cannot be historically or politically interrogated. Such an understanding of the legal sphere must necessarily universalise the fundamental categories of law, ripping them unceremoniously from the specific historical context of their emergence. Weber's reading, inasmuch as it is grounded in an (admittedly schematic) appreciation of the historical

⁴⁶ Pashukanis, *Selected Writings on Marxism and Law*, Editors' Introduction at p. 11

⁴⁷ Pashukanis, 'The general theory of law and Marxism', p. 92

⁴⁸ E. B. Pashukanis, 'The Marxist Theory of State and Law' in P. Beirne, & R. Sharlet (eds.), *Pashukanis: Selected Writings on Marxism and Law*, pp. 275-301

unfolding of the organisational specificity of modern legal systems as stimulated by the increasing importance of commerce, is more significant. Indeed, the interconnection he posits between the increasing sophistication of formal rational law and the rational organisation of free labour under ‘sober bourgeois’ capitalism is particularly relevant. Nevertheless, while his understanding of the tendential destabilisation of the demarcation between politics and law may have an immediate resonance with the contemporary reader, his anxiety to avoid conceding a close coupling of legal and economic developments prevents him from ascertaining the context-driven imperatives underlying such political intrusions. Weber’s conception is of a unilinear divergence of law and economics – from a situation of an historical close coupling – in accordance with the development of law’s specific logic of rationality by formally-educated legal specialists. This understanding cannot account for the phenomenon of the collapse of all the haughtily independent fiefdoms of capitalist society into the basic imperatives of the capitalist class – or the leading fraction(s) thereof – as necessitated by the process of (in-)validation of domestic productive relations at the level of the world market. Pashukanis’ method, being grounded in a Marxist political economy which provides a much more sophisticated understanding of the emergence of capitalist social relations and their subsequent contradictory development, is more promising. It may certainly be regarded as the proper task of the Marxist legal philosopher to deconstruct the positivistic sacralisation of legal categories, revealing their historical contingency by tracing their emergence in conjunction with the generalisation of commodity exchange. In this regard, Pashukanis’ approach is exemplary – indeed, moving forward his precise delineation of the legal form must be maintained if we are to make further progress. However, when presented with the divergent legal realities facing labour and groups oppressed under capitalism in phases of capitalist development understood in terms of *welfarism*, *neoliberalism* and *austerity*, Marxists must have prepared fuller answers than those entailed by a simple restatement, in a formally-articulated and substantively-evacuated manner, of the structural interconnection of law and the capitalist economy. Only when the legal *form* is re-coupled with – and recognised as the effervescent expression of – the *content* of social and political struggles which drive the contradictory reproduction of capitalist society, will we arrive at a materialist conception of the legal sphere which can challenge mainstream accounts of legal and political theory. In this connection, Miéville – however generous his reading of *The General Theory* – points us in the right direction. He rightly emphasises that while Pashukanis’ emphasis on the legal form is a corrective to content-driven analyses, it is not thereby inimical to examinations of particular legal contents. Indeed, the further development of an understanding of the operation of the legal form as a moment in the dynamic and contradictory development of capitalist social relations requires a precise examination of the *mechanisms* of the relation between form and content⁴⁹. In this regard, Miéville correctly identifies that law, by virtue of its very form, embeds the particular class content of capitalist exploitation inasmuch as it articulates the exchange of a particular commodity – labour-power – the value of which is the very index of the shifting balance

⁴⁹ Miéville, *Between Equal Rights*, p. 118

of forces of capital and labour underpinned by conditions of supply and demand⁵⁰. To this we may add that the legal form also structures the determination of the *rate of interest*, and the *tendential gravitation of market prices towards prices of production*, these pivots articulating respectively the functional and fractious interrelation of productive and financial capital and the competitive interaction of rival state-capitals. The present work attempts to take a small step forward in understanding how the state, by way of the legal form, structures the determination of these ‘irrational expressions’ (nonetheless embedded within capitalist production) and by such mechanism modulates the contradictory re-production of capitalist social relations.

II. The Public/Private Dichotomy and the Unity of Capitalist (Re-)Production

Much political and legal theory, including that of the positivist school of legal philosophy represented by Kelsen in the foregoing discussion, is animated by an understanding of the public sphere as a space or moment which exists independently of and prior to the private. The ‘public’ is regarded as containing – or otherwise facilitating the production of – democratically generated imperatives which may be deployed to structure or limit the activities of political and economic actors. According to this account, the ‘private’ appears as a secondary, derivative realm which is framed and constituted by the public. Neil Walker has recently developed a sophisticated and updated version of this position⁵¹. In the following discussion, I will appeal to the analytical tools of Marxist political economy in order to investigate the operative relevance of the public/private dichotomy from the perspective of capital accumulation. The latter is in capitalist society a privileged vantage point, since in a system of generalised commodity production and exchange, the imperative of the self-valorisation of value systematically subordinates the goal of the satisfaction of human needs. In such a system, capital appears as a totalising subject, a ‘self-moving substance’ of individual circuits and the organising principle of society as a whole⁵². The argument will proceed with an assessment of the organic interconnection of capitalist production and social reproduction, with the aim of developing the understanding that in accordance with the intensive development of capitalism, the commodity form comes progressively to structure both production and reproduction. I will further contend that as the commodity form penetrates relations of economic production and concomitant processes of social reproduction, similarly the legal form as its juridical reflex is coherent across the fields of private and public law. From this perspective, it is revealed that all law is fundamentally of a bourgeois character, its deep structure and logic being that of the commodity form, whilst the dichotomy between public and private appears as a first order distinction operating to facilitate and rationalise the reproduction of the social conditions which ground capital accumulation. This analysis is based upon – and will attempt to develop – a particular understanding of the dialectical relation of states and capitals, both domestically and in

⁵⁰ Miéville, *Between Equal Rights*, p. 119

⁵¹ N. Walker, ‘On the necessarily public character of law’ in C. Michelon, G. Clunie *et al.* (eds.), *The Public in Law: Representations of the Political in Legal Discourse* (Surrey: Ashgate, 2012)

⁵² T. Smith, *Globalisation: A Systematic Marxist Account* (Chicago: Haymarket, 2009), pp. 180, 189

the world market. This latter, global level is the one at which abstract labour, value, money and capital are ultimately defined⁵³. Consequently, it will be necessary to touch on how forces of competitive accumulation operating in the global economy give rise to a process of uneven and combined development, the latter producing patterns of territoriality which re-structure the relation between states and capitals at the domestic level.

If the validity of this analysis is upheld, there are serious implications for the transformative potential of public law and its strategic operationalisation in political projects. If law's inner logic mirrors that which structures the system of generalised commodity production and exchange through which social wealth in capitalist society is produced and distributed, it follows logically that legal mechanisms will be of limited utility in rectifying the social contradictions which emerge out of this process. "The public" which appears in law will be recognised as formally structured by the logic of commodity exchange, whilst being in substance restrained by its subordination to the maintenance of conditions facilitative of capital accumulation. In addition to these substantive points, I seek to argue for and attempt to demonstrate, albeit imperfectly, a particular methodological approach. It is my view that Marxist political economy provides the sharpest set of analytical tools with which to interrogate contemporary economic and political processes. In our present connection, the detailed account of capitalist property and production relations supplied by Marx's *Capital* allows us to develop an understanding of the interrelation of capitalist production and social reproduction. Marx's project also provides us with a set of abstract tendencies of capitalist development which form the starting point for an analysis of concrete historical trends. More broadly, the historical materialist method facilitates the situation of the legal within the fluid and contradictory totality of social relations. In my view, law may only be properly understood in the historical context of its material development as a sub-set of social relations unfolding as part of a dialectically integrated whole.

Capitalist Production and Social Reproduction

It is vital to understand the state not as external to and constitutive of economic relations, but rather as an important moment in the very process of commodity production and circulation. The coercive power of the state apparatus is presupposed at every stage of the circulation of capital, from the purchase of labour-power and means of production, through the regulation of the production process to the sale of the commodities produced on the market. Viewed historically, the state serves as a crucial mechanism in the inauguration of the capitalist mode of production, being a coercive lever in the process of social upheaval understood in terms of 'primitive accumulation', a function effected through an extensive and intensive expansion of its repressive apparatus. Subsequently, the state has an enduring role to play in the reproduction of social conditions facilitative of capital

⁵³ Smith, *Globalisation*, p. 190

accumulation, these conditions being informed by the coercive effects of the operation of the law of value in the world market. At this point, a degree of analytical confusion can arise insofar as the *state* mediates the ‘vertical’ antagonism between capital and labour, whilst simultaneously forming part of the *state system* which articulates the ‘horizontal’ competitive interaction of capitals at the international level. The latter process of competitive accumulation gives rise to a tendency towards the dynamic technological and sociological development of the production process, this entailing a continual adjustment of the quantity and quality of the required objective and subjective factors of production. Historically, the state has played a central role in ensuring the availability of sufficient labour-powers possessing the degree of physical and mental dexterity appropriate to the extant level of development of the productive process. The coercive power of the state has also been projected internationally to ensure control over economic territory, facilitating access to raw material inputs and markets for surplus realisation. In addition to technological innovation, the process of competitive accumulation also instantiates a tendency towards the concentration and centralisation of capital which leads progressively to uneven and combined development in the geography of the global capitalist system. As a result, national economies become oriented towards the fulfilment of particular functions within an international division of labour articulated through the interrelation of heterogeneous regional contexts. Specifically, the antagonism between industry and agriculture is played out at a global level, as advanced industrial economies seek an agrarian “economic supplement” by the military and financial subjugation of countries with predominantly agrarian economies⁵⁴. In the context of the global dominance of finance capital and its international institutionalisation in the interests of dominant state-capital blocs, the economic and geopolitical competitiveness of different state-capital formations informs the policy options that are available to state managers with regard to the regulation of economic production and social reproduction within their territory.

At this stage, it is necessary to pre-empt a familiar criticism by recognising that the requirements of capitalist production cannot be said to mechanistically generate appropriate social forms, this translation being mediated by a political process through which are articulated conflicting class interests. Indeed, as Kevin Doogan as recognised, the labour market is itself an inefficient mechanism for the transmission of the requirements of production, insofar as it is structured by embedded class relations inflected with historical and cultural contingencies which change within a generational time-frame⁵⁵. However, it would be a mistake of a similar magnitude to attempt to understand politics in abstraction from the cleavage between capital and labour, which is not confined, nor is confinable within relations of production as narrowly conceived, rather inevitably coming to structure the social and political environment in its totality. This is captured from one perspective by Tony Smith when he contends that “the choices of state officials...are made within structural constraints systematically rewarding behaviour furthering the accumulation of total social

⁵⁴ N. Bukharin, *Imperialism and World Economy* (London: Bookmarks, 2003), p. 108

⁵⁵ K. Doogan, *New Capitalism? The Transformation of Work* (Cambridge: Polity, 2009)

capital and penalising all other modes of action”⁵⁶. Further, at a more visceral level, the subordination of social and political demands to the imperatives of capitalist economy is especially apparent in the context of the current global financial and economic crisis.

