

CRITICAL THEORY, ORDOLIBERALISM AND THE CAPITALIST STATE

Teoría Crítica, Ordoliberalismo y el Estado capitalista

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ABSTRACT

In this contribution, the author uses the concept of the state as the political form of capitalist society to shed light on the state theories of two intellectual currents that were heavily marked by crisis of capitalism during the interwar period, namely the Freiburg school of ordoliberals and the Institute for Social Research or *Institut für Sozialforschung* (IfS). Though politically opposed, both intellectual currents argued that the free market, left to its own devices, produces crises that lead to the collapse of the relatively autonomous form of the liberal state (*Rechtsstaat*), and thus to undesirable forms of state intervention and administration. Today, liberal capitalism is said to be in crisis once again. For this reason, this paper compares and contrasts two historic approaches to the “liberal state-economy relation in crisis” and considers their implications for critical theories of the state today.

Keywords: authoritarianism, ordoliberalism, neoliberalism, capitalist state, state-form, value-form, Weimar, state theory, form theory.

RESUMEN

En esta contribución, el autor utiliza el concepto de Estado como forma política de la sociedad capitalista para arrojar luz sobre las teorías del Estado de dos corrientes intelectuales marcadas por la crisis del capitalismo durante el período de entreguerras: la perspectiva ordoliberal asociada con la Escuela de Friburgo y la de los socios del Instituto de Investigación Social o *Institut für Sozialforschung* (IfS). Aunque políticamente opuestas, ambas perspectivas sostenían que el mercado libre, abandonado a su propia suerte, produce situaciones de crisis que conducen hacia el colapso de la forma relativamente autónoma del Estado de derecho liberal (*Rechtsstaat*) y el auge de formas indeseables de gobierno e intervención estatal. Hoy es una afirmación común que el capitalismo liberal ha

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entrado de nuevo en crisis. Por ende, el presente artículo compara y contrasta dos perspectivas históricas sobre “la relación Estado-economía en crisis” y analiza las posibles consecuencias de estas para la Teoría Crítica del Estado.

Palabras clave: autoritarismo, ordoliberalismo, neoliberalismo, Estado capitalista, forma-Estado, forma-valor, Weimar, teoría del Estado, teoría-forma del Estado.

1 THE CAPITALIST STATE

1.1 *Illiberal Neoliberalism and the Capitalist State*

The crisis that followed the financial crash of 2008 has often been characterised as a “crisis of neoliberalism”, of a specifically financial stage of capitalism that seeks to extend the competitive logic of the market to all areas of life. However, as Chris O’Kane observes, in the aftermath of 2008 critics of neoliberalism largely focused on the excesses of global finance at the expense of an analysis of the state.¹ This is problematic considering the key role the state plays not only in managing crises but also in reproducing capitalist society as a whole.² In *The Crisis of Neoliberalism* Gerard Duménil and Dominique Lévy define neoliberalism as “a new stage of capitalism” that “expresses the strategy of the capitalist classes in alliance with ... financial managers ... to strengthen their hegemony and expand it globally” (2011: 1). For them, neoliberalism amounts to a doctrine reflecting a given moment of capitalist development, which a particular class fraction instrumentalises to gain a competitive advantage over other fractions. Since the state is not mentioned, we may assume that neoliberal strategy strengthens its hegemony either by convincing or manipulating nation states into adopting a series of policies that benefit a global élite.

However, the political state is not an innocent fool that looks on powerlessly as capitalism develops. In fact, the neoliberal state is a capitalist state, and the capitalist state is the political form of the capitalist relations of production, regardless of their

¹ This essay takes the following as its point of departure: Aufheben Collective (2010) and Chris O’Kane (2014).

² In Slobodian and Plehwe (2020), the term “neoliberal state” appears once –in a footnote– while the term “capitalist state” does not appear at all.

stage of development.³ This paper argues that to understand the crisis of the (neo)liberal capitalist state, one ought to examine the form-determined relation between the capitalist state and the capitalist mode of production.⁴ What does the state do that the allegedly self-regulating economic sphere cannot do for itself?⁵ Do the functions of the state determine its form? Is an increase in state intervention the sign of a postliberal era or are liberal forms of state control at all possible? What can the Institute for Social Research (IfS) and Freiburg school analyses tell us about a post-liberal society in which some economic players are paradoxically “too big to fail”?⁶ Such an analysis aims to shed light on the “unilateral” and or “instrumental” state models that characterise much of the Marxist tradition. In short, this paper compares and contrasts two distinct (and largely heterodox) theories of the collapse of the liberal form of the state-economy relation. It examines how such theories relate to a form theory of the capitalist state and assesses the extent to which such theories address some of the limitations associated with more orthodox critical approaches.⁷

³ The conception of the state as the political form of capitalist reproduction was first put forward by Johannes Agnoli in response to the social-democratic state theories of Claus Offe and Jürgen Habermas. According to this view, the state and the economy form two distinct parts of a conjoined whole. That is, they speak different languages but share the same objective: the reproduction of capitalist society. For Agnoli and Bonefeld, the continuity of the capitalist system can only be assured if the state remains institutionally separate from competition between economic agents. Agnoli's conception is often contrasted with the idea that the state can be “derived” from the capital relation. For more on the West German State Derivation debate, see Simon Clarke (1991). See also Holloway and Piccioto (1978).

⁴ For “form theory” and its relation to the IfS, Cf. Neupert-Doppler (2018: 816), Harms (2018: 852).

⁵ For example, Elmar Altvater claims that the state performs at least four maintenance functions private capitalists cannot: establishing a legal framework for commodity exchange, containing the class antagonism, enforcing rules of international trade, expanding markets territorially and delivering infrastructure projects. Cf. Altvater (1972: 97-108).

⁶ The authors associated with the Institute for Social Research - misleadingly known as the Frankfurt School - developed radical democratic and anticapitalist social theories with explicit reference to the fate of the Weimar Republic and the rise of Nazism. The “Freiburg School”, on the other hand, refers to a loose tradition of German “ordo” or “neo”-liberalism, which sought to establish the political and theoretical foundations for a return to liberal capitalism in the aftermath of Weimar and both during and after Hitler. While the two tendencies disagree on the causes underlying Weimar's collapse, in their diagnoses they often point to the same symptoms. One important factor they did agree on was the negative impact of monopoly capitalism and the concentration of power in the hands of special interest groups. As Olson (2018: 835) points out: “The phrase ‘too big to fail’ may have been coined only in the crisis of 2008 but the concept had already been applied in 1929 and the years that followed.”

⁷ The state is understood here as the specific political form that corresponds to the (historically) specific social form of production. My analysis draws on Werner Bonefeld's well-known work on ordoliberalism, and on the “Open Marxism” state theory with which it is associated. In a “form-determined” model, the state has access to an array of politico-economic powers that are determined by the forms of the capitalist economy, and which benefit its reproduction. Many Marxist accounts

1.2 *The Unilateral Conception of the Neoliberal State*

Contemporary critics of neoliberalism often take a “unilateral” or one-sided approach to the state-economy relation. This view holds that the sphere of the (global) economy advances at the expense of the (national) sphere of politics and vice versa.⁸ Perspectives as diverse as the influential globalisation theory of David Held and Ulrich Beck, traditional Marxist approaches, and even post-Marxist theories of “cognitive” capitalism all share this view, to some extent.⁹ Traditional Marxist state theories can count on several points of departure, including but not limited to: Marx’s topology of “base” and “superstructure” (*Überbau*) from the 1859 Preface to *A Contribution to the Critique of Political Economy*, the *Communist Manifesto*’s view of the state as the committee of the ruling class, aspects of Engels’ criticisms of nineteenth-century German social democracy, Lenin’s theory of the class state in *State and Revolution*, or discussions regarding social democracy before, during and after the rise of fascism in Europe. Unlike revolutionary Marxism, social democracy regards the political state as a wholly independent and neutral arena in which different class actors compete to implement social reforms. However, for the subsequent form-based theory “the class character of the state (is) determined ultimately by the structural relationship between the state and the economy, embedded in the form of the state determined by its function within the system as a whole” Clarke (1991: 5). Therefore, as an expression of bourgeois society the state is neither independent nor neutral with respect to the economic.¹⁰ By focusing on the state’s systemic function, form theory aims to go beyond both the traditional “unilateral class instrument” and social-democratic “neutral apparatus” models that still inform much of today’s thinking about the neoliberal capitalist state.

of the state can be regarded as “formless” because they treat the state as a *thing* that is both logically and historically external to the nexus of relations that constitute the capitalist social form. That is, they view the state as a transhistorical and merely *political* entity that has, over time, been taken over by the allegedly incompatible, alien power of the capitalist economy. They thus fail to consider the historically specific, political-economic form of the capitalist state.

⁸ Cf. Sørensen (2004)

⁹ In sociology, the spatiotemporal approach to social theory was particularly pronounced during the nineteen nineties and the beginning of the new millenium. See Ulrich Beck (1998: 28-30), (2002). For traditional Marxism see Vladimir Lenin’s *Imperialism, the Highest Stage of Capitalism*. For a psychological approach see Yan Moulier-Boutang’s *Cognitive Capitalism*.

¹⁰As Neupert-Doppler (2018: 817) points out, “the theory of the state as the political form of capitalism also follows from the theories of Marx and Engels, who in their early works had already described the modern state as the ‘form in which, the individuals of which society consists have subsequently given themselves collective expression.’”

1.3 Marx and Engels on the State

Marx's early comments on the liberal state responded critically to Hegel's political philosophy. For Marx, by attributing equality and universality to the bourgeois constitutional state (*Rechtsstaat*), Hegel had inverted the topology of state and civil society. On the other hand, Marx argues that the liberal state acquired its distinctive political form during the historical transition towards a new system of generalised commodity production. As the political form of commodity society, the state manifests specific attributes and functions. During this shared transition, Marx documents a growing separation between the functions of the state and those of civil society, that is, between political rule and economic exploitation. Compared to pre-capitalist societies of direct coercion, what is historically specific about liberal capitalist society is the indirect character of its class exploitation. Since under capitalist social relations direct political force is no longer necessary for economic exploitation, it is enough for the state to function as an impersonal, class neutral, and independent guarantor for private property rights and the political equality and universality of buyers and sellers of labour power. However, the state must have some degree of independence or sovereignty if it is to compel *all* participants to recognise one another as legal owners of private property. For this reason, the early Marx maintains that the political equality and universality of the neutral *Rechtsstaat* is a fiction because it only guarantees equality in a formal rather than a material sense. The liberal state's relative sovereignty thus functions as an instrument of class power: its detached legal forms (i.e. freedom of contract) conveniently serve to mask the interests of the propertied class. Nevertheless, the later Marx of *Capital* puts forward a different view. Rather than simply serving to regulate competition and contain the class struggle, the relatively autonomous form of the capitalist state *itself* serves a systemic function: to reproduce the capitalist society and relation in general.¹¹ Marx thus poses a dilemma that was never exhaustively theorised in his own work: how is one to conceive of the state's relative autonomy in terms of form as well as function?¹²

¹¹ Cf. Marx (1990: 711). In other words, Marx goes on to indicate that the *really neutral* state supports the capitalist *general interest* over and above the interests of specific class fractions. Cf. Heinrich (2012: 205)

¹² To avoid confusion, the different connotations of the term "form" ought to be clarified. In its most basic sense, "form" refers to the constitution of the liberal state as an entity shaped by virtue of its separation from the economy. The term acquires a new dimension when Marx develops his theory

Marx and Engels' early or "precritical" state conceptions thus predate several general and scattered theoretical advances made in *Capital: A Critique of Political Economy* and in *Grundrisse*.¹³ For Marx, *Capital* is a fundamental critique both of bourgeois economic science and of its conditions of possibility in the self-conception of its main proponents.¹⁴ The classical economists offered a transhistorical economic theory which rightly identified labour as the source of value but failed to ask why labour adopts the specific form of value under capitalist relations of production. For this reason, *Capital's* decisive contribution is a theory of historically specific social forms. Lacking a theory of specific social forms, the classical economists presented labour not as a social relation embedded in the nexus of specifically capitalist relations, but as a self-evident, atemporal and formless *thing* or instrument that could be appropriated by the ruling class during different stages of development. Unable to fully break with the classical viewpoint, traditional Marxism saw its task as "liberating" labour from the bourgeois sphere of circulation. Similarly, most but not all of Marx and Engels' pre-critical writings depict the state as a self-evident and formless instrument or "medium" (Engels) waiting to be picked up, as it were, by the dominant class of a given stage of economic development.¹⁵

In "Ludwig Feuerbach" Engels (1994) presents a good example of a state theory that downplays the form element. Following Marx's early cue, Engels proposes a materialist alternative to the "traditional conception" (shared by Hegel) that sees "in the state the determining element, and in civil society the element determined by it." Rather than something peculiar, for Engels it is "self-evident" that economic interests, regardless of which class happens to be in power, must pass through the

of specific social forms. In the latter case, "form" refers to the "forms of appearance" of definite social relations in civil society. A state-economy model can thus be described as "formless" in two main respects. First, it may not acknowledge that the liberal state's basic form is one of separation relative to civil society. Second, a formless theory may fail to ask why it is that in capitalism private interests take on the form of appearance of an impersonal apparatus of public power. It would thus fail to relate the state's legal forms of appearance (law, nation) to the specific socioeconomic forms of the commodity, money, capital, interest, rent etc.

