

Liberté, Égalité and such matters	1
The logic of punishment in democratic states	7
Hard to Believe! – A critique of religion	15
Free Property – On social criticism in the form of a software licence	18
A new state in Africa: South Sudan	22
Does capital always aim to suppress wages?	24
Benefit envy without benefit	29
Occupy's Process – On the politics of a-politics	30

Liberté, Égalité and such matters

Democratic states grant their subjects freedom and equality. Those with a unified and written constitution do so in the first few paragraphs of those documents to underline the importance of these guarantees.¹ Or in the words of the declaration of intent of the world's most successful capitalist states: "All human beings are born free and equal in dignity and rights."² Their subjects generally thank them by making good use of these guarantees and by judging the world around them in terms of these ideals. Most praise the capitalist sovereign for services rendered while some (also) detect a lack of freedom and equality in its exercise of power.

One is hard pressed to find a political tendency, which does *not* appeal to (at least either) freedom or equality.³ The BNP outright calls its newsletter "The Voice of Freedom", Tories accuse Labour of putting social equality before economic freedom, Liberal Democrats declare their identity with freedom by name, Labour attempts the delicate task of balancing freedom and equality, and there is a Trotskyist organisation dedicated to achieving freedom for workers – the Alliance for Workers Liberty. Anti-racist and feminist campaigners rally against (racist and sexist) inequality⁴ and even the international communisation journal *Sic*, who are not very fond of this society, asserts that "no equality can come from the use of a means whose very existence is based on inequality".⁵

Hence, there is a bit of a dissonance between, on the one hand, freedom and equality being the

central ideals of this society and, on the other hand, central standpoints for those who want to get rid of it. What allows this is the critically-minded assertion that in this society freedom and equality are either not fully realised or that in this society they are a sham.⁶



We disagree. Our argument has two parts, one on freedom and one on equality. In each we discuss what it means when states guarantee their subjects freedom and equality. In summary, our claim is that in this society indeed particular forms of freedom and equality are realised, which cannot be brushed aside. Instead, these

are the forms in which (economic) exploitation and (political) domination happen. The critique of domination and exploitation must hence take on this freedom and equality.⁷

Yet, before we get started a short word of caution on inversion of arguments. Analysing how well the guarantee of freedom works for domination does not imply partisanship for domination. Highlighting indifference towards material dependencies as an obstacle to satisfaction of needs and wants does not imply subordination of needs and wants to some central committee. Critiquing the justifications by bourgeois democrats for suppressing Stalinists and Fascists does not imply partisanship for the latter two – our enmity to Stalinism and Fascism simply does not make us followers of bourgeois-democratic coping mechanisms.

1 – Freedom

Private property: a realm of freedom

Private property – a basic legal prerequisite for the capitalist mode of production – realises a particular form of freedom in the economic sphere. This means, citizens are granted freedom to dispose over their own property. The silent compulsion of economic relations is not in contradiction with but a part of this realisation of the citizens' freedom.

The democratic state grants its subjects the freedom to pursue whatever purpose they see

¹For example, German basis law, i.e. the German constitution, declares freedom in Article 2 and equality in Article 3. As there is no constitution in that sense in Britain, there is no equivalent – at least not one, which would make it as explicit.

²<http://www.un.org/en/documents/udhr/index.shtml> (last access 23. March 2013)

³In fact, these ideals are so self-evident to many bourgeois commentators that they think of them as hard-wired: "Whatever you feel when you read about a criminal going free, see a wrongdoer get away with it, or hear that a mass murderer got sentenced to only 21 years, those emotions might be rooted in a basic human need for justice and fairness. A 2003 Princeton psychological study, for example, isolated a feeling of 'moral outrage felt by those who witness transgressions.' A German study from last year found that people who believe they've witnessed injustice become less happy, as if living in a just society were an intrinsic emotional need." – Max Fisher, A Different Justice: Why Anders Breivik Only Got 21 Years for Killing 77 People, <http://www.theatlantic.com/international/archive/2012/08/a-different-justice-why-anders-breivik-only-got-21-years-for-killing-77-people/261532/> (last access 28. April 2013).

⁴"The No Borders network adopts an explicit anti-capitalist position, seeing capitalism as at the root of social injustice and inequality." – No Borders London, <http://london.noborders.org.uk/howeare> (last access 14. August 2013)

⁵Leon de Mattis, What is communisation? in *Sic* #1, 2011

⁶A third option would be that the involved parties simply mean radically different things but somehow fail to recognise or ignore that everybody else does the same.

⁷Since we learned this argument from Marx the online version of this piece at <http://antinational.org/en> finishes with a brief appendix on Marx' argument on freedom and equality in Capital and a critique of what some commentators made of it.

fit. In other words, the state creates a sphere of freedom where everybody gets to do as she pleases. In bourgeois societies every citizen is free, no citizen is a serf or slave, direct coercion may only be exercised by the state – and the state has principles, which stand above the whims of its agents: the rule of law. For example, people get to apply for whatever job they want, they are allowed to attempt to move to whatever town they want to, they can believe in whatever religion they like, and they are free to read journals critiquing the bourgeois order.

A first sticking point is that apparently this freedom needs to be guaranteed with force, lots of it. The state's monopoly on force guarantees the freedom of its citizens. This – at the very least – prompts us to consider the matter more closely.

A central realm of freedom exists in a sphere where people *necessarily* interact: the economy. People get to deal with their private property – the stuff they own – in the way they see fit. In fact, this is precisely what private property means: the exclusive right of disposal over stuff. It defines a perimeter in which my interest is unchallenged, a realm of freedom.⁸

The capitalist state insists that, for instance, Alice may dispose over her widget shop exclusively.⁹ Nobody else has a say in what she does with it and its products, because it is her property; her will applies exclusively. While others are in need of the products produced in her shop, she can be completely ignorant towards these needs and wants. Just because they need her widgets does not compel her to give them widgets – the shop belongs to her and not to them. This freedom is guaranteed by the state.

The confrontation with others' right of exclusive disposal and the guarantee of the same right over one's own wealth comprises a proposition: make use of your freedom to gain access to the stuff in the realm of somebody else's freedom. Confronted with the freedom of Bob, Charlie and Eve to exclude Alice from their respective property, Alice is invited by the state's guarantee of free reign over her property to return the 'favour'. Alice has what Bob needs, Bob has what Alice needs, so they make use of these dependencies to get their hands on the stuff behind the respective barriers of freedom. They engage in exchange.

This exercise of one's freedom, this acceptance of the offer that is posed by the democratic

state's guarantee of freedom, implies collisions of interests. When we confront each other on the market we try to exploit each others dependency on our stuff to get the stuff we need. While Alice and Bob come to some sort of agreement – the contract –, this does not mean that the positions they started off from vanishes: they still exploit each other's dependency.¹⁰

The reason most people in this society are excluded from the means of living is because these means are in the realm of freedom of someone else. Despite the fact that people, in a society based on the division of labour, are dependent on each other, their indifference towards this is guaranteed by the state. This also explains why the state's force is necessary to maintain this kind of freedom.

