

## THE CRITIQUE OF IDEOLOGICAL LEGAL REASON\*

MICHAŁ STAMBULSKI\*\*

### I. DID SOMEBODY SAY “THE END OF IDEOLOGY”?

In the 19th century there was a commonly held myth that there were three elements of European thought – German, French and Anglo-Saxon. German thought was supposedly strictly philosophical and dealt with pure speculation. French thought was political and its domain was action. Anglo-Saxon thought, on the other hand, was preoccupied with economy and focused on usefulness. This division reflects the socialisation and nationalisation of the Aristotelian categories of *theoria*, *praxis*, *poiesis*. But while the Stagirite saw them as analytical in character, arguing that they could be all present simultaneously in the activity of one subject, the national division highlighted their antagonistic and indivisible character and thus consequently the nations directly linked with these categories were seen as unable to change them. Being philosophical, political or economic was in their nature. They also had a teleological character, indicating the ends which people should aspire to. Thus they determined the manner of modernisation to be pursued, which may be attained, respectively, by further developing culture, granting equal rights in the political realm or fulfilling basic needs by economic means. All the remaining geopolitical areas may select one of the three available ways of modernisation. At the same time, the categories, examined together, constituted Europe in terms of culture and geography.

According to Slavoj Žižek, the triad determines the basic structure of our spontaneous everyday life, which may be seen, for instance, in the construction of toilets:

“In a traditional German lavatory, the hole in which shit disappears after we flush water is way in front, so that the shit is first laid out for us to sniff at and inspect for traces of some illness; in the typical French lavatory, on the contrary, the hole is in the back - that is, the shit is supposed to disappear as soon as possible; finally, the Anglo-Saxon (English or American) lavatory presents a kind of synthesis, a mediation between these two opposed poles - the basin is full of water, so that the shit floats in it - visible, but not to be inspected.”<sup>1</sup>

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\*\* Centre for Legal Education and Social Theory, Faculty of Law, Administration and Economics, University of Wrocław.

The triad presented above is also, to an extent, present in the ideological foundations of the European Union (EU); to an extent, because the excessive presence of one element prevents its simple reproduction. The EU is commonly assumed to be founded on three pillars: common economic policy, common foreign and security policy, and cooperation of the police and judiciary in criminal cases. It is symptomatic that the economic element predominates here, thus resulting in an assumption that politics and culture are founded on the exchange of goods. The preamble to the Treaty on European Union, the basic document for the functioning of the EU, in its Maastricht 1993 version highlighted the economic significance of the Community, while consecutive versions of treaties (from Amsterdam 1997, Nice 2000 and Lisbon 2007) increasingly emphasised the cultural and political heritage; yet the realm of economy still remains their guarantor.

The dissonance between the abstract equality of the three elements determining European values and their actual implementation indicates not so much the imperfection of each concrete political project, which is a banality, but at the very values implemented. Perhaps these values are innately irreconcilable in their abstractiveness. This reveals the dialectics of Hegelian "species subverting its own genus".<sup>2</sup> In the apparent row of equal elements of the set (philosophy, politics, economy), one of them (economy) determines the remaining ones. This determination is seen as natural thus Marx's statement of the "economic base" needs to be revisited and the question should be asked: what economy? In other words: what are the social conditions of the possibility in this determination?

In 1992, in his book *The End of History and the Last Man*<sup>3</sup>, Francis Fukuyama proposes a famous thesis concerning the relations between liberal democracy, which in the philosopher's opinion constitutes the best political system, and the eponymous end of history, understood as society's emancipation struggle for a better form of government. It is interesting that Fukuyama's book is a development of his essay from 1989 entitled *The End of History?* written at the precarious time of the development of revolutionary movements in Eastern Europe and on the eve of the Soviet Union's demise. The predomination of liberal discourse following these events is responsible for the fact that, after a few years, the concept of the end of history loses its solely theoretical character and becomes a description of the present. Thus the question mark from the essay's title disappears in the book's title.

Fukuyama states:

"I argued that liberal democracy may constitute the "end point of mankind's ideological evolution" and the "final form of human government," and as such constituted the "end of history." That is, while earlier forms of government were characterized by grave defects and irrationalities that led to their eventual collapse, liberal democracy was arguably free from such fundamental internal contradictions. This was not to say that today's stable democracies, like the United States, France, or Switzerland, were not without injustice or serious social problems. But these problems were ones of incomplete implementation of the twin principles of liberty and equality on which

<sup>1</sup> Slavoj Žižek, *The Plague of Fantasies* (2<sup>nd</sup> edn, Verso 2008) 3.

