

LAW'S SYMBOLIC POWER: BEYOND THE MARXIST CONCEPTION OF IDEOLOGY*

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INTRODUCTION

In *The German Ideology*, Karl Marx and Friedrich Engels do not provide for an explicit definition of the notion of “ideology”. They rather compare it to mystified consciousness, because individuals are not aware of the social sources of their thoughts. One is frequently convinced that one’s opinions, as well as political and philosophical views, are autonomous, i.e. that they result from one’s own thinking, whereas in reality they are heavily dependent on the social circumstances which form their basis. In the words of Marx and Engels:

“Consciousness can never be anything else than conscious existence, and the existence of men is their actual life-process. If in all ideology men and their circumstances appear upside-down as in a *camera obscura*, this phenomenon arises just as much from their historical life-process as the inversion of objects on the retina does from their physical life-process”.¹

A little further they add that:

“The totality of these relations of production constitutes the economic structure of society, the real foundation, on which arises a legal and political superstructure and to which correspond definite forms of social consciousness. The mode of production of material life conditions the general process of social, political and intellectual life”.²

Since consciousness is a social product, the understanding of both legal and state relationships results not from themselves, nor from, as Marx puts it “a general mental development”, but from the material conditions of life.³ Moreover, the ideas that this superstructure consists of are designed to serve the ruling class, which maintains its dominant position through the use of

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¹ Karl Marx and Frederick Engels, *The German Ideology* (1845) available at: <<http://www.marxists.org/archive/marx/works/1845/german-ideology/ch01a.htm>> accessed May 2014.

² Karol Marks, ‘Przyczynek do teorii ekonomii politycznej. Przedmowa’ [A Contribution to the Critique of Political Economy: Introduction 1985] in Marks, *Dzieła wybrane* [Selected Works] (Książka i Wiedza, 1947) 370.

³ *ibid* 369.

mental violence. Therefore, what people think does not just depend on social conditions, but also expresses and realises class interests of the dominant group. In other words, the dominated classes remain enslaved, in a way, by these visualisations, and because of this they often allow themselves to be dominated, up to and including acting against their own best interest. It is only after these ideas have been revealed and people are consciously aware of them that the dominated classes will be able to free themselves from the power of the dominant class.⁴ However, acting on consciousness alone is not sufficient. Since “life is not determined by consciousness, but consciousness by life”,⁵ people will only be able to change their thinking once the material reality changes. As such, the only way of bringing about change in social relationships is to change the material conditions of social life.

As we will see, many of Marks’s findings form the basis of the social theory created by the French sociologist Pierre Bourdieu (1930-2002). Bourdieu’s theory is concerned with a profound reflection on power relations, and particularly with the unmasking of those relations that might be deemed as “misrecognised” (*méconnues*). It is the capacity to create a social world in terms of dominant groups and powerful institutions operating in modern society. The symbolic power of institutions and dominant groups is so strong because those who are dominated adopt the vision of those who dominate. Besides, they treat it as universal. What is more, symbolic power is inscribed in embodied dispositions (the “habitus”, i.e. the “social nature” of an individual which incline agents to act in a specific way). The social order inscribes itself in bodies, which is why it remains largely unconscious. For these reasons the symbolic dimension of power developed by Pierre Bourdieu is insightful, while breaking away from the well-known Marxist conception of ideology.

I. REPLACING FALSE CONSCIOUSNESS WITH HABITUS

The later Marxists, and in particular György Lukács, developed a notion of “false consciousness”⁶ which drives human actions. We should start by stating that Bourdieu rejects this notion, as it implies (similarly to Marx’s understanding of ideology) the existence of a conscious reflexive subject. According to the French thinker, there is a particular logic of agents social practices which is unsubordinated to conscious goals and mechanical causes. Because of this, he considers both reductionist theories of economy ascribing rationality only to actions of agents consciously directed at achieving specific goals, as well deterministic theories, which require an individual to be subject to external structures, as wrong.⁷ According to Bourdieu, choosing one of the aforementioned theories makes it

“impossible to understand the logic of all actions that are reasonable without being a product of a reasoned design, still less of rational calculation; informed by a kind of objective finality without being consciously organized

⁴ Marx and Engels, *The German Ideology* (n 1).

⁵ *ibid.*

⁶ György Lukács, *History & Class Consciousness* 1920 (Merlin Press 1967) available at: <<https://www.marxists.org/archive/lukacs/works/history/lukacs3.htm#9>> accessed May 2014.

⁷ See Pierre Bourdieu, *Outline of a Theory of Practice* (CUP 2002) 72 ff.

in relation to an explicitly constituted end; intelligible and coherent without springing from an intention of coherence and a deliberate decision; adjusted to the future without being the product of a project or a plan".⁸

In his theory of social practices, Bourdieu introduces the concept of the "habitus" (practical sense) explaining the schemata of human thought and action in the world, which simultaneously allows him to break away from the dichotomy of individual vs. society. Bourdieu points out that while individuals retain the "authorship" of their actions, "what they can nor cannot do is largely determined by the structure in which they are placed and by the positions they occupy within a structure".⁹ Let us consider this approach.