Freedom and the means of realisation

The permission (given by the state) to pursue my own interest contains nothing but this permission. In particular, without the means to realise an interest the permission to pursue it remains abstract. People are not exploited through direct force but the silent compulsion of economic relations.

Private property, i.e. the freedom which guarantees the right of indifference towards material dependencies, implies another kind of dependency: the dependencies of people in their role as commodity owners. Here, we restrict ourselves to one particular point on these social relations. There are people who do not own any property worth mentioning, all they have is freedom.¹¹ They are thus required to come to an agreement with those who are not only free like them but also own property. Firstly, they must buy food, housing, entertainment, etc. from those who sell them. Secondly, to earn the money to buy what they need they must sell something to capitalists, i.e. to those who own property in sufficient quantity (and in the right form). Namely, what people without property can offer to capitalists is their services and so millions of people are wage labourers and work for other people as long as this is beneficial to the latter. Capitalists are, of course, free to disengage from this relationship if they see fit.¹² For most people the guarantee of their personal freedom means perpetual dependency. Far from being able to do "what I want" they are dependent on others. It is not only a mu-

tual dependency, but a dependency which is the basis for and is based on exploitation.

More generally, the freedom to do what I want is of little use without the means to actually do it. For example, when Eastern German citizens took to the streets in 1989 to demand – among other things – the lifting of travel restrictions by the East German state, this eventually culminated in the annexation of Eastern Germany by Western Germany. As a result, such travel restrictions do not exist any more. The then popular slogan "No visa til Shanghai!"¹³ is realised¹⁴, but many people in Germany still cannot afford flights to Shanghai. The right to travel does not imply the means to do so. When you are only granted freedom, all you get is freedom.

Sure, the world puts a limit on our freedom to act: we are not pure thought but natural beings – meaning that we have to engage with nature in order to eat, have shelter, or play video games. However, by studying and applying the laws of nature, we can form it according to our will, leading to a great degree of freedom. In that department humanity is doing pretty well – understanding nature and the application of its laws is rather developed. It has advanced to a stage where we can share videos of the best nature has to offer worldwide in seconds.¹⁵ While it is worth stressing that we are not free from nature and we can only realise our freedom by obeying nature's laws, the limit to realising our purposes these days is usually not a lack of understanding of natural laws, but rather of how society is organised. For producing the things we need and want "I do as I please" is a shabby standard.¹⁶ On the contrary, the adequate approach would be to reflect on the mutual dependency that comes with the division of labour and to consciously work together so we all get what pleases us.

The right to freedom

Any right cannot be had without domination. The right to some freedoms such as speech, opinion, trade, movement and so on presupposes domination and subjection. Whoever argues for a right to freedom (willy nilly or not) argues for subjection under the state.

If someone grants others the right to something, e.g. the right to protest, this someone first of all claims the authority to grant this. It is an enti-

⁸There are notable restrictions to this freedom such as environmental protection etc., but those limit rather than abolish the principle. These regulations are based on private property and specify exceptions.

⁹Although this piece is about the capitalist state and the capitalist economy, at this stage we are deliberately using "shop" instead of "factory" to highlight the level of abstraction, here it is the level of private property owners – the differentiation into classes will follow in the next section. This is because the state does not confront its citizens with the demand to accumulate capital or assigns them to one of the economic classes, but provides the basis for such activities by guaranteeing private property. Instead of saying "it is easy to see that economic freedom means the freedom of capital to exploit labour-power", this section investigates what the guarantee of economic freedom in itself entails and what it entails for *everyone*.

¹⁰At this level of presentation this confrontation is still a bit tentative. The opposition that slumbers in exchange might seem rather faint, as things might still work out in such a way that – say, by accident – everybody goes home relatively well off. However, this is not where the story ends, but begins. For example, with exchange the freedom exists to exchange with a different person for a better deal. If one flowerpot maker produces flowerpots cheaper than the rest, then this flowerpot maker can underbid the competition and has an advantage in the form of more custom. This has the consequence that flowerpot makers impose a standard of productivity on each other, those who cannot keep up, simply go under. Hence, an opposition between flowerpot maker and flowerpot maker is implied. In this text our focus is to relate the beginning of that development to the guarantee of freedom by the bourgeois state. The development of the economic laws on the basis of this guarantee is presented in Karl Marx's *Capital*.

¹¹The famous Marx phrase "free labourer, free in [a] double sense" means exactly that: workers are free from direct coercion and they are free from the means of production – they have none.

¹²Workers have this right to disengage, too. However, living from pay check to pay check means, this right is not a right exercised lightly and hence often.

¹³It rhymes in German: "Visa-frei bis Shanghai".

¹⁴The Chinese state still requires a visa, the German state, however, does not restrict where its citizens may travel if they have a valid passport.

¹⁵<http://youtu.be/OBmhjf0rKe8> (last access 23. March 2013)

¹⁶... and so is "you do as I please" – at least for those being commanded.

tlement to rule over actions and speech. If we – the authors of this piece – would start granting our readers the right to form their own opinions about our writing, it would be laughable, we clearly are in no position to grant or withhold such a right. Our readers would reject our jurisdiction over the matter.¹⁷ The state, however, successfully manages to do this, it grants the right to something people do on their own and without anybody's permission anyway. That is quite a claim to authority. A claim which is successful because the state has superior force, which is accepted by the vast majority of its citizens. Domination is already presupposed with the granting of such a right – not only when it restricts those rights, as any rights whatsoever cannot be had without domination.¹⁸ Of course, this also clarifies that the state and no one else gets to decide what can legally be done or said and what not, i.e. what the scope of any right is. Giving permission also implies the power to withhold it.¹⁹ Yet, the point here is that domination does not start with restriction or withdrawal of a right but is presupposed when granting rights in the first place.

In light of this the state's blanket declaration of "you may pursue your interests" appears in a different light: any and every act of its subjects is by virtue of the state's grace – this is the claim laid when the state grants freedom.

Freedom of speech

Freedom in a democratic society is of course not limited to exclusive access to things. To take an example where freedom is not immediately concerned with the economic sphere, which also enjoys appreciation in the Left, let us take freedom of speech, which is also considered to be one of the most fundamental democratic rights.²⁰

A productive force for democratic governance

Freedom of speech is a means of domination. On the one hand, it is a means for government to rule a society of competitors. On the other hand, through pluralism the state imposes relativism on its subjects. Their freedom of speech has its limits in other citizens' freedom, they may not deny this freedom and therewith the status quo.