¹³ Marx and Engels' views on the state changed significantly after embarking on the critique of political economy in the 1850s. For the early Engels the state is "the state of the most powerful, economically dominant class, which through the medium of the state, becomes also the politically dominant class." Cf. Engels (1990: 271).

¹⁴ In a 17th April, 1867 letter to Johann Phillip Becker, Marx considers *Capital* to be "the most terrible missile that has yet been hurled at the heads of the bourgeoisie."

¹⁵ It followed that to liberate labour one had to liberate the state that had been taken hostage by the market. As such traditional views failed to ask after the specific character of labour under capitalist relations of productions, they also failed to account for the specific form of the capitalist state.

“will of the state” to obtain their “general validity in the form of laws”.¹⁶ Yet rather than examining, as Pashukanis noted, why it is that under specifically capitalist conditions such private interests assume the form of a public entity distinct from the economy, Engels draws attention to the “content” of this “merely formal will”, asking us to consider for whom or for what external purposes the state is being used. What Engels discovers is that the “will of the state” is determined in the last instance by its content, namely “by the changing needs of civil society” and “by the development of the productive forces and relations of exchange”.¹⁷ Thus in “Ludwig Feuerbach” the state is not and never has been an “independent domain” with laws of development distinct from those of the economy.

Similarly, the traditional Marxist and “unilateral” view sees the political and economic spheres as engaged in a directly instrumental relationship in which the functions of the state are evidently and directly subordinate to the needs of the dominant economic class at any given stage of accumulation. That the changing material needs of civil society determine the conduct of the state was not, however, a novel let alone a Marxian argument. Adam Smith anticipated Engels’ reading, arguing that in the inevitable transition towards commercial society the character of the political sphere as authority or jurisdiction “all necessarily flowed from the state of property” (Smith, 1977: 543).

1.4 *Traditional Marxism and Contemporary Scholarship*

By drawing on Marx and Engels’ early polemical and residually liberal formulations, traditional Marxism tended to focus excessively on *who* is instrumentalising the state, rather than on *how* the state works to reproduce capitalist relations as such (Elbe, 2010: 23). O’Kane cites Elbe’s observation that Engels’ “content-based” model of the state as the “mere instrument” of the ruling class “paved the way” for social-democratic and imperialist state theories and thus for Marxism-Leninism (O’Kane 2014: 6), (Elbe, 2010: 22). Specifically, traditional Marxist state theory drew on a logico-historical interpretation of *Capital*¹⁸ and on Engels’ notion that the capitalist

¹⁶ Cf. Chapter 4 (on Marx) in Engels (1994).

¹⁷ Like Engels, Marx distances himself from Hegel’s state model in his 1859 Preface: “neither legal relations nor political forms could be comprehended whether by themselves or on the basis of a so-called general development of the human mind, but that on the contrary they originate in the material conditions of life.” Cf. Marx (2010: 262).

¹⁸ The logical-historical or historically “developmental” interpretation regarded Marx’s presentation of “simple” commodity exchange in the initial sections of volume I to be an account of the historical

state, once the “ideal collective capitalist”, increasingly assumes the role of a “real collective capitalist” or large corporation.¹⁹ Subsequently, in the 20th century many traditional and even heterodox or Western Marxists maintained that as capitalism developed historically, a newly empowered capitalist class arose, one confident enough to manipulate the state into managing what had previously been the competitive activity of the free market and private entrepreneurs. Such instrumentalism often leads to the idea that the state can be simply taken over by a proletarian party and ideology and used to direct a “socialist” economy.

Additionally, traditional Marxist state theory tends to: overlook specific differences between capitalist and pre-capitalist societies, attribute false harmony to the ruling classes, and overstate the anti-establishment credentials of the welfare state. Its understanding of the state-economy relation as an age-old struggle between monolithic blocs informs both academic and popular conceptions of neoliberalism. According to Slobodian and Plehwe, much of the critical scholarship on neoliberalism in the 1990s “began with the basic contention that the ideology meant the rollback of the state and the return of *laissez-faire*: a market fundamentalism, which purportedly dictated the liberation of markets and the transformation of every member of the world’s population into *homo economicus*.” (Slobodian & Plehwe, 2020: 4). This modern unilateral view regards neoliberalism as an economic *ideology* or *doctrine*, as an “-ism” that aims to debilitate the state.²⁰ Furthermore, as O’Kane and Phillip Mirowski note, while many left-wing scholars of neoliberalism criticise the influence of private economic power on the public sphere, they are unable to explain the process by which the interests of the capitalist state bleed into everyday life, hence the last-minute resort to Foucauldian biopolitics by many post-Marxist interpretations (O’Kane, 2014), (Mirowski, 2013: 105). Today, while part of the scholarship has indeed broadened to include the idea of a “strong state and free economy”

emergence of capitalism. This influential reading led to a markedly “stageist” approach to the study of capitalist society in the 20th century.

¹⁹ In *Anti-Dühring*, Engels argues that “The modern state, no matter what its form, is essentially a capitalist machine, the state of the capitalists, the ideal personification of the total national capital. The more it proceeds to the taking over of productive forces, the more does it actually become the national capitalist, the more citizens does it exploit. The workers remain wage-workers—proletarians. The capitalist relation is not done away with. It is rather brought to a head.” Cf. Engels (2010: 266)

²⁰ Cf. Held (1995: 133).

(Bonefeld) and a “roll-out” phase (Peck), the popular critical reception of neoliberalism continues to reinforce the earlier unilateral view.²¹

1.5 *The Idea of a Form-based Theory*

As Altvater, Bonefeld, Neupert-Doppler and others indicate, a more adequate approach understands the capitalist state as a historically specific organisation, the functions of which are delimited by a politico-economic logic or rationality that is detached from but fundamentally connected to the goal of the social form of production: valorisation.²² In other words, it regards the state as the political form of the bourgeois relations of production and their goal: to extract surplus value from living labour (Bonefeld, 2014: 12). As such, the state’s politico-economic capacities are determined by the historically specific social form in which it is integrated: value circumscribes the capacities of the state. In practice, this means that the capitalist state does for surplus value extraction or valorisation that which it is unable to do for itself. Though such politico-economic capacities do have certain instrumental functions, *how* such functions are implemented cannot be inferred by simply regarding the political state as the hostage of a particular economic power (O’Kane, 2014: 3) (Neupert-Doppler, 2018: 817). Rather, we can understand the conduct of the capitalist state better if we consider the ways in which its policies correspond to a particular value-determined rationality – one that presupposes that the state governs to reproduce capitalist society as a whole.²³ This differs from the idea that the principal goal of the (neoliberal) state is to privilege a particular class fraction. Unfortunately, though Marx’s writings on the state are fragmentary and incomplete,

²¹ For neoliberalism as ideology or doctrine in popular books and press, see for example Naomi Klein’s *The Shock Doctrine: the Rise of Disaster Capitalism* or George Monbiot’s article “Neoliberalism – the ideology at the root of all our problems”, *The Guardian*, April 15, 2016, URL: <https://www.theguardian.com/books/2016/apr/15/neoliberalism-ideology-problem-george-monbiot>.

For academic and Marxist accounts, Cf. Saad-Filho (2010) and Navarro (2007)

²² Valorisation (of capital) refers to the process of surplus-value accumulation that a society based on the movement of coins and wage-labour uses to extend and reproduce itself. Cf. Altvater and Brigitte Mahnkopf (2002: 50)

²³ From a neoliberal viewpoint, it is the responsibility of the state welfare system is to teach the (temporarily) unemployed to see themselves as entrepreneurs in transit. The fact that job centres and unemployment benefits or subsidies continue to exist does not correspond to the idea of neoliberalism as a radically anti-state and anti-welfare ideology. For neoliberalism does not aim for full employment. Rather, it charges the state with the responsibility of ensuring that there is always a potential workforce ready to compete on the market. The state, through taxation (politico-economic capacity) funds a minimum of unemployment support to stop potential entrepreneurs from dying of hunger and to educate them in the morality of work – a policy which clearly benefits the reproduction of capitalism but does not correspond to the interests of any particular class fraction.

we can nevertheless identify the foundations of a form-determined (*Formbestimmt*) conception of the state in the third volume of *Capital*:

“The specific economic form in which unpaid surplus labour is pumped out of the direct producer determines the relationship of domination and servitude, as this grows directly out of production itself and reacts back on it in turn as a determinant. On this is based the entire configuration of the economic community arising from the actual relations of production, and hence also its specific political form. It is in each case the direct relationship of the owners of the conditions of production to the immediate producers – a relationship whose particular form naturally corresponds always to a certain level of development of the type and manner of labour, and hence to the development of its social productivity – in which we find the innermost secret, the hidden basis of the entire social edifice, and hence also the political form of the relationship of sovereignty and dependence, in short, the specific form of state in each case.”²⁴

As O’Kane states, a form-determined theory of the capitalist state would document the categorical development of the state as the specific political form that corresponds to the specificities of the economic form. In this view, the state’s relative independence from the free economy serves the ends of valorisation. It is only by virtue of its immediate institutional separation from but mediated connection to the economic sphere that the state is free to govern on behalf of the market and its functionaries free to use its form-determined powers in a way that responds to the changing needs of valorisation, for example, by using military power to open markets or illegalising trade unions to keep wages down (O’Kane, 2014: 5). This model gradually begins to take shape in Marx’s corpus after the publication of the *Eighteenth Brumaire of Louis Bonaparte*, in which the state is portrayed as an actively “parasitic” organisation that “enmeshes, controls, regulates, supervises and regiments civil society”, in the sense of a referee that enforces policy based on formal freedom and equality in exchange, the right to private property, and the ability to buy and sell labour power.²⁵ At this point, Marx’s concept of the neutrality of the Bonapartist state is moving towards being understood as a real “form of appearance” and away from being regarded as an illusory deception. Though not *directly* subordinate to bourgeois power and interests the French state still maintained the political and legal conditions necessary for capitalist development to take place. In *Capital*, Marx ob-

²⁴ Marx (2015: 778).

²⁵ Cf. Marx (2010b: 186, 237).

serves that during the earlier process of primitive accumulation the ascendant bourgeois class directly commanded the liberal state to legally extend the length of the working day so that it could extract the capital it needed to continue expanding. However, Marx writes that “in the ordinary run of things” the liberal state need not concern itself with direct political intervention because it can count on the “silent compulsion” of the “natural laws of production” to discipline labour.²⁶ The fragmentary comments in Marx’s later work suggest an image of the developed capitalist state as a political form in its “ideal average”, neutral vis-a-vis specific class interests but which governs in the “general interest” by reproducing the social form of production and ensuring the conditions for silent compulsion as a whole.

2 THE STATE THEORIES OF THE INSTITUTE FOR SOCIAL RESEARCH

Alexander Neupert-Doppler (2018) offers a valuable analysis of how the heterodox state theories of Eugen Pashukanis and Critical Theory began to use elements of Marx’s mature critique to distance themselves from the assumptions of traditional Marxism.²⁷ What follows is a short summary of Neupert-Doppler’s account of this initial departure. Pashukanis’ state theory begins with the question of why it is that under developed capitalist conditions private or class rule takes on the public form of state rule.²⁸ It notes that the institutions of commodity society and the liberal-constitutional state share a common historical origin; however, it also notes that this tells us little about “the logic behind their complementarity” and how to interpret it (Neupert-Doppler, 2018: 817). According to Neupert-Doppler, for Pashukanis the answer to such complementarity “lies in the function of the state as a (liberal) *Rechtsstaat*, that is, a state that contains the class struggle and regulates competition on the basis of law.” (2018: 817). Nevertheless, Neupert-Doppler adds that a) “the functions that a state might take on do not explain the form itself” and b) that the authors of

²⁶ Cf. Marx (1990: 899, 900)

²⁷ Neumann openly acknowledges Pashukanis’ Marxist contribution to legal theory. The extent to which the other members of the IfS were directly influenced by Pashukanis is a question that is beyond the scope of this paper.