<sup>2</sup> Slavoj Žižek, *The Sublime Object of Ideology* (2<sup>nd</sup> edn, Verso 2008) 16.

<sup>3</sup> Francis Fukuyama, *The End of History and the Last Man* (1<sup>st</sup> edn, The Free Press 1992).

modern democracy is founded, rather than of flaws in the principles themselves. While some present-day countries might fail to achieve stable liberal democracy, and others might lapse back into other, more primitive forms of rule like theocracy or military dictatorship, the *ideal* of liberal democracy could not be improved on.”<sup>4</sup>

How then does this American philosopher of politics understand liberal democracy? His understanding is founded on two assumptions concerning human nature – economics and symbolism. Fukuyama associates economic development with the development of the natural sciences. The spread of scientific rationality led to the uniformisation of ways of producing goods. One characteristic feature of modern science is its political neutrality, as the results of scientific research must be intersubjective, verifiable; it must be possible to express them as mathematical formulas, thus rendering them independent of any concrete circumstances. Scientific procedures are easily transformed into other, non-theoretical aspects of social life. Their application in economy causes the homogenisation of modes of production. From that moment only one mode of production predominates – capitalism, involving the accumulation of capital and continuous increase of needs, which is presented as the most rational and thus natural system available. However, the economic assumption presented above fails to explain liberal democracy; therefore, the philosopher complements it with a symbolic assumption. Drawing on the Hegelian notion of “struggle for recognition”, Fukuyama assumes that each human being is characterised by a desire to be recognised, i.e. to be identified and accepted as an autonomous individual by other human beings. This affirmation is only fully possible in the democratic system, being founded on the formal equality of each vote and granting each individual legal subjectivity. Only such a system, where elections continuously renew and maintain its legitimisation, may survive for a long period of time.

When liberal democracy triumphs, the end of history occurs. From that moment no more rational and effective political project may be conceived. Moreover, the very structure of democracy, understood as an arena comprising a plurality of views, excludes a single comprehensive vision of human social life. The moment of the end of history is tantamount to the end of politics and the end of ideology. There is no need to devise better ideological projects. Fukuyama’s vision entails absolute reconciliation of rationality and reality. Governance should thus consist in managing, repairing faults, striving to fully implement the plan. In this view law becomes secondary; it is solely the instrument of politics. Legal discourse becomes solely the instrument of liberal politics. This, of course, is not tantamount to the absence of conflicts or political crises; it simply means that what Alain Badiou calls “the event” can’t take place. Such an event or occurrence is an extension of the space for what is possible and expected in political life; it is an act of remodelling the whole symbolic order. For Badiou, the French Revolution or the teachings of St Paul were such occurrences.<sup>5</sup>

Fukuyama’s concept is symptomatic of the prevalent way of thinking in Central and Eastern Europe in the 1990s and set the course for the transformation during this period. This reasoning may be described as

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<sup>4</sup> *ibid* xi.

<sup>5</sup> Alain Badiou, *Saint Paul: The Foundation of Universalism* (1<sup>st</sup> edn, Stanford University Press 1997).

neoliberal in that he (Fukuyama) was convinced that politics should consist solely in providing the greatest possible scope of freedom in the economic sphere, while the economy consists in “the desire to intensify and expand the market, by increasing the number, frequency, repeatability, and formalisation of transactions.”<sup>6</sup> In other words, the societies of Central and Eastern Europe should concentrate on introducing the solutions supporting free market and the rest will follow by themselves. There are many arguments for the fact that this project failed. This is even admitted by the architects of the Polish transformation who, in the 1990s, promoted such a model of society. In a recent, well-known interview for *Gazeta Wyborcza*, Marcin Król said:

“We were stupid. We contracted the ideology of neoliberalism in the 1980s and I was instrumental here; I talked Tusk, Bielecki, all this Gdańsk crowd into that. I eagerly thrust Hayek’s works at them. I shared the same views with Balcerowicz, but now we’ve gone separate ways. I lost that enthusiasm quite quickly. I realised that liberalism is dominated by the element of individualism, which drives out other important values one after another and kills the community. It is easy to explain this. Individualism has a strong support from the forces of free market, which makes a fortune on the individualistic model of life, while social and civic values, solidarity, cooperation lack such a booster. They are “ineffective” from the point of view of economy.”<sup>7</sup>

Given that today it seems that this project has failed, it is even more pressing to diagnose the theoretical errors on which it was founded. I would like to propose the idea that in order to do that, it is necessary to return to the notion of ideology, which provides the scope for rethinking the links between economics and politics, as well as between law and politics. Absolution of the notion of ownership, the myth of the free market or the conviction of the end of history were already criticised in the 19<sup>th</sup> century by Karl Marx. Therefore, in the current social situation, it is worthwhile to return to his remarks.

## II. “YOUNG MARX” AND THE CLASSIC NOTION OF IDEOLOGY

For Marx, the proletariat is the subject and hope of social emancipation. It is the only social class able to express the interests of all people. Because material conditions of their life are so bad, they have nothing to lose. At the same time, they are a class without any historical ties and binds, unable to quote any estate privileges, and therefore they are structurally forced to invent new ways of social organisation - especially in the scope of the distribution of property and power. In Marx’s opinion, the fact that the proletariat has no access to property proves that the very idea of private ownership should be reconstructed. We see here how a negative condition (an illusion of universal accessibility of private property) is reformulated into a positive one (abolition of private property by the proletariat):

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<sup>6</sup> Paul Treanor, *Neoliberalism: origins, theory, definition*,  
<<http://web.inter.nl.net/users/Paul.Treanor/neoliberalism.html>> accessed 01.09.2014.

<sup>7</sup> Marcin Król, *Byliśmy głupi [We were stupid]*  
<<http://wyborcza.pl/magazyn/1,136528,15414610.html>> accessed 01.09.2014.

“By heralding the *dissolution of the hereto existing world order*, the proletariat merely proclaims the *secret of its own existence*, for it is the factual dissolution of that world order. By demanding the *negation of private property*, the proletariat merely raises to the rank of a principle of society what society has raised to the rank of *its* principle, what is already incorporated in *it* as the negative result of society without its own participation. The proletarian then finds himself possessing the same right in regard to the world which is coming into being as the *German king* in regard to the world which has come into being when he calls the people *his* people, as he calls the horse *his* horse. By declaring the people his private property, the king merely proclaims that the owner of property is king.”<sup>8</sup>

Ultimately, a worker possesses only his body, whose use is offered for sale thus becoming one of the available commodities. Marx understands a “worker” as a certain production role of a human being, who due to his corporeality, is condemned to physical work. A capitalist may break free of this obligation and may either not work at all or do only intellectual work as others work for him. Capital itself is “accumulated labour”. The accumulation is possible due to the division of labour (the factory system), which in turn affects a worker, reducing his role to that of a machine performing one, highly specialised and homogenous production activity. If an economic situation is bad, there are too many workers and not everyone will find a means of existence. If it is healthy, competition between capitalists seeking profit results in the emergence of monopolies and the ruin of small-time entrepreneurs who join the workers and thus become further dependent on capitalists. Irrespective of a country’s economic situation, a worker is condemned to overwork “thus in a declining state of society – increasing misery of the worker; in an advancing state – misery with complications; and in a fully developed state of society – static misery.”<sup>9</sup>

The error of political economy is, according to Marx, the fact that impoverishment of workers is seen as a necessity. Private ownership, the free market, the monetary system, competition and monopolies are interpreted as a point of departure without considering their causes. In particular, political economy does not consider the mode of production from the perspective of the relation between a worker and a commodity. It thus resembles theology in its similarly unquestioning treatment of God or the Kingdom of Heaven.

A worker remains a real manufacturer of commodity. Commodity is congealed labour. However, because of the separation of labour, capital and landed property, the commodity separates from the worker and becomes the property of the owner of the worker’s labour who, in turn, pays the worker for his labour. Borrowing the notion from Ludwig Feuerbach, Marx calls this process of separation “alienation”. “The raising of wages presupposes and entails the accumulation of capital, and thus sets the product of labour against

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<sup>8</sup> Karl Marx, *A Contribution to the Critique of Hegel’s Philosophy of Right. Introduction* <<https://www.marxists.org/archive/marx/works/1843/critique-hpr/intro.htm>> accessed 01.09.2014.