Bourgeois society is characterised by a motley all against all, an ensemble of conflicting inter-

ests. The guarantee of this situation by the state indicates that it has an interest in the persistence of this status quo. The state guarantees this situation and has an interest in maintaining it: it wants the economic success that is produced by the universal competition of its subjects. The competing actors confront the state with their demands for the conditions of success – either for themselves or for what they think is best for economic growth overall. Some want higher, others want lower taxes to promote economic success, some lobby for workers to receive better healthcare so they have less sick days, others oppose this asserted "pampering" of workers, others yet argue that environmental protection should trump short-term growth etc. For all these questions, citizens have conflicting answers. The freedom to announce and argue for these answers is recognised by democratic states as an ingredient for effective governance in a society based on competition.²¹

Put differently, the democratic state relies on the initiative of its citizens and encourages them to submit proposals on how to run its society. As long as they accept that all social change ought to be accomplished through the proper political channels, all citizens are welcome to contribute their proposals. Protest, too, is encouraged to transform itself into constructive proposals.

The defence of speech against its consequences

Freedom of speech has its limits like any other freedom guaranteed by the state. No democratic state in the world grants freedom of speech without restriction. Firstly, no state grants its citizens the right to say whatever they want.²² Secondly, democratic states ask their subjects to restrict themselves to freedom of speech, i.e. to refrain from letting actions follow words. Thirdly, they take particular care of that restriction, when it comes to the political system itself. For example, the British state asserts its existence in all eternity with the assertion that Parliament is sovereign and that "no Parliament can pass laws that future Parliaments cannot change"²³. Parliamentary democracy is eternal and not even Parliament can change that. The one thing that is not up to the free competition of ideas under the protection of the state is the political system itself.

Case Study A: The worries of the British constitutionalists.

In fact, there is a bit of debate in the British legal literature about the scenario what would happen if an "extremist" party would take over Parliament, i.e. a party which does not accept Parliament's sovereignty and parliamentary democracy. No serious participant in this debate supports Parliament's supremacy in such a case.

For example, Albert Venn Dicey, a well-reputed author on the UK constitution, believed that in certain extreme circumstances the monarch could dissolve Parliament single-handedly, on the condition that "an occasion has arisen on which there is fair reason to suppose that the opinion of the House is not the opinion of the electors ... A dissolution is allowable, or necessary, whenever the wishes of the legislature are, or may fairly be presumed to be, *different from the wishes of the nation*"²⁴, i.e. that the dissolution of Parliament in extreme situations is part of the royal prerogative to assert the "opinion of the electors" against actual election results.

In a similar fashion, Trevor Allan, a professor of law specialised in the relation of the courts and Parliament, writes: "The practice of judicial obedience to statute cannot itself be based on the authority of statute: it can only reflect a judicial choice based on an understanding of what (in contemporary conditions) *political morality demands*. The limits of that practice of obedience must therefore be constituted by the boundaries of that political morality. *An enactment which threatened the essential elements of any plausible conception of democratic government would lie beyond those boundaries*. It would forfeit, by the same token, any claim to be recognised as law."²⁵

It is clear to these scholars that any move to abolish parliamentary democracy must be suppressed by suppressing Parliament. This is not up for debate. The granting of freedom of speech on the one hand and the restriction that certain political convictions, such as the abolition of parliamentary democracy, cannot be made practical, obliges subjects to relativism: no matter what the evidence for a particular political theory is, it cannot be implemented if it violates the freedom of others, such as those who refuse to accept this evidence.

¹⁷We very much hope they would.

¹⁸Common-law legal systems are based on the fiction of a natural law which the state ought to respect. Yet, there is no such thing as a natural right – it is always a power such as the state that grants rights and can take them away as well.

¹⁹It is the state which puts people in jail for possessing and distributing illegal literature. It is the state which makes wearing a t-shirt bearing the name or logo of certain organisations such as the FARC, ETA, PKK, Hamas and November 17 a criminal offence. It is the state which bans people with certain political views – BNP in the UK, communists in Germany – from (certain) public sector jobs. The state is a threat to people's ability to speak not despite the fact that it grants the right but because: it has the authority to grant and deny this right.

²⁰Fun fact: the UK only officially included freedom of speech into its domestic law in 1998 under the Human Rights Act. It has been common practice though for centuries and some rights had been codified for just about as long. For example, the Bill of Rights granted freedom of speech in Parliament in 1689.

²¹A small methodological point: explaining the function of something (freedom of speech) for something else (governance) should not be confused with what that something (freedom of speech) is. Here, the point is to give an argument why the state has an interest in freedom of speech. What freedom of speech is becomes clearer in the next section: the right to speak, nothing more, nothing less.

²²This is more pronounced in European states – "anti-extremism" clauses in Germany, libel law in the UK – than in the USA, but with the arrival of the Patriot Act the USA also introduced limits on what can be said, e.g. in support of a group on a terrorism list. <http://www.nytimes.com/2010/02/11/us/111aw.html> (last access 4. May 2013)

²³<http://www.parliament.uk/about/how/sovereignty/> (last access 8. April 2013)

²⁴Cited from [http://en.wikipedia.org/wiki/Royal_Prerogative_\(United_Kingdom\)](http://en.wikipedia.org/wiki/Royal_Prerogative_(United_Kingdom)), emphasis added (last access 8. April 2013).

²⁵TRS Allan, The limits of parliamentary sovereignty, 1985, PL 614, 620–22, 623 24 and 627, emphasis added

Case Study B: The ban of the CP in Western Germany.

When in 1956 the Federal Constitutional Court of Germany banned the Stalinist Communist Party of Germany, it quite nicely expressed this logic of freedom of speech granted by the state: “This [multi-party] principle wants to ensure the existence of multiple political parties, at least the possibility, that at any time new parties can be founded freely. This not only constitutionally excludes the position of one party as ‘unity party’, but this also sets the tenet that no political party can claim a monopoly on correct political insight and objective, on correct political behaviour; because such a monopoly party is in its essence not directed to take part in the state but directed to embody state power by itself in itself. *Contrary to this, liberal democracy must avow the opinion, that in the area of political basic views provable and irrefutable truth does not exist.*”²⁶

When the court banned the Stalinist communist party it did not examine the arguments presented by this party, it did not investigate whether they were right or wrong, but insisted that there could not possibly be proof that they were correct.²⁷ The irrefutable truth of the Federal Constitutional Court is that there must not be irrefutable truth: it decreed the abstinence from such truths to anyone involved in politics.

While so far the British legal debate abstained from this kind of creative ‘argumentation’, the result is effectively the same. Pluralism and freedom of speech do not mean to give in to the forceless force of the better argument when it comes to pluralism, freedom of speech and the basics of the democratic order. In this realm, they are not means to let the better argument prevail. On the contrary, precisely this is excluded, *a priori* it is decided that whatever the outcome it cannot be acted upon. Put differently: either the nation state and capital imply poverty and misery for the masses or they do not. This requires investigation, arguments and debate which then inform action. To exclude actions based on the result of this debate excludes the possibility of a reasonable society without misery.