Practical sense is a collection of mental schemata and schemata for action, embodied and developed in the process of socialisation (culture that is anchored in the body). They are objective social dispositions which are internalised by an individual. The habitus "tells" an individual how she should view certain situations, and subsequently they determine a reaction appropriate to that perspective. It can be seen in the way one speaks or writes, in the lifestyle one chooses, in one's taste or choice of partner etc. Practical sense acts as a guiding framework for action, almost automatically determining the way an individual will act.¹⁰ It also points one towards a predetermined space of possibilities – hints at what is "an appropriate thing to do" in a particular situation, as well as what is possible and accessible for a given individual (what one "may think" and what one "may not think", what is "for me" and what "is not for me").¹¹ The most important aspect of the habitus is the fact that whilst its structures are acquired by an individual in the process of her socialisation, they are in fact an unconscious and subjective aspect of the social structure as such. Because these structures are grounded mostly in bodily practices (our *hexis*), individuals often perceive them as their own.¹² The human body accepts these arbitrary qualities due to conditioning, i.e. it absorbs socially imposed characteristics. Cognisance of the world has, therefore, a predominantly practical, rather than intentional or conscious nature.¹³ This phenomenon is the ultimate reason behind our thinking that what is in fact acquired is natural.¹⁴ As Bourdieu notices:

"The world is comprehensible, immediately endowed with meaning, because the body, which, thanks to its senses and its brain, has the capacity to be present to what is outside itself, in the world, and to be impressed and durably modified by it, has been protractedly (from the beginning) exposed to its regularities."¹⁵

⁸ Pierre Bourdieu, *The Logic of Practice* (Stanford University Press 1990) 50-51.

⁹ Pierre Bourdieu, *On Television* (The New Press 1999) 54.

¹⁰ Tomasz Warczok, 'Konstruktywny zwrot filozofii i socjologii w projekcie teoretycznym Pierre'a Bourdieu', [The Constructive Turn in Philosophy and Sociology in Pierre Bourdieu's Theoretical Project] (2013) 3 *Przegląd Filozoficzny* 46.

¹¹ Bourdieu, *The Logic of Practice* (n 9) *passim*.

¹² Pierre Bourdieu, 'Social Space and Symbolic Power' (1989) 7 *Sociological Theory* 17.

¹³ See: Hanna Dębska, 'Somatyzacja dominacji. Ciało w teorii socjologicznej Pierre'a Bourdieu', [Somatisation of Domination. The Body in Pierre Bourdieu's theory] (2015) 7.1 *Annales Universitatis Paedagogicae Cracoviensis. Studia Sociologica* 18.

¹⁴ Bourdieu, *The Logic of Practice* (n 8) 135 ff.

¹⁵ Pierre Bourdieu, *Pascalian Meditations* (Stanford University Press 2000) 135.

The key fact supporting the existence of the habitus is the relativisation of this acquired system of perceptions and preferences to the position one occupies in a social structure (in Bourdieu's terms – within a social field¹⁶). An individual, whilst being part of the social structure, perceives it from a particular vantage point of which she is unaware. Moreover, social agents¹⁷ of a given structure (e.g. in a religious or legal community) occupying similar positions tend to develop similar mental schemata and practices. Because of this, they understand each other better, which allows them to form a relatively coherent social class. Thus, thanks to this communication and understanding among agents occupying the same position is possible. Therefore, if an individual occupies a dominated position, she will act according to the dispositions produced by the social space.¹⁸ It should be stressed that such an individual is not completely passive; however, it is the occupied position that determines, to a substantial degree, her space of possible actions.¹⁹ Similarly to Marx, Bourdieu's account of social space is strictly relational. In other words, it is a constant dialectic between an individual's habitus and the social space where an individual acts.

A class, according to Bourdieu, is created not only through material conditions (as in Marx; i.e. distribution of capital) but also symbolically, through representations (ways of perceiving)²⁰

¹⁶ In Bourdieu's conception social space consist of separate, relatively autonomous fields (legal, political, scientific, art fields) which can be regarded as specific social universes.

¹⁷ In this paper, individuals active within a given social field (e.g. the legal field) will be invariably referred to as "agents" (*agentes*) to underline their active role in social actions.

¹⁸ Bourdieu, *Outline* (n 7).

¹⁹ For this reason both Marx and Bourdieu are critical of intellectuals. Whilst Marx criticises German Idealism, Bourdieu goes much further. He stresses that intellectuals (philosophers in particular) tend to fall prey to 'scholastic fallacy', which is a view that one can evaluate and reflect upon the social domain 'from a distance' while being a part of this domain. It would effectively require an "omnipotence of thought if one were to believe it possible to take an absolute point of view on one's own point of view" (Bourdieu, *Pascalian* (n 15) 119). This disposition arises during the process of education among individuals who are not restricted by economic necessity, which means that they can 'play for real'. As a result, those individuals transpose their own privileged experiences onto the experiences of others, treating their own experiences as universal. In Bourdieu's view, Marx falls prey to this 'scholastic fallacy', because when speaking of the working class, he expresses thoughts characteristic of an intellectual – that is to say, he creates the class as an intellectual would, overlooking the fact that he is doing so. Both the vision of awaking consciousness and of communism are, according to Bourdieu, intellectualist in nature. See: Michael Burawoy, *Theory and Practice: Marx meets Bourdieu* (July 2011) available at: <<http://burawoy.berkeley.edu/Bourdieu/3.Marx.pdf>> accessed May 2014).

²⁰ See: Loïc J.D. Wacquant, 'Symbolic Power and Group Making. On Pierre Bourdieu's Reframing of Class' (2013) 13 *Journal of Classical Sociology* 1. As we can see, when Bourdieu uses the term "class" it is to distinguish a particular social category, i.e. classification according to sex, occupation, nationality etc. We can speak of the construction of a class when one group of agents, having privileged access to certain dispositions, is able to impose itself on a specific group as figures of authority with regards to speech and act to such a degree that the other group is aware of its subordinate position. For Bourdieu, a class only exists as long as there are agents strong enough to reproduce the stable, characteristic dispositional structures. Therefore, as pointed out by Burawoy, "Marxism cannot understand that a classification or representational struggle has to precede class struggle, that is classes have to be constituted symbolically before they can engage in struggle" (Burawoy, *Theory* (n 19)).