<sup>9</sup> Karl Marx, *Economic and Philosophic Manuscripts of 1844* <<https://www.marxists.org/archive/marx/works/1844/manuscripts/wages.htm>> accessed 01.09.2014.

the worker as something ever more alien to him.”<sup>10</sup> Commodity may only be produced at the cost of commodifying the worker. Just as when finishing work, the worker loses control over his product and, when at work, loses control over himself. Alienation not only consists of alienating the worker from his product but also from his labour. Labour becomes an external and alien phenomenon, similar to commodity. He does not feel his causative powers even though he is a real producer, he feels only his dependence on capital and its whims.

The paradox consists in the fact that the more a worker works, thus building a capitalist society, the more he contributes to the emergence of the system based on the division of labour, and puts himself in chains. Production of new and improved products extends the world of commodities and, at the same time, restricts the life of a worker. To quote Herbert Marcuse’s famous term, while the world of commodities is continually extending, a worker is constantly becoming a “one-dimensional man” – a commodity. Remaining solely a worker-commodity, he loses the opportunity to express his human nature.

In connection with labour, a worker’s illusory conception of his social situation emerges. Marx states that:

“Hitherto men have constantly made up for themselves false conceptions about themselves, about what they are and what they ought to be. They have arranged their relationships according to their ideas of God, of normal man, etc. The phantoms of their brains have got out of their hands. They, the creators, have bowed down before their creations. Let us liberate them from the chimeras, the ideas, dogmas, imaginary beings under the yoke of which they are pining away. Let us revolt against the rule of thoughts. Let us teach men, says one, to exchange these imaginations for thoughts which correspond to the essence of man; says the second, to take up a critical attitude to them; says the third, to knock them out of their heads; and - existing reality will collapse.”<sup>11</sup>

Due to their bodily determinants and to maintain their corporeality, people are forced to work. Labour is a human need. With the development of cooperation between people, production emerges, i.e. a collective manner, based on the division of labour, of regenerating and securing the physical existence of human beings. The development of production results in specialisations of human activity – agricultural, industrial, commercial. The division of production is accompanied by the division of labour and the resulting division of a society into various groups, each of which promotes a new form of ownership. Marx describes the whole production potential - consisting of the workforce (“human beings”) and means of production (tools and raw material) - as “productive forces”. The forces are connected with particular “relations of production” (relations of ownership and power between people). Productive forces and relations of production form the material base of a society, from which stems an ideological, spiritual and philosophical superstructure:

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<sup>10</sup> *ibid.*

<sup>11</sup> Karl Marx, *The German Ideology*

<<https://www.marxists.org/archive/marx/works/1845/german-ideology/preface.htm>>  
accessed 01.09.2014.

“The fact is, therefore, that definite individuals who are productively active in a definite way enter into these definite social and political relations. Empirical observation must in each separate instance bring out empirically, and without any mystification and speculation, the connection of the social and political structure with production. The social structure and the State are continually evolving out of the life-process of definite individuals, but of individuals, not as they may appear in their own or other people’s imagination, but as they really are; i.e. as they operate, produce materially, and hence as they work under definite material limits, presuppositions and conditions independent of their will.”<sup>12</sup>

In a crossed-out comment, Marx adds that people’s notions may be concerned with their relation to nature, to other people and/or to their own nature. However, even these “illusions” reflect the real basis of their emergence, as each notion results from production. Therefore, ideologies (religious, artistic, philosophical notions) never occur independently but are always connected with a particular base of production. Ideology is thus a reversal of the relation between the base and the superstructure which needs to be abandoned.