²⁸ Pashukanis poses the famous “question” in *The General Theory of Law & Marxism* (1923): “Why does class rule not remain what it is, the factual subjugation of one section of the population by the other? Why does it assume the form of official state rule, or - which is the same thing - why does the machinery of state coercion not come into being as the private machinery of the ruling class: why does it detach itself from the ruling class and take on the form of an impersonal apparatus of public power, separate from society?” See Eugen Pashukanis (2003: 139)

the Institute for Social Research (IfS) “were precisely focused on the decline of liberal states” and thus on the historic collapse of its relatively autonomous form. Indeed, Marx suggests that the relatively autonomous connection between the legal form and the commodity form must be grounded in the capitalist relations of production themselves, in the very practice of producing and exchanging commodities (819).²⁹ The IfS authors begin to question traditional Marxism’s blindness as to the specific form of state rule under capitalist conditions. Their theories reflect Pashukanis’ idea that the formal relation between the state and civil society is determined by the functions the state assumes during a given stage of historical development.³⁰ For IfS state theory, the liberal rule of law was appropriate to the competitive capitalism of the private, entrepreneurial class. In their view, this competitive stage had since given way to a monopoly capitalism that required an interventionist, Authoritarian State. Representing an intermediary position with respect to traditional Marxist, heterodox/Western Marxist, and social democratic state theories, for Neupert-Doppler (817) they adopted, via Marx and Lukács, the fundamental distinction between the essence of capitalist society and its form(s) of appearance:

“In this argument, the commodity form, which posits human labour power as a commodity, and the legal form, which posits the individuals as legal subjects, express the essence of exploitation and domination in the form of free labour and abstract legal equality. Just as Marx conceives of the forms of commodities, money, capital and interest as forms of definite social relations, the forms of law, politics, the State and the nation are forms of these same relations, too.”

This once heterodox position became central to the form-theoretical “state debates” in post-war Western Europe (817). Simon Clarke attributes “this change of direction to the failure of traditional Marxist state theories”. However, in the “Introduction” to their volume on the West German state debate John Holloway and Sol Picciotto implicitly refer to the heterodox state theories of Friedrich Pollock and Max Horkheimer when they write of the need to supersede “those who believed in a ‘new capitalism’ which might still be oppressive, but in which the problem of economic crisis had largely been solved by state intervention” (Holloway & Picciotto, 1978:1). Similarly, Moishe Postone is openly critical of Pollock and Horkheimer’s

²⁹ As Neupert-Doppler points out, Marx’s account implies that “formal legal equality is not just a precondition for commodity exchange, the exchange of commodities itself is its content.” (2018: 819)

³⁰ By remaining “faithful to the idea of the primacy of the real economy” Pashukanis falls short of a fully developed form theory grounded in capitalist relations. (2018: 820)

state theories.³¹ Thus for some, the “state debate” conception of the state as the political form of capitalist society arose as a corrective to IfS theories of postliberal capitalism.³² Were Postone, Holloway, and Picciotto right to single out Horkheimer and Pollock? To what extent did the authors of the IfS move beyond Pashukanis’ “functional” view towards a categorical form theory of the state? How relevant to this debate are the lesser-known state theories of Franz Neumann and Herbert Marcuse? The aim of this section is to provide a necessarily broad and provisional overview of the Institute’s key theorisations of the postliberal or “new capitalist” state, in order to ground the comparison with ordoliberal state theory in the subsequent section.³³

2.1 Pollock: The Postliberal State as an Authoritarian State

According to Moishe Postone and Harry Dahms, the aim of the Institute’s research or *Forschung* was to update Marx’s social critique in light of transformed socio-historical conditions. (Postone, 1996: 84) “The issue was no longer the critique of political economy in its latest state of capitalist development, but the critique of *political* economy – that is, of the relationship between the administrative state and the economy” (Dahms, 2000: 326). To update Marx’s critique, Horkheimer felt it necessary to draw on theories of rationalisation found in the works of Georg Simmel, Max Weber and Georg Lukács (Dahms, 2000: 326). Having visited the USSR from 1927 to 1928, in the early thirties Pollock began to formulate his concept of “State Capitalism” (Neupert-Doppler, 2018: 823). Similarly, Horkheimer would frame his take on State Capitalism in terms of an “Authoritarian State” in which the principles of technical administration replace the earlier, liberal principle of economic *laissez faire* (Horkheimer, 2000: 345). Though Pollock’s State Capitalism initially applied to *state* socialism, he later introduced modifications of the term to encompass other instances of postliberal societies. Against Neumann, Pollock termed the Nazi regime

³¹ Cf. Moishe Postone (1996)

³² It is beyond the scope of this paper to take into account other significant texts associated with the Institute’s state theory, for example, Adorno’s “Reflections on Class Theory”, Benjamin’s “*Kritik der Gewalt*”, Sohn-Rethel’s *The Economy and Class Structure of German Fascism*, or Kirchheimer’s work on the state, among others.

³³ “Postliberal” here refers both to the authoritarian turn of the Weimar state and the subsequent rise of Nazism and to Western states after the Second World War. Both the Frankfurt School and the Freiburg ordoliberals develop their social theories around the notion that the capitalism of the first half of the twentieth century has left liberal free-market capitalism behind, and that this has had important consequences for how we think about the capitalist state.

“authoritarian State Capitalism” (Pollock, 1941b). For the postliberal societies of Roosevelt and Mussolini, Pollock developed the term “state capitalist intervention”, the distinctive feature of which is “the suspension of the market mechanism in economies dominated by large corporations” and the preponderance of the administrative state (Dahms, 2000: 336-7). Reflecting Hilferding’s early claim that “in accordance with the dialectical method, conceptual evolution runs parallel with historical evolution” (Hilferding, 1920: 39), Pollock’s “State Capitalism” offers a logical-historical account of the state as a rationalising instrument appropriate to the new stage of development. Its central argument is that the contradictory dynamic of the free market economy necessarily leads to agglomeration and monopolisation, which in turn encourages greater state intervention in the economy and society.³⁴ The rise of a public state apparatus and central plan signals the collapse of private-competitive capitalism, the price mechanism, and the invisible hand as means of market allocation. The crises of the liberal stage are apparently a thing of the past. Crucially, since instability results from the dynamic of the liberal market sphere itself, namely from the contradiction between the forces and relations of production, Pollock argues that “any attempt to reconstitute a social organization based on liberal economic mechanisms would historically be doomed to failure”, that “it would be a wasted effort to attempt to re-establish the technical, economic and social-psychological conditions for a free market economy.” (Pollock in Postone, 1996: 92). The four tenets of Pollock’s theory in “State Capitalism: Its Possibilities and Limitations” (Pollock, 1941) are as follows:

1. Public state-capitalism is the historical successor to private, liberal capitalism.
2. The state, as total social or “collective” capitalist, “assumes important functions of the private capitalist”, that is, it behaves like a corporation.
3. The profit motive still plays a significant role.
4. It is not socialism.

State Capitalism signals the end of the primacy of the economic and the institution of the “primacy of the political” (Postone, 1996: 90) Furthermore, since the economy has turned fungible, for Pollock it becomes necessary to ask: who directs the economic process and to what end? What is the goal of the economic process in

³⁴ One reason why the logical-historical interpretation may have appeared to make sense to contemporary observers is that the transition from liberalism to statism, as Neupert-Doppler points out, “also corresponds to global trends in the 1930s and 1940s.” It is true that a process of monopolisation took place, whether this was a necessary step is the subject of debate (2018: 823).

advanced capitalism? Pollock's conception of State Capitalism can certainly be admired for its breadth of ambition in accounting for various kinds of postliberal society. Nevertheless, for Postone "the assertion that economic "laws" lose their essential function when the state supersedes the market indicates that, in his view, such laws are rooted only in the market mode of social regulation." (1996: 97) Were that the case, Marx's critique of the contradictory character of capitalism would be "relegated" to the liberal era and invalidated with respect to postliberal or monopoly forms of capitalism (1996: 98). Another issue for Postone is that Pollock considers Marx's forms of value, the commodity, money, surplus value, rent, etc "solely in terms of the market" and not as categories of production (1996: 97). This implies that capitalist social relations apply only to the market and not to the sphere of production, echoing traditional Marxism's "standpoint" critique, which holds that labour ought to be "freed" from the influence of irrational market forces. Pollock thus echoes traditional Marxism in various respects. First, labour is regarded as a timeless and formless thing or instrument and not as a social relation that is itself embedded in the nexus of capitalist relations. Second, it makes uncritical use of Engel's view of the state as "real collective capitalist" (Engels, 2010: 267). Third, since capitalism has entered a qualitatively and historically new and mass "corporate" phase, and since the state merely reflects the successive stages of economic development, Pollock's analysis requires not only a new theory of the capitalist state, but also a novel class dynamic in which "key bureaucrats in the business, state and party allied with the remaining vested interests" (Dahms, 2000: 340). However, regardless of its level of development, since State Capitalism is a capitalist society, we are already familiar with the goal of the economic process: valorisation and the reproduction of capitalist social relations. Since Pollock's emphasis was on the *politics* of a historically "advanced capitalism", Dahms argues that he does not address the economic function of the rationalising state (2000: 342). Nevertheless, in focusing on the *political* state not only did Pollock draw attention to an aspect of Marx's critique that had been neglected by the economism of traditional Marxism; with Horkheimer he also helped to develop an unrivalled description of the mutilating effect of instrumental or technical rationality on social institutions. Unfortunately, Postone regards the subsequent emphasis on instrumental reason as symptomatic of the IfS' failure to revise Marx's categories, and thus to live up to the claim that Critical Theory represents an updated form of Marxian critique. Postone, however, fails to criticise State Capitalism as a state theory in its own right. Instead, he dismisses

Pollock's model for not having grasped the categorical rather than historical dimension of Marx's critique of capitalism. As a state theory, Pollock's account accords with the traditional view that the complementary relation between the (administrative) state and (monopoly) capitalism can be explained in terms of the functional role the state assumes: namely replacing the haphazard, liberal mode of market allocation with a calculated plan. Thus, since "State Capitalism" is formless in a political-legal as well as a politico-economic sense, it can only argue that the relative autonomy of the *Rechtsstaat* has collapsed in a historical sense.

2.2 Horkheimer: *The Authoritarian State*

Horkheimer sets out his basic views on the postliberal state-economy relation in the 1940 essay "The Authoritarian State" (Horkheimer, 1973: 3-20). The term refers both to the state socialism of the Soviet Union and to fascist regimes. Like Pollock, Horkheimer documents a "transition from monopoly to state capitalism" in which "joint-stock companies" followed by trusts and finally the state take control of circulation as well as production. The cornerstone of the liberal economy, that is, the sphere of exchange or circulation – what Marx sarcastically refers to as the bourgeois "Eden of Human Rights" and Horkheimer as the "El Dorado of bourgeois existence" – has been liquidated (Horkheimer, 1973:3). The basic contradiction of the earlier liberal economy is that it generates the technical means of saving on labour costs, inventing machines that make workers redundant, but not work per se. The defective mechanism of the liberal sphere means that "the state, as the official representative of capitalist society ... must finally take over the management of production" and civil servants must "perform the functions previously carried out by private profit-seekers." (1973: 3). Furthermore, whereas workers previously related to an individual capitalist in a liberal society beset by crises of accumulation, in post-liberal society the wage labourer's relation to capital becomes more acute insofar as she is exploited by its very "embodiment" – the state (1973: 3). Yet "in spite of the alleged absence of crises there is no harmony." (1973: 8). As all forms of state capitalism are "repressive, exploitative, and antagonistic", Horkheimer recognises that the Authoritarian State is "ultimately transitory rather than stable." (Postone, 1996: 110) Horkheimer's basic argument is that as capitalism develops historically, the state abandons its neutral function as "ideal collective capitalist" and increasingly becomes an openly partial apparatus, a "real collective capitalist" that adjusts according to the interests of the dominant economic class. Nevertheless, at another point

in the text, Horkheimer seems to contradict his description of the state as a biased public apparatus. Positing a classically liberal or Smithian conception of the state as “police”, Horkheimer describes it as “the organisation which bourgeois society creates for itself to maintain the general external conditions for the capitalist means of production against encroachments either by the workers or the capitalists” (Horkheimer, 1973: 3). Horkheimer resolves this apparent contradiction by employing a somewhat counterintuitive distinction: the state maintains such external conditions insofar as it “increasingly takes possession of once private forces of production.” In other words, the new state fulfils the traditional role of ideal collective capitalist to the extent that it behaves as real collective capitalist. How, we might ask, can the state defend the general conditions of competition and avoid distorting the price signalling mechanism if it intervenes directly in the market as a monopolising power group with partial interests? Another ambiguity in Horkheimer’s account is that while “The Authoritarian State” shares Pollock’s developmental view of a transition to state capitalism, unlike the early Hilferding he does not regard this movement as a logical-historical inevitability: “dialectic is not identical with development” (1973: 12). If Horkheimer misleadingly refers to State Capitalism as the “last stage of class society” it is because “the existing material conditions make possible and promote that leap” (12). That is, it is precisely the gap between concept and reality that grounds the possibility of revolutionary action or praxis (13). Furthermore, Horkheimer states that “the equality of commodity owners (in exchange) is an ideological illusion which breaks down in an industrial system and which yields to overt domination in an authoritarian state” (13). Neupert-Doppler observes that “with open domination not mediated by the form of law, the fetishism of law that belonged to it is also extinguished.” (2018: 823). Since the neutrality and universality of the liberal rule of law is no longer self-evident, state socialism (and by implication fascism) can openly declare the establishment of a proletarian “class state”, that is, an openly partial state.