“Social groups, and especially social classes, exist twice, so to speak, and they do so prior to the intervention of the scientific gaze itself: they exist in the objectivity of the first order, that which is recorded by distributions of material properties; and they exist in the objectivity of the second order, that of the contrasted classifications and representations produced by agents on the basis of a practical knowledge of these distributions such as they are expressed in lifestyles.”²¹

Even when recognised, these cognitive schemata and practices are exceptionally transformation-resistant because past experiences inscribed them into the body.²² It is this embodiment of domination practices which makes liberating oneself from the shackles of domination particularly difficult. In Bourdieu's theory, consciousness is closely connected to the body into which a social order, established by the dominant agents, is inscribed, and by virtue of which this embodiment remains unrecognised. For these reasons, Bourdieu rejects the concept of false consciousness as erroneous. The introduction of practical sense, as well as an emphasis placed upon the embodied character of social practices (empirically proven by Bourdieu on several occasions²³) constitutes an important addition to Marx's analysis of human action, consciousness and domination.

II. SYMBOLIC POWER

Let us now consider the key aspect of Bourdieu's theory – symbolic power²⁴ – named in this way in order to differentiate it from physical coercion, and to flesh out its linguistic dimension. Power is symbolic because of the tools it employs. These include primarily language, as well the symbols and world-visions conveyed by it. Language is predominately a tool for imposition by means of processes of identification, nomination (official naming, correct order) and classification (especially according to sex, age) of both individuals and groups.²⁵ Put simply:

“Every power to exert symbolic violence, i.e. every power which manages to impose meanings and to impose them as legitimate by concealing the power relations which are the basis of its force, adds its own specifically symbolic force to those power relations.”²⁶

It has to be emphasised that for Bourdieu language itself is never the expression of dominant ideology, but the expression of an ideology recognised as legitimate. Symbolic power is a legitimised particularity perceived as something universal. In other words, those who have managed to achieve a dominant position present their own point of view as a universal

²¹ Pierre Bourdieu, ‘Symbolic Capital and Social Classes’, (2013) 13 *Journal of Classical Sociology* 292.

²² Bourdieu, *The Logic of Practice* (n 8) 52 ff.; Bourdieu, *Pascalian* (n 15) 138 ff.

²³ See Pierre Bourdieu, *The Bachelors' Ball: The Crisis of Peasant Society in Béarn* (Polity Press 2008).

²⁴ In his works Bourdieu uses ‘symbolic power’ and ‘symbolic violence’ interchangeably and without differentiation. My work follows him in this respect.

²⁵ Pierre Bourdieu, *Language and Symbolic Power* (Polity Press 1991).

²⁶ Pierre Bourdieu and Jean-Claude Passeron, *Reproduction in Education. Society and Culture* (SAGE 1990) 4.

one, thus protecting it from potential attacks. Universalism serves to maintain an existing order. The point of view of the dominant agents becomes the dominant way of being – it is “tacitly turned into a norm”²⁷ – a *doxa* which is not challenged and whose arbitrariness is never recognised. That is why the social notion of “common sense” and behaviour in accordance with it are nothing more than *doxa* introduced by the dominant agents. Put simply, *doxa* constitutes the sphere of unspoken assumptions which is the basis for mental schemata reproduced in practices²⁸ and the obviousness of which is not questioned. Bourdieu reminds us about every step of the way along which the social order hides in minute, seemingly irrelevant gestures.

Doxa is not questioned by those who are dominated, because it is automatically accepted as both neutral and natural. The dominated agents are under the impression that they have access to a universal perspective, whilst in fact they promote particular interests of the dominant agents, which are only expressed in a universal manner.²⁹ The imposition of forms and cognitive patterns by the dominant agents happens in a way which allows the dominated agents to consider their choices as unequivocal. This is further strengthened by the fact that the body of the dominated agents also undergoes subjugation and conditioning. Because of this, symbolic power is considered to arise with the help of the dominated. Following Bourdieu, Loïc Wacquant states that

“it is fitting to recall that the dominated always contribute to their own domination it is necessary at once to be reminded that the dispositions which incline them to this complicity are also the effect, embodied, of domination.”³⁰

For these reasons, the concept of symbolic power may be understood as misrecognised power (*ergo*, hidden and socially accepted), perceived as legitimate authority or, paradoxically, as denied power. In Bourdieu’s own words,

“symbolic violence [is] a gentle violence, imperceptible, and invisible even to its victims exerted for the most part through the purely symbolic channels of communication and cognition (more precisely, misrecognition), recognition, or even feeling. This extraordinarily ordinary social relation thus offers a privileged opportunity to grasp the logic of the domination exerted in the name of a symbolic principle known and recognized both by the dominant and by the dominated – a language (or a pronunciation), a lifestyle (or a way of thinking, speaking and acting) – and, more generally, a distinctive property, whether emblem or stigma, the symbolically most powerful of which is that perfectly arbitrary and non-predictive bodily property, skin colour.”³¹

²⁷ Bourdieu, *Pascalien* (n 15) 72.

²⁸ A charismatic ideology of artistic occupations (more broadly, the artistic field), which relies on a belief in natural talent, natural artistic sensitivity (i.e. literary, visual) is a good example of *doxa*. In bodily practices this may be exemplified by, for example, showing superiors signs of respect.

²⁹ Bourdieu, *Pascalien* (n 15) 56-57.

³⁰ Pierre Bourdieu, *Noblesse d’État. Grands corps et Grandes Ecoles*, (Edition de Minuit 1989), 12 cited after: Loïc J.D. Wacquant, ‘Toward a social Praxeology: The Structure and Logic of Bourdieu Sociology’, in Pierre Bourdieu and Loïc Wacquant (eds), *An Invitation to Reflexive Sociology* (University of Chicago Press 1992) 24.

³¹ Bourdieu, *Masculine Domination* (Stanford University Press 2001) 1-2.