Yet, this relativism does not violate freedom of speech. First of all, freedom of speech indeed makes no guarantee beyond speech itself. Secondly, freedom of speech is a guarantee of freedom in disregard of the content of speech: a statement is defended on the grounds that it is a statement, not because it is right, correct, important etc.²⁸ The logic of which shines whenever people respond to critique by pointing to their entitlement to opinion and their freedom to voice it. This is both presumptuous and humble. It is presumptuous because it insists on opinion, it disregards critique instead of engaging with it. It is humble because it wants nothing but voice an opinion. It makes no attempt to change or influence the world around them.

2 – Equality

Equality as a matter of principle

*The state’s treatment of its subjects as equals is a matter of principle: first of all, the state relates to all of its subjects as subjects and as nothing else.*²⁹

Democratic states grant their citizens equality before the law. This means, firstly, that laws apply to everyone and secondly, laws apply *without exception*. To return to the capitalist state’s general declaration of intent, the Universal Declaration of Human Rights,³⁰ article 7 of this declaration states: “All are equal before the law and are entitled without any discrimination to equal protection of the law.”

Firstly, this stipulates that “all are equal before the law”.³¹ This presupposes all are before the law. Everybody is subjugated by the state and in this regard everybody is equal. As subjects of the state we are all equal, we all have to obey. Equality before the law means unquestioned authority of the state without exception. Subjects are not only subjugated, but they also receive “equal protection of the law”. With that, the state declares all its subjects equal with one-another, i.e. they all have the same authority over each other, authority in the sense of what they are allowed to do to each other. This, together with the state’s guarantee of freedom prohibits immediate coercion of one citizen against another. Equality before the law

posits the state as the *only* ruler. Examples of excluded immediate forms of coercion are racketeering³² or – historically – the former role of the church, an authority which laid claim to set its own rules; hence, state and church had to cope with the respective other interfering with their rule.

To give an example, the state excludes *some* forms of patriarchal social relations, e.g. direct coercion of women by men. While democratic states did not always recognise women as full subjects before the law, this changed eventually and states passed laws which banned husbands from using direct force. For an example when the state did not recognise women as full subjects over their own bodies, in 1895, a curfew on wife beating was introduced as a bylaw in London between the hours of 10pm and 7am – because the noise kept neighbours awake. Nowadays, however, the state principally asserts that women can no longer be ‘disciplined’ by their husbands – or by any other citizen. Of course, this does not include police officers in the lawful exercise of their duties, i.e. beating people in order to enforce the law. Insofar, as the state protects from harm inflicted by competing authorities, it protects its citizens as citizens. However, as it protects its subjects as the material for its purposes it does not protect them from harm *per se*. What the state protects is the validity of law.

Equality before the law is the assertion of unchallenged domination by the state.

Equal treatment and its outcome

Equal treatment does not offset differences but allows them to take effect.

Equality before the law does not mean that the state intends for everybody to be equal. That is, the state does not seek or produce an equal outcome when it treats its subjects equally. This is sometimes discussed as equity versus equality but a more common distinction is social justice versus formal equality.

Indeed, equal treatment of people in a certain regard who are different in this regard does not extinguish the existing differences. If we ask a short and a tall person to fetch a bottle of wine from the top shelf – winner gets to keep it –, this

²⁶“BVerfGE 5, 85 – KPD-Verbot”, <http://sorminiserv.unibe.ch:8080/tools/ainfo.exe?Command=ShowPrintText&Name=bv005085>, our translation, emphasis added (last access 8. April 2013)

²⁷The communist party argued that it represented a future that would inevitably arrive. According to its philosophy of history, socialism was the next step of civilisation, but the time for socialism was not ripe yet. Hence, the party would not at present seek to abolish the Western German state. For a critique of the underlying theory, see “Historical Materialism – an anti-revolutionary theory of revolution” at <http://antination.org/en/historical-materialism>.

²⁸The absurdity of this position is aptly expressed in Voltaire’s often quoted expression: “I disapprove of what you say, but I will defend to the death your right to say it.”

²⁹Here “subject” means first of all subject in the sense of being subject to domination: anyone declared by a state to be its citizen, its material, its subject. “Subject to the law” are of course all people located on the state’s territory. But those who the state has a particular interest in, those, who are its material, those who ought to elect the government and of those the military is recruited from – all those are the state’s subjects in a stricter sense: its citizens. Yet, not all subjects are treated equally, i.e. not everyone is fully recognised as a person. A person has to be over 18 years old (in most cases, though in some regards, the limit is 14, 16 or 21). Before that age, the state does not want to assume that the young subject is fit to make decisions and instead declares (in most cases) one or two parent(s) or a legal guardian legally responsible for that human being. Another important group treated similarly is anyone the state declares mentally unfit, usually referred to as mentally disabled.

³⁰A fun fact about the British legal system is that equality before the law – or even the rule of law – is not actually codified anywhere. Yet, it is universally agreed to be a constitutional principle and courts have ruled in accordance with this principle.

³¹The Basic Law for the Federal Republic of Germany, i.e. Germany’s equivalent of a constitution, declares: “All people are equal before the law.” For a discussion of this principle in British law see Lord Bingham, *The Rule of Law*, lecture in honour of Sir David Williams, Centre for Public Law, November 2006: “[...] the laws of the land should apply equally to all, save to the extent that objective differences justify differentiation. I doubt if this would strike a modern audience as doubtful.” We shall get to “save to the extent that objective differences justify differentiation” shortly.

³²For example, in Mexico or in certain parts of Italy criminal organisations enforce their own rules with the state being unable or unwilling to enforce all of its laws at all times.

³³Note that here we are talking about treating people equally when they are not equal. We are not talking about treating people differently when they are – in this regard – indeed equal. For example, we are not talking about segregation which separated people based on a wrong homogenisation based on skin pigmentation. If that practice stops people are no longer treated differently. Now, the only common standard to live up to is having to afford the bus fare.

is a form of equal treatment. We abstract from the existing differences and because of this the tall person has an advantage.³³

The reality of equal treatment of people who are not in that regard sets a standard everybody has to live up to. In the illustration above being tall enough was the standard both people were compelled to live up to if they wanted that wine. An example almost everybody has experienced is public education. Everybody has to live up to the same standards such as the GCSE set by the state. Within certain bounds these standards apply regardless of whether students need more time to learn, become nervous during exams or take an interest in the subject. By enforcing these standards the differences between students impact not only their learning, but also their future life choices. This way, the differences between students take full effect.

However, this compulsion to live up to a set standard is best demonstrated with free and equal exchange. On the market, all participants confront each other as equals. The power participants have over each other is that of their respective private property. That is, how much thereof they have – counted in money – or how badly others can want it – counted in how much money they are willing and able to spend. Poor people and rich people meet each other as equals. The common standard they all have to live up to is that they can only use what they own to get what they want and need. Of course, if equivalents are exchanged, the person starting out with less still has less in the end. Furthermore, even workers and capitalists meet on the labour market as equal owners of their respective property: labour power and money. While the material content of their relationship is that the former produces the wealth of the latter – in a word: exploitation –, their equality on the market is not infringed: they meet as proprietors of their respective possessions. That one has to own in order to sustain oneself is the set standard, the silent compulsion, the equality everybody is granted in the economic sphere. What the realisation of equality in this regard boils down to is that failing to live up to it means poverty and in the worst case death by poverty.