For Postone, Horkheimer’s “Authoritarian State” adopts an “analysis of postliberal capitalism essentially similar to Pollock’s” (Postone 1996: 87). Postone’s analysis can be summarised as follows: instead of grounding his account in Marx’s socio-economic categories (as forms of appearance of specific social relations), Horkheimer enlisted a precritical concept of labour. Labour, understood as the process of mastering nature and developing human powers, is potentially liberatory. Nevertheless, anachronistic market relations which subject labour to “economic laws” such as the profit motive hold back its emancipatory potential. The inner contradictions of

market society lead to the concentration of money and the rise of a monopoly ruling class. A noncontradictory, public capitalism follows on from the old, contradictory, private capitalism. No longer the object of market relations, labour is subjected to repressive, bureaucratic planning. At this point, Postone's description of "The Authoritarian State" is almost indistinguishable from his account of Pollock's theory of State Capitalism. However, there are three important points that ought to be mentioned. First, Postone argues that Horkheimer locates the very possibility of social critique precisely in the disparity between creative forces and restrictive relations of production. If historical development has eliminated this contradiction in its transition towards a one-dimensional or non-contradictory society, then Critical Theory would lose its ground. Second, echoing a point made earlier, Postone's Horkheimer indicates that capitalist development is not necessarily the result of iron laws of history, as it were. Yet, whether contingent or not, Horkheimer observes that, in practice, the liberal *Rechtsstaat* everywhere transforms into some form of market-free Authoritarian State characterised by greater levels of repression. The implications are stark: if repressive logic and action cannot be attributed to the internal dynamic of exchange relations, what does this tell us about the nature of labour itself? For Postone, this led Horkheimer to attribute sinister motives to labour as such and to locate technical or instrumental rationality prior to the advent of commodity society, in man's very metabolism with nature. It is at this point, Postone argues, that Critical Theory shifted its emphasis from the Marxian critique of society towards a more pessimistic account of the rise of instrumental rationality in Western Civilisation (1996: 119).

In short, though Horkheimer does recognise that one of the maintenance functions of a capitalist state is to ensure the reproduction of capitalist social relations in general, he seemingly contradicts this point by claiming that state intervention and the "decimation" of the bourgeois sphere of exchange are necessary to ensure that capitalist society outlives the instability of the market.³⁵ Like Pollock, Horkheimer argues -implicitly- that the relatively autonomous form of the *Rechtsstaat* collapsed after the Authoritarian State took control of what had previously been the sphere of the liberal economy. Postone's comparison of the two authors, while convincing in

³⁵ As the article will show further on, this places Horkheimer in direct contradiction with the Freiburg school, which sees the orderly functioning of the market as depending on a strong state that limits itself to refereeing the economic 'game' rather than intervening in it.

its portrayal of their traditional Marxist assumptions, tends to overstate the similarities between the two authors, and tends to object to such state theories for betraying a precritical concept of labour rather than for their indebtedness to precritical state theories.

2.3 Marcuse: *The Irrationalist Authoritarian-Liberal State*

Marcuse's philosophical and cultural-historical analysis of the authoritarian state complements those of his associates at the Institute for Social Research. In his 1934 essay for the *Zeitschrift für Sozialforschung*, "The Struggle against Liberalism in the Totalitarian View of the State", Marcuse notes that the advent of the Authoritarian State is accompanied by the rise of a worldview he characterises as "heroic-völkisch realism" (Marcuse, 2009: 2). In principle, Marcuse regards liberal democracy as a rationalist project that contributes towards the victory of reason. Its doctrine stems from liberal naturalism, namely the idea that social life is governed by natural law (2009: 7). However, under certain conditions, natural rationalism tips over into illiberal naturalism, in which the specific character of the *Volk*-nation is regarded as a natural or eternal given. This heroic-*völkisch* mode is the *Authoritarian State*, and its enemy is liberal, enlightenment culture. Significantly, Marcuse argues that "liberalist naturalism already contains, pre-formed, those tendencies that, with the change from industrial to monopoly capitalist, take on an irrationalist character" (9). Like Horkheimer, Marcuse attributes this postliberal shift to a shift in capitalist development. However, rather than solely promoting exclusionary and monopolistic organisations, for Marcuse the transition to monopoly capitalism also activates xenophobic and irrational elements that lie dormant in liberal naturalism, in the *culture* of liberal society. If the nativism of the Authoritarian State attacks capitalism, it does so only to protect its underlying structure. It attacks only one type of capitalist – the petty "merchant breed" and thus only one type of capitalism – stock or free-market capitalism, types which for Marcuse "have already been displaced by the course of economic development." The Authoritarian State uses the image of a "bygone" liberal capitalism to channel popular antibourgeois sentiment away from the fact that at no moment does it challenge the bourgeois relations of production that underpin it. At the same time, the authoritarian state celebrates the figure of the "gifted economic leader" or "born executive" over that of the economic specialist or analyst (2009: 7).

Citing Ludwig von Mises and Giovanni Gentile's support for far-right regimes, Marcuse shows that because for liberalism "capitalism is the only possible order of social relations" an authoritarian, non-democratic government is acceptable if free-market society is threatened by popular, mass democratic or Marxist demands (2009: 6). Indeed, for Marcuse, the "total authoritarian state" maintains the basic principle of liberalism, namely, that society should be organised around the recognition of private property and the private initiative of the entrepreneur. However, while the Authoritarian State maintains this principle of organisation, it modifies the liberal model in light of the immediate requirements of capitalist development, in this case those of monopoly capitalism. The shift from a liberal to a *volkisch* worldview reflects the fact that "they are all essentially part of the transition ... to monopoly capitalism ... and especially the large units such as cartels and trusts require a strong state mobilizing all means of power" (2009: 12). Drawing on a traditional interpretation of Marx's base-superstructure topology, Marcuse summarises his view (2009: 13):

"The turn from the liberalist to the total-authoritarian state occurs within the framework of a single social order. With regard to the unity of this economic base, we can say it is liberalism that 'produces' the total authoritarian state out of itself, as its own consummation at a more advanced stage of development. The total-authoritarian state brings with it the organization and theory of society that correspond to the monopolistic stage of capitalism."

Marcuse's basic argument is that the one-sidedness of liberal rationality, which does not ground reason in sensuous human praxis but only in a formal conception of "natural" law, must resort to irrational justifications. Liberal capitalism, incapable of delivering *material* freedom and equality, always incubates its irrational negation. If liberal capitalism has a global, mobile, and mercantile character, then it also harbours the potential for a national, static, and industrial capitalism. This negation is activated by a change in capitalist development, though it is unclear to what extent this is regarded as a necessary evolution. By this token, the rise of monopoly capitalism requires the state to adopt an illiberal *Weltanschauung* which has cultural precedents in Germany. Marcuse's interdisciplinary analysis shows how neoliberalism in Germany – with its concern for authenticity, quality, morality and substantiality – responds to a specific cultural anxiety about the state of play of bourgeois modernity, the historical impact of which cannot be underestimated. His observation that both illiberal and liberal forms of capitalism wage cultural wars on one other to

distract from their shared economic constitution is timely and relevant. Furthermore, Marcuse perceptively links the pseudo-critique of the culture of liberal capitalism to the rise of xenophobic and nativist politics.

2.4 Neumann: *The Postliberal Nazi Regime*

In the late twenties in Berlin, Franz Neumann met Otto Kirchheimer and lectured alongside Carl Schmitt and Hermann Heller, coiner of the term “authoritarian liberalism”. His post-WWII magnum opus, *Behemoth: The Structure and Practice of National Socialism, 1933-1944* is one of the Institute’s most historically significant works.³⁶ Written, in part, against Pollock’s one-sidedly *political* interpretation of *State Capitalism*, the elementary claim in the second section of *Behemoth* is that the Weimar state collapsed even before the Nazis came to power. It disintegrated because of an increasing imbalance between the economic forces and relations of production, in a context of increasing monopolisation that supposedly rendered the old liberal-contractual state obsolete (Neumann, 2009: 221-358). According to Felix Sassmannhausen, for Neumann the “phase of liberal and democratic capitalism ends with the emergence of monopolistic capital at the beginning of the 20th century” (Felix Sassmannhausen, 2019: 308). Neumann’s theory can be summarised as follows. First, every mode of production is understood to give rise to a corresponding and complementary political-legal framework (Neumann, 2009: 255). That is, the legal form of the state is understood to be positively and causally derived from the socioeconomic content of historical development. Thus, the regulative centre of the state is to be found in the economic as well as in the political sphere. Prior to the rise of late-Weimar monopoly capitalism, the liberal constitutional state best matched the requirements of free market capitalism. In a law-based liberal regime, the state must intervene in society in order to continually regenerate and sustain the conditions necessary for free, undistorted competition (Olson, 2018: 93). The state does not plan for competition in its abstract capacity as a capitalist state. Rather, it plans and intervenes for competition because that is what the competitive class power demands of it at that given moment. (Neumann, 1996: 101) In Neumann’s schema,

³⁶ In 1933 the SA broke into the law practice he shared with Ernest Fraenckel in order to arrest him for his political activity and Jewish heritage. His affiliation with the *Institute for Social Research* was brief, officially lasting only from 1936-1940, and his relationship with Horkheimer was strained. *Behemoth* was primarily concerned with the way in which the Nazis were to be defeated and Germany rebuilt, and its “four powers” schema influenced the structure of the Nuremberg trials and helped to increase the reach and effectiveness of denazification.

in liberal society the state governs to benefit the dominant entrepreneurial/competitive class. However, in monopoly capitalism the political state governs on behalf of the heads of industry or monopolists, responding to an economic situation in which capital has become increasingly concentrated in the hands of increasingly few cartels and trusts. In neither of the two stages of development does the state govern neutrally as an ideal capitalist, that is, on behalf of the capitalist system as such. At the end of the nineteenth century the relatively detached state-form serves the interests of entrepreneurial capitalists. At the beginning of the twentieth, the collapsed form of the state suits the interests of the industrial monopolists. Neumann attributes the rise of monopoly capitalism to several factors. First, he cites the complicity between politico-judicial functionaries of the state and members of the economic elite.³⁷ Second, he points out the failure of the left to discern that agglomeration is not a sign of incumbent socialism (Neumann, 2009: 15). Above all, Neuman points to the technological changes taking place within the manufacturing process itself. Polymerisation, which requires a complex infrastructure for its extraction, production, and distribution, exceeded the organisational capacities of ‘competitive’ pre-monopoly capitalism. The polymer monopolies need the state to function not as a neutral market-referee but as a loyal ally that helps to make the manufacturing process viable. The conditions demanded by a vertical and large-scale manufacturing process are best met by monopoly capitalism and subsequently the Nazi regime (2009: 279) (Olson, 2018: 95). As Neumann famously notes, the Nazis did not establish a state in any conventional understanding of the term. Nazi Germany failed to meet the basic definition of the state as holding the monopoly on violence in a sovereign body. Not one sovereign but several power groups existed in Nazism. The army, the bureaucracy, the party, and captains of industry came together temporarily to share a common goal, a goal which did not stem either from a single shared ideology or from the total bureaucratisation of the state. Irrational beliefs, like that of the *Fuhrerprinzip*, were not fixed organising principles, but convenient distractions from the one true goal that *all* the class power fractions would benefit from in the German model: limitless expansion.³⁸ As Olson notes, “By intimately linking the form of government with the mode of production, it becomes possible to suggest that the rise of Hitler was preceded and accelerated by material relations descending to the atomic level” (Olson, 2018: 96). However, as Sassmannhausen perceptively

³⁷ Cf. David Kettler and Thomas Wheatland (2019: 346).