As we can see, the concept of symbolic power supplements and enhances Marx's considerations regarding ideology because it underscores that symbolic order is inscribed in things and bodies.³²

III. TOWARDS SOCIODICY

It would be a mistake to think that symbolic power is an instrument by means of which the dominant social agents intentionally try to impose some form of propaganda upon the dominated agents. This power is inscribed in the structures of their dispositions (the *habitus*) and in the social structure itself (the social field). Dominant agents cannot simply be perceived as cynical. As we already know, it is not "false consciousness" that brings them to impose symbolic power. Dominant agents are not only dominated by their own domination,³³ but also that they themselves need to legitimise their privileged position. In Bourdieu's own words, "the social order itself largely produces its own sociodicy".³⁴

Sociodicy, a term derived from Max Weber's concept of theodicy,³⁵ is a justification of the social world. On Weber's account, a theodicy is a particular religious idea aimed at (in terms of sociology) the justification of social inequalities. Weber openly states that „[g]ood fortune thus wants to be 'legitimate' fortune".³⁶ Therefore, happy people (the dominant) feel the need to legitimise their right to happiness. As such, when explaining their dominant position they often refer to the theodicy of privilege (i.e. I was chosen by God; God loves me). Conversely, the dominated justify their position by reference to the theodicy of disprivilege (i.e. my life is a failure because I am sinful; God does not love me).³⁷ By reinforcing social inequalities, sociodicy supports the established social order which has a tendency for reproduction and lasting in an unchanging form.³⁸

³² In Bourdieu's own words: "If I have little by little come to shun the use of the word 'ideology', is not only because of its polysemy and the resulting ambiguities. It is above all because, by evoking the order of ideas, and of action by ideas and on ideas, it inclines one to forget one of the most powerful mechanisms of the maintenance of the symbolic order, the *twofold naturalization* which results from the inscription of the social in things and in bodies (as much those of the dominant as of the dominated – whether in terms of sex, ethnicity, social position or any other discriminating factor), with the resulting effects of symbolic violence. As is underlined by ordinary-language notions such as 'natural distinction' or 'gift', the work of legitimation of the established order is extraordinarily facilitated by the fact that it goes on almost automatically in the reality of the social world" (Bourdieu, *Pascalien* (n 15) 181).

³³ See Bourdieu, *Masculine* (n 31) 49 ff.

³⁴ Bourdieu, *Pascalien* (n 15) 181.

³⁵ Hans H. Gerth and C. Wright Mills (eds), *From Max Weber: Essays in Sociology* (OUP 1946) 358 ff.

³⁶ Bourdieu, *Pascalien* (n 15) 271: "In treating suffering as a symptom of odiousness in the eyes of the gods and as a sign of secret guilt, religion has psychologically met a very general need. The fortunate is seldom satisfied with the fact of being fortunate. Beyond this, he needs to know that he has a right to his good fortune. He wants to be convinced that he 'deserves' it, and above all, that he deserves it in comparison with others."

³⁷ *ibid* 272 ff.

³⁸ *ibid* 146, 152.

Inspired by Weber, Bourdieu created the term “sociodicy”, which is, much like Weber’s theodicy, a sociological “justification of the society”. Sociodicy is part of a justification the privileged agents construct to explain their high position in society. In other words, it is a kind of symbolic strategy that makes the domination of dominant agents (e.g. lawyers) legitimate. Contrary to ideology, sociodicy locates itself within the realm of unconsciousness. Sociodicy is inscribed in social mechanisms which themselves are not a “product of a Machiavellian intention” but rather of chances that an individual obtains due to the position she occupies and the capitals (i.e. assets available in a particular social space) that she possesses.³⁹ The social order has a tendency to reproduce itself, that is why it also

“largely produces its own sociodicy. It follows that one only has to let the objective mechanisms do their work, which may be upon oneself, in order, unwittingly, to grant the social order its ratification.”⁴⁰

However, as will be shown below, there is no one universal sociodicy applicable to every dominant agent.

IV. THE STRUCTURE OF A FIELD, FORMS OF CAPITAL AND THE STRUGGLE FOR DOMINATION

Marx and Bourdieu paint different pictures of the social space. According to Marx, social structure is dichotomous in nature, and state institutions are a direct tool of the dominant class (in capitalism, the bourgeoisie), representing its interests. Therefore, in every historical period two classes – the oppressed and the oppressors – struggle for means of production. Every time this occurs, it leads to a change in socio-political formation.⁴¹

Bourdieu does not abandon Marx’s view of social struggles. However, he avoids the Marxist notion of the “ruling class”, suggesting to view the social space as an intricate system of power and struggle among various agents. On Bourdieu’s account, the social world is composed of separate, relatively autonomous microcosms which he refers to as “fields” – the administrative (bureaucratic) field, the political field, the religious field, the legal field, etc. All these microcosms are only partially independent from each another, although in modern societies among these fields we can observe a drive towards autonomy, which each of them tries to achieve through struggles against the other ones (particularly against the most powerful – the economic field), where the weapons are a field-specific language, institutions, capital etc. (stakes in the struggle for domination).⁴² Every field has its own rules, which are mandatory within that field and which govern the way it functions. However, fields are not only homogenous, but are also tied together

³⁹ Pierre Bourdieu, *Sociology in Question* (SAGE 1993) 71.

⁴⁰ Bourdieu, *Pascalian* (n 15) 181.

⁴¹ Karl Marx and Frederick Engels, *Manifesto of the Communist Party* (1848), available at: < <http://www.marxists.org/archive/marx/works/download/pdf/Manifesto.pdf>> accessed May 2014.

⁴² Fields are homologous with each other, which means that all individuals of one field recur in other fields, although in various configurations, i.e. in all social fields we can observe symbolic struggle for domination through the use of valuable capitals. However these valuable capitals differ depending on the field.

by a more or less strong network of connections.⁴³ It is best visible in the transfer of content from the political field to the legal field. Such a transfer which must always abide by the rules of the legal field, meaning a “translation” from the language of politics to formal legal language (Bourdieu refers to such a “translation” as “censorship”).⁴⁴

The meta-field of power is a space characterised by a particular range: it covers the dominant parts of every social field,⁴⁵ spanning from the economic field (where the economic capital is the main asset), all the way to the field of cultural production (where cultural capital, understood as, for example, the way of using a language, manners, academic degrees etc., is the main asset). In this way, the field of power has its heteronomous pole (e.g. the economic and political fields) and its autonomous pole (e.g. the artistic and religious fields). The field of power controls the “exchange rate” of various forms of cultural, symbolic and other capitals between the fields. Within the meta-field of power the struggle is between the field of cultural production and the economic field, which mirrors the social bisection into intellectuals and businesspeople.