Society exists as an ensemble of social relations through which is articulated a process of economic production, this presupposing and interpenetrating with relations of social reproduction. In the form of society characterised by generalised commodity production, i.e. capitalist society, social wealth appears as an immense collection of commodities⁵⁷, while social relations assume the form of exchange relations between commodity owners. The commodity form thus comes to structure not only relations of production as narrowly conceived, but also concomitant processes of social reproduction. The continuation of surplus value production, and consequently of capital accumulation (its reproduction on an expanded scale), requires the availability of an adequate stock of labour-powers possessing the degree of physical and mental skill and dexterity appropriate to the level of technological development of the production process. Recalling the analysis of Marx in volume two of *Capital*, the circuit of money capital, which most starkly reveals the valorisation of value, money-making and accumulation as the driving motive of capitalist production, may be represented by the formula $M-C < L_{mp} \dots P \dots C' - M'$. Here, M is capital value in the functional form of money capital, C represents value wrapped in the material shell of the commodity, L and mp stand for labour power and means of production – the subjective and objective factors of the production process –, the sum of the two forming productive capital P . The circuit of money capital interacts with the individual consumption of the worker insofar as $M-L$ is for her $L-M$ (or $C-M$), the first phase of the circulation which mediates her consumption: $L-M-C$, where C is the means of subsistence⁵⁸. The second phase, $M-C$ of the circuit by which the worker reproduces herself is thus not contained within the circuit describing the motion of the individual industrial capital in relation to which her labour is employed. However, such consumption, insofar as it is essential to her physical regeneration and consequently her existence on the market as exploitable material for the capitalist, is an essential precondition for even the simple reproduction of that capital – indeed its very existence *as capital*, understood as value in motion. Further and in logical consequence, the motion of the sum of individual capitals, or total social capital is conditional upon the reproduction of labour powers in general. From the perspective of capital accumulation, social reproduction appears as an evanescent (or fractally related) process accounting for the renewal of the production input L .

The availability of adequate stocks of labour is not the only precondition for capital accumulation, as is immediately evident from the summary analysis above. Indeed, labour-power (L) becomes capital in the hands of the buyer only as a component part of productive capital (P). Thus, the

⁵⁶ Smith, *Globalisation*, p. 242

⁵⁷ K. Marx, *Capital: A Critique of Political Economy* Vol. 1 (London: Penguin, 1990), p. 125

⁵⁸ K. Marx, *Capital: A Critique of Political Economy* Vol. 2 (London: Penguin, 1992), chapters 1-4

production process requires that the capitalist has access to means of production (*mp*) – comprising raw materials, energy, machines, buildings, etc – of an appropriate nature and quantity to facilitate the production of surplus value through the consumption of labour-power. The means of production will often themselves be products of the movement of other individual capitals, revealing the intertwinement of the metamorphoses of individual capitals in the totality of social production⁵⁹. Furthermore, the entire enterprise will be futile if there exists not the market for the sale of the commodities produced by the capitalist, this exchange being the mechanism for the realisation of the value embodied therein. In the exposition of these basic prerequisites for capitalist production, we may recognise that they each presuppose a number of other social and environmental conditions. For instance, the availability of labour-powers depends on the wage-labour relation being the most convenient way for the worker to gain access to the means of subsistence, while the realisation of surplus value through the sale of the commodities produced presupposes adequate protection against the expropriation of such commodities by way other than exchange, i.e. theft.

The social conditions facilitative of capital accumulation are, from a historical perspective, quite contingent. One need only recall the tragic ordeal of the earnest entrepreneur Mr Peel to recognise the difficulties of carrying on capitalist production in the absence of the political and legal environment necessary to institute and reproduce the requisite relations of production⁶⁰. The social foundations for the interaction in the marketplace of capital and labour, figures which arise neither naturally nor a-historically, are laid by a process of ‘primitive accumulation’. This entails the forcible expropriation of the mass of the population from the means of production and their created dependency upon money wages. While primitive accumulation follows different modalities and chronologies in different countries, we may using the classic example of the agricultural revolution in England – which is explored in detail in the following section – identify as central dynamics the creation of new forms of property rights, the extinguishment of customary rights and perquisites, legal regulation of the wage-labour relation and a restructuring of welfare provision⁶¹. In all of these respects, the transition from feudal to capitalist modes of production is facilitated by the operation of the state, as the concentrated and organised force of society. Further, once the rule of capital has been established, the state plays an enduring role in the institution and reproduction of the social conditions necessary for accumulation. While this entails a variety of activities, we will maintain our focus on the reproduction of labour-powers. The latter, being directly related to the welfare of the population and falling within the ambit of the ‘public’ sector as opposed to the ‘private’ economy within the ontological framework of the liberal dichotomy, is especially relevant in our present connection. We can through historical analysis chart the continual evolution of state

⁵⁹ Marx, *Capital* Vol. 2, p. 178

⁶⁰ Marx, *Capital* Vol. 1, pp. 931-933

⁶¹ Marx, *Capital* Vol. 1; M. Overton, *Agricultural Revolution in England: the Transformation of the Agrarian Economy 1500-1850* (Cambridge: CUP, 1996); E. Hobsbawm, *The Age of Revolution: Europe, 1789-1848* (London: Weidenfeld & Nicholson, 1962); E. Thompson, *Whigs and Hunters: the Origin of the Black Act* (London: Allen Lane, Penguin, 1975), *Customs in Common* (London: Merlin Press, 1991); Doogan, *New Capitalism?*

functions and responsibilities in response to the productive requirements of the developing forces of production⁶². The technological dynamism entailed by this process of competitive accumulation and the consequent revision of the conditions of labour require a continual adaption of the physical and intellectual abilities of labour powers. While this may be facilitated to some degree by individual capitals themselves, their restricted sectoral and temporal outlooks often limit the extent to which they may take actions which are rational from the perspective of total social capital. For example, the industrial practices in Britain of the late 18th and early 19th centuries led to the premature exhaustion and untimely death of factory workers, threatening to undermine the reproduction of labour-powers at the existing level of productivity. In this context, the factory legislation of 1853-1860, which achieved a remarkable physical and moral regeneration of labour-powers⁶³ could be understood as the state acting to mediate the myopic actions of individual capitals in the interests of total social capital. Indeed, as Doogan has commented, the period from the early 1830s to the 1880s saw the emergence of a body of legislation marking a shift from orthodox economic liberalism towards social and national protectionism, the government increasingly intervening to mitigate the worst social effects of nascent industrial capitalism. Thus the state “assumed overall responsibility for the reproduction of the next generation of labour”⁶⁴.

The physical maintenance of the workforce is crucial not only to ensure the future supply of waged labour necessary to facilitate reproduction of capital on an expanded scale, but may also be of import in relation to the military articulation of a state’s imperialist pretensions, particularly where the extant military paradigm is especially labour-intensive. Thus, following the experiences of the Boer war and First World War, changes in government healthcare policy significantly improved levels of medical fitness by the beginning of World War II⁶⁵. Here, then, we witness the intersection of the State’s responsibilities in reproducing in a domestic context social conditions facilitative of capitalist production and the labour implications of the military action required internationally to gain and maintain control over economic territory. Moving from healthcare to education, the industrial revolution necessitated a dramatic turnaround in the responsibilities of the state at all levels, demonstrated by the fact that while in 1818 only 7% of children attended day school, by 1880 schooling had been made compulsory for all five to ten year olds. Further, following the emergence of a skills gap between the British workforce and those of other Western European countries including Germany, state funding for higher education was introduced⁶⁶.

A period of particular import in relation to the development of state responsibility for social reproduction is that of the ‘golden age’ of Western capitalism, beginning in the aftermath of the

⁶² Doogan, *New Capitalism?*, p. 110

⁶³ Marx, *Capital* Vol. 1, pp. 406-408

⁶⁴ Doogan, *New Capitalism?*, p. 108

⁶⁵ Doogan, *New Capitalism?*, p. 110; N. Timmins, *The Five Giants: A Biography of the Welfare State* (London: Fontana Press, 1996)

⁶⁶ Doogan, *New Capitalism?*, pp. 109-110

Second World War and continuing until the 1960s in the US and the 1970s in Western Europe and Japan⁶⁷. This was a period of economic growth of unprecedented longevity and consistency, something explicable at least in part by the mass devaluation of capital effected by the destruction of the war and the operation of the ‘permanent arms economy’, the latter functioning to offset the rising organic composition of capital⁶⁸. An economic environment characterised by a high rate of profit and the relative productivity of capital in the US and Western Europe provided the necessary objective conditions for concessions to labour in the form of welfare policies and social security schemes which together represented a ‘socialisation’ of labour costs. Of course, these developments were not automatic, being rather driven by the subjective articulation of the demands of labour in a favourable context of historically low levels of unemployment and at times acute labour shortage⁶⁹. In order to perform the function of nourishing the suddenly finite number of labour-powers in a context of scarcity driven by expanding production, the state apparatus underwent a profound reorganisation in its re-configuration as the “welfare” state. Unsurprisingly, this period also marked the high point of the reformist political and ideological project of social democracy, which sought in contradistinction to its demographically and geographically limited material basis, to provide a universal solution to the social impact of capitalist economy. As we have seen however, the boom did not continue beyond 1973, when the crisis which erupted in the advanced capitalist countries and a large part of the third world marked the return of traditional economic cycles of boom and bust. Chris Harman seeks to understand the end of the golden age in terms of the victory of the dynamic of market competition over that of inter-imperialist military competition. The uneven global distribution of arms expenditure allowed economies with relatively low levels of expenditure to invest proportionately more in industry and achieve faster rates of growth than the militarised economies of the US, Russia and (to a lesser degree) the UK and France. These latter countries were consequently forced to scale-back their military expenditure in view of economic competition from the increasingly productive economies of Japan and Germany. In this way, the permanent arms economy ceased to operate as an escape valve for the accumulating pressure of the global economy⁷⁰.

Following the crises of the 70s, we saw the emergence of the political and economic project of neo-liberalism which, driven by the ‘Dollar-Wall Street Regime’, sought to promote policies favourable to the interests of US investment banks and transnational corporations. This relied on US dominance of the international financial architecture and was prefigured by the harsh monetary discipline imposed on the world economy by the ‘Volcker shock’ of 1979⁷¹. The social impact of these developments has been experienced extremely unevenly, with processes of welfare re-

⁶⁷ C. Harman, *Zombie Capitalism* (London: Bookmarks, 2009)

⁶⁸ Harman, *Zombie Capitalism*, chapter 9; A. Callinicos, *Bonfire of Illusions: The Twin Crises of the Liberal World* (Cambridge: Polity, 2010); M. Kidron, *Western Capitalism Since the War* (London: Penguin, 1970)

⁶⁹ Harman, *Zombie Capitalism*, pp. 172-5

⁷⁰ Harman, *Zombie Capitalism*, pp. 191-201

⁷¹ A. Callinicos, *Imperialism and Global Political Economy* (Cambridge: Polity, 2009), p. 191; P. Gowan, *The Global Gamble: Washington’s Faustian Bid for World Dominance* (London: Verso, 1999)

commodification and retrenchment proceeding with widely varying speed and intensity in different regional contexts. Thus, welfare regimes in Western Europe were seen to be relatively resilient⁷², whilst in many peripheral economies there were experienced profound social changes which often appeared as wanton destruction. Crucial to understanding the complexities of the neoliberal project is to recognise that it is driven by a bi-linear attempt to redistribute the costs of the emergent crisis: firstly from capital to labour and secondly; from the powerful state-capital formations comprising the core of the global economy to the weaker peripheral economies. With regard to the latter, the international financial system can be seen as the transmission mechanism by which the effects of a crisis of over-accumulation and profitability are spatially displaced and diffused from the core to the periphery, like the concentric rippling of a puddle in the rain. Further, the resilience of welfare provision in one form or another demonstrates that such services do not represent pure loss for capital, but are rather indispensable to the extraction of surplus-value insofar as the latter is dependent upon the reproduction of labour-powers. To bring our historiography up to date, the emergence from behind the veil of financialisation of a chronic crisis of over-accumulation and profitability in the global financial and economic crisis precipitated by the US sub-prime mortgage crash of 2008 has generated a generalised politics of “austerity”. This entails a policy package which seeks to redistribute to labour the costs of its own reproduction and to increase the rate of exploitation by disciplining the wage-labour relation through strategic retrenchment of welfare provision. Moreover, in a UK context David Cameron’s “big society” appears little more than a thinly veiled attempt to squeeze increasing amounts of unpaid labour from the pores of society, further reducing the proportion of the costs of social reproduction borne by capital. Once again, we must be careful to avoid implementing a crudely economic-functionalist understanding of state action, since the specific reforms mentioned must be recognised as the outcome of a process of political contestation. However, logically, the range of policy options available to the capitalist state are informed by the necessity of maintaining social conditions facilitative of capital accumulation, whilst the environment in which political contestation occurs is profoundly structured by the capital relation.