³⁸ Cf. David Kettler and Thomas Wheatland (2019: 340).

observes, Neumann's derivation of the legal form of the earlier, pre-Nazi order is contradictory. In principle, the abstract and legal form of the *Rechtsstaat* is causally determined by its socioeconomic content. To this extent, Neumann follows Marx's understanding of the legal form as a *real* "form of appearance", as the objective ground for formal freedom and equality in society. Yet at other times he seems to revert to the traditional Marxist conception of the relatively autonomous state as a mere illusion, as a pseudo-neutral state which serves to conceal direct, class-to-class domination. It is not that abstract or indirect domination replaces the material exploitation of one class by another. Rather, Marx suggests that just as the class relation is subordinated to the dynamic of valorisation, in practice, class competition becomes subordinate to the abstract imperatives of the bourgeois law and state. Sassmannhausen writes of Neumann that:

"Without differentiating the levels of abstraction, this two-fold characterization remains inconsistent, because it implies two contradictory concepts of domination. We rather ought to grasp this notion as a specific double character of capitalist power relations. This entails that on the level of social content, we have to understand capitalism as a form of class domination. With regard to his legal-form theory, however, we have to grasp social power as abstract and impersonal powers."³⁹

To summarise, Pollock holds that in postliberal society the vagaries and crises of the earlier liberal phase are rendered obsolete by a powerful, calculating state apparatus. In theory, this technical apparatus is politically value-free – compatible with both progressive and regressive kinds of political rationality. His notion of "state capitalist intervention" draws attention to the problem of the state's relationship to capitalist development, foregrounding the political element that economic, traditional Marxism tended to neglect. Horkheimer's "The Authoritarian State" recognises that the historic function of the relative autonomy of the liberal state was to facilitate the reproduction of a society based on the free market and private property. Yet the instability of the free market generated the conditions in which illiberal, interventionist states could gain control. The function of the new public apparatus and technical rationality was to ensure the "general interest" of capitalist society by saving it from the contradictions inherent to its "mode of distribution" (Postone). Unlike Pollock, Horkheimer did not regard the new state as a politically neutral

³⁹ Felix Sassmannhausen (2019: 311).

apparatus that progressive forces had to appropriate in order to avoid the establishment of a computer-stabilised, “thousand-year Reich” (Olson, 2018: 98). Marcuse agrees with his colleagues that the postliberal state responds to the material interests of the economically dominant class at a given stage of development, and thus that the Authoritarian State and its rationality reflect a shift in the economic “base” towards monopoly capitalism. This shift, for Marcuse, triggers an authoritarian cultural reaction that is already latent in the rationality of liberal society. Less interested in the idea of an unfolding technical rationality, Neumann focuses on the contingency of material-economic processes, arguing for the continuing influence of economic contradiction on the political and against the possibility of a crisis-free, neutral, plan-based administration. While Neumann is closer to the social democratic conception of the state as a politico-economic arena, this arena is nothing less than an instrumental space in which economic power groups compete to articulate their interests through the Engelsian “medium” of the state.

Unfortunately, Moishe Postone’s analysis limits itself to IfS theories that foreground the “primacy of the political”. However, even if it had encompassed Neumann or even Pashukanis’ focus on the primacy of the real economy, Postone’s critique would have arrived at similar conclusions, namely that all such state theories fail to make a clean break with traditional Marxism, with its transhistorical and standpoint theory of labour and value, despite acknowledging many of its limitations. Above all, Postone’s analysis implies that critique would not have lost its ground and taken a pessimistic turn had Pollock and Horkheimer a) grasped that immanent contradiction belongs to capitalism in general rather than any given moment of development and b) acknowledged that the true object of Marx’s critique is a system in which capitalist relations determine the forms of production *and* exchange. Beyond Pollock and Horkheimer, all the authors mentioned fall short of Marx’s mature form-based conception. This owes to the fact that instead of associating the relatively autonomous form of the capitalist state to the specific form of capitalist production per se, “without exception, Critical Theory attributes the *Rechtsstaat* to private capital.” (Neupert-Doppler 2018: 825). IfS theories generally maintain an instrumental and developmental view in which the contradictory dynamic of private, liberal capitalism leads to naked administration and repression at the hands of various kinds of postliberal states (though Neumann would later attribute

a greater level of contingency to such development).⁴⁰ With no guarantee that state socialism would prevent further violence, or that liberal capitalism would not consistently lead to conditions in which open Nazi or dictatorial violence could still flourish, the IfS authors came to prefer a democratised state that retained the pseudo-neutrality of the liberal rule of law over an openly partial “class state” that could not guarantee even a minimum degree of formal equality and liberty. Like Pollock, “Horkheimer, who triggered the debate, did not believe in a return to liberalism.” (825). However, as the following section will demonstrate, the German ordoliberals could conceive of little else.

3 THE STATE WITHOUT QUALITIES: WERNER BONEFELD ON AUTHORITARIAN AND ORDOLIBERAL STATE THEORIES

Ordoliberalism refers to the conservative political, juridical, and economic project of a loose tendency of German neoliberals who, after experiencing the multiple crises of Weimar and Hitler, sought to give German capitalism a distinctly liberal economic foundation. Today, the idea of a social market economy and the success of the *Wirtschaftswunder* are attributed to ordoliberal doctrine, which has come under renewed scrutiny considering recent debates over fiscal austerity in light of the Eurozone crisis of 2010.⁴¹ The key ordoliberal insight is the idea that the premise of a free economy is a strong state.⁴² For the ordoliberals, free market capitalism is not a fully automatic or self-regulating system. Rather, it is a fragile entity that requires a political, legal, and economic “order” or “constitution” to function. The objective of this institutional order is to restore the relatively autonomous form of the liberal *Rechtstaat*, to restore the relative separation between political and economic spheres that ordoliberals regard as the fundamental requirement of a functioning price mechanism. Without this fragile, allegedly civilising mechanism, society collapses into “totalitarianism” – that is, into “state interventionism”. Among others, its main authors include Walter Eucken, founder of the journal “Ordo” and the “Freiburg School” of economic thought, Franz Böhm, also a member of the Freiburg School,

⁴⁰ Cf. Felix Sassmannhausen (2019: 309).

⁴¹ In 2013, Mario Draghi claimed that the European Central Bank operated according to ordoliberal principles. URL: <https://www.neweurope.eu/article/draghi-ecb%E2%80%99s-policies-are-based-%E2%80%9Cordoliberalism%E2%80%9D/>.

⁴² “Strong” here refers to a state that is sufficiently autonomous politically to govern over the public and not be ruled by the public.

Alexander Rüstow, coiner of the term *Vitalpolitik*, the economist Wilhelm Röpke, and the one-time pro-Nazi, Alfred Müller-Armack.⁴³ Such thinkers published in the journal “Ordo”, and many were active members of the neoliberal Mont Pelerin Society, though not all of them were members of the Freiburg School.⁴⁴ Like the thinkers of the *Institute for Social Research* they analysed the rise of mass culture and authoritarian governments in the 20th century. However, while the authors associated with the IfS related the rise of illiberal states to capitalist development and technical rationality, the ordoliberalists attributed the problems of postliberal society not to an excess of free markets, but to an excess of mass democracy. Drawing on Werner Bonefeld’s insights, in this section I examine the “ordo”, “authoritarian” or “German neoliberal” responses to the crisis of the liberal state, in order to show that at the core of liberal thought we find a non-instrumental state theory that a) accounts for the state’s relative independence from the economic sphere as an essential requirement of capitalism, and b) supports the use of illiberal politics as a means of enforcing liberal economic policy.

3.1 Heller, Schmitt, and “Authoritarian Liberalism”

In 1932, Hermann Heller coined the term “authoritarian liberalism” in order to describe the “authoritarian” political programme of the von Papen government in Weimar, which he refers to as a “neoliberal state”. He uses the term “authoritarian” to designate a conception of the state shared by Carl Schmitt and the proponents of an early form of German neoliberalism, today known as Ordoliberalism (Heller, 2015: 295). The ordoliberalists share Schmitt’s view that the state is the key guarantor of a free economy and stable society or *Stabilitätsgemeinschaft* (Bonefeld, 2017: 128).⁴⁵ For authoritarian liberals, the state is a security state that acts as the “concentrated power of a continuously prevented civil war” (Bonefeld, 2016: 2). It is the state’s

⁴³ To date, the scholarship has focused on the way in which ordoliberal thinkers thought of themselves as defenders of the free market and against so-called totalitarian regimes. However, as Aleksandar Matković indicates, many of the original ordoliberal economists –starting from a more authoritarian approach to market maintenance– remained in Germany and supported the Nazi regime. To my knowledge, this connection has yet to be explored in any substantial detail. Cf. Aleksandar Matković (2020)

⁴⁴ Wilhelm Röpke, Alfred Müller-Armack and Alexander Rüstow were not members of the Freiburg School but did provide, together with the Freiburg School, the foundations of ordoliberalism. In this essay I use the terms “ordoliberalism” and “Freiburg School” synonymously.

⁴⁵ See Alexander Rüstow (1932: 62-69) and Carl Schmitt (1998: 213-32)

responsibility to act as a neutral referee that enforces the rules of the game and contains the “civil war” of class struggle.⁴⁶

Heller regards authoritarian liberalism as an attempt to install what Schmitt termed a state of “total quality”, one that successfully claims its monopoly over the legitimate use of violence by asserting itself as the concentrated power of a depoliticised exchange society in which political self-assertion is illegitimate (Bonefeld, 2016: 3). Instead, in a state of total quality, individuals compete and exchange with one another in freedom from personal coercion and private power. According to Schmitt, the independence of the state is fundamental to both “the ability of government to govern” and to the “initiative and free labour power of all economically active people” (Heller, 2015: 299). This owes to the fact that for Schmitt: “Only a strong state can depoliticise, only a strong state can openly and effectively decree that certain activities ... remain its privilege and as such ought to be administered by it, that other activities belong to the ... sphere of self-management, and that all the rest be given to the domain of a free economy” (Schmitt, *op.cit* in Bonefeld, 2017: 53).

The idea of a self-limiting state as a strong state is shared both by ordoliberalism and by authoritarian or Schmittian liberals (Bonefeld, 2017: 3). Like Schmitt, the ordoliberal conception of democracy prefers “authority over majority” rule. In times of crisis, law is to be sacrificed for order, its *sine qua non*. Therefore, in German neo-liberalism, the strong, self-limiting state is both the regulative centre of politico-economic life and the premise of a free economy and society. The state has specific responsibilities or “privileges” it can use not in order to favour any one group of competitors, but to favour capitalist production as a whole.

3.2 An Authoritarian Response to Weimar

Schmitt and the ordoliberals regard Weimar as an unacceptably weak and unstable state that instead of governing over the *demos* is ruled by it and its particular self-seeking fractions. In other words, mass democracy is regarded as a menace to the free economy because it undermines the relative autonomy of the state, making government either accountable to the governed or susceptible to partisan influence (Röpke, 1960: 7), (Bonefeld, 2017: 8). Unlimited mass democracy leads to the purely quantitative state of Weimar, that is, a value-free state, a state of chaos and amorality.

⁴⁶ Cf. Ludwig Erhard (1958: 102).

It is no longer what the authoritarian liberals recall nostalgically as “a democracy of friends”(ibid.: 2017: 51). Rather, the state without qualities, as it were, is at the mercy of an ensemble of powerful private interests. Instead of regulating social conduct on the basis of abstract legal norms, the weak state “refeudalises” the (bourgeois) liberal rule of law, bringing economic agents into pre-capitalist relations of dependency.⁴⁷ “A state of its clients”, the weak state protects its members against the risks of a free labour economy by welfare guarantees and protectionism (ibid.: 2017: 50).

The authoritarian liberals argue that in the name of a free economy, the state “has to be built like a fortress” to prevent it from becoming the victim of mass democratic demands for material security (Bonefeld, 2017: 132).⁴⁸ Thus Bonefeld observes that Adorno’s demand that “no one should go hungry anymore” amounts to an affront to liberty, morality and the rights or *Rechts* of private property.⁴⁹ The authoritarian liberal state of von Papen thus “defends work as a duty, as the psychological happiness of the people” and makes clear that the state’s capacity as market-police depends on its ability to facilitate the “cheapness of provision”, to do what the market cannot do for itself(von Papen in Heller, 2015: 300). In short, the capitalist economy is understood as a political practice of economic order. A liberal state that fails to defend its independence from mass society loses its authority to govern over the *demos* and will instead become their victim. (Röpke, 1942: 192) For the sake of liberty and the avoidance of emergencies, democracy has to be restrained by the power of the free market (Bonefeld, 2017: 31).