Every field is an arena of struggle, i.e. of rivalry (symbolic in nature) between individuals and groups competing for meanings through which the winner is able to impose legitimate norms of perceiving and dividing the world. Therefore, each field can be divided into a dominant part (comprising those individuals that have gained an advantage over others in the struggle for domination) and a dominated part. This is not, however, the only division. No social sphere remains the sphere of a single asset: they can be equally well divided, following the division rule applied to the meta-field of power: into heteronomous and autonomous areas. The economic field will thus feature private and public business sectors; in the field of art one will find commercial artists and those that practice “art for the sake of art” (i.e. for its aesthetic values only); the academic field will feature a division into applied and theoretical research, and so forth.

The state, represented by the administrative (bureaucratic) field is located in the centre of the meta-field of power, and as such it is more closely connected with fields that are the closest to it, like the legal, political and economic fields. The state itself is also divided. Within the government one can easily find, on the one hand, the Ministry of Finance and the Ministry of Foreign Affairs, and on the other hand the Ministry of Culture and the Ministry of Social Affairs. Here, the struggle is for state capital (position in hierarchy between those ministries). In the light of Bourdieu's theory, we

⁴³ Pierre Bourdieu, *Sociology in Question* (n 39) 72-77.

⁴⁴ See Hanna Dębska, ‘Legal Doxa as a Form of Neutralization of Values in the Law. The Case of Constitutional Tribunal Judgments’ in Krzysztof Pałeczki (ed), *Neutralization of Values in Law* (Wolters Kluwer 2013) 303-351. For the notion of “censorship” in Bourdieu see Bourdieu, *Language and symbolic power* (n 25) 137 ff.

⁴⁵ Bourdieu introduces the term “field of power” to avoid using a substantial term like “ruling class” and to emphasise his relational approach to the social phenomenon in question. See Loïc J.D. Wacquant, ‘From Ruling Class to Field of Power. An Interview with Bourdieu on La Noblesse d'État’ (1993) 1 *Theory, Culture and Society* 19.

should not consider the state as a monolithic agent, but rather as a space in which various players compete for state capital.⁴⁶

Following Bourdieu, we should admit that in light of the lack of coherence within the ruling class there can be no single dominant ideology. This, however, is not to imply a simple change in terminology, where “ideology” is replaced by “sociodicy”. Bourdieu points out that because of the number of agents and their competing world-views, there can be no single sociodicy within the meta-field of power. Agents that are closer to cultural capital – intellectuals and all those whose position relies on cultural capital (artists, writers, professors etc.) – will favour explanations involving notions like talent or ability. They will also share a common belief in meritocracy. In contrast to them, businesspeople (especially traditionalists) will refer to what is natural, so heritage, blood, land, transfers of ownership (the sacred right of ownership etc.).⁴⁷ What is worth mentioning is the fact that today even businesspeople need to legitimise this reproduction by way of educational capital. They require their children to acquire a certain level of education before transferring their wealth to them. Education, it seems, is a more effective way of legitimising inherited capital.

Relationships of domination are best preserved in institutions that remain under the influence of the state, which has the greatest capacity for imposing both physical and symbolic power.⁴⁸ The latter form of power is achieved not only through financial and legal interventions, but also by “shaping minds”. During the process of education, the state instils in people some of the basic categories of the social world, e.g. a vision of masculinity and femininity (for instance, in school textbooks). Moreover, Bourdieu states that schools, much like religion, give a socially strong but misleading epistemic sociodicy.⁴⁹ It would seem that the school system is designed as meritocratic, ratings students according to universal and objective criteria (grades, diplomas etc.) and provides each student with equal opportunities. Bourdieu, however, proves that “on the outset” the system favours children from families possessing cultural capital (e.g. children from families of intellectuals). This means that in reality, the selections performed by schools are aimed at the reproduction of existing positions, maintaining the existing social order and legitimising pre-existing social differences.⁵⁰

Against this background, one can clearly see that Bourdieu, contrary to Marx, does not reduce power to exclusively economic power over the means of production. He rather proves that power does not have to be focused on the economic capital. It may well be focused around the cultural or social capital (resulting from social obligations, e.g. social connections), which

⁴⁶ Pierre Bourdieu, *Sur l'État. Cours au Collège de France (1989-1992)* (Le Seuil 2012).

⁴⁷ Pierre Bourdieu, ‘Séminaires sur le concept de champ, 1972-1975’ (2013) 5 Actes de la Recherche en Sciences Sociales 4.

⁴⁸ Bourdieu, *Sur l'Etat* (n 46).

⁴⁹ Bourdieu, *Pascalian* (n 15) 71: “The educational institution, in so far as it is capable of imposing more or less universal recognition of the cultural law while being very far from being able to distribute so widely the knowledge of the universal culture needed in order to obey it, gives a fallacious, but socially very powerful, basis to the epistemic Sociodicy.”

⁵⁰ Bourdieu and Passeron, *passim*; See also Paul DiMaggio, ‘Cultural Capital and School Success: The Impact of Status Culture Participation on the Grades of the U.S. High School Students’, (1982) 47 American Sociological Review 189.

under certain conditions may be transformed into economic capital.⁵¹ Capitals are convertible. However, the most important result here is the possibility of transforming, in a given field, any of the aforementioned capitals into symbolic capital, which is not recognised as capital and is used to execute symbolic power. In the religious field it will be the “vocation”; in the artistic field – talent (craftsmanship, acting talent, literary talent etc.); in the legal field – legal capital.