Private property is universally and equally guaranteed for people both with and without sufficient wealth to live off. The state thereby declares that whatever the social relations generalising on the basis of this guarantee – capitalism –, their detrimental effects on many people

are of no immediate concern to the state. It only sees citizens – that most of them are poor, that is their private plight.

When declaring its indifference towards the differences between people, when the state abstracts from rich and poor, from workers and capitalists, from landlords and tenants, in short: when the state considers its subjects as citizens, it declares that it – at the very least – tolerates these differences. It declares: your struggles, problems, differences, these do not concern me as something I should remedy; I will ignore these differences in my treatment of you; that these differences come about does not concern me.³⁴

But the state does not react to circumstances it simply comes upon. The state does not come across landlords and tenants and then chooses to ignore their difference.³⁵ The circumstances which it declares as none of its business are in fact guaranteed, protected and sanctioned by the state. The characters of landlord and tenant require – for example – the granting of ownership of land by the state. Private property means that landlords can make use of their titles to land by letting it to people without such a title, i.e. tenants. Because the standard of private property applies equally to all, the latter depend on finding a place to rent.³⁶

Equal treatment needs convincing

Equal treatment means that one is treated like the next. The state prohibits squatting for everyone, landlords and homeless people alike. Their particular situations are of no concern, those are the rules.

This contains the ingredients for a conflict. One of the two groups – the homeless – are excluded from the means of subsistence because their particularity – having no home – is ignored. If this situation is to be maintained, the state has to be prepared to use force.

Put differently, equal treatment necessarily means disregard for the particular; it treats what is unequal as equal;³⁷ in particular, if equal treatment is metered out in disregard of material means, i.e. that what counts in this society. The assertion of equality requires exactly that: assertion, authority and – in the last instance – violence.

Law – Concretisation of equality

The state distinguishes between legitimate and illegitimate differences between its citizens, i.e. differences it recognises in its laws and those it does not: it knows and appreciates only certain “roles” like landlords and tenants, employers and employees.

Yet, when the state imposes rules on its subjects, one may wonder how the principle applies to all the situations it ought to regulate. The state posits that everybody has to follow the law, that punishment awaits if one does not, or more concretely that among other things everybody’s private property is protected. But because of the social relations that develop on the basis of these general rules its citizens confront each other in various “roles”: citizens meet as landlords and tenants, as workers and capitalists, as husbands and wives, as wives and wives etc. These situations produce the necessity for regulation by the state; hence, the law recognises not only citizens but also landlords and tenants, workers and capitalists, husbands and wives etc.³⁸

Here, equality means that the law recognises tenants and landlords, but not tenant Smith and landlord Miller. It disregards the particularity of the tenant, but declares that it will treat everybody in a situation of being a tenant as a tenant, nothing else matters. So, in this recognition of differences it still insists on one principal level of equality: the law applies to every tenant. The state does not make some specific people tenants and some landlords. The citizens do this themselves on the basis of the law. The state applies rules to anyone who finds herself in such a situation. This is not a violation of equality before the law, but its concretisation. That is, the application of equality to the social situations that it ought to regulate.

Anti-discrimination law

By means of anti-discrimination law the state declares competing principles as invalid and the principles of its domination as superior to them. That is, other differences between its citizens are subordinated to the differences the state appreciates.

The state recognises only differences that are relevant to its purpose (worker/capitalist, tenant/landlord), but not differences that it considers accidental: “race”, “sex”, being called “Peter” etc.³⁹ It is only the law and its intended pur-

³⁴In a second step, once the rules of the market have run their course the state does take somewhat of an interest in the plight of its subjects and, for example, provides those who cannot afford it with some amount of housing benefits. Yet, this is a reaction to social conditions that the state itself protects and facilitates. It wants its citizens to pursue their economic reproduction on their own, and if they fail, it supports their continued existence, but nothing more. Put differently, these interventions do not put an end to its citizens’ plight but perpetuate it.

³⁵Certainly, people have owned stuff before the democratic state existed. But the social role of a private property owner, a role that includes an opposing relation to other people, requires some sort of power – either of one’s own gun or of an authority like the state. If it is one’s gun which protects private property, that property is as good as the gun which protects it. Only under the rule of law, the laws of and an economy based on private property can flourish uninhibited by external influences such as better gunmen.

³⁶It is a constant matter of political debate which differences to ignore and which ones not. For example, some more left-leaning Social Democrats do sometimes take issue with the “unequal” distribution of land ownership – and in some countries they fight for land reform. It certainly is a slightly less formal understanding of what equality might mean. Yet, private property as such is rarely disputed outside the radical Left.

³⁷Treating things that are the same as the same is not what we mean by “equal treatment” here. Treating one fresh copy of Kittens #4 like the next is not at stake here, but treating issue #0 and #4 the same would disregard their particularities, i.e. that our selection of pictures of kittens has improved over time. When things differ in some regard and one is concerned with that regard, the difference indeed matters and equal treatment would be inadequate.

³⁸Although the latter is – in many countries – being replaced by spouse and spouse.

³⁹There are, however, some areas where states do not consider the question of “sex” to be accidental. In particular in areas concerning the reproduction of its population – the upbringing of children and marriage, for example maternity leave – some states including the UK have laws directly aimed at women. In recent decades some of the legislation in this area was revised reflecting the realisation that the state’s objectives can also be reached without the assertion of certain ostensible intrinsic qualities of women in the respective laws.

pose which rule. If, for example, the European Convention on Human Rights bans discrimination based on “sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”, it puts on record that it is not in the interest of the signing states that a person’s fate should be dictated by these categories. Put differently, their economic condition ought to be decided based on pure economic performance instead of – now considered to be – extrinsic reasons such as racism.