3.3 Differences with “laissez-faire” liberalism

Unlike the *laissez faire* liberals who regard the market as a self-regulating system, the ordoliberals regard the liberal state as the *indispensable* regulative power of the free economy. For post-WWII liberalism, the affirmation of the state as the independent power of society remains the key issue. This led the likes of James Buchanan, Friedrich von Hayek, Milton Friedman, and others associated with the Mont Pelerin group of neoliberals to praise the Pinochet regime for its *economic* liberalism. According to Hayek, Pinochet’s regime “may be more liberal in its policies than an unlimited democratic assembly” (Hayek, 19 April 1981: 50-51). The radical *laissez-faire* liberal, Ludwig von Mises, proclaimed that fascism had temporarily “saved Europe”

⁴⁷ Cf. Franz Böhm (1980: 258).

⁴⁸ Cf. Norbert Klöten (1989: 99).

⁴⁹ Cf. Franz Böhm (1980: 75-151) and Werner Bonefeld (2017b).

from the threat of communism – the ultimate form of state interventionism (Mises, 2005: 30). The Austrian neoliberal view of historical development roughly expounded is as follows: as in Weimar, the post-war regimes of the West suffered from an excess of democracy. This excess of democracy meant that the State became overwhelmed with social and economic responsibilities. This weak state was powerless before the private power of unions, and its Keynesian monetary policy led to the stagflation crisis (Bonefeld, 2016: 2). The weak state is a crisis state, and crisis calls for the prescription of crisis resolutions. Their solution: limit the state to strengthen it, assert independence from trade unions and other mass organisations, deregulate the market, and extend the logic of private competition to public life (Hayek, 2001: 63). Schmitt and the ordoliberalists reject *laissez faire* liberalism because (at least in theory) it fails to regard the state as the indispensable precondition of a liberal order that guarantees the conditions for market competition and the reproduction of capitalism.

3.4 *The Smithian Foundations of the Liberal Strong State*

While it is true that the ordoliberal analysis was energised by the authoritarian, Schmittian response to Weimar, its fundamental point of departure is Adam Smith's observation that state power is the premise of civil society.⁵⁰ The State acts to uphold the principle of private, earned property, and to prevent the bloodshed, piracy and chaos that an unbounded market would entail.⁵¹ In the *Wealth of Nations*, Smith states that political economy is a "branch of the science of a statesman or legislator", that is, of the politician and the lawyer and not that of the economist (Smith, 1981: 138). In other words, for Smith there is no such thing as economic science per se. Economy is always a question of political economy. Without the state there can be no market, for the market is not spontaneously given in nature. In the first of his "Lectures on Jurisprudence" Smith argues that "the first and chief design of every system of government is to maintain justice; to prevent the members of a society from encroaching on one another's property" and that subsequently "this produces what we call police" (Adam Smith, 1982: 1). The founding document of the ordoliberalists declares that civil society "amounts to a political practice of market police".⁵² They thus recognise that the game – market competition – is unsocial by definition.

⁵⁰ Werner Bonefeld (2017b).

⁵¹ Adam Smith (2004: 340).

⁵² See Alexander Rüstow in Wilhelm Röpke (1942: 228). See also Milton Friedman (1962: 29).

It is the job of the state to render such unsocial sociability properly “social” and constructive. When ordoliberalism is described as the inventors of the “social market economy”, it ought to be understood that the prefix “social” does not refer to socialism but to the idea of social *order*. The state or “market police” is required to secure orderly competition – securing the sociability of conflicting selfish interests – by means of a series of abstract legal guidelines or principles. For there can be no market or social freedom without law. (Müller-Armack in Röpke, 1960: 281) Law does not apply to chaos (Schmitt in Bonefeld, 2017: 52). It presupposes order. Order, in turn, requires a monopoly on the legitimate use of violence, as well as a set of morals and conventions.⁵³ In practice, liberal politicians, whether authoritarian, ordo, or neo-liberal, accept that the rule of law requires the power of the state as the “concentrated force of law-making violence” (Bonefeld, 2014: 179).

Not only do Adam Smith and classical liberals prefigure the ordo and neoliberal view of the state as market police, they also influenced the traditional Marxist idea that the political “superstructure” is derived from the economic “base” (Bonefeld, 2014: 169). As Peter Burnham notes: “For James Steuart and Adam Smith the structure of society is conceptualised on the basis of its economic foundation. William Robertson provides the classic statement arguing that “in every inquiry concerning the operation of men when united together in society, the first object of attention should be their mode of subsistence” (Burnham, 1994: 221). For the classics, then, the political flows from the developing forms of property.⁵⁴ By this token, many traditional Marxist state theories owe more to Engels and classical political economy than they do to Marx’s mature critique of political economy.

3.5 *The Menace of Mass Society*

Ordoliberals are fearful of the allegedly totalitarian tendencies of mass democracy identified by Hayek in *The Road to Serfdom*.⁵⁵ Following Schmitt, Röpke argues that once mass interests take hold “democracy necessarily falls victim either to anarchy or collectivism”, entailing social disintegration, the blurring of class boundaries, standardisation and mass production. Society loses its vertical coherence and its members lose the vital satisfaction of regarding their contribution in terms of a “job

⁵³ Peter Nedergaard (2019: 27).

⁵⁴ Cf. Adam Smith (1977: 543).

⁵⁵ Cf. Friedrich Hayek (2001: 74).

well done”.⁵⁶ However, ordoliberal anxiety towards the masses is based on qualitative rather than quantitative grounds. They are not too concerned about the number of proletarians. Instead, they object to the identity and culture of the proletarian. Above all, they fear the rise of a “mass man” unrestrained by the nineteenth-century values of hard work and self-reliance (Röpke, 1942: 218-233).

For the ordoliberals, “order” is threatened by the moral and economic consequences of proletarianisation, which *laissez faire* liberalism tends to ignore. They recognise that the proletarian class struggles to subsist because it lacks direct access to the means of production. However, instead of taking personal responsibility for its situation and improving it by being more productive, the proletarian class tends to demand that the state satisfy its material wants and needs by way of welfare, redistributive policies, and full employment. The ordoliberals, however, oppose excessive welfare provision because they believe it deprives workers of the moral freedom to contribute to society as self-reliant and self-responsible entrepreneurs of their own labour power (Röpke, 1942: 14). In other terms, by depending on the state or their union workers are deprived of the freedom to “get on their bike” and find a better contract, so to speak. Qualitatively speaking, this undermines the moral fabric of society, without which there can be no order, no law, no free economy, and thus no free society. For example, Röpke (1989: 71) rejects the welfare state as the “wooden leg of a society crippled by its proletariat” – as the fruit of mass passions. As Bonfeld points out, such fear and contempt for the proletarianised masses was strongly articulated in José Ortega y Gasset’s 1929 “Revolt of the Masses” (*La rebelión de las masas*), a regular reference point for the ordoliberals (Bonfeld, 2017: 56). For some ordoliberals, the problem with mass life is its secular character: it seeks satisfaction in this life and not the next. Weimar democracy failed because it had misplaced the “the whip of competition” (2017: 57) (Röpke, 1942: 182). In its weakness it was ripped apart by mass parties and the specific power groups. In yielding to mass demands, Weimar swapped market sovereignty for collectivist tyranny, unchecked by the liberal principle and in thrall to an excessively “absolute” conception of democracy (Röpke 1942: 50). It follows that for them, a society that is excessively in thrall to the state, a union, party, clan or clique is an irrational society that ends in disorder.

⁵⁶ Cf. Wilhelm Röpke (1942b: 3).

Since capitalism entails proletarianisation and mass revolt – to which *laissez faire* has no solution – the ordoliberals set out to deproletarianise society, that is, to render society bourgeois, to revitalise society and inculcate bourgeois values by means of market-oriented social policy, organic policy, *Vitalpolitik*.⁵⁷ The aim of social policy is to encourage mass individuals to think of themselves not as exploited proletarians in need of state aid, but as “emerging” entrepreneurs. Furthermore, according to Röpke, mass proletarianisation “must be counteracted by individual leadership” to ensure that mass unsociability is harnessed for the ends of the market and not those of political revolution (2017: 39). For the ordoliberals, mass man, in his heart of hearts, does not want to depend on the state (Röpke, 1942: 178). Rather, and not unlike their bosses, proletarians are keen to participate in the labour market as self-determining human capital “if only they knew how and whom to follow” (Röpke in Bonefeld, 2017: 39). For their own good, the proletarian masses need to be led by a benevolent leader in order not to fall prey to the “pseudo-leadership” of anticapitalist figures or organisations (1942: 11).

For Alexander Rüstow, a “plebiscitarian leadership democracy” is essential in order to lead and direct the masses (Bonefeld, 2016: 6).⁵⁸ A charismatic elite ought to govern over the *demos* according to firm principles, establishing an affective connection that enchants the masses and diverts their attention away from the disenchanting reality of everyday abstract-economic compulsion.⁵⁹ In this theatrical model, the leadership of the masses appears as an intensified democracy between leader and movement. It articulates the real resentment of the masses by naming the guilty groups and personifying the impersonal, supra-individual source of anxiety – capitalist valorisation (Bonefeld, 2014: 196). Thus, with Müller-Armack’s influential tract “The Idea of the State and Economic Order in the New Reich” in mind, Bonefeld argues that for the ordoliberals “the masses are the movement of the *Volk*, that is, the real and authentic people.”⁶⁰ Presupposed by the category of the *Volk* is the identity of an “other” that conspires against the allegedly authentic people.⁶¹ This exclusionary identity-thinking is pseudo or “false concrete”, as Neumann observes.

⁵⁷ Cf. Alexander Rüstow (2017: 163-177).

⁵⁸ Max Weber is the first to use the phrase “plebiscitarian leadership democracy” - a phrase also used by Hayek in *The Road to Serfdom*.

⁵⁹ This refers to the compulsion to pay one’s debts, produce a certain number of commodities, earn a certain wage etc.

⁶⁰ Cf. Alfred Müller-Armack (1933).

⁶¹ Cf. Werner Bonefeld (2017b).

While the “other” is not the real source of anxiety, nevertheless it is treated by the conspiratorial masses as if it were. That is, the “other” is not just scapegoated, they are actively discriminated against in practice. Müller-Armack’s prescription confirms Marcuse’s observation that in times of crisis, liberalism will fall back on nativist politics of “heroic *Volkisch* realism” if that is what is needed to contain the class antagonism and free the market.

To summarise, the anxious proletarian is the emblem of mass society and the protagonist of the Weimar experiment. For the ordoliberals, only weak states seek to broaden their popular appeal. Only weak states attempt to appease the proletarian masses, bending to sectional interests and class-specific demands. Rather than enabling the free market, the weak state intervenes in it, creating distortions in the mechanism of market allocation that trigger the need for further interventions. Eucken and Röpke identified the “chaotic force of the masses” as the root cause for the transformation of the liberal state into an “economic” (i.e. quantitative) state of planned chaos (Röpke, 1960: 57), (Bonefeld, 2017: 55) In this chaotic context, private interest groups lobby for controls on competition in order to secure market privileges for themselves. In Franz Böhm’s terms, private power groups invent *complots* in which the state does for them what they cannot or do not want to do themselves (Bonefeld, 2016: 6). Unable to maintain its independence from the *demos*, the weak democratic welfare state succumbs to the demands of pressure groups such as monopolies and unionised workers (Röpke, 1942: 131). Since a mass worker’s society is incompatible with liberal democracy, society must be deproletarianised. As we have seen, this is not an economic and quantitative problem but a qualitative and human problem. The masses lack vitality and psychological well-being. Their society is amorphous, culturally relativistic, and thus easily manipulated. The masses are fundamentally ignorant, making them easy targets for illiberal demagogues and street dictators.⁶² Liberalism must fight for mass man and govern the values and mentality of mass society for the sake of liberal freedom. In his heart of hearts, mass man’s desire isn’t to revolt but to be led and governed. The revolt of the masses is to be countered by a “revolt of the élite” that assumes leadership of the state and acts pre-emptively to neutralise democratic and socialist threats as soon as they arise. Its aim is to reverse the “spiritual collectivisation” of society (Röpke, 1942: 142). Liberalism, Rüstow argued, “had not demanded weakness from the state, but only

⁶² In ordoliberal usage, “illiberal” or “authoritarian” refers to the anti-market perspective held by socialists and, to some extent, by Nazism.

freedom for economic development under state protection” (1942: 58). By this token, Austrian and Chicago neoliberals could justify their support for murderous regimes in Chile and Indonesia. The Freiburg School’s criticisms of the Weimar regime resemble those of the Institute’s resident jurists and political scientists. Neumann and Kirchheimer, aligning with Schmitt, also regard Weimar as a weak postliberal state that allows itself to get bogged down in the contradictions of mass society. However, their solutions differ significantly. The members of the Institute for Social Research all demanded greater levels of democracy, whereas the ordoliberalists demanded a politically authoritarian response to restore a strong state and free economy. While the IfS thought a return to the form of the liberal state a historical impossibility, the latter regarded it as a moral imperative. The following section examines the state’s relation to mass society in the work of Frankfurt and Freiburg-linked authors. It explores the similarities and differences of their politico-economic doctrines and examines their relation to form-based state theory.