Bourdieu stresses the fact that social reality extends beyond pure materiality: it is also symbolically structured, a fact that is often overlooked. He adds that in certain circumstances symbolic power may be far more effective than the economic one. It seems that the latter thought is close to that of Louis Althusser, a representative of Marxist structuralism, who believed that exploitation is often covered up by the cooperation between the state repressive apparatus (administration, government, the army, the police, courts, penal system) and various ideological apparatuses (i.e. religious, familial, educational, legal, political, cultural etc.) which, while not using openly repressive instruments (physical coercion), take advantage of ideologies which seem ahistorical, but are in fact ideologies of the ruling class.⁵² Bourdieu's views are somewhat more sophisticated. He proves that power is best visible in social practices, actions of agents and rituals involving the body.⁵³ Arbitrary social rules are “inscribed” in the body – they are expressed through its movements, gestures and words (i.e. signs of respect towards superiors often involving a bow – “bent” body; polite forms of addressing professors and judges). The influence of power is also expressed through divisions of social space, particularly ones depicting the school hierarchy, where a teacher lectures *ex cathedra*, from a podium etc.,⁵⁴ or ones

⁵¹ For types of capital in Bourdieu's theory see: Pierre Bourdieu, ‘The Forms of Capital’, in John Richardson (ed), *Handbook of Theory and Research for Sociology of Education, Education* (Greenwood Press 1986) 241-158. For forms of cultural capital see Pierre Bourdieu, ‘Les trois états du capital culturel’, (1979) 30 *Actes de la Recherche en Sciences Sociales* 3, 6.

⁵² Louis Althusser, *Ideology and Ideological State Apparatuses. Notes Towards an Investigation, Lenin and Philosophy and Other Essays*, (1971) Monthly Review Press available at: < <https://www.marxists.org/reference/archive/althusser/1970/ideology.htm> > accessed May 2014). On Althusser's notion of ideology and ideological interpellation see e.g. Rafał Mańko, ‘Koncepcja interpelacji ideologicznej a krytyczny dyskurs o prawie’ [The Notion of Ideological Interpellation and Critical Legal Discourse] [2014] 1 *Archiwum Filozofii Prawa i Filozofii Społecznej* 41. It is worth mentioning that according to Althusser, law belongs both to the ideological, and to the repressive state apparatus (cf Rafał Mańko, ‘Quality of Legislation Following a Transition from Really Existing Socialism to Capitalism: A Case Study of General Clauses in Polish Private Law’ in Jānis Rozenfelds (ed), *The Quality of Legal Acts and its Importance in Contemporary Legal Space* (University of Latvia Press 2012) 541.

⁵³ Bourdieu, *Outline* (n 7).

⁵⁴ This approach resembles Foucault's disciplinary institutions. See Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Vintage Book 1995). In this work by Foucault we can clearly see a passive vision of the object of power, whereas in later works regarding the so called bio-powers we can observe a change towards the importance of the subject. According to Foucault, in neoliberal regime an individual is, in a way, forced to be a subject, and even forced to be free. See Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France 1978/1979* (Picador 2010).

dividing the social space into public and private – so into what is socially important and significant (economy, politics) and what is unimportant and meaningless (household). This binary structure of public/private (domestic) is subsequently superimposed on the male/female relationship.⁵⁵ A woman acts predominantly in the domestic area (motherhood, raising children) – the private and thus socially inferior; a man acts in the socially superior area – the public (working away from home) – which serves to establish a hierarchic relation between the sexes.⁵⁶

There is another important difference between Bourdieu and Althusser. In contrast to Althusser, who seems to adopt a static approach to state apparatuses, Bourdieu emphasises in his research the historical processes leading to the creation of specific fields, e.g. the emergence of bureaucrats and lawyers in France,⁵⁷ as well as the processes that shaped the religious⁵⁸ and literary⁵⁹ fields.

Bourdieu agrees that under certain specific conditions a society may start to function like Althusser's apparatus; however, he believes this to be highly unlikely.⁶⁰ This would be a boundary case for the French thinker – a pathological state of the field, unattainable even for totalitarian systems.⁶¹ Because of the ongoing struggles taking place within a field, its structure is never stable. Agents do not just obey the rules of a given field, but they also play their own games within that field's boundaries. Under favourable conditions, those acting in a field may transform its structure. As such, dominant agents must take into account the possibility of resistance and even mutiny by the dominated agents. Their goal is, therefore, to minimise the threat of resistance or revolution by using symbolic power, which makes the particular appear as universal. This is further facilitated by the habitus, embodied by the dominated and produced within the field, as well as the prevailing sociodicy. Therefore, a comparison of Althusser's and Bourdieu's conceptions reveals that the Althusser's vision is rather static, while Bourdieu's theory accounts for the dynamics of social relationships.

V. THE FORCE OF LAW AND ITS SYMBOLIC POWER

What has been said above about social fields is effectively applicable to the legal field, which is one of many social fields involved in the struggle for privileges within the meta-field of power. It occupies a special place in this

⁵⁵ This does not necessarily translate itself onto the public vs. private division in law.

⁵⁶ Bourdieu, *Masculine* (n 31).

⁵⁷ Pierre Bourdieu, 'From the King's House to the Reason of State: A Model of the Genesis of the Bureaucratic Field', in: Wacquant (ed), *Pierre Bourdieu and Democratic Politics* (Polity Press 2005) 29-54.

⁵⁸ Pierre Bourdieu, 'Genesis and Structure of the Religious Field' (1991) *Comparative Social Research* 13, 1-44.

⁵⁹ Pierre Bourdieu, *Rules of Art. Genesis and Structure of the Literary Field* (Stanford University Press 1996).