The crucial point which must emerge from this discussion is that the process of capitalist production presupposes and is interconnected with processes of social reproduction. The continuation of capital accumulation is dependent upon the reproduction of labour powers at a level of productivity informed in different local contexts by the international division of social labour. The global organisation of capitalist production into a plurality of different capitals which are structurally connected to states also gives rise to a competitive dynamic which requires that the organisation of social reproduction be rational and cost-effective from the perspective of surplus-value generation. For instance, if a capital in state A is able to access labour-powers of a particular productivity at a price *to it* which is below that at which labour-powers may be obtained in state B,

⁷² Doogan, *New Capitalism?*, pp. 119-122

then the state A-based capital will have a competitive advantage over capitals based in state B. In this regard, premiums extracted from capital by taxation to cover costs of reproduction – such as National Insurance in the UK – can be considered as augmenting expenditure on wages, or variable capital (v), thus impacting the rate of exploitation: s/v , where s represents surplus value. However, it would be a mistake to infer from this that the interests of total social capital necessarily lie in a neoliberal agenda entailing the reduction of corporate taxation to a minimum and the privatisation of public services, since the latter may detrimentally affect general profit rates by another mechanism. While the privatisation of healthcare and educational provision may hold prospects of substantial profits for capitals operating in relevant sectors, such enterprises do not lend themselves to decentralised organisation, such that there will exist a tendency for these fields to become quickly dominated by a small number of very large capitals. The latter may ultimately use their monopoly power to effect a redistribution of surplus from other sectors, impacting upon the general rate of profit and the ability of capitals elsewhere in the economy to compete internationally. By way of example, it is certainly open to argument that the premiums extracted by healthcare providers in the US erect a ceiling for the rate of exploitation for industrial capital, under which conditions for instance, the Detroit-based General Motors may be out-competed by Japanese automobile manufacture. Ultimately, the centralisation and rationalisation of social reproduction entailed by its administration by the state apparatus may in certain circumstances represent the most efficient mode from the perspective of total social capital. Further, it may be contended that the public/private dichotomy grounds the organisational framework within which public bodies may facilitate the reproduction of social conditions which, despite being essential to the valorisation circuits of individual capitals, lie outwith both such circuits and the organisational capacities of the individual capitals concerned.

Beyond the requirements that labour-powers be reproduced with the requisite skills determined by the spatial and temporal location of production and that such reproduction is effected in a manner that facilitates the maintenance of an internationally competitive rate of exploitation, there remain of course a multitude of organisational methods by which labour could be appropriately reproduced. These economic considerations thus form only a framework within which there rages continual political contestation over the financing and delivery of social services, key issues being the distribution of cost between surplus value (s) and variable capital (v) and the extent to which provision is linked directly to employment. Note however that the interconnection between capitalist production and social reproduction under capital is not exhausted by the requirements of the former operating as a substantive limit to the organisation of the latter. Additionally, the *form* of social relation which accompanies capitalist production, i.e. the relation of commodity exchange, comes inevitably to profoundly structure reproductive processes as it structures social relations in their entirety.

The bourgeois epoch is not the first in which society has been fragmented into classes, the consumption of the ruling class being fuelled by the extraction of surplus labour from a subordinate social grouping. However, under capitalism such exploitation assumes a specific form, surplus labour appearing as surplus *value* generated by the consumption of labour-power mediated by the mechanism of the wage-labour relation. In contrast to economic systems founded upon enslavement or indenture of a direct, personal nature, the wage-labourer remains formally free insofar as she sells not herself, but her capacity to labour for a limited period, while the person of her employer is subject to periodic change. Coercion, as the pivot between economics and politics, also undergoes a reorganisation under capitalism, insofar as the use of force is progressively divested from the person directly implicated in the extraction of surplus labour, such power being congealed instead in the body of an institutionalised collective public authority. Capitalist society might be described then as class society *par excellence* insofar as labour is exploited *as a class* by capital organised collectively and operating coercively through the mechanism of constituted public authority. This is of course not to make a crude or conspiratorial assessment of the influence of the agency of capital over parliamentary politics, but rather to recognise that under capitalism, society is *capitalist* society inasmuch as social relations in their totality are structured by the logics of commodity production and exchange and subordinated in substance to the maintenance of this specific form of organisation of social production.

Whilst the most fundamental form of regulation of social relations in capitalist society is economic, being grounded in the coercive effects of a class-inflected organisation of the means of production, this is supported by regulatory mechanisms of a political and legal nature. The latter attains in bourgeois society a particular significance, the legal form here achieving its most universal and consummate articulation. For Pashukanis this is no mere coincidence, since the deep grammar of the legal form, entailing a specific *legal* modulation of social relations, forms a logical unity with the relations of commodity production and exchange which characterise capitalist society. Now, of course, commodities were produced in pre-capitalist societies, yet it is only in bourgeois society that commodity production becomes *generalised* – that use-values are increasingly produced primarily for exchange, and progressively, the entirety of social wealth passes through the mechanism of commodity circulation. It is under these conditions that the legal form obtains universal significance and legal ideology can obtain a firm grip on human consciousness. Pashukanis argued that there is an “indissoluble internal connection” between the categories of the economy based on the commodity and on money, and the legal form itself. This connection is borne out by the category of the legal subject, which can be regarded as “the indispensable and unavoidable complement of the commodity”. The legal subject, as the “abstract bearer of all possible legal claims”, can be compared directly with, and indeed recognised as the juridical

reflection of, the commodity owner, as an “abstract, impersonal subject of rights in things”⁷³. The definition and attribution of legal personality, being the mechanism by which individuals are represented or instantiated in the legal process is a crucial aspect of the broader process of juridification. The latter can be understood in terms of the assimilation of social relations to a set of standard forms, providing for the observation and regulation of those relations by specified corporate social organisations which are empowered to modulate those relations by the deployment of defined coercive actions. The place to begin in attempting to understand the consequences of such regulation for social development is an analysis of the manner in which those forms of modulation facilitate the production and distribution of use-values and, by extension whether they presuppose a particular method of effecting the latter.

The juridical *persona* is a mask which constitutes the legal subject, simultaneously signifying her existence and mystifying the contours of the face beneath. One of the primary logics which informs the operation of legal personality is abstraction, insofar as the complex material and social context which grounds the relation between individuals is reduced to the rational interaction of legal persons who are considered (from the perspective of the legal) to be free and equal. Whilst the legal person is in general an abstract bearer of subjective rights, crucially in the context of the present discussion there do exist certain operative distinctions between legal persons, not least that which differentiates ‘public’ and ‘private’ persons. Organisations designated as ‘public’ are, in general terms, legally constituted corporate social entities which emerge from constitutionally-structured political processes, charged with the performance of more or less loosely defined ‘public’ functions. They can be thus seen as mediating the actions of private persons in such a manner that their individual, narrowly focused actions can be accommodated to the maintenance of the operative socio-economic order, the latter grounding the power and maintenance of the state apparatus. The distinction between public and private persons grounds the derivative dichotomy between public and private law, the two spheres being distinguished primarily by the extent to which the interests of legally constituted ‘public’ persons are implicated – such that they are permitted certain freedoms of action – within that realm. Upon a detailed analysis, the public/private boundary is revealed as porous, whilst it may also be seen to shift in location when mapped across different legal disciplines, which are themselves internally and inconsistently demarcated. Similarly, the categories of ‘public’ and ‘private’ personality are not watertight, there being many organisations which straddle the boundary or are otherwise difficult to locate relative to it.

A particularly privileged perspective from which to understand the operation of the legal public/private dichotomy is the perspective of capital accumulation, informed by the dialectic of state and world market in the context of the coercive operation of the law of value in the global

⁷³ E. Pashukanis, *Law and Marxism: A General Theory* (London: Pluto Press, 1983), pp. 14, 42

economy. Whilst this is not the only manner in which the public/private divide can be cognised, it is of particular resonance given that in a system of generalised commodity production and exchange, the imperative of the self-valorisation of value systematically subordinates the goal of the satisfaction of human needs. Capitalism is driven by accumulation for accumulation's sake, production for production's sake, whilst social reproduction assumes organisational and procedural forms which are oriented towards the achievement of optimal conditions for accumulation. In this regard it is useful to recall Tony Smith's criticism of the "humanist social ontology" underlying much political economy when he asserts that it "fails to grasp the inversion whereby humanly created social forms generate an inhuman subject whose end ('self-valorisation') comes to have precedence over human ends"⁷⁴. A similar critique could apply to constitutional and administrative law scholarship which presupposes that the institutional and procedural articulation of political authority is primarily informed by humanist-functional imperatives. Drawing again from Smith, it might be said that constitutional law scholarship "fail[s] to comprehend how the property and production relations of capitalism define a social order in which valorisation, not human flourishing, is the ultimate end of social life". Under a system of generalised commodity production, capital appears as a totalising subject, a 'self-moving substance' of individual circuits and the organising principle of society as a whole⁷⁵. This entails the real (as opposed to formal) subsumption of labour by capital, effecting a restructure not only of the activities of labour within the narrow spatiality and temporality of employment, but of the existence and reproduction of labour in its entirety. The "capital fetishism" which inevitably accompanies this process of inversion veils the subordination of human needs to valorisation, transforming capital from a contingent, evanescent product of a particular organisation of property and production relations into the driving force behind social development and the satisfaction of human wants. Capital is thus understood not as congealed past labour parasitically exploiting the creative energies of living social labour, but as the well-spring of social wealth and productive human endeavour. When we couple the recognition that in a capitalist social order valorisation becomes the immanent end of social interaction, with an understanding that the legal form unfolds in harmony with the development of generalised commodity production, we may begin to understand that the legal system in its entirety is deeply structured by the logic of capitalist accumulation. In this context, the public/private dichotomy is revealed as a first order distinction which facilitates and rationalises the development of organisational forms which support accumulation in a context of global competition. Specifically, as we have discussed in some detail here, it allows for the rational and efficient organisation of social reproduction on a large scale.

The public/private divide operates to sever the fluid and contradictory totality of social relations into two spheres within which legally constituted 'public' organisations are given different degrees of influence and the legal regulation of social relations differs in quality and intensity. Far from

⁷⁴ Smith, *Globalisation*, p. 178

⁷⁵ Smith, *Globalisation*, pp. 180, 189

being an unmarked space in which collectively and democratically generated imperatives are imposed upon a bounded (and derivative) private realm, the public sphere rather displays the birthmarks of its origin in the genesis of the public/private dichotomy, being deeply structured by the logic of the commodity form. This may appear counter-intuitive to the legal thinker who regards legal relations as deriving from overarching legal norms and civil society as a product of the will of an institutionally-grounded sovereign power. Following Pashukanis, we must turn these conceptions on their head, recognising that the norm cannot exist but in the concrete multiplicity of legal relations, these being the fabric through which the norm is woven, whilst appreciating that the state, far from producing civil society, rather grows out of it, whilst the latter in turn rests upon a foundation of economic relations⁷⁶.