In anti-discrimination law, which outlaws discrimination not only in acts of the state but also in acts of its citizens, the state stipulates that a person’s fate is decided according to its principles only. It emphasises its authority by excluding other principles like racism. It demands of its subjects that their actions are guided by its principles. In affirmative action the state even goes so far as to positively discriminate against certain groups to reinforce its principles. For example, mandatory quotas for women in management express the concern that the exclusion of women from these positions undermines “the best person for the job” if that person happens to be a woman. Here, the state recognises that other principles potentially undermine its own and if it recognises this as a problem, actively counters them.⁴⁰

This is not to say that the state and its laws have nothing to do with, e.g. racism. On the contrary, its existence as a nation-state is a basis for racism. Here, the point is that it does not positively recognise “race” as a category on which it bases its laws.⁴¹

Sure, (legal) reality is a different story. People in various positions of the state apparatus often enough are e.g. sexist in their decision making – explicitly or not, consciously or not. As long as that is not disputed (and substantiated in the eyes of a jury), this happens regardless of the law’s assertion to the contrary. For example, women are still discriminated against on an everyday basis such as earning less than men on average. This is due to a long history of the state itself treating women as only partial subjects, the gender roles that went with it and how capital dealt with it. These roles are still common and in some areas seem to be taken as even more self-evident than a few of decades ago. All this means that in law one can find what is

legally valid and what can be brought to court if not abode. But it does not necessarily show social reality. Indeed, many laws exist exactly in reaction to what goes on in society, but should not in the eyes of lawmakers.⁴²

It needs to be stressed that there is no necessity either in the past development of modern states that started to consider more and more groups as full subjects (women, disabled etc.) and has tended to an almost complete non-discrimination of those formerly treated as unequal. Besides children and mentally disabled people, many groups are now considered to be full subjects, but there might be reasons for a government to reverse this development again. We do not want to predict the future – e.g. if all modern states will treat homosexuals fully equally to heterosexuals (e.g. in tax and adoption laws). This, only time will tell: the state is not on mission to realise some ideal of equality, but to rule over a capitalist economy for which equality is an adequate means.

3 – Beyond law and market

Denouncing freedom and equality in capitalist society as a sham fails to recognise the specific forms in which they do in fact exist: here, domination and exploitation are grounded in freedom and equality.

Many people claim to and some people have different notions of freedom and equality from that which counts as freedom and equality in this society. Indeed, there is room for another notion of freedom. Any rational notion of freedom must at least reflect on necessities – e.g. we all need to eat – and their means of realisation. It is exactly this reflection which is explicitly excluded from what is commonly referred to as bourgeois freedom.

However, insisting on the existence of a rational notion of freedom or equality is not the same as denying the existence of these principles in this society. The former may or may not be a productive debate, the latter casts a wrong verdict about the social conditions we are forced to live under. Private property is a realisation of freedom; equality before the law is a realisation of equality. As such, equality and freedom realised in this society must not be rejected by appeals to the full realisation of this equality

and freedom or by denying its existence. The critique of domination and exploitation is to be phrased as a critique of the existing notions of freedom and equality.

Moreover, one should be careful about what to wish for when campaigning in the name of freedom and equality. For example, when anti-racist or feminist campaigners call for, say, “equal wages for equal work” one should keep in mind that equality as such does not specify a particular outcome. This equality could very well be realised in a downward correction of those wages, which are higher than those of the people being discriminated. In either case, wages rising or falling, wage equality would be realised.⁴³ Complaining that others have more can result in the demand (or outcome) that they, too, have less. Also, if poverty is decried in this form, e.g. when poverty and wealth in the UK are contrasted, this can be confronted with the contrast of poverty in the UK and, say, Romania. This is a criticism purely in form of a comparison, which criticises that some people have more than others instead of addressing that most people do not have what they want and need.

Of course, when left-wing activists demand closing the gender gap or “equal rights for all!”, their intent can be guessed: better lives for those being discriminated against. Yet, this point is not adequately expressed in the demand for equality and fails to recognise how equal rights are the basis for exploitation in this society.

In contrast, an example of a slogan which completely disregards material improvements for anyone in the name of equality and justice is “Steals a bottle of water – goes to jail. Commits biggest financial fraud in history – no charges”.⁴⁴ It contrasts the LIBOR scandal⁴⁵ with the harsh sentencing of August 2011 rioters. Yet, the two cases contrasted in the slogan are not connected except by an ideal of equal punishment: justice. Rioters were not harshly sentenced because LIBOR fraudsters are let off the hook and vice versa. Sentencing the former head of Barclays does not get rioters out of jail. More lenient sentencing against rioters does not mean harsher sentences against bankers.⁴⁶ In this slogan, the focus is not real material improvements, but an appeal to equality of punishment.⁴⁷

⁴⁰Clearly, there are some forms of discrimination the state spends a bit of energy on discouraging, while there are other forms of discrimination, which are not even recognised in its anti-discrimination law. Relative to the standard of what ought to be, discrimination against, say, intersexual people is currently not considered a very pressing issue by modern states.

⁴¹Anti-discrimination law usually indirectly recognises the false category “race” by excluding it, i.e. by stipulating that no one shall be discriminated against on the basis of “race”. This implies that there is such a thing as “race”. However, it is also possible that such law merely recognises that racist discrimination exists.

⁴²There is also what is called “structural racism”: regulations and laws affecting ‘white’ and ‘black’ people differently. Sentencing guidelines for crack and cocaine are often cited in this context. However, these differences express how much of an issue the state takes with poor people smoking crack vs. not-so-poor people snorting cocaine. The state – while objecting to both – considers the former a bigger social problem than the latter: it sees a greater need to discipline the (unemployed) poor and not so much to discipline those who are more economically successful. The existing racism in bourgeois society sorts people into rich and poor along racist lines.

⁴³There is another reason why “closing the gender gap” does not necessarily imply improvements for all women. One of the factors of the gender gap – i.e. women earning far less than men by average – is that women disproportionately work minimum wage jobs. Closing the gender gap would only mean that people in the same jobs would get same pay. Hence, all those women who would still work minimum wage jobs would see no improvement at all. They would still earn just as little as their male colleagues – as closing the gender gap in itself does not question the general hierarchy of wages from sub-minimum wage to high earners.

⁴⁴It is by Occupy London and then reproduced by, e.g., the Imaginary Party: <http://imaginaryparty.tumblr.com/image/26986679113> (last access 14. August 2013)

⁴⁵The scandal was about banks fixing the the average interest rate estimated by leading banks in London on what they would be charged if borrowing from other banks.

⁴⁶For a critique of punishment itself see “The logic of punishment in democratic states” in this issue.

⁴⁷A radicalised version of this: “Here’s the tough thing about restorative justice: it works, as long as you don’t consider retribution to be its own inherent good. [...] Norwegian-style restorative justice subverts those human desires for justice and fairness, which does seem to have found success in reducing crime’s cost to society. [...] The retributive approach absolutely has its pitfalls – the American system’s heavy emphasis on punishment has a history of leading it to horrific excess and abuse – but at least it’s meant to be just. I don’t know how you balance that against the overall social good [...]” – Max Fisher, op. Cit. This author desires to do harm to perpetrators (in the name of retributive justice) such much that it trumps lowering the crime rate. He is absolutely willing to see that more people are subjected to, say, violent crime if more violence (by the state) follows suite.