⁶⁰ It happened for example in Poland during the communist period. See Hanna Dębska, *Władza, symbol, prawo. Społeczne tworzenie Trybunału Konstytucyjnego* [Power, Symbol, Law: The Social Construction of the Constitutional Court in Poland] (Wydawnictwo Sejmowe 2015) 103ff.

⁶¹ Pierre Bourdieu and Loïc J.D. Wacquant, *An invitation to Reflexive Sociology* (University Chicago Press 1992) 102 ff.

meta-field, and this privileged position of law has been constructed historically.⁶² Bourdieu offers an interesting perspective on the history of the state (understood as the administrative field, tied together with the field of politics) which conditions the history of law (i.e. of the legal field). It is a “deep” perspective which joins together the symbolic (ideal) aspect and the material (structural) one, which allows for an explanation of the particular role played by lawyers in the shaping of the state, and later in “consecrat[ing] the established order by bringing it to know and recognized, official existence.”⁶³ It is lawyers, who by laid the grounds for the idea of public service (based on ideas like universality, justice, selflessness, working for the public), played a key role in forming the modern state, such as Bourdieu’s homeland, France. While creating the rules of the state, they simultaneously provided for their own independence of it, claiming exclusive competence in such areas as codification of the law, forensic evidence or adjudication.⁶⁴ More importantly, the legal field is strongly supported by the state’s authority which validates both the examinations required for working in the legal field and academic degrees that academic lawyers can obtain. Finally, the law supports the state’s agenda, by playing the “double game”, mentioned above. Put simply, the state is a field of ideological production and the legal field, which is close to the state, is a domain that exercises the power of the state.

As we can see, Bourdieu’s account supplements those of Marx and Althusser, who both seem to overlook the relative autonomy of the field of symbolic production, including the legal field. As shown by Bourdieu, the legal field is not directly dependent on material interests. The historically grounded position of this field makes it appear to society as the best mechanism for safeguarding social order, which allows the field to claim universality, as it is clearly visible in the process of juridification of social life. Bourdieu’s account reveals the most important truth: the legal field has a particular interest in universality.⁶⁵

Due to the long-term accumulation of autonomy, the legal field remains independent, to a degree, from external forces, in particular from the influences of the political and economic fields. Thanks to that, it is able to reproduce itself in relative independence from external conditions,⁶⁶ and symbolically construct its neutrality (presenting itself, in Frédéric Lebaron’s terms, as a “neutral place”).⁶⁷ Within legal discourse, the legal field places itself in opposition to the political field, claiming to be a neutral space

⁶² Pierre Bourdieu, *The State Nobility. Elite Schools in the Field of Power* (Stanford University Press 1996) 370 ff.

⁶³ Bourdieu, *Masculine* (n 31) 8.

⁶⁴ Bourdieu, ‘From the King’s House’ (n 57) 42-46.

⁶⁵ *ibid* 48. For discussion on selfless interest see also Bourdieu, *Sur l’Etat* (n 46); Pierre Bourdieu, ‘Les juristes, gardiens de l’hypocrisie collective’, in Pierre Bourdieu, François Chazel and Jacques Commaille (eds) *Normes juridiques et régulation sociale* (LGDJ 1991) 95-99.

⁶⁶ Pierre Bourdieu, ‘The Force of Law Toward the Juridical Field’ (1987) 38 *Hastings Law Journal* 814.

⁶⁷ On processes that take place in economic field see Frédéric Lebaron, ‘The Space of the Economic Neutrality: Types of Legitimacy and Trajectories of Central Bank Managers’ (2000) 37.2 *International Journal of Comparative Sociology* 208.

governed by formal rules. According to this narrative, the law does not serve any particular political interests, but rather its aim is to protect the society as a whole; it is selfless; it warrants social order by resorting to selfless and specifically trained agents, who abide by universal rules that are fair and apply to all members of society. A further consequence of this illusion of not yielding to pressure of other fields is the misrecognition of the socially important fact that the creation of symbolic power involves the law.⁶⁸ The law is symbolically effective if it is able to convince people that it serves their best interest (and not its own).

The power of law is symbolic in nature. Through law it is possible to impose ideological visions, common principles of perceiving and dividing the world (both the natural and the social one) that are socially legitimised and seen as neutral or even obvious.⁶⁹ This process works by making the designated agents take ownership of everyday language and transform it into a specialistic one, thus monopolising access to the sources of law.⁷⁰ By doing so they outline the framework for mandatory and appropriate actions, thus restricting the scope of what is considered “right”. At the same time they universalise their point of view (remaining “neutral”) by appealing to established rules which exemplify the “will of the people”. Bourdieu lists a number of symbolic strategies facilitating the exercise of symbolic power by agents of the legal field. These include processes of codification and formalisation introduced by the very language of law, as well as the processes of universalisation and neutralisation. Universalisation relies on referring to assumed common intersubjective values which remain immune to critique, and expressing the constant presence of law (for instance, by resorting to Roman legal maxims).⁷¹ Neutralisation consists of using passive and impersonal linguistic forms in legal texts, which depersonalises the operations of law (hiding particular agents involved in the creation of these rules).⁷²

Like other social spaces, the legal field is divided into a heteronomous space (the sub-field of legal practice) and an autonomous area (the academic sub-field). These sub-fields compete for power, with the academia influencing legal practice and *vice versa*. The stake in this game is the acquisition of a specific type of cultural capital – legal capital – seen as a particular competency acquired in a universal process of training and education. The core of the competency is the ability to interpret legal texts.⁷³

⁶⁸ Bourdieu, ‘The Force of Law’ (n 66) 817-820.

⁶⁹ The classifications of the world are usually ordered into binary codes, which sort the world into pairs of contradictions: normal/deviant (i.e. behaviour), legal/illegal (i.e. drugs), conflicting/non-conflicting (i.e. conflict resolution) etc., which in part introduces valuation categories like right/wrong (i.e. claim), just/unjust (i.e. sentence), proper/improper (i.e. conduct), democratic/undemocratic (i.e. procedures), and even ethical: good (honest)/evil (dishonest) (i.e. good/dishonest trade practices).