Given an historically grounded understanding of the development of the legal form which recognises its intertwinement with the generalisation of commodity production and exchange, the logical unity of private and public law follows necessarily. If in capitalist society valorisation becomes the overriding goal in view of which social relations are structured, whilst valorisation requires concrete labour employed in a particular locality to pass the test of social utility overseen by the operation of the law of value in the world market, then public bodies must act in such a way as to facilitate the maintenance of a rate of exploitation which is internationally competitive. In this context, it would appear that the burden of proof shifts to representatives of those schools of thought which insist upon a substantive independence of the public sphere to show how the latter maintains its insulation from the central dynamics of capital accumulation. This being said, it will be useful here to invoke some evidence to reinforce our analytically-generated conclusion regarding the logical unity of private and public law. Firstly, the structural cohesion of private and public law is apparent at a fairly superficial institutional and procedural level. In the UK, the superior civil courts exercise jurisdiction over all justiciable disputes, irrespective of whether they concern private citizens or public authorities. Further, in England the practice is to avoid a hard and fast demarcation between public and private law in the determination of procedural matters, whilst in Scotland the structure of remedies does not require a distinction to be drawn between public and private law. Public bodies are a subspecies of a broader category of legal persons, which Pashukanis has taught us to understand as the juridical reflex of the commodity owner. Constancy of form is also apparent at a basic doctrinal level, the rule of law requiring equality before the law of all legal persons whether designated as ‘public’ or ‘private’, while logics of private interaction inform theoretical understandings of constitutional and administrative regimes – note for instance the ubiquity of the “social contract” metaphor. More profoundly, the centrality of human rights discourse and the institutionalisation of the latter in regional and international regimes reflects a structuring of the public sphere and articulation of questions of the distribution of social wealth in accordance with the conflict of egoistically generated private interests. This structural framing of

⁷⁶ Pashukanis, *Law and Marxism*, pp. 85-88

profound political questions already presupposes the type of “asocial sociality” formed by the interaction of dissociated private producers⁷⁷. Thus, the citizen is in a position formally analogous to that of the commodity owner, her bundle of rights against a legally constituted public authority being the mirror of the owner’s rights in her commodity in respect to all those who may make competing claims. The structural rigidity of public law is further revealed in contexts which do not lend themselves comfortably to the form of regulation presupposed by this structure. For instance, anti-discrimination legislation, as a form of public, administrative law approaches the problem of the inequality of remuneration received by male and female workers by treating women as a series of abstract individuals, each possessing the formal right to equal pay. This attempt to formalise the marginalised group as equal is founded upon the “subsumption of a particular category – women – into a formal, abstract, juridical one, and to *insist upon its abstract equality*”⁷⁸. Insofar as this form of administration displays a fidelity to the legal form by attempting to emulate or approximate the latter’s abstraction, it will necessarily be limited in its substantive efficacy.

One criticism of the account developed here might be that it fails to recognise that the legal subjects which animate public law are not merely isolated individuals, but corporate entities such as associations, trades unions, utilities and public corporations. However, as China Miéville has convincingly argued, such a shift in legal subjectivity does not represent a change in the basic ontological structure of law, but rather “a shift in the atoms of the juridical relationship *on the basis of the commodity relationship under changing conditions of mass industrialisation and the commodification of labour-power itself*”. Just as Marx recognised that the legalisation of capital and labour as collectives results from the very nature of labour-power as a commodity, the developments in legal subjectivity in accordance with the changing conditions of late capitalism must be understood as a development of the legal form on the basis of that form itself⁷⁹. Indeed, as Tony Smith has recognised, the definition of what constitutes a corporate ‘person’ and the forms of legally permissible interactions which can be undertaken by those persons must be regularly revised by state judicial apparatuses in light of the shifting organisational forms adopted by capital as a result of the tendencies towards concentration and centralisation, especially in a global context where these trends are articulated in cross-border mergers and acquisitions, joint ventures and subcontracting arrangements⁸⁰. Similarly, public institutions charged with the maintenance of social conditions facilitative of capital accumulation may assume varying organisational forms in different economic and political contexts. These adaptations are driven by factors including the tendency for the commodification of new areas of social life (‘accumulation by dispossession’) to increase in importance in the context of crises of over-accumulation in other sectors, and the necessity for states to intervene in research and development programmes and networks of

⁷⁷ Smith, *Globalisation*

⁷⁸ Miéville, *Between Equal Rights*, p. 111

⁷⁹ Miéville, *Between Equal Rights*, pp. 101-113

⁸⁰ Smith, *Globalisation*, p. 237

knowledge production in order to create ‘innovation systems’ in sectors with potentially high rates of profitability. The changing organisational forms assumed by capital emerge out of the commodity form as the shifts in legal subjectivity represent an evolution of the legal form on the basis of that form itself.

‘The public in law’

In this discussion I have attempted to illustrate the interpenetration of relations of production and reproduction in capitalist society, arguing that the commodity form comes to structure the emergent totality. I have further argued that this unity is mirrored by the formal coherence of public and private law, the distinction between the two forming the juridical framework for the establishment of organisational forms which both maintain the existence of capital as a plurality of capitals and provide for the rational reproduction of the social conditions of accumulation. Consequently, the space provided by the ‘public’ in law is revealed as formally structured by the logic of commodity exchange, whilst being in substance restrained by its subordination to the maintenance of conditions facilitative of capital accumulation. Public and private law form the poles of a first-order distinction which is subsumed within the ‘legal’ as a formally coherent mother category, the logic of which is the logic of the commodity form. These conclusions place in a different perspective Walker’s aim of establishing the second-order ‘publicness’ of law, whilst revealing the futility of the broader ideological tug-of-war between the ‘civilists’ and ‘publicists’ for mastery over the jurisprudential universe. We have established not the second-order ‘publicness’ of law, but rather a second-order *bourgeoisness*. We may thus conclude either that Walker is wrong, or perhaps more frighteningly, that he is *right*. For as have discovered, in a profound sense, the subject which animates capitalist society is not the human being, but capital itself, whilst the corresponding public is not a corporate association of human beings, but total social capital. The only manner in which we may reverse the dialectical inversion by which the human being was supplanted by an alien pseudo-subject as the organising principle of society as a whole is by effecting a profound restructuring of the mode by which society produces its means of subsistence, such that it ceases to simultaneously reproduce the antagonistically related estates of capital and labour. Legal mechanisms are not sufficient to procure such a revolutionary transformation, insofar as “it is totally impossible to reconstitute society on the basis of what is merely an embellished shadow of it”⁸¹. This is not to underestimate the importance of the legal reforms which in limited historical and geographical contexts have assuaged some of the worst social consequences of capitalist development. Rather it is to recognise that the momentum and energy crystallised in such enactments is not of *legal* origin, being born rather of the conflict of antagonistically related classes. Law is a mechanism which mediates social relations which return ultimately to economic and political dynamics as their centre of gravity.

⁸¹ K. Marx, ‘The poverty of philosophy’ in D. McLellan (Ed.), *Karl Marx: Selected Writings* Second Edn. (Oxford: OUP, 2000), at p. 215

III. Juridification and social transformation: law as sword, shield and fetter

The existence of history presupposes the existence of material life, something which can be sustained only by the production of the basic means of subsistence. Such production must continually be fulfilled and is necessarily constitutive of a double relation: natural insofar as it entails a particular metabolism between humans and nature, and; social in that it requires the cooperation of human individuals⁸². The production of the means of subsistence, indeed of life itself, involves the appropriation and transformation of nature through labour. This working-over of the objective world is what constitutes the human's "species-being", her essence, the process of production being her vital activity or her "active species life"⁸³. The human can be distinguished from the animal insofar as she makes her vital activity an object of her will and consciousness – her vital activity is thus conscious vital activity⁸⁴. Humans are consequently able to reflect upon their vital activity and alter its natural and social form. For Marx, different epochs in human history can be distinguished by the manner in which the means of subsistence are produced, this mode of production presupposing a particular set of natural and social relations. The relation between man and nature develops symbiotically with the productive relations between men, each definite stage of development of the "forces of production" corresponding to a set of definite social relations. These social relations are, naturally, regulated by economic and political forces. However, at a certain stage of development, the social regulation of human relations assumes a specifically *legal* character, such that spontaneously arising reified relations are transformed into legal relations, a process we may designate *juridification*.

Juridification is the window through which we will attempt to locate the legal system relative to broader processes of economic production and social reproduction. It is by way of a discussion of what is entailed by, and what is at stake in, the legal mediation of social relations that we are able to investigate the role of law in the development of processes of economic production and consequently, in the unfolding of human history. For Marx, class struggle – the conflict of social groupings unified by their common relation to the means of production and labour – is the driving force of history, such conflict each time ending either in the revolutionary reconstruction of society, or in the common ruin of the contending classes⁸⁵. The question of the function of the legal system in processes of social transformation is thus also a question of how law frames and mediates the political struggle between classes – in bourgeois society, capital and labour. In attempting to answer these questions, the argument proceeds by way of the invocation of three figures – those of

⁸² K. Marx, *The German Ideology* in D. McLellan (ed.), *Karl Marx: Selected Writings* (Oxford: OUP, 2000), pp.181-182

⁸³ K. Marx, *Economic and Philosophical Manuscripts* in McLellan (ed.), *Karl Marx: Selected Writings*, pp. 90-91

⁸⁴ Marx, *Economic and Philosophical Manuscripts*, p. 90

⁸⁵ K. Marx & F. Engels, *The Communist Manifesto* (Oxford: Oxford University Press, 1992), p. 219

the *sword*, the *shield* and the *fetter*. Each of the figures captures from a different perspective the role of law in the institution and reproduction of the relations of production, whilst casting in a different light the legal modulation of the wage-labour relation. It is essential to note in this connexion that the functions represented by these figures are neither clearly delineated nor mutually exclusive – rather, they presuppose and interpenetrate one another. All three figures are always present in the operation of the legal system, though at different social and historical conjectures one or other is brought more sharply into focus and tends to predominate. As a consequence, the analysis cannot be understood as proceeding in a linear manner, it being necessary to understand each of the three perspectives before any one can be grasped fully.

Law as Sword

The capitalist mode of production requires the interaction in the marketplace of two figures which arise not naturally nor a-historically, but rather as a result of definite and tumultuous processes of economic and social transformation. Capital exists as a social relation between owners of means of production and subsistence on the one hand, and owners of labour-power willing to sell it in return for access to means of subsistence, on the other. Both persons arise out of the demise of the peasant and small-holding farmer, the artisan and journeyman, though while the capitalist hoists himself up upon the broken and bloodied bodies of the peasantry, the labouring poor are their emaciated, skeletal offspring. To dig beneath the rational, symmetrical edifice of the market, built of a million free and equitable commodity exchanges, is to unearth a foundation of violent and merciless expropriation. The pre-history of capital is a bloody tale of the forcible severance of the mass of the people from the means of production, the clearing of pastures and enclosure of common lands, the driving of the agricultural population by threat of starvation into the arms of the waiting agricultural, mercantile and ultimately industrial capitalists. Whilst “Force is the midwife of every old society which is pregnant with a new one”⁸⁶, coercion is in different historical periods articulated through a variety of institutional frameworks and clothed in trendy new ideological fabrics. The transition from feudal to capitalist modes of production is facilitated by the operation of the state, as the concentrated and organised force of society⁸⁷, while Law, as the lingua franca of the state, lubricates the gears of history. Ever since the Glorious Revolution and the enlistment of the state apparatus in the service of the emerging bourgeoisie, legal machinery has been employed to ensure the institution and reproduction of the social conditions necessary for the accumulation of capital, including principally the availability of adequate stocks of “free and rightless” proletarians.