The logic of punishment in democratic states

Punishment in the public debate

Crime pays – especially in the public debate. These days, many seem to be concerned with how to best fight crime. The discussions are diverse: some are concerned whether the state's actions against criminals are sufficient enough so that the citizens' need for protection is met. Others consider the possibilities of legal punishment to be adequate but claim that the law has to be enforced more persistently. Then there is a minority claiming that strict punishment and too much imprisonment do not help in turning criminals into good and decent citizens.¹ Especially the Left argues that only those who have problems, cause problems and demands more money for the reintegration of (former) criminals into society. If prison conditions constantly become worse because less money is spent on, e.g. education in prison and probation workers, then no wonder that imprisonment does not help make better people out of criminals and protect them from a relapse, is a common leftist argument.²

So, as divergent the debates on crime and approaches to fighting it may be, the need for punishment and for the state's capacity to use force is common ground – from right to left.³ For some, for example, it may be evident that we would get nowhere without the protection of private property and/or freedom. Without punishment citizens and their rights would not be properly protected and justice would not prevail. Even if some would admit that harsher punishment does not help, the necessity for the state to punish in order for a society to work is hardly an issue. Sentences, which impose punishment on offenders, it is claimed, have a deterring effect which – as sad as it may be – is inevitable in order for communal life to work. In this view then without punishment, it is claimed, many people would not accept the “legal rules” essential to live harmoniously together and it would always be the more powerful people asserting their “right”. This would result in the “law of the jungle”. And this, obviously, would be harmful for anyone without the “muscle”. Punishment by the state and its systematic practice is necessary, it is argued, because it respects the people's need for punishment. But, in a “civilised”, predictable and just way, i.e. there is no “cruel and unusual punishment”.⁴ And this, as those who hold this view conclude, is the only way to prevent boundless

and arbitrary punishment, i.e. that people take the law into their own hands.

In the following, we want to critique this explanation for the necessity of state punishment and show that the crucial basis for the continued existence of crime is not to be found within people themselves. Instead, we argue that the fact that the state by law guarantees private property, freedom and equality is what continuously produces “good reasons” to break the law. Moreover, we question what the public and jurisprudence consensually claim to be criminal law's purpose: that it saves people from harm and ensures their daily “peaceful coexistence”.

But, before we really start we would like to briefly clarify: this article deals with punishment in states with a capitalist economy and a democratic legal order. Hence, the subject of this article is not the question of how to deal with people doing harm to other people in a reasonable society. And to avoid any misunderstandings: we do not rule out that in a society based on a social plan of production encroachments on the life and limb of other people may take place. In order to protect ourselves and others from harm, some form of coercion may now and then be necessary – otherwise one would just be subjected to violence. But, this is a different question: temporary coercion on the one hand or, on the other, an enduring necessity not only for a monopoly of violence, but also for the complete punishment system of the state.

Why the bourgeois legal order's economic substance continuously invites to break the law

In order to explain and put forward a critique of state punishment, it is necessary to take the bourgeois legal and property order into account as a whole, i.e. the basic legal institutions of freedom, equality and private property have to be critically assessed and their purposes explained. Put differently: if a proper analysis of state punishment comes to the conclusion that its purposes – forcing through and maintaining the ever so peaceful coexistence of people in the bourgeois-democratic state – cannot be asserted and maintained without such sanctions, then also the purposes have to be critically looked into. Hence, a critique of bourgeois criminal law is not to be had without a basic critique of the bourgeois legal and prop-

erty order, that is freedom, equality and private property.

Private property is the institution regarded by many as the means through which people are able to secure their access to stuff. But, in fact, it mainly excludes people from stuff, i.e. from anything and everything they do *not* own. This exclusion again and again gives rise to situations where people violate property law – simply in order to be able to satisfy their material interests and basic needs. Whenever the purse limits this satisfaction of needs a person might think about an extra-legal way to get access anyway, which means to commit a crime.⁵

There is no need to look far: even in successful capitalist states crime occurs on a large scale. It is a daily habit to dodge the fare, download films illegally, to evade taxes, or to make misstatements to maybe get just a little more in (state) benefits. People squat houses or do not pay for, e.g. electricity because the little money they had was spent for something else.

These examples of crime indicate that life – also in successful capitalist states – is not a life in which people's needs, wants or desires are provided for (or on the state's agenda). Instead, one finds that to satisfy one's needs the law must often be broken.

Moreover, in a society which is based on its members pursuing their economic success in competition against each other, it is no surprise that the rules set to facilitate this competition are constantly broken. Two or more companies, for example, may work together illegally in order to drive others out of the market to expand their position on the market: they engage in “unfair competition”. Or a capitalist might disregard labour or environmental protection regulations, might bribe an official or might hire people without valid immigration status in order to have an advantage on the market. The capitalist tries to succeed economically like everybody else, an interest which has the state's blessing, but with illegal means.

So, while not all forms of crime result from the dependency on property, most crime only exists because of the pursuit of economic success in competition with and against each other. And it is this regular production of crime that makes a penalty system in bourgeois societies imperative.

¹A recent example in the UK: <http://www.guardian.co.uk/law/2013/jul/09/whole-life-sentences-david-cameron-human-rights> (last access 22. July 2013).

²We do not disapprove of claims to improve prison conditions, but, we do criticise the justifications made in this context. People criticising the penal system in the name of a better rehabilitation speak for a bourgeois-democratic state's better functioning. They do not criticise or question the violence always involved in punishment. Instead, those people contribute to morally legitimise it – we deal with this in more detail later on in the article.

³Even some people of the radical left approve of punishment – if it is directed against the “right” offenders, e.g. racists or tax dodgers.

⁴The phrase cruel and unusual punishment describes punishment which is regarded unacceptable because of the bodily and/or emotional harm (pain, suffering, humiliation) people experience whom this punishment is inflicted on, see http://en.wikipedia.org/wiki/Cruel_and_unusual_punishment (last access 22. July 2013).

⁵Hereafter, we will focus on such crimes through which – in any way – a person aims at illegally acquiring material wealth. This also includes a good many violent crimes, such as extortion or robbery, which, however, by the public usually are not counted and discussed as property offences. While not all forms of crime result from dependency on property still most crime only exists because of the material lack connected to one's dependency on wage labour or else on the way to succeed in competition.

No crime without law

In contrast to our condensed explanation above, it is public opinion that by means of the law the state merely *reacts* to violently carried out clashes of interest that simply exist in every society at all times. However, interests clashing on a systematic basis only happens *because* of the bourgeois state and its law. Guaranteeing the premises of these competing interests does not mean that the state welcomes the resulting breaches of the law, though. On the contrary and following the above, the state's purpose is a functioning capitalist economy – and for that it wants clashes of interest to be productive. This means, the state must also guarantee a stable order for and smooth running of such a society.