4 FRANKFURT AND FREIBURG: THE STATE OF MASS SOCIETY

While the Institute for Social Research and the Freiburg school both develop comparable critiques of post-Weimar mass society and the effects of technical rationality, they diverge significantly in their conceptions of the state-economy relation. In her article on the two currents, Victoria Haidar emphasises the similarity of their views on mass society, rather than on their state theory. Nevertheless, an understanding of their views on mass society is crucial to understanding their views on the state-economy relationship. Haidar notes that both perspectives offer critical examinations of mass society, and that both attempt to situate those dangers in underlying social structures.⁶³

With respect to the dispute over specialisation in post-war German sociology, Haidar justifies her comparison of the two tendencies, citing Adorno’s praise for the ordoliberal Alexander Rüstow’s *Das Versagen des Wirtschaftsliberalismus als religionsgeschichtliches Problem* and its “global presentation of the contemporary social problematic” (Haidar, 2016: 31). The connection between the two tendencies can be further substantiated: after the war, Franz Böhm was appointed Chairman of the Supervisory Board of the repatriated *Institute* in Frankfurt. During this same period, Böhm

⁶³ Cf. Victoria Haidar (2016: 31).

contributed to the Institute's empirical *Gruppenexperiment* on latent fascist tendencies in mass society with his concept of "non-public opinion" in his "Foreword" to the resulting published volume.⁶⁴ Furthermore, on the occasion of Pollock's death in 1971, Böhm wrote to Horkheimer noting the "mutual theoretical controversy that constituted the point of departure of our thought."⁶⁵

Observing that both approaches were concerned with the genesis of the Nazi regime and the crises of liberal capitalism, Haidar writes that "from a Foucauldian perspective" and "in light of Weber's analysis of the irrationality of capitalist society", "their readings ... both bifurcate and reflect each other mutually" (Haidar, 2016: 36). However, although it is true that both perspectives share several concerns, neither approach ought to be reduced to simple "Weberism".⁶⁶ The task here is not to establish how Schmittian or how Weberian the Freiburg and Frankfurt analyses really are. Rather, the objective of this section is to show how underneath their superficially comparable critiques of mass society lie two fundamentally different conceptions of the state-economy relation.

4.1 Mass Irrationality

The German neoliberals or ordoliberalists recognised that the origin of contemporary social ills could be traced back to the "irrationality" of a series of cultural and socio-political developments, such as the rise of monopolies and central plans. Such "collectivist" irrationality stemmed from the state's application of a technical rationality to social questions of a uniquely qualitative, human character. They aimed to counter such irrationality by promoting a form of economic rationality based on the principle of competition (Haidar, 2016: 39). Ordoliberal thought holds that in postliberal societies all social phenomena are endowed and distorted by a mass character or quality that is the source of collectivist and economically illiberal forms of government. For them, mass phenomena are indicative of the pathological form of social bond that the collectivist state encourages. They articulate their critique of mass phenomena via a series of unilateral oppositions: free economy (liberalism) versus totalitarianism, individual initiative versus central planning, morality and immorality, the small and substantial versus the large and intangible, and quality

⁶⁴ Cf. Pollock & Adorno (2011).

⁶⁵ Cf. Joshua Charles Rahtz (2017).

⁶⁶ Like Dahms, Haidar overstates Weber's influence on the Institute as a whole. The relation between authors of the Institute for Social Research and Weber is highly mediated and not at all straightforward, as Karsten Olson (2018) points out.

against quantity (2016: 42). Historically speaking, such oppositions served as convenient weapons in the ideological battle against the USSR during the Cold War. Inspired by a counter-Enlightenment aesthetic, the German neoliberals' critique of mass society was initially formulated in terms of the ongoing dehumanisation and disenchantment of social relations, that is, in terms of the problem of alienation (2016: 43). However, unlike Marx's concept of alienation, for the ordoliberal "alienation" refers to an individual's separation from given "organic" or *Vital* social institutions such as the family. The ordoliberals attribute alienation and loss of vitality to the imposition of a mass character on social life. Haidar cites a passage from Röpke's *The Social Crisis of Our Time* (1942: 33) that would not look out of place in Adorno's *Minima Moralia*:

"Until recently the city dweller's vacations were a consequence-necessary for reasons of health and a balanced life-of mass living, but just lately collectivization extended its domain to include vacations, too, not by enabling larger sections of the population to enjoy them (which one certainly would not begrudge), but by putting even on vacations the stamp of a mass enterprise: even here the individual is not allowed to find himself. A climax in this development seems to be the installation of ski-lifts, whereby the principle of the conveyor belt has been transferred from the factory to the winter sport resort."

Reading this passage, we can imagine that the "collectivizing" principles of Fordism and Taylorism have extended even to Nietzsche's alpine village of Sils-Maria, where Adorno and Marcuse liked to holiday. In short: nothing escapes the irrationality of mass society and its "principle of the conveyor belt". It is not the liberal state that is amorphous and irrational, but the mass, allegedly postliberal state. In *Freedom and Domination*, Alexander Rüstow portrays the mass society of the West as covered in a heap of grainy dust, as an accretion of individual sand grains or atoms varyingly separated from "organic" or "vital" social ties.⁶⁷ This "amorphous" situation (Eucken) is the result of a crisis in the ruling strata, the product of unstable elites that waste their time and energies waging ideological war on rival interest groups, of a technocratic elite that abstains from making value judgments in the name of scientificity, or even worse, of a fraction of the elite that actively supports "collectivist" projects, in other words, of left-wing members of the German middle class such as Félix

⁶⁷ Cf. Alexander Rüstow (1980: 448).

Weil.⁶⁸ The dead heap of dust owes to a failure of political, moral and cultural nerve. For the ordoliberal, it is the task of the uncorrupted elite, of those few well-defined members that constitute the “moral reserve” or moral residue of liberal society, to combat mass society (Bonefeld, 2017: 111).

4.2 *Authoritarian Adjustment*

The ordoliberals do not view the masses as static, however. Under certain exceptional circumstances, the cold and distant bond that characterises the basic social relation between mass individuals can ignite. What Rüstow terms social “sub-integration” can tip over into social over-integration under the correct conditions. For him, both modes of integration amount to pathological forms of social relation because both represent “artificial” attempts at adjustment, rooted in a “hysterical” psychological response to external events that the mass state is said to encourage. In other words, the popular state is regarded as a government that indulges the sentimentality of the masses in order to better seduce it. According to ordoliberal thought, left-wing popular politics encourages the proletarian masses to respond angrily and irrationally to the harmful social consequences of an economic crisis. Unlike proletarian man, the civilised individual comes to understand and accept that crises are part of the economic cycle. Instead of seeking state or union protection, he responds to recession stoically by tightening his belt and adopting a self-sacrificing attitude (Haidar, 2016: 45). At this point, the connection between mass society and authoritarianism becomes somewhat clearer. For Rüstow and Röpke the “decomposition” of community ties, of “intermediate” forms of socialisation, results from a process of “super-stratification” that leads to state expansion and intervention (Röpke, 1942: 10). With the decline of mid-level or intermediate forms of association such as the family and the village, isolated individuals find themselves defenceless before a powerful bureaucratic state. (Röpke, 1942: 45).

Haidar holds that while the Freiburg School regards mass culture as the result of a series of political failures, the Institute’s thinkers trace mass culture back to the uncritical worldview of a society governed by the economic imperative of self-preservation. For Adorno and Horkheimer, mass culture is framed in terms of compensation for an otherwise intolerable, menial existence. Yet as Bonefeld notes, for Adorno and Horkheimer the problem of the masses is not that they are a potential

⁶⁸ Félix José Weil was a Jewish German-Argentine Marxist who provided the funds needed to establish the Institute for Social Research in Frankfurt.

source of irrational rebellion. Rather, the issue with the proletarian mass is its docility and impotence. The levelling effect of the exchange abstraction, which renders all things in nature equivalent, is what truly defines a mass society in which social integration or assimilation is achieved only by means of consumption. The result of mass production and consumption is that both product and consumer are transformed into equally interchangeable, equally expendable samples. Faced with ego loss, the individual is liable to seek out the compensatory mechanisms that the culture of mass society offers. Despite the short-term anaesthetising power of the *Kulturindustrie*, the threat of violence remains. The possibility of violence stems from the preponderance of techniques of repetition in media, culture and politics that herald the return of archaic schemes of mimetic and ritual sacrifice at specific psychological moments. Before signs of danger – real or imaginary – the ego hardens, and the desire for terror as a form of protection represents a mimetic response. In short, exchange society is a mass society of ego-weak individuals who are, especially in times of crisis, susceptible to the incantations of authoritarian leaders who repeatedly insinuate across a variety of media that the Other is to blame for their present misery.

4.3 *Institutions and the State*

Above all, for Haidar, both tendencies regard the rationality of the postliberal state and its institutions as defective, though it must be reiterated that while the Institute's thinkers adopt a dialectical approach to reason and unreason, the ordoliberalists do not. In this sense, Haidar's analysis agrees with Honneth and Dahms that the IfS adopts a cultural approach to social theory, one that centres on the negative effects of rationalisation on social institutions and on the cultural apparatus that is used to enforce it. Haidar adds that the ordoliberalists were interested in institutional dynamics because they were a group of (largely) conservative jurists and economists who aimed to defend given institutions by implementing a practical political project that regarded the state as an object of reform. By reengineering the political structure and legal scaffolding of the state, ordoliberalism hopes to strengthen a communitarian rationality at the same time as decentralising political and economic power in the spirit of subsidiarity. Subsidiarity, however – in the original sense of intervening when help is called for – is regarded as insufficient. Instead, the state must *anticipate* rather than merely react to crisis. Before the threat of a popular revolution, it is the duty of the liberal state to remain one step ahead of its rivals, suspending democracy

where necessary in order to restore order and law-based liberty. The liberal state thus permits the use authoritarian means to liquidate threats to the free market before they have even materialised. Similarly, it is the liberal subject's duty to remain competitive on the labour market. If it is to succeed, it must embrace, anticipate, and overcome economic risk in a self-responsible manner. (Haidar, 2016: 51).

4.4 *The Decomposition of the Bourgeois*

The kind of mass society that emerges from the Nazi war economy puts the very notion of the modern individual to the test, according to Horkheimer and Adorno. In Haidar's reading, they attribute the "liquidation" of the individual to Tayloristic processes of mass production, standardisation and "streamlining" – the hallmarks of a monopolistic mode of production favoured by cartels and other mass organisations. For Haidar, *Dialectic of Enlightenment's* analysis of mass society serves to reveal the inherent contradictions of the notion of individuality. Its analysis of mass culture aims to expose the mythical character of the image of the bourgeois individual (Haidar, 2016: 52). According to Adorno and Horkheimer, bourgeois society infantilises and only tolerates individuality to the extent that it adjusts to the totality and uncomplainingly contributes to the maintenance of class society. The pathological, rather than deviating from it, sheds light on the "normal" state of affairs.