The proletarian experiences freedom in a double sense: freedom from being tethered to a particular master, and to sell her labour-power (in such quantity as she pleases) to whomsoever she pleases, and; freedom from (in the sense of being unencumbered by) any means of production of her own

⁸⁶ K. Marx, *Capital: A Critique of Political Economy* Vol. 1 (London: Penguin, 1990), p. 916

⁸⁷ Marx, *Capital* Vol. 1, pp. 915-916

and any control over the conditions of her labour⁸⁸. In one sense then, the dissolution of the bands of feudal retainers served to emancipate the serf from the regime of the guilds and their restrictive labour relations; yet, such a movement was coincidental with the robbery of all her own means of production and the stable arrangements which guaranteed her subsistence and survival⁸⁹. This history of expropriation, of great masses of men being “suddenly and forcibly torn from their means of subsistence, and hurled onto the labour market as free, unprotected and rightless proletarians”, is “written in the annals of mankind in letters of blood and fire”⁹⁰. Whilst this process of “primitive accumulation” follows different modalities and chronologies in different countries, what is common is that law operates as a key mechanism in the expropriation of the agricultural population from the soil.

In Britain, the birthplace of the industrial revolution and the first country in which the wage based labour market came into prominence, the commodification of labour power was effected by the reduction of the labouring poor to a complete dependency upon money wages⁹¹. Such a development required the establishment of new forms of property rights, the extinguishment of customary rights and perquisites, legal regulation of the wage-labour relation and welfare restructuration. Land enclosures, crucial to the commodification both of the land and labour power, occurred in two main stages in the three centuries from c. 1550, such that by 1850, private property rights had been established on almost all the arable land in England⁹². The first stage, the “Tudor enclosures” of the late fifteenth and the sixteenth centuries, was carried out predominantly using the mechanism of “enclosure by agreement”, whereby arrangements which were to a greater or lesser degree voluntary were ratified by actions in the Court of Chancery in the form of fictitious disputes which enabled the legal recognition of changes in property rights⁹³. The second great wave of enclosures occurred between 1760 and 1830, when the transformation of agriculture was effectively completed by the enclosure of six million acres of common land in a process officially sanctioned by acts of parliament⁹⁴ - something described by Marx as a “parliamentary coup d’état”⁹⁵. In this manner, landowners used the mechanism of “Enclosure Acts” to annex great expanses of common land, swallowing up open-field villages in the creation of large enclosed lordships⁹⁶.

⁸⁸ Marx, *Capital* Vol. 1, p. 874

⁸⁹ Marx, *Capital* Vol. 1, p. 875

⁹⁰ Marx, *Capital* Vol. 1, p. 875-6

⁹¹ K. Doogan, *New Capitalism? The Transformation of Work* (Cambridge: Polity, 2009), pp. 104-5

⁹² M. Overton, *Agricultural Revolution in England: the Transformation of the Agrarian Economy 1500-1850* (Cambridge: CUP, 1996), p. 147

⁹³ Overton, *Agricultural Revolution in England*, pp. 148, 156-157

⁹⁴ Overton, *Agricultural Revolution in England*, pp. 148; Doogan, *New Capitalism?*, pp. 105-6

⁹⁵ Marx, *Capital* Vol. 1, p. 886

⁹⁶ E. Hobsbawm, *The Age of Revolution: Europe, 1789-1848* (London: Weidenfeld & Nicholson, 1962), p. 46; Marx, *Capital* Vol. 1, pp. 885-887

The process of enclosure and the concomitant extinction of common rights landed a fatal blow to the English peasantry and may be seen as a key factor in the development of the rural proletariat⁹⁷. Legal enactment and process not only provided the legitimating framework for this process of expropriation, but further, provided a mechanism by which the repressive state apparatus enforced the profound changes to rural life that the developments presupposed. The Black Act of 1723, purportedly a response to the ‘emergency’ occasioned by instances of organised poaching in the forests of Windsor and Hampshire, created fifty new capital offences and “signalled the onset of the flood-tide of eighteenth-century retributive justice”⁹⁸. The 1723 Act operated primarily to criminalise the hunting or stealing of deer, the poaching of hares, conies or fish and the cutting down of trees in forests, parks and enclosed grounds, offences which became capital if the offending persons were armed or disguised⁹⁹. The Act contained various provisions designed to expedite the legal process, overriding customary procedure and the defences of the subject, including a section enabling persons failing to surrender upon order by the Privy Council to be presumed guilty and sentenced to death without trial¹⁰⁰. The Black Act, amended by subsequent enactments and evolving through a process of creeping judicial interpretation, became a malleable instrument of repression used to punish by example those displaying malice to the gentry and thereby strengthening the resources of stability in a time of popular disaffection¹⁰¹. Moreover, the 1723 Act must be seen as part of a broader process whereby the independent livelihoods of the rural poor, based upon the survival of pre-capitalist use-rights over land, were eroded by legal (as well as economic) forces. As Edward Thompson remarks, the foresters were seeing “the very roof beams which housed their practical economy...being eaten away” as successive legal decisions “signalled that lawyers had become converted to the notions of absolute property ownership, and that...the law abhorred the messy complexities of use-right”¹⁰². What was in effect occurring in many instances was the redefinition of age-old offices, rights and perquisites as criminal offences, a process which increased the dependency of the emerging proletariat upon money wages and one which could be ideologically rationalised in the context of the uncoupling of labour from the land and the consequent emergence of the product of labour as a discrete commodity¹⁰³.

The developments outlined above, whilst necessary, are insufficient to establish a basis for the capitalist mode of production, it being further required to institute such disciplinary practices as are necessary to domesticate the worker into the regime of wage-labour, and to regulate the conditions of labour – including such matters as the length of the working day and the level of wages – in such a manner as to facilitate capital accumulation. Legal mechanisms are central to the achievement of

⁹⁷ Overton, *Agricultural Revolution in England*, pp. 192

⁹⁸ E. Thompson, *Whigs and Hunters: the Origin of the Black Act* (London: Allen Lane, Penguin, 1975), pp. 206, 23

⁹⁹ Thompson, *Whigs and Hunters*, pp. 21-22

¹⁰⁰ Thompson, *Whigs and Hunters*, pp. 22

¹⁰¹ Thompson, *Whigs and Hunters*, pp. 201-2, 256

¹⁰² Thompson, *Whigs and Hunters*, pp. 240-1

¹⁰³ Thompson, *Whigs and Hunters*, pp. 207

all of these objectives, the power of the state being employed “to hasten, as in a hothouse, the process of transformation of the feudal mode of production into the capitalist mode, and to shorten the transition”¹⁰⁴. The transition to industrial society required “a severe restructuring of working habits – new disciplines, new incentives, and a new human nature upon which these incentives could bite effectively”¹⁰⁵. Enclosure and agricultural improvement entailed “the efficient husbandry of the time of the labour-force”, requiring crucially the synchronisation of labour, a shift from task-orientation to timed labour and a sharper demarcation between “work” and “life”¹⁰⁶. Pre-capitalist modes of production had been characterised by the intermingling of social intercourse and labour, borne out in irregular work patterns punctuated by alternate bouts of intense labour and idleness – practices which would have to be overcome in order to fuel the advance of industrial capitalism¹⁰⁷. The problem for the capitalist was the acquisition of a sufficient quantity of labour-powers possessing the right qualifications and skills and being sufficiently habituated to the rhythm of regular unbroken daily work¹⁰⁸. Unsurprisingly, workers were often unwilling to accept the shift in temporality entailed by the transition from the “seasonal ups and downs of the farm or the self-controlled patchiness of the independent craftsman” to the monotonous rigidity of timed labour presided over by the deadening “tick-tocks” of the devil’s mill. The answer was found, as Hobsbawm has recognised, in a draconian labour discipline articulated in the form of a ‘Master and Servant’ code mobilising the law on the side of the employer¹⁰⁹.

The Master and Servant Law of 1823 instituted a profound asymmetry in the rights and obligations of employers and workers, providing for instance that a breach of contract on the part of a master constituted a civil offence, while the violation of an agreement by an employee was a criminal offence subject to retribution of up to three months imprisonment with hard labour¹¹⁰. There is evidence to suggest that some 10,000 prosecutions per year occurred under the 1823 Act¹¹¹. Moreover, the Master and Servant Law was only one of a succession of enactments which regulated wage-labour in such a manner as to create and reproduce conditions of exploitation, something which is hardly surprising given Adam Smith’s observation that “Whenever the legislature attempts to regulate the differences between masters and their workmen, its counsellors are always the masters”¹¹². The Statute of Labourers of 1349 aimed at a compulsory extension of the working day, whilst prohibiting on pain of imprisonment the payment of wages higher than those fixed by the statute. The penalties were greater for the worker receiving such wages than the employer paying them, a lopsidedness mirrored by Elizabeth’s later Statute of Apprentices, which

¹⁰⁴ Marx, *Capital* Vol. 1, pp. 915-916

¹⁰⁵ E. Thompson, *Customs in Common* (London: Merlin Press, 1991), p. 354

¹⁰⁶ Thompson, *Customs in Common*, pp. 358-9

¹⁰⁷ Thompson, *Customs in Common*, pp. 358-369

¹⁰⁸ Hobsbawm, *The Age of Revolution*, p. 66

¹⁰⁹ Thompson, *Customs in Common*, pp. 356, 360; Hobsbawm, *The Age of Revolution*, p. 66

¹¹⁰ Doogan, *New Capitalism?*, p. 106

¹¹¹ Doogan, *New Capitalism?*, p. 106

¹¹² A. Smith, *Wealth of Nations* Vol. 1 (Edinburgh, 1814), p. 142. Referenced in Marx, *Capital* Vol. 1, p. 900 fn

set the penalties at twenty-one days and ten days imprisonment respectively¹¹³. Further, from the fourteenth century until 1825, worker's combinations were regarded as "heinous crimes", notable enactments including the Mutiny Act of 1797, the Seditious Meetings Act of 1817 and the Combinations Act of 1799-1800, the latter extending prohibitions on organisation to all trades which previously only applied to specific occupations. Indeed, it was not until 1875 that there was established formal legal equality between capital and labour, in contradiction with the vintage of platitudes regarding the "freedom and equality" of market exchanges¹¹⁴.