### **III. THE CASE OF “WOOD THEFT” AS AN EXAMPLE OF CRITIQUE OF IDEOLOGICAL REASON**

Bearing Marx’s concept of political ontology in mind, we can now proceed to an attempt to present the usefulness of the concept of ideology and alienation for the critique of law. For this purpose, we may refer to the case of “wood theft”, i.e. the articles in which Marx, a lawyer by education, criticised the bill of law of the Rhine Province’s Landtag of 1842 on the theft of wood and other products from the forest submitted on behalf of King Frederick William of Prussia. At that time, Landtag legislation complemented national law. The Landtag of the Rhine Province had an estate structure where each estate (nobility, townspeople, peasants) had an equal proportion of votes. The official purpose of the discussed bill was the prevention of appropriation of wood and other forest products by impoverished peasants. However, Marx perceived it as an attempt to introduce a new system of ownership. Not only the appropriation and sale of stolen wood and fruit, but also their theft and use to satisfy basic existential needs were to be punished by law. Additionally, both breaking branches off a living tree and collecting dry branches lying on the ground were to be treated as theft, which contradicted contemporary custom and practice. Marx categorically argues that they are two different things. We may distinguish the ownership of a tree, the ownership of processed wood and the ownership of brushwood that has naturally separated from a tree. In the first case, the disturbance of the tree is tantamount to theft. In the second, the tree has been processed and become a new quality and thus a new object of ownership. In the third case, the ownership of the tree remains

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<sup>12</sup> *ibid* < <https://www.marxists.org/archive/marx/works/1845/german-ideology/ch01a.htm> > accessed 01.09.2014.



the same, while a dry branch has separated from it and become a new object of ownership. In each case, there is a different object of action. Marx writes:

“In the case of fallen wood, on the contrary, nothing has been separated from property. It is only what has already been separated from property that is being separated from it. The wood thief pronounces on his own authority a sentence on property. The gatherer of fallen wood only carries out a sentence already pronounced by the very nature of the property, for the owner possesses only the tree, but the tree no longer possesses the branches that have fallen from it.”<sup>13</sup>

In this way, ownership is perceived as more primal than the laws of nature, which is a considerable abuse. Wood is reduced to the status of a commodity which must first be bought. Earlier, peasants were allowed to collect wood, which was their right independently of the owner's rights. This resulted from existential needs and cycles of nature thus ownership of brushwood had a specific character – it was a common good, located somewhere between private and public property. Now, elements of nature were being alienated from people. The right of property proposed in the bill became absolute. The bill also introduced the institution of a forester, remunerated by the state, whose job consisted of estimating the value of stolen objects and reporting theft. According to Marx, this is tantamount to subordinating the state to private ownership. The forester was to guard the interests of private owners of trees through shifting this burden onto the state by looking after their property. This is seen in the punishment proposed by the bill for the theft, i.e. either a fine or providing work for the owner. In his comment, Daniel Bensaid said that in his article “Marks uses the question of property to reveal the contradictions between a civic society and a state”<sup>14</sup>. On one hand, there is the right of citizens to collect brushwood, which emerged as a result of a spontaneous historical process. On the other, there is the issue of privatisation of the state. In Marx's opinion, this was a consequence of the notion of the Landtag itself, whose members represented particular estates and were unable to rise to the level of civic thinking. Universal franchise and severing the link between a parliamentary seat and a constituency formally removes such a tendency.

On a more general level, we can see that law played an important role in the capitalisation of social relations. Owing to law and its objective character, a new absolute notion of ownership could be introduced, which constituted a change in the distribution of power. However, the question arises: what enables ideology to impact the content to law? It is possible because ideology also functions on the level of the everyday social practices, that are ontologically before the law. The most appropriate description of this phenomenon may be found in theory of Louis Althusser and Slavoj Žižek.

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<sup>13</sup> Karl Marx, *Debates on the Law on Thefts of Wood*

<<https://marxists.anu.edu.au/archive/marx/works/1842/10/25.htm>> accessed 01.09.2014.

<sup>14</sup>Daniel Bensaid, *Wydłuszczeni. Marks, własność i komunizm* [Expropriated. Marks, property and communism] (1<sup>st</sup> edn, Książka i Prasa 2010).



#### IV. IDEOLOGICAL STATE APPARATUSES AND DEMOCRATIC GOVERNANCE

The question which prompted the French philosopher Louis Althusser to form a different, more ontological view of ideology was the question as to how the means of production are reproduced. If production is to be possible for a prolonged period of time, its own condition of possibility must be reproduced. In a sense, production must produce itself. In the long term, this process requires changes of production. According to Marx's analyses, to increase production and make it more effective, a capitalist society requires continuous revolutionising of means of production – by creating new and cheaper modes of production or by inventing new products. Therefore, a change, a revolution of means of production is inherent in the process of reproduction of production. Reproduction is never a simple reflection of the previous production.