⁷⁰ Bourdieu, ‘The Force of Law’ (n 66) 819.

⁷¹ On building the legitimacy of modern law on Roman law by referring to Latin legal maxims see e.g. Paulina Świącicka, ‘From Sublimation to Naturalisation: Constructing Ideological Hegemony on the Shoulders of Roman Jurists’ in Cosmin S. Cercel, Rafał Mańko and Adam Sulikowski (eds), *Law and Critique in Central Europe* (Counterpress, forthcoming in 2016).

⁷² *ibid* 820. For more information regarding linguistic strategies used by law in creating neutrality see Dębska, ‘Legal Doxa’ (n 44).

⁷³ Richard Terdiman, ‘Translator’s Introduction’, in Pierre Bourdieu, *The Force of Law* (n 67) 805.

Publicly, however, the legal field tries to hide this rivalry, by representing itself as a coherent and professional area. It should be emphasised that any competition among the agents in this field is always conducted with respect to legal rules: lawyers may question specific rules or argue about their interpretation, but they are unlikely to question the idea of law as such.⁷⁴

The logic of the legal field (as the logic of any other field) regulates social situations and determines reactions to particular actions by referring to points of reference common to all lawyers (treated here as a social class). Individuals involved with the legal field subject themselves to the unconsciously imposed rules of that field, which involve the acceptance of certain principles of legal reasoning, but most importantly a specific way of looking at social reality and social action. This way of looking is neither universal, nor neutral, and involves classifications and hidden assumptions which order the social world. In other words, the legal field produces certain mental structures (rules of perceiving and valuating the world) which are accepted by legal agents by virtue of legal education and participation in legal practice. Lawyers are entangled in the schemata of the legal habitus and legal *doxa*.⁷⁵

The assumed rationality of social agents is a good example of the internalisation of rules upon which legal *doxa* is founded. On the one hand, the assumed rationality of the legislator prevents legal actions and rules from being accused of arbitrariness. On the other hand, the rationalisation of actions of all social agents creates the basis for the construct of legal responsibility. The same applies to the impossibility of questioning the selflessness of the law, and, particularly for the legal field, the relation between time and power, expressed in an unspoken belief in the necessity of a long-term training and development process.⁷⁶ The rule regulating the possibility of interpreting law is an unspoken but obvious assumption that “legal texts should be read in a legal way”, much like

“philosophical texts must be read philosophically, works art must be contemplated aesthetically – and not religiously, or erotically etc.), there is no need to specify the sense in which they are meant.”⁷⁷

Agents involved in the games of the legal field acquire (often unconsciously) benefits associated with domination in the meta-field of power. What is also important for critical sociology is the fact that agents of the legal field believe in the selflessness of their social practices. This, however, is not a surprise if we account for the field-habitus dialectic. Like other fields, the legal one instils specific dispositions into its agents who, while limited by their place within it, are unable to recognise the arbitrary nature of the rules governing that field. This is due to the fact that they are actively engaged in the game (Bourdieu uses the term “*illusio*”), which is particularly visible in the work of judges. In other words, the habitus schemata of a judge fit well within the

⁷⁴ Bourdieu, *Pascalien* (n 15) 123.

⁷⁵ See Hanna Dębska, ‘Iluzje prawniczego Rozumu. O społecznych warunkach praktyk(bez)refleksyjnych’, [Illusions of the Legal Reason: On the Social Conditions of Non-reflexive Practices] (2014) 92 *Studia Prawno- Ekonomiczne* 11.

⁷⁶ *ibid.*

⁷⁷ Bourdieu, *Pascalien* (n 15) 58.

legal universe: judges learn their habitus bodily, e.g. by donning a gown, behaving in a specific way in the courtroom etc. This is specifically due to (although, as Bourdieu stresses, not exclusively) the “normalization exerted through the discipline of institutions”.⁷⁸ Therefore, following Bourdieu, we should agree that:

“[T]he law is not what it says it is, what it considers it is, meaning that it is not something pure, perfectly autonomous etc. Nevertheless, the fact that it conceives of itself this way and that it successfully manages to make others perceive it this way produces actual social effects, especially among those who encounter it.”⁷⁹

Concluding, the misrecognition of the “force of law” (both by those subject to the law and by the lawyers themselves) is the most striking example of the effectiveness of its symbolic violence; a violence which cannot go unnoticed if we really want to understand this fragment of social reality.⁸⁰ The law is closely tied together with social practices, decides what is socially meaningful. There is clearly a place here for critical sociological research which is able to unmask the legal *doxa* and its symbolic practices.

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⁷⁸ ibid 141. Here, as he pointed out himself, Bourdieu takes advantage of Foucault’s work, while supplementing it with Marx. See the following passage: “We learn bodily. The social order inscribes itself in bodies through this permanent confrontation, which may be more or less dramatic but is always largely marked by affectivity and, more precisely, by affective transactions with the environment. One thinks, obviously, especially after the work of Michel Foucault, of the normalization exerted through the discipline of institutions. But it would be wrong to underestimate the pressure or oppression, continuous and often unnoticed, of the ordinary order of things, the conditionings imposed by the material conditions of existence, by the insidious injunctions and ‘inert violence’ (as Sartre puts it) of economic and social structures and of the mechanisms through which they are reproduced.” (ibid 141).

⁷⁹ Bourdieu, *Les juristes* (n 66) 99. Translation from the French is mine.

⁸⁰ For an account of the difficulties faced by researchers applying this approach see Hanna Dębska, ‘W okowach prawniczego *sensus communis*. O trudnościach uprawiania krytycznie zorientowanej socjologii prawa’ [Shackled by the legal *sensus communis*. On the Difficulties of Critically Oriented Sociology of Law] [2014] 1 *Archiwum Filozofii Prawa i Filozofii Społecznej* 18.

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