The final piece in the puzzle as regards the institution of the market in labour and the created dependency of the working population was a program of social reforms which punished those new proletarians who, having been forcibly expropriated from the soil, were transformed by circumstance into vagabonds and paupers. The nascent manufactures had a limited capacity to absorb this new surplus population, such that those unable to find employment were forced to scrape a living by different means, these latter practices being chastised under a system which regarded such criminality as 'voluntary'¹¹⁵. In the reign of Henry VIII, some seventy-two thousand "great and petty" thieves were put to death under a succession of legislative enactments which provided for the whipping, disfigurement and ultimately, capital punishment of vagabonds¹¹⁶. Similarly terroristic laws were passed under Edward VI and Elizabeth I, permitting the enslavement, flogging, branding and execution of idlers and unlicensed beggars, whilst provision was made in the reign of James I for the public whipping, imprisonment and hanging of "rouges". The latter legislation remained in force until the beginning of the eighteenth century and was mirrored by laws of similar substance in the developing capitalist economies of France and the Netherlands¹¹⁷. Beyond the criminalisation of pauperism and the grotesque punishment of those subjected to it, profound social changes were engineered by the social welfare reforms of the Speenhamland Act of 1797 and the Poor Law of 1834, enactments Doogan has described as "milestones in state social policy which finally completed the establishment of the labour market"¹¹⁸. The 1797 Act modified the parish-based system of poor relief established by the Poor Law Act of 1601 and the Settlement Act of 1662, supplementing wages from the poor rates on a flexible scale varying with the price of bread¹¹⁹. However well-intentioned, the Speenhamland system functioned in such a manner that those property owners not employing labour effectively subsidised those that did – as a consequence, farmers were encouraged to lower wages and workers became demoralised. Conditions worsened under the Poor Law of 1834, which entitled paupers to poor relief only within the newly established workhouses, where workers were paid wages below

¹¹³ Marx, *Capital* Vol. 1, p. 900-1

¹¹⁴ Doogan, *New Capitalism?*, p. 106; Marx, *Capital* Vol. 1, p. 901

¹¹⁵ See Marx, *Capital* Vol. 1, chapter 28

¹¹⁶ Marx, *Capital* Vol. 1, pp. 896-7

¹¹⁷ Marx, *Capital* Vol. 1, pp. 897-9

¹¹⁸ Doogan, *New Capitalism?*, p. 107

¹¹⁹ Overton, *Agricultural Revolution in England*, p. 187

market rates, systematically separated from their families and subjected to deliberately inhospitable conditions¹²⁰.

The above study outlines the dynamics of the creation of the wage labour system using the illustrative example of the agricultural revolution in England. The process is one of the forcible expropriation of the mass of the population from the means of production and their created dependency upon money wages. Law is crucially implicated in this transformation, which is accomplished by means of the establishment of new forms of property rights, the extinguishment of customary rights and perquisites, legal regulation of the wage-labour relation and welfare restructuration. Central to this project is an expansion of the coercive powers of the state apparatus, which is facilitated and legitimised by legal enactment. The role of law with regard to such violent social transformation can be understood in terms of the *sword*. It must be emphasised at this point that the process of primitive accumulation is not merely an historical curiosity, but rather has recurring, contemporary relevance. Such acts of appropriation are embedded within extant economic relations, providing the foundational framework for each and every market transaction. It can be appreciated that the modern worker's lack of control over the means of production and access to independent means of subsistence is what compels her to sell her labour to the capitalist and buy his wage goods on the market. In this regard, the legal form operates to veil the asymmetrical power relations created by the "original sin" of primitive accumulation behind the idealised equality of commodity exchange. Law can thus be seen as legitimising and ideologically rationalising economic interactions which are inherently exploitative. Does Justitia's blindfold spare her from the irony of the juxtaposition of delicate scales and bloody sword? Moreover, we may witness the occurrence of contemporary processes of primitive accumulation as populations in the periphery of the capitalist economy are progressively integrated into the system of generalised commodity production. Indeed, one Marxist position on imperialism would attempt to assimilate recent imperialist projects and even neoliberal globalisation with primitive accumulation, as part of an evolving organic interrelation between processes of accumulation by exploitation and accumulation by dispossession¹²¹.

Law as Shield

Law is centrally involved in the institution and reproduction of such social conditions as are necessary to facilitate the accumulation of capital through the extraction of surplus value from the working population. The legal system is constitutive of the labour market, provides the coercive foundation for the system of private property and operates to lubricate the multitude of commodity exchanges which form the basis of the distribution of social wealth under a capitalist system of

¹²⁰ Doogan, *New Capitalism?*, p. 107; Overton, *Agricultural Revolution in England*, p. 187

¹²¹ See for instance D. Harvey, *The New Imperialism* (Oxford: OUP, 2005); R. Luxemburg, *The Accumulation of Capital* (A. Schwarzschild trans.) (London: Routledge, 1951)

production. However, the legal system is to *some* degree institutionally insulated from the direct control of the bourgeoisie and moreover, must in order to effectively perform its ideological function maintain an appearance of operational consistency and conceptual coherence. Legal education inculcates in practitioners a complex disciplinary apparatus, coupled with an ideological commitment to the core values and presumptions of legal thought, the latter generally being severed from any systematic critical understanding of the role of law within processes of economic production and social reproduction. The logic and values of the legal system are projected outwards in society through a combination of symbolic imagery and ceremonial procedure. Legal actors may not conceive themselves as behaving in the direct interests of capital, yet their actions, taken in furtherance of the logic of the legal system and in accordance with its core principles, may have precisely that effect as a result of the structural interconnection between the legal form and capitalist economy¹²². However, it is the insulated (autopoietic?) and internally coherent systemic logic of the law which provides the opportunity for the progressive operationalisation of legal machinery by labour and social groups oppressed under capitalist production. Law provides a rationalised normative system for market exchanges, producing stable expectations for capital as regards the production and realisation of surplus value and entrenching the gains made by the bourgeoisie during processes of primitive accumulation. Yet at the same time as law is constitutive of the social basis of capitalist exploitation, it may also be seen to *frame* and *limit* such domination in crucial ways. Thus, whilst the legal system permits the hiring of wage labour, it may prohibit the physical coercion and punishment of workers, or compel capital to contribute to the reproduction of labour-power through the enforcement of a designated minimum level of monetary remuneration. These concessions generally arise as a result of the social mobilisation of labour, the latter using its leverage in the process of production to exert pressure upon capital. When this action is coupled with appropriate interventions in the political and legal spheres, labour may be able to achieve the crystallisation of the gains of such struggle in legal enactment. Thus, it may be possible to legally entrench the victories occasioned by collective organisation and action, constructing a legal “high water mark” against further encroachment by capital.

Lenin was acutely aware of the progressive potential of the strategic deployment of legal machinery, encouraging the use at given historical stages of those ‘legal opportunities’ which the enemy is forced to provide when placed on the back foot by political mobilisation¹²³. Indeed, argues Pashukanis, he strongly opposed the degeneration of revolutionary tactics into the “fetishist denial of legality” which in the mind of the petit bourgeois revolutionary “supplants both the sober calculation of the forces and conditions of struggle and the ability to use and strengthen even the most inconsequential victories in preparing for the next assault”¹²⁴. The task of the revolutionary is

¹²² See part three of this paper – ‘Law as Fetter’

¹²³ E. Pashukanis, ‘Lenin and Problems of Law’ in E. Pashukanis, *Selected Writings on Marxism and Law* (P. Beirne & R. Sharlet eds.) (London: Academic Press, 1980)

¹²⁴ Pashukanis, ‘Lenin and Problems of Law’

therefore not solely to overthrow and unmask the legalistic fetish of the system, but also in certain periods to engage in the “dirty, thankless work” of struggle within the law, articulating demands in the form of the legality which, imposed by the enemy, “is re-imposed on him by the logic of events”¹²⁵. Edward Thompson gives a similar warning against legal nihilism in *Whigs and Hunters*, stressing that it would be an error to “give up the struggle against bad laws, and to disarm ourselves before power” since to do so would be “to throw away a whole inheritance of struggle *about* law, and within the forms of law...”¹²⁶. Thompson provides a sophisticated analysis which recognises that whilst law can be seen as mediating and reinforcing extant class relations, indeed ideologically legitimating the latter, there remains a limit to the pliability of the legal form which restricts its use as an instrument of power. For the legal system to effectively function as ideology, it must display a sufficient degree of systemic integrity, maintained by way of respect for its internal logic and criteria of equity. The translation of the demands of political power into legal enactment is thus a frictional process, the syntactic structures and limitations of the legal form imposing restrictions upon political whim. In this way, rulers can be seen as “prisoners of their own rhetoric”, moving within an actional framework which fundamentally reinforces the class structures which brought them to power, yet considerably limits their freedom of movement – whilst the rules suit the rulers, they must not be seen to be wilfully broken, or the game is up¹²⁷. For Thompson, the restrictive conditions imposed by the legal mediation of political force create opportunities in certain limited circumstances for class conflict to be played out in a legal forum. The working class and other political agents may operationalise legal mechanisms, exploiting the performative contradiction between the formal equality of the law and the material inequality of the underlying economic structure, to secure meaningful material concessions. Thus, law may on occasion be seen to inhibit power and afford some protection to the powerless – law has become *shield*.

It is crucial to note that the two functions of law we have outlined thus far, those of *sword* and of *shield*, exist together in symbiotic relation. To the extent that the legal system limits the exercise of power through the subjection of the latter to the substantive and procedural logic of the legal form, law also provides the framework of legitimation and consent that underwrites and consolidates such power. This paradoxical coupling of law’s *restricting* and *enabling* functions leads to the perverse effect that struggles within the law which seek to defend labour against the most inhumane effects of its exploitation by capital can actually help to stabilise the capitalist mode of production, strengthening the foundation upon which future exploitation rests. Such stabilisation occurs both at ideological and structural levels. As regards the former, legal victories for labour help bolster the appearance of impartiality and legitimacy of the legal system. The stabilisation which we have called “structural” refers to the effect which reforms, in regulating the conditions of exploitation without undermining its basis, may have in securing the sustainable reproduction of a

¹²⁵ Pashukanis, ‘Lenin and Problems of Law’

¹²⁶ Thompson, *Whigs and Hunters*, 266 (emphasis in original)

¹²⁷ Thompson, *Whigs and Hunters*, pp. 258-269

healthy and sufficiently content working population. In this regard, labour movements, perhaps intersecting with bourgeois reformist movements underlain by notions of “civilised morality”, can function to offset the tendency of capital, motivated by the coercive pressures of competitive accumulation, to increase the rate of exploitation to levels which threaten to undermine the reproduction of labour-powers at their current level of productivity. Marx, in discussing this matter, grounds his analysis in the experience of the passing of the factory legislation of 1853-1860. These enactments, in regulating industrial practices which had led to the premature exhaustion and (ultimately) death of factory workers, achieved a remarkable physical and moral regeneration of labour-powers¹²⁸. Hence, the concessions achieved by class struggle may work to safeguard the vitality of the labouring population, ensuring the sustainable reproduction of that material source of value which the class of employers of labour, despite their dependence upon it, have failed to guard and cherish. From a slightly different perspective, the crystallisation of the concessions gained through class struggle in legal enactment may be regarded as examples of the state apparatus working to mediate the egoistic interests of individual capitals in favour of total social capital.

It would be a mistake to conclude from the above that movements which seek progressive reform within the capitalist mode of production are incapable of achieving a trajectory which leads beyond the narrow horizon of bourgeois right, being condemned instead to reinforce – and ‘perfect’ – the exploitation of labour by capital. Firstly, the experience of collective organisation and activity of the working class in opposition to capital leads to the progressive development of class consciousness, whilst the achievement of even minor victories, especially those achieved in alliance with other social forces, boosts confidence and strengthens labour’s power of attack¹²⁹. Moreover, building on Hegel’s *Logic*, it may be discerned that quantitative differences at a certain point pass over by a “dialectical inversion” into qualitative distinctions¹³⁰. Thus, in a manner analogous to the transformation of liquid water into solid ice as a result of an accumulation of small changes in temperature, the progressive reduction in the length of the working day would eventually reach a “tipping point” at which the accumulation of capital would cease due to the impossibility of the extraction of surplus value. It would of course be a mistake to infer from this that the capitalist mode of production could be overthrown “quietly” or discretely as a result of a succession of progressive reforms. Such a route would be blocked by the deployment of reactionary forces, including crucially the coercive state apparatus, such instruments operating with an increasing intensity as the point of transformation is neared. Hence, the working class must achieve sufficiently powerful political and military organisation to facilitate the overthrow of the bourgeois state.