Althusser observes<sup>15</sup> that reproduction takes place at two levels: those of productive forces and relations of production. With regard to the latter, i.e. the material bases enabling production (raw materials, tools, etc.), the French philosopher argues that this mechanism cannot be understood on the mere level of a single business enterprise:

“A moment's reflection is enough to be convinced of this: Mr X, a capitalist who produces woollen yarn in his spinning-mill, has to 'reproduce' his raw material, his machines, etc. But he does not produce them for his own production – other capitalists do: an Australian sheep farmer, Mr Y, a heavy engineer producing machine-tools, Mr Z, etc., etc. And Mr Y and Mr Z, in order to produce those products which are the condition of the reproduction of Mr X's conditions of production, also have to reproduce the conditions of their own production, and so on to infinity – the whole in proportions such that, on the national and even the world market, the demand for means of production (for reproduction) can be satisfied by the supply.”<sup>16</sup>

Emphasising this transition, from the level of notions of social players to the unconscious network of links between them, Althusser momentarily departs from the means of production and shifts towards the issue of reproduction of productive forces (workforce). Here, the perspective of a single business enterprise (awareness of an individual entrepreneur) is also insufficient. An entrepreneur does not reproduce workers, he only provides them with means for their own reproduction – a salary. However, a salary is insufficient for productive forces to reproduce themselves in the form of another generation of workers. A company needs not only a worker's (real worker's) body, but also his competences, i.e. symbolic skills (operating machines, writing reports, etc.) required for a particular job. What is more, due to the increasingly more dynamic situation of production resulting from changes in

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<sup>15</sup> Louis Althusser, *Ideology and Ideological State Apparatuses*  
 <<https://www.marxists.org/reference/archive/althusser/1970/ideology.htm>> accessed  
 01.09.2014.

<sup>16</sup> *ibid.*

demand (new commodities) and changes of the means of production (new machines), the required symbolic skills also change.

In capitalist society, skills are primarily acquired at school and laterally in academia. It is a place where knowledge and skills (reading, writing, etc.), differing relative to class, are transmitted. The division of curricula results from the division of labour. Requirements concerning a worker, an engineer or a manager differ; however, school always transmits skills in a definite form:

“But besides these techniques and knowledge, and in learning them, children at school also learn the ‘rules’ of good behaviour, i.e. the attitude that should be observed by every agent in the division of labour, according to the job he is ‘destined’ for: rules of morality, civic and professional conscience, which actually means rules of respect for the socio-technical division of labour and ultimately the rules of the order established by class domination. They also learn to ‘speak proper French’, to ‘handle’ the workers correctly, i.e. actually (for the future capitalists and their servants) to ‘order them about’ properly, i.e. (ideally) to ‘speak to them’ in the right way, etc.”<sup>17</sup>

It is the form in question that hides the secret of subjugating productive forces to the rules of capitalism. The complex of rules constitutes a network – an ideology which requires its content to be transmitted and practised in a particular way. An ideology may be used to exploit (a capitalist) others (a worker) to facilitate exploitation (administrative personnel), to provide quasi-scientific justification (professional ideologues, e.g. neoliberal economists) or justification in terms of the state and its institutions (functionaries as “priests of ideology”). Althusser states that “reproduction of qualifications of the workforce is ensured in the forms and under the forms of ideological subjugation”<sup>18</sup>.

Ideology belongs to the superstructure, which is determined by the economic base. However, according to Althusser, the determination in question has a character of “the determination in the last instance”, as the topical metaphor of the concept of base and superstructure indicates that while the superstructure rests on the base, it has a certain degree of autonomy. In structuralist terms, they are two linked but separate structures; the superstructure reflects the base in terms of its basic structure, but not necessarily in terms of its content. The superstructure contains special complexes of practices serving the purpose of supporting the base, called apparatuses. One of the most important practices of this type is the state apparatus, consisting of the system of justice, police, and armed forces.