Like the ordoliberal, the members of the *Institute* attribute the destruction of bourgeois values to state capitalism's mass dynamics of agglomeration and standardisation. Rendered obsolete are bourgeois notions of personal liability, moral duty, hard work, thrift, foresight, the capacity to assume risk, and deferred gratification. The liquidation of the bourgeois individual leaves the subject defenceless before the reifying forces of bureaucracy and susceptible to the kind of mimetic conduct favoured by authoritarian regimes. The threat to the bourgeois individual and the potential for a return of fascism is linked to the demands of an economic apparatus and imperative of competition that no longer needs individuality as such. The IfS thus attributes the death of the bourgeois individual to exchange society and the economic processes that correspond to a given stage of its development. For ordoliberalism however, it is not the economy but "statification" and "collectivisation" in the form of state intervention, central planning, redistributive policy and mass democracy that both destroys the market-driven bourgeois individual and gives rise to state-dependent man. For the IfS, while quality and individuality is extinguished

by the logic of commodity exchange, the rise of monopoly is assured by the preponderance of instrumental reason and the principle of administration. On the other hand, for the Freiburgers quality is extinguished by the mass society and secular culture of the politically interventionist state. When combined with technological development, institutional fragility, and private ambition among fractions of the elite, secular culture ultimately leads to “planned chaos” and monopoly. Whereas Eucken identifies a “triple threat to (bourgeois) liberty”, namely the power of private monopoly, the collective power of trade unions, and the public power of the state, Horkheimer, Marcuse and Fromm’s early analyses of bourgeois socialisation focus on the way in which both public and private structures such as the economy, family and state come together to facilitate the emergence of a kind of subjectivity vulnerable to fascism.

For the ordoliberal, the social problematic of mass, postliberal societies can be attributed to the state’s implementation of a technical, “conveyor belt” (Röpke) rationality to social questions of a qualitative and *Vital* character. Mass phenomena are emblematic of the pathological social ties between rootless, mass individuals. The mass itself is a volatile collection of particles that, under the right historical conditions, can be convinced to commit atrocities. The “decomposition” of the old bonds and hierarchies renders the masses helpless before a powerful bureaucratic state, which, instead of accepting the civilizing rationality of the market, encourages mass man to respond politically and hysterically to the challenges of free market capitalism. Instead of teaching citizens to become self-responsible entrepreneurs, the state seeks to manipulate the masses emotionally in order to buy their vote.

4.5 *The Form of the State*

For the *Institute’s* members, the repressive form of the postliberal state is “derived” from a particular stage of economic development. That is, they do not see the political state as the exclusive or even primary source of social ill. Certainly, on one level both currents frame the social problematic in terms of the negative cultural and institutional impact of a state-sponsored, technical rationality. Both relate the liquidation of the bourgeois identity, economy, and morality to the emergence of mass society. Yet while the members of the IfS emphasise the relation of mass dynamics to the logic of economic development, the ordoliberals attribute the rise of mass processes to “statification”, which for them stems from multiple contingent factors. They recognise that the state must have a political, legal and economic shape or

constitution –rather than *form* in Marx’s sense– that responds both to public and private concerns, and which cannot be reduced to them. Since the ordoliberals blame the breakdown of the liberal form of the state-economy relation on weak institutions and a “statified” culture, they also believe that by fortifying political institutions and revitalising mass society they can achieve the institutional “order” (i.e. the necessary separation between the political and economic spheres) that the free market, silent domination, and the price mechanism all require to function harmoniously. By not regarding it as the hostage of the market, the ordoliberals were able to conceive of the very form of the state as an object of institutional reform. This allowed them to formulate the concrete strategy of *Vitalpolitik* or social policy, namely the deproletarianisation of the mass society and state. The ordoliberal view thus comes closer to social democracy or even Mandel’s alternative Marxist conception of the state as a “strategic arena for the advancement of hegemonic projects” (Bonefeld, 2014: 165).

The IfS authors largely adopt Pashukanis’ Marxian understanding of the form of law and the form of the commodity as “parallel forms of appearance of bourgeois socialization (*Vergesellschaftung*).”⁶⁹ The problem, as Postone indicated, was that they conceived of this process of socialization solely in terms of its “mode of distribution” and not in terms of the process of production. That is, they derived the form of the liberal *Rechtsstaat* from the commodity understood as a category of exchange rather than one of production. Moreover, they tended to view such a state form in terms of its adequacy or instrumental value for a given class and stage of development. Since they adopted a largely historical approach to the genesis of the capitalist system, they came to regard the rise of monopoly power as a sign that the liberal sphere of exchange had been either surpassed or put under new management, so to speak. For the IfS, the relatively autonomous form of the liberal state collapsed precisely because the liberal market sphere it existed to serve –its content– had collapsed under the weight of its own contradictions and crises. This is problematic from a form-theoretical perspective because it suggests that the relative autonomy of the state is a function of a particular “market” stage of capitalism and not one of the essential prerequisites for reproducing the system of capitalist relations more generally. The condensed form of the authoritarian, postliberal state is thus derived by the IfS from the instrumental value it holds for the new class of monopoly capitalists.

⁶⁹ Andreas Harms (2018: 852).

Direct political repression replaces the silent compulsion that the free-market and its legal form facilitated.⁷⁰ For the IfS, a return to an earlier stage of relatively autonomous spheres and formal equality is impossible. The ordoliberals, however, believe that a return is not only possible but absolutely necessary and desirable.

5 SUMMARY

Rather than seeing the two spheres as necessarily complementary, Critical Theory tends to regard the political sphere as the passive instrument of the real economy. The ordoliberal view regards the strong, independent state and the free economy as two mutually constitutive elements that share a specific politico-economic rationality and common objectives. In this respect, the ordoliberals come closer to Marx's observation that while capitalism (developed, and in its ideal average) requires the legal framework of a relatively independent state, the very "juridical form" of such relative autonomy depends on a functioning capitalist sphere.⁷¹ The ordoliberals present the state's co-constitutive relation to the free economy in abstract, normative terms, as a question of law and order. Critical Theory articulates the form of the state in materialist and historical terms, as a political reflection of a given stage of economic and material development. The *Institute* members attribute the negative effects of the mass, postliberal order to capitalist development, while the ordoliberals blame a state-dependent *culture* and the excessively democratic demands of "mass man". For these reasons, the notion of "the primacy of the political" as a definitive characteristic of IfS state theories can be called into question. The ordoliberal response to postliberal Weimar is to use political means to depoliticise society, to separate the political and economic spheres, and to reshape it in the image of the original free market economy, implementing authoritarian measures to suspend civil and political rights if necessary. For the *Institute* members, one possible solution was

⁷⁰ At first glance, we might detect here something of a missed encounter. Surely the ordoliberals would have agreed with Horkheimer and Neumann that exploitation with an absolute minimum of legal rights is preferable to the direct violence of the class state or the Nazi *Unstaat*? In fact, such an agreement could only be considered on a case-by-case basis. Many of the ordoliberals interested in the idea of a national economy had a more authoritarian idea of how to achieve the institutional order necessary for the free market. Many of the ordoliberals collaborated with the Nazi regime because they believed they would be able to determine the politico-economic structure of a hypothetical Nazi peace, were an armistice to be reached for example.

⁷¹ Cf. Karl Marx (1990: 178).

to further politicise and democratise the *demos* and social sphere as a means of limiting the undemocratic power of the economic ruling classes.

Both traditions can be understood to be “formless” in different respects. A fully form-based theory of the state must first acknowledge Pashukanis’ analogy between the legal and commodity forms. Second, it must ground the legal form in the commodity understood as a dual category of circulation *and* production, as per Marx’s mature critique in *Capital*. The ordoliberal accounts may be formless, however they provide a sophisticated account of the “constitution” of the *Rechtsstaat* and its disintegration. Generally speaking, the IfS authors established the analogy but fell back on traditional Marxism’s pre-critical understanding of the commodity society presented in Marx’s *Capital*. For Postone and Dahms, this pre-critical understanding undermined the state theories of Pollock and Horkheimer and ultimately led to a pessimistic turn in Critical Theory. However, while Postone and Dahms criticise such authors for failing to adopt a sufficiently critical approach to “the economic”, they do not criticise them for failing to make a full break with the formless state models of traditional Marxism.

The advantage of form theory is that it allows us to explain how the state behaves with respect to capitalist society as a whole, taking on specific political and legal functions which benefit the system in general rather than any particular class fraction. Certainly, the lack of a complete form theory in the IfS accounts tends to express itself in terms of an overly instrumental conception of the authoritarian state that leaves little room for political agency and for capitalist relations as such. Regarding an increase in authoritarianism and state interventionism as symptoms of the demise of the free market rather than an omnipresent possibility in capitalist society can also be misleading. It may lead one to declare another “crisis of capitalism” at the first sign of increased state intervention, at the first sign of a state-led response to historical crises such as those of 2008, the Eurozone, or the Covid-19 pandemic. This instrumental view reinforces the popular, unilateral, “roll-back” critique of neoliberalism, in which the innocent nation state is pitted against a global conspiracy of financial élites and presented as incompatible.⁷²

However, the advances made in form-theoretical accounts should not blind one to the wealth and variety of useful insights available in Marxist and non-Marxist state

⁷² This view overestimates the anti-establishment credentials of the welfare state and underestimates the state’s role in reproducing capitalist society as such.

theories alike. Aside from their focus on the adequacy of the state to the real economy, the state theories of the IfS exhibit subtle variations on almost every other aspect analysed.⁷³ They offer a broad range of useful ways of thinking about mass dynamics, modern leaders, public opinion, rationalisation, dehumanisation, and other relevant issues. The principal strength of the Institute's reading lies in its ability to relate the mutilation of individuals and their institutions to the imperatives of exchange society. The clear strength of the ordoliberal account lies in its understanding of the economic sphere as a practice of political economy – that is, of the free market as a form of governance or political rationality secured by state power, and not as an externally imposed class conspiracy.⁷⁴

This paper suggests that the ordoliberal emphasis on reforming institutions, the IfS' focus on the lived experience of social domination, and Marx's attention to the abstract, structural relation between the state and capitalist society can be brought into fruitful dialogue. Such a theory would avoid not only the liberal-bourgeois

⁷³ This paper has attempted to move beyond Postone's attribution of Pollock and Horkheimer's accounts to Critical Theory as a whole. Nevertheless, it has still had to refer to distinct theories from both traditions in the singular. It has only analysed what are commonly regarded to be their paradigmatic texts on state theory. Though this is not ideal, without such generalisation a comparison between the two tendencies would not have been possible. The different IfS vary both conceptually and in their objects. Horkheimer's description applies to state socialism and fascism. Neumann focuses specifically on the postliberal Nazi regime. A more exhaustive account would have discussed the evolution of the debate on State Capitalism within the Institute, Walter Benjamin's conception of law and his exchanges with Horkheimer, and texts such as Adorno's *Reflections on Class Theory*. It would have included Otto Kirchheimer and Arkady Gurland's respective contributions, as well as those of the less central figures of ordoliberalism, especially those that were interested less in restoring the free market and more in achieving an authoritarian "order" by means of the NSDAP.

⁷⁴ The ordoliberals are thus in a better position to describe in terms of specific policies how political power comes to bear on economic power. Decades before Margaret Thatcher transformed Britain's society and housing market with her neoliberal "right to buy" policy, the ordoliberals had argued that promoting personal debt and mortgages were a reliable means of deproletarianisation. They understood that mortgaged workers were more concerned about keeping their jobs and more likely to regard themselves as propertied and self-responsible economic agents. Without understanding that the aim of the political rationality of the capitalist state is to deproletarianise society, to instil market qualities and values, the conventional anticapitalist view is liable to regard "right to buy" either in a merely quantitative and instrumental light - as a means of privileging a particular class fraction - or as the product of an irrational anti-state ideology that seeks to diminish state ownership of housing stock. Instead, such a policy ought to be regarded as emblematic of the neutrality of a capitalist state the primary function of which is to extend and reproduce the regime of private property over and above conflicting class interests, fractions and ideologies. The extent to which capitalist states have - in 'real' historical terms - actually identified with and carried out such functions is a matter of ongoing debate which ought to be dealt with on a specific basis. This relates in a broader sense to the relation between structure and historical agency and its implications for Marxist historiography. For more on these issues, see the recent discussion on Political Marxism in *Historical Materialism*, volume 29, issue 3, 2021.

neglect of the relations of class and production, but also the instrumentalism, historical determinism and economism of many traditional Marxist approaches that remain influential to this day. The project of developing a critical model of the capitalist state as the political form of capitalist society is still a work in progress. Neupert-Doppler suggests that Joachim Hirsch offers a good example of a Marxist state theory that productively combines form theory's abstract approach with a more ordoliberal or social-democratic understanding of the state as a field of social struggle (Neupert-Doppler, 2018: 831). Similarly, for Andreas Harms "Oskar Negt and several other authors attempted instead to derive the form of law from the particularities of the capitalist production process and not just from the process of circulation". The extent to which later Critical Theory developed a fully form-based theory deserves further attention.⁷⁵

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⁷⁵ Cf. Andreas Harms (2018: 852).

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