¹²⁸ Marx, *Capital* Vol. 1, pp. 406-8, full discussion in chapters 10 & 11

¹²⁹ Marx, *Capital* Vol. 1, p. 409

¹³⁰ Marx, *Capital* Vol. 1, p. 423; A. Callinicos, *The Revolutionary Ideas of Karl Marx* (London: Bookmarks, 1996), p. 60

Whilst some of the insights provided by Edward Thompson in *Whigs and Hunters* interface productively with the notion of law as *Shield* developed here, he at certain stages goes further than the present analysis. For instance, Thompson contends that the notion of the inhibition of power by law and the regulation and reconciliation of conflict by means of the rule of law should be regarded as a “cultural achievement of universal significance”. Indeed, he suggests that the rule of law itself is an “unqualified human good”¹³¹ and finds it impossible to conceive of any society without law¹³². Now, it must certainly be recognised that there is much to distinguish the rule of law from the arbitrary exercise of power and that the development of the legal system was progressive in view of the struggle against royal absolutism in the 16th and 17th centuries. However, in my view it is a mistake to conclude that the legal form is of *universal* significance and that it has an enduring utility which will guarantee its perseverance in any imaginable future society. Indeed, the analysis Pashukanis provides of the formal specificity and historical contingency of the legal system (discussed at length in part three of this paper) seems more convincing. Ultimately, a lot hinges on the notion of law that is operative in analysis, whether it be the relatively *thin* concept preferred by Thompson, which seems at times to amount to little more than the inhibition of power by rules, or the *thicker* notion employed by Pashukanis, which builds in a greater degree of formal particularity and contrasts specifically *legal* regulation to other forms of social control. In my view, the latter approach is preferable insofar as the former is susceptible to charges of legal imperialism, since it is likely to result in the juridification of social life in its entirety. Moreover, the incisiveness, purchase and particular relevance of a legal analysis is eroded when law is severed from the concrete, historical context of its formal and institutional development. This problematic is evidenced by Thompson’s analysis of the interaction between the “moral economy” of the foresters and the notions of exclusive property right promulgated by the process of enclosure, which he describes in terms of the forester moving within “visible or invisible structures of law” which are “deeply imbricated within the very basis of productive relations”¹³³. This effectively pluralist analysis is premised upon an abandonment of a clear analytical distinction between ‘law’ as legislated under the officially constituted political order – and backed by the coercive power of the state as the concentrated and organised force of society – and the informal, customary regime underlying the eroding moral economy. In my view, this is a conceptual move which is both analytically disorientating and impoverishing.

Another analysis which is instructive with regard to the development of the notion of law as *shield*, yet must ultimately be departed from in important ways, is that provided by Alain Supiot in his *Homo Juridicus*¹³⁴. Supiot sets out to develop an understanding of the operation of the legal system from an anthropological perspective, emphasising the role which law plays in constituting the

¹³¹ Thompson, *Whigs and Hunters*, pp. 265-6

¹³² Thompson, *Whigs and Hunters*, p. 260

¹³³ Thompson, *Whigs and Hunters*, p. 261

¹³⁴ A. Supiot, *Homo Juridicus: on the Anthropological Function of Law* (London: Verso, 2007)

individual and situating her within an epistemological universe which makes sense of material reality. For him, law is a technique of “inter-diction”, a communicative mechanism which mediates the person and her representation of the world, interposing a realm of shared meaning which transcends the individual¹³⁵. The effect is to subject social interaction to the rule of reason, binding human society together by the imposition of responsibilities, or limitations upon action, justified by reference to a set of dogmatic resources embedded within law¹³⁶. In this way, the legal system operates to instantiate a set of beliefs, an ideological system which, despite being founded upon indemonstrable “certainties”, nevertheless forms an inter-subjective reference point by virtue of which the worth and particularity of the human individual can (to some degree) be guaranteed. The result of this mode of reasoning is to impose a narrow dichotomy between legality and barbarism which is somewhat reminiscent of Hobbes’ *Leviathan*. People cannot live “freely and peaceably” without the instituted principles of the law, whilst juridical personality becomes a last refuge of humanity and a final defence against descent into “scientific absolutism” and totalitarian domination¹³⁷. From this perspective, Supiot attacks all those intellectual and political positions which fail to respect the sanctity of legal values. Indeed, he even goes so far as to assimilate, on the one hand, the fascistic destruction of legal personality as a prelude to authoritarian repression, with on the other, the materialist analysis of the historical contingency of the legal form and the projection that in post-capitalist society, law will ultimately wither away having outlived its utility¹³⁸.

Supiot’s analysis is compromised by crucial methodological weaknesses which derive in part from a failure to maintain a clear distinction between essential and phenomenal relations. Further, his investigation, proceeding in the spirit of the Hegelian dialectic, appears to understand social history in terms of the progressive refinement of consciousness, mental conceptions being severed from the material context of their development and reified as abstract categories which act as determinate forces upon historical processes. This type of reasoning is manifested in Supiot’s attempt to sever the “idea” of law from its institutional instantiation, isolating the notion of “obligation” from the web of contractual relations which constitute the market. This approach can be usefully contrasted to that of Pashukanis, who contends that the norm cannot exist but in the concrete multiplicity of legal relations, these being the fabric through which the norm is woven¹³⁹. Moreover, Supiot investigates technological development as an autonomous social phenomenon disconnected from the structural antagonism between capital and labour. Hence, he attacks the excesses of technoscience and “scientism” as a substitute for the coercive effects of competitive accumulation, which compel the capitalist to innovate in such a manner as to increase productivity and maximise the rate of exploitation. It is in large part due to the intertwinement of technological innovation and

¹³⁵ Supiot, *Homo Juridicus*, prologue at xxiv

¹³⁶ Supiot, *Homo Juridicus*, prologue

¹³⁷ Supiot, *Homo Juridicus*, prologue at xv, xviii-xix

¹³⁸ Supiot, *Homo Juridicus*, pp. 31-4

¹³⁹ E. Pashukanis, *Law and Marxism: A General Theory* (London: Pluto Press, 1983), Chapter 3

capitalist relations of production that scientific development, itself containing enormous potential for human progress and emancipation, becomes instead a weapon for the intensified exploitation of labour. Further, the competitive process of the diversification and repulsion of capitals¹⁴⁰ is a key mechanism in propelling scientific research into areas with the greatest potential for profitable investment, rather than those which might most benefit humanity.

Despite the limitations summarised above, there may be salvaged from Supiot's analysis certain insights which are useful in our connection. Most valuable is his recognition that law can operate as a social hermeneutic, an open epistemological framework which evolves in an iterative manner through a dialogical process of (re-)interpretation and application¹⁴¹. In this way, Supiot argues that human rights can become a flexible resource which may be adapted in a manner which allows their deployment in a diverse range of cultural and institutional environments. This analysis captures from an interesting perspective the role that law, as a mode of social communication and representation, can play in the cross-fertilisation of political struggle, enabling the communicability of victories achieved in different contexts. Law provides a powerful rhetorical arsenal which can in periods of heightened class struggle and political consciousness be deployed in a manner which juxtaposes the avowed ideals and principles of the legal system with the materiality of their class-inflected realisation. Thus, the idea of universal rights embodied in the legal form emerges as "one of the greatest emancipatory ideas in world history", insofar as it enables bourgeois society to be challenged by those it suppresses "according to its own logic, caught out in a performative contradiction between what it [says] and what it [does]"¹⁴². A concrete example of this process may be seen in the manner in which the French revolution and the Declaration of the Rights of Man and the Citizen of 1789 gave impetus to and galvanised the Haitian slave revolts of 1791-1804. The principles of universality and equality embedded in the Declaration and the subsequent constitutions of 1793 and 1795 brought into sharp relief the political and economic asymmetries underlying imperial domination in the French colonies. Thus, however useful ideas of universal right and equality might have been to the French bourgeoisie with regard to domestic struggles against the white cockades and the system of privileges and perquisites which characterised the old regime, these ideas possessed a transformative power which escaped direct control. Instead, they could be seen as part of a (relatively) open system of thought which would be deployed as a rhetorical weapon by the revolutionary movement in Haiti.

At this point, it is crucial to avoid slipping into a form of idealism which might suggest that developments of consciousness, of political and legal thought, operate as the determinate factor in processes of social transformation. In order to circumvent this danger, we must effect a change of

¹⁴⁰ See Marx, *Capital* Vol. 1, pp. 776-7

¹⁴¹ Supiot, *Homo Juridicus*, Chapter 6

¹⁴² T. Eagleton, *The Illusions of Postmodernism* (Oxford: Blackwell, 1996). Referenced in N. Davidson, 'Enlightenment and anti-capitalism' (2006) 10 *International Socialism*

analytical perspective from that which appears to underlie Supiot's argument in *Homo Juridicus* – we must bring political struggle centre stage. It may be discerned that progressive political movements tend not to have a legal genesis – they cannot be said, generally, to arise from developments in *legal* thought, the operation of *legal* institutions or the specifically *legal* actions of legal, political and economic actors. Rather, the analysis which I have attempted to outline here is of law acting as a medium for the articulation and crystallisation of victories occasioned by broader processes of political and economic struggle, and as a mechanism for communicating and transposing these into different social contexts. I would contend, by implication, that while legal mechanisms may allow the entrenchment of material concessions exhorted by struggle, thus providing some degree of protection against their erosion by reactionary forces, such guarantees are not self-activating insofar as they are produced and powered by social forces operating predominantly outside of the official procedures of the legal system. Returning to Haiti for instance, it was only the material context of the bloody struggles of the Haitian rebels against French colonial rule which destabilised existing social relations and widened the scope of political possibility, opening a space within which the status quo could be placed in contradistinction with the principles of the French revolution. Moreover, the Declaration of the Rights of Man derives its power not from its literary elegance or grammatical accuracy, but rather because it symbolises profound social changes which cannot be wholly perceived through a legal lens. The continued effectiveness of legal guarantees thus depends on the maintenance of the balance of class forces which effected their enactment – the erosion of this foundation will allow labour's gains to be rolled back or subverted. This may occur especially during periods of economic crisis, which the bourgeoisie may attempt to countervail by way of the increased exploitation of labour and the mass devaluation of capital. The legal *shield* must be held fast to the body of the proletariat if it is not to be prised from its grasp and transformed once more into an instrument of domination by capital.

Law as Fetter

The third figure which it is useful to invoke in our thematisation of the role of the law relative to processes of social transformation is that of the *fetter*. In this regard, the analysis is based crucially upon an understanding of the historical contingency of the legal form, on recognition of the correspondence of the specifically legal form of social regulation to the capitalist mode of production. Given that the legal form grows out of the system of generalised commodity production which characterises bourgeois society and is intertwined with the social relations of production which correspond thereto, it must ultimately be abandoned together with those relations in the transition to a more advanced form of economic organisation. Since law supports and reproduces capitalist relations of production, it is imbricated in the process by which the latter, at a particular historical conjecture, come to operate as a limit upon the further development of the forces of production and their deployment in the interests of humanity. In this regard, the legal

form may be seen to suffer a similar fate to those ideas and institutions of feudal society which were torn asunder in the transition to the capitalist mode of production.