Althusser argues that the topical approach to ideology (base and superstructure) has its limitations. First and foremost, it is descriptive; it does not explain in theoretical terms how ideology is possible, does not describe its condition of possibility, but indicates at its elements. Such a description constitutes the first step towards theory yet this necessitates shifting attention from state authority and State Apparatus (SA) to Ideological State Apparatuses (ISA). While state apparatus is always visible, always in the singular (one Government, one Court, legal provisions), ideological apparatuses are dispersed. While SA always resorts to overt violence and

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<sup>17</sup> *ibid.*

<sup>18</sup> *ibid.*

repression, the ISA's violence is symbolic. Althusser presents examples of Ideological Apparatuses: religion, school, law, politics, trade union, information and culture. Thus, he defines the whole sphere where the public and private orders overlap as ideological. Ideology transgresses the public sphere and encroaches on the private. How does it happen?

The functioning of Ideological State Apparatuses is based on educational, pedagogical and everyday practices. Yet, as indicated above, since the 19<sup>th</sup> century Capital has been taking over the functions of the State. Therefore, further on we may talk about Ideological Capital Apparatuses. Thus ideology becomes not a specific set of view but a set of practical activities. Their function of sustaining the economic base is far removed from the awareness of social players. The activity of ideology results in the emergence of the subject. We shall discuss school – in Althusser's opinion, the most important ideological state apparatus. It gathers children irrespectively of their class and works on them for years. With the use of appropriate pedagogical methods (tests and examinations), it selects them for appropriate roles in capitalist society, advertising its activity as natural and based on the principle of equality:

“The mechanisms which produce this vital result for the capitalist regime are naturally covered up and concealed by a universally reigning ideology of the School, universally reigning because it is one of the essential forms of the ruling bourgeois ideology: an ideology which represents the School as a neutral environment purged of ideology (because it is ...lay), where teachers respectful of the ‘conscience’ and ‘freedom’ of the children who are entrusted to them (in complete confidence) by their ‘parents’ (who are free, too, i.e. the owners of their children) open up for them the path to the freedom, morality and responsibility of adults by their own example, by knowledge, literature and their ‘liberating’ virtues.”<sup>19</sup>

This prompts Althusser to state that ideology is not pure negativity maintaining appearances, but has a positive ontological status. He observes that while concrete ideologies connected with concrete conditions of class struggle have their histories, “ideology in general” has no such history. Ideology is eternal, similar to Freudian unconsciousness. Ideology, in general, is the very form of ideology. It is not a false presentation of real social relations as young Marx thought. Just like in psychoanalysis, fulfilling one's desire will never satisfy it and showing people their real social world will not result in the disappearance of ideology.

Ideology is thus a question of form, which in the political and legal discourse assumes the form of constitutional democracy. In her book *The Riddle of All Constitutions*<sup>20</sup>, Susan Marks, who follows in the footsteps of Althusser and Slavoj Žižek, discusses the implications of this phenomenon. In her opinion, the increase of the significance of constitutionalism and democracy seen in the last few decades brings t neoliberal hegemony. As a theoretician of international law, she points to a discrepancy between declarations (human rights, liberty, political equality) and everyday activity. Ideology occupies the space between these disparate constituents. She shows

<sup>19</sup> *ibid.*

<sup>20</sup> Susan Marks, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (1<sup>st</sup> edn, Oxford University Press 2003).

the limitations of liberal democracy: weak social involvement (“low intensity democracy”) and the transfer of competences to supranational organisations (“pan-national democracy”). The first means that in modern democracies the election procedure itself legitimizes power without regard to whether the actors participating in the elections represent the main social forces. The latter is the view that, because of practical reasons (territory, technicality decisions), democracy should be limited to nation-states. As Marks points out:

“Thus, discussion of global governance centres on institutional and procedural reform in the interests of improved fairness, or on the reorganization of decision-making systems in the interests of enhanced efficiency. In this way, once again the issues are made to seem largely technical; the extent to which goal-setting is implicated and distributive policies are shaped is removed from view, and democratic concerns about the thereby marginalized.”<sup>21</sup>

These views are supported by the doctrine of international law and constitutional law. In other words, neoliberal ideology presents itself as a legally-required realisation of democracy, while it is merely a facade of democracy. Owing to this, the rule of Capital is presented as the rule of law and the doctrine of international law unwittingly became the Ideological Apparatus of Capital.

Taking the aforementioned into account, we return to the theme from the beginning of this paper. Establishing neoliberal hegemony in Poland was possible due to political and legal pressure. This ideology was perceived as a natural option, for which there was no alternative.

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