Again, it is important to emphasise that the function of law as *fetter* does not prejudice its role as *sword* and as *shield* outlined above, rather the figures should be seen as three perspectives or windows from which to view the integrated operation of the legal system. Law (as *sword*) is crucially implicated in the construction and reproduction of those social conditions which are required for the accumulation of capital by the extraction of surplus value. This notwithstanding, legal mechanisms may be operationalised (as *shield*) by labour and oppressed groups under capitalism to consolidate their struggles against the worst effects of their exploitation, holding the avowed principles of the legal system in contradistinction with the inequities presupposed by capitalist production. The entrenchment of political gains in legal enactment must certainly be recognised as a substantial achievement, indeed one with the potential to greatly improve the health and living standards of the working class¹⁴³. However, the articulation of the victories of labour in legal form is problematic insofar as it imposes upon those demands a syntactic structure and inner logic which, as we shall see, is closely coupled with the logic of the commodity form. Legal reforms, by their nature, tend not to challenge the central dynamics of the capitalist system, indeed at times operating to stabilise the process of accumulation at both structural and ideological levels. The ability to operate the legal machine may be of substantial political advantage to agents working strategically within the bounds of capitalist economy. Nevertheless, it may be foreseen that, following the transition – driven by the political activity of those oppressed under capitalism – to a new form of social and economic organisation, legality will ultimately outlive its usefulness. The legal form, as a historically specific mode of social regulation corresponding to the system of generalised commodity production, will start to restrict the unfolding of the new political order. Thus legality appears now as a limit, a restraint under which society, liberated from the exploitation and alienation of capitalist production, starts to chafe: law has become *fetter*.

In order to further develop the notion of law as *fetter*, it will be necessary to examine in further detail the analysis provided by Pashukanis in *A General Theory of Law and Marxism*¹⁴⁴. As we have seen, Pashukanis sought to develop an elementary framework for the elaboration of a revolutionary dialectical and materialist method of jurisprudence. In this connection, he was careful to avoid the crude, instrumentalist approach which would attempt to demonstrate the direct correspondence of the content of particular laws and legal institutions with the material interests of the bourgeoisie¹⁴⁵. Rather, he aimed to provide an analysis of the fundamental characteristics of the legal superstructure through an interrogation of the most basic and abstract juridical concepts - the

¹⁴³ Marx himself celebrates the advances occasioned by the enactment of the Factory Acts of 1853-1860 – *Capital* Vol. 1, pp. 406-8, 416

¹⁴⁴ E. Pashukanis, *Law and Marxism: A General Theory* (London: Pluto Press, 1983)

¹⁴⁵ Pashukanis, *Law and Marxism*, editor's introduction at p. 11, preface to the German edition at p. 35

legal subject and legal norm – and an evaluation of the operational modalities of the legal relation¹⁴⁶. In this regard, Pashukanis’ argument proceeds in a manner which is reminiscent of Marx’s analysis of political economy in *Capital*, beginning as it does with an appraisal of the fundamental categories of the legal form, before branching out in a process of dialectical expansion to investigate both the inner relation between these concepts and the manner in which associated social phenomena can be explained in light of their operation. Given that the most fundamental juridical concepts can be seen to maintain their logical and systematic meaning across multiple legal spheres¹⁴⁷, Pashukanis’ approach is able to produce insights which have relevance for the legal superstructure in its entirety. He could, employing this method, address the “particular problematic” of the legal form, doing justice to law’s specific internal structure, which other approaches are apt to dissolve away “into some vaguer notion of social control”¹⁴⁸.

Crucially, Pashukanis proceeds from the premise that the development of the legal superstructure cannot be understood merely as the formation of an abstract schema of legal ideology, but rather as an actual process of the transformation of human relations into legal relations, embodied in “profound, universal changes of an objective kind”. Thus, legal relationships are not merely mystified mental conceptions of economic relations, masking the ‘despotism of the factory’ behind the ‘republic of the market’¹⁴⁹, but have a concrete existence in real social forces¹⁵⁰, as evidenced by such developments as: the progressive dominance of relations of liability; the disintegration of organic patriarchal relations and their replacement by legal relations between formally equal subjects, and; the precipitation of a political authority as a separate power and the resultant differentiation between the spheres of public and private relations¹⁵¹. Expressing the point succinctly, Pashukanis remarks that “Law as a form does not exist in the heads and the theories of learned jurists alone. It has a parallel, real history, which unfolds not as a set of ideas, but as a specific set of relations”¹⁵². It is important to note at this point however that these two parallel existences of the legal form – ideological and concrete – are not completely coincidental, there existing a cleavage of sorts between the actual legal mediation of the relations of production and the theoretical reflection of the legal system expressed by juridical concepts as logical abstractions. For Pashukanis, actual legal mediation of economic relations is accomplished only in the instant of the contract, the moment at which the legal relation as a psychological phenomenon (by virtue of which the commodity owner is *aware* of himself as a commodity owner) becomes an objective economic fact – “an economic relation which is inextricably linked to its similarly objective legal form”. Such legal mediation has objective consequences which escape the consciousness or will of

¹⁴⁶ Pashukanis, *Law and Marxism*, preface to the second Russian edition at p. 40, p. 47

¹⁴⁷ Pashukanis, *Law and Marxism*, p. 47

¹⁴⁸ Pashukanis, *Law and Marxism*, editors introduction at p. 11-12

¹⁴⁹ Pashukanis, *Law and Marxism*, preface to the second Russian edition at pp. 39-40

¹⁵⁰ Pashukanis, *Law and Marxism*, preface to the second Russian edition at p. 59

¹⁵¹ Pashukanis, *Law and Marxism*, preface to the second Russian edition at pp. 40-41

¹⁵² Pashukanis, *Law and Marxism*, p. 68

the commodity owner, organised instead by a complex legal machinery consisting of criteria, statutes, law courts and the compulsory execution of court decisions¹⁵³.

Pashukanis is extremely critical of those Marxist theorists who, in seeking to develop a notion of “proletarian law”, unwittingly remain within a narrow bourgeois horizon, insofar as they implicitly accept the form of law as “supra-historical and capable of constant renewal”¹⁵⁴. While in bourgeois society, the legal form may be seen to attain universal significance, such that legal ideology becomes the ideology par excellence¹⁵⁵, Pashukanis recognises that the legal system, as with any social form, has a historical dimension, and sets out to analyse law in its social and historical materiality. For him, any attempt to elaborate a theory of law in general, abstracted from the objective processes of its historical development, will be fruitless insofar as it must inevitably result in “empty scholastic verbal formulae”¹⁵⁶. Pashukanis attempts rather to examine the legal system as it exists in bourgeois, capitalist society, this being the point at which legal relations achieve their most highly developed, most universal and most consummate expression¹⁵⁷. It is important to note that Pashukanis is not thereby suggesting that law did not exist in earlier societies, but rather that it did so only in embryonic or rudimentary forms, the true nature and orientation of which was only revealed by the consequent refinement of the legal relation¹⁵⁸. For Pashukanis, it is no mere coincidence that law attains its most developed form in bourgeois society. Instead, he asserts that there is an “indissoluble internal connection” between the categories of the economy based on the commodity and on money, and the legal form itself. This connection is borne out by the category of the legal subject, which can be regarded as “the indispensable and unavoidable complement of the commodity”¹⁵⁹. Thus, the legal subject, as the “abstract bearer of all possible legal claims”, can be compared directly with, and indeed recognised as the juridical reflection of, the commodity owner, as an “abstract, impersonal subject of rights in things”¹⁶⁰. Now, of course, commodities were produced in pre-capitalist societies, yet it is only in bourgeois society that commodity production becomes *generalised* – that use-values are increasingly produced primarily for exchange, and progressively, the entirety of social wealth passes through the mechanism of commodity circulation¹⁶¹. It is under these conditions that the legal form obtains universal significance and legal ideology can obtain a firm grip on human consciousness.

At this point, it will be useful to take a step back and examine exactly what Pashukanis is proposing. Essentially, he is contending that in the juridical concepts and categories of the legal

¹⁵³ Pashukanis, *Law and Marxism*, preface to the second Russian edition at pp. 43-44

¹⁵⁴ Pashukanis, *Law and Marxism*, editor’s introduction at p. 18

¹⁵⁵ Pashukanis, *Law and Marxism*, preface to the second Russian edition at p. 45

¹⁵⁶ Pashukanis, *Law and Marxism*, p. 57

¹⁵⁷ Pashukanis, *Law and Marxism*, preface to the second Russian edition at p. 44

¹⁵⁸ Pashukanis, *Law and Marxism*, p. 70

¹⁵⁹ Pashukanis, *Law and Marxism*, preface to the second Russian edition at p. 42

¹⁶⁰ Pashukanis, *Law and Marxism*, editor’s introduction at p. 14

¹⁶¹ Marx, *Capital* Vol. 1

superstructure there are reflected, or expressed, certain modalities of social interaction, certain objective relationships, which are grounded in the materiality of the economic structure and which determine the existence of their “counterpart” legal relationships. He is seeking to demonstrate the inextricable interrelation of the development of the legal form and that of the economic system in which social relations of production are expressed in the form of the exchange (and cumulatively, circulation) of commodities, as the objectification of a specific quantity of socially necessary labour time (value). Thus, legal regulation is revealed as a particular – and necessarily contingent – historical form, whilst juridical categories, in spite their apparent universality, are now seen as the specific reflex of the economic actors and relations which characterise bourgeois commodity-producing society. Law itself cannot be regarded as an appendage of human society in the abstract, but rather “as an historical category corresponding to a particular social environment based on the conflict of private interests”¹⁶².

The implication of Pashukanis’ argument is that as bourgeois relations of production come to be replaced by those corresponding to a developing post-capitalist mode of production, we will see the disappearance of the juridical factor from social relations, and ultimately the withering away of law altogether¹⁶³. During the transitional period, social relations will to some extent continue to be constrained by the “narrow horizon of bourgeois right”, such vestiges of the legal form being part of the heritage of the bourgeois epoch from which the population must eventually be liberated, a *fetter* from which they must be set free. The case thus developed by Pashukanis is controversial among theorists working both within and outside the Marxist tradition of enquiry. While there is insufficient space for an exhaustive account of the arguments here, it should be said that much confusion can be avoided by the retention of a firm grasp upon the specific understanding of “law” that is operative in Pashukanis’ analysis. For him, law entails something more specific than a system of normative regulation or mode of social control, this being most clearly expressed in the distinction he draws between *legal* and *technical* forms of regulation.

To say that law will *wither away* is not to suggest that human conduct in a post-capitalist society will be entirely free from subjection to particular rules or frameworks of action. It is rather to suggest that the specifically “legal” form of regulation that has developed symbiotically with bourgeois relations of production will disappear. Thus, we may see for instance a rationalisation of the social response to acts of interpersonal violence, involving a transition from the retributive, individualist approach which characterises bourgeois justice to a pedagogical, socialistic model which accounts for and attempts to undercut the contextual nexus which underlies the behaviour. “Punishment” is thereby transformed from the taking of a pound of flesh as equivalent to the gravity of the contravention into “a measure of expediency for the protection of society”¹⁶⁴.

¹⁶² Pashukanis, *Law and Marxism*, pp. 70-72

¹⁶³ Pashukanis, *Law and Marxism*, p. 61

¹⁶⁴ Pashukanis, *Law and Marxism*, p. 185

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