The basic form for bringing conflicting interests in a capitalist society into a *productive form* is the contract: here, two parties specifically come to some agreement that both sides hope to *gain* from. Yet, in and through the contract their conflicts are not dissolved. Instead, each contracting party is now equipped with entitlements that allow for the assertion of her contractually recorded interests against the other party. Such entitlements can be enforced with the help of *civil* law, i.e. the law predominately concerned with the relation between citizens.⁶

In *criminal* law the state relates the actions of its subjects to itself and defines – among other things – what kind of breaches of the social rules are considered to be of state concern and prosecuted accordingly. Not every action which the state regards as detrimental to society and the coexistence of its citizens is met with punishment, e.g. breaches of contract, are not in themselves criminal matters. It is only those deeds it considers to be matters of principle, i.e. actions the state regards as directed against its basic legally protected interests (e.g. personal freedom, life, the human body and health, and property), which are classified as offences and responded to with punishment. However, even though there are no objective criteria within each offence according to which an action is classified (in law) as serious and thus is punishable by law, it is not for nothing that in most capitalist states murder and robbery are considered serious crimes (see section on criminal law below).

Both, in respect of civil law and criminal law the state aims to make sure that its citizens' interactions follow a certain set of rules, even in situations of colliding interests. The state is well aware of the variety of conflicts and consequently it also knows that there are ample invitations to break the law. So, instead of solely relying on some kind of moral considerations that the citizens may make and which possi-

bly would prevent them from illegally obtaining the objects of their desire, the state intervenes by means of criminal law. The punishments meted out in these interventions damage the guilty citizens through restrictions on their property and freedom. The state thereby creates and maintains a situation in which people are obliged to make the following cost-benefit-calculation: how much do I want something versus how much would the punishment impair me if I got caught. Indeed, it assumes its citizens make this calculation. The higher the punishment, the more probable it is that citizens act in line with the state's hope and obey the law. By punishing and therefore creating costs for the offender the state, with varying degrees of success, limits breaches of the law in society as a whole.

If this calculation works in society as a whole, then every citizen can rely on conditions where contracts are usually fulfilled – be it with respect to trade, work or tenancy – even if it might be tempting to not fulfil some contract for whatever reason. This is two-folded: firstly, every citizen can expect that fare-dodging, car theft and other crimes stay exceptions. Secondly, as long as all her actions take place in compliance with the legal order every citizen may refer to the state as the guarantor of this order in case she is confronted with a breach of the law negatively impacting herself, for example, when someone steals her bike.⁷ This is an offer to the citizens to use this legal order as their means to success – an opportunity they simply need to take – and thereby ignore their own subjugation that comes with it.

The bourgeois state's task for its citizens: to abide and to appreciate it

To illustrate the specificity of bourgeois law it makes sense to look back in time. During the Middle Ages, many relationships of domination were based on a few, very specific acts that subjects of a monarch had to perform resp. rules they had to adhere to (and if they did not, they had to face punishment). Common ones were, for example, to tithe or to have to send the first son to do military service. In many other regards, a ruler's subjects were of little to no interest to him (or rarely: her). Put in a very condensed way: a feudal ruler's interest was to mainly squeeze out some wealth out of its subjects. Less of concern was whether or not his subjects endorsed the law, there was no generally accepted ideology for the subjects to "translate" this power relation into a bunch of chances.

The state under the rule of law is usually more demanding. It and the capitalist society it rules

over need the majority of people to not only abide by the law but also principally appreciate the legal order. Generally, the state's citizens know what they are allowed to do and they stick to the rules. If the law is accepted in general and asserted by the state, especially when it is broken, then an important prerequisite for a successful national capital accumulation and attracting foreign capital is fulfilled. Then capital may be invested in the country instead of somewhere else and long-term growth becomes possible. Such long-term growth, if it occurs, holds the possibility that it pays off economically – at least for a few. If exploitation of workers and the poverty, which produces and is produced by this kind of wealth, are ignored as usual, then these conditions seem to be a friendly offer. It is noteworthy that this offer usually seems to work out even if there is only hope for a little bit of success. Even only reasonably successful capitalist states are able to assert and maintain such nasty conditions without their citizens having fundamental doubts in the legal or the economic order. This has only recently been demonstrated by many of the protests in reaction to the global financial crisis of the last years.

The citizen as an economic subject pursuing her economic interests, may and is required to pursue a blinkered personal interest to make money. But there is another role inevitably to be 'played', namely, that of the political subject or citizen. The democratic state relies on the general self-identification of its citizens as citizens, i.e. that they accept that there must be rules and restrictions, in order that being a subject in ceaseless competition may work out. After all, if murder and manslaughter were allowed, simply eliminating competing subjects would indeed be a possible alternative and economic success would be a question of the bigger gun.

The citizens, though, are not only to understand their roles for the sake of their own petty standing in competition but also in terms of the national whole, i.e. they are to accept their own sacrifice(s) in order for the economy and state to function. For instance, I do accept the building of a new nuclear power plant in my backyard for the sake of improved regional development. This means a basic loyalty to the state. The state's function to rule – the state as legislator, law enforcer and monopolist of violence – has to be appreciated and recognised on a very basic level. It is the state asserting the basic rights and ground rules and only within the realm of these rules may one change anything.⁸ The state, in turn, wants and needs these yes-men-citizens in their dual role as citizens of the state and subjects in ceaseless competition:

⁶In civil law the state, among other things, regulates contractual entitlements which the parties have towards each other. This means the state, on the basis of its monopoly on violence, provides and forms the possibilities of action (in case of breaches of contract). Seeking legal enforcement of debt means to utilise state violence in order to enforce entitlements of the creditor against the debtor on the basis of a title, for example through attachment, i.e. through ordering deductions from earnings, or forced sales. The state is not directly involved in this as a subject, it merely establishes and provides the framework of action in which this is carried out.

⁷The harm done to citizens by further car thefts or unpaid loans is in no way eliminated just because it is possible (by law) to send bailiffs round to tardy payers or imprison car thieves. In other words, that offenders are imprisoned does not make the offence and its social reasons disappear. And neither does the work of bailiffs eliminate the reasons why many people regularly cannot pay the instalments of their loans any longer.

⁸Every action a citizen may carry out – be it (in) a public campaign, voting in an election, founding a party, initiating or signing a petition – are subordinated to these ground rules. This is why a critique of current policies does not question this fundamental loyalty.



they ought to be political and private persons at the same time.⁹

A state's rules are usually misunderstood as an altruistic service to its citizens regarding a "civilised coexistence". Politicians may also have this understanding. The state, however, does in fact pursue its own interests by enforcing the law. It puts people in the position of legal persons that, at the same time, depend on each other and act against each other. For the sake of a continuous national growth of capital, these contrasting positions need to be and remain in productive conflict. This way the state has established a permanent need for regulation. In various laws it now has to regulate the course of this competition and restrict individual interests at various points.

Nowadays the subjugation and loyalty that the state demands from its citizens is no battle ground any more – the majority has signed off on this. However, it should be borne in mind that it is an intellectual effort to establish this loyalty. How come people so easily appropriate such a scheme? How come they subordinate themselves *voluntarily* to quite a large extent under this order *and* on top of it appreciate it?

How come citizens idealise law and state violence?

The violent enforcement and the rule of law is justified by the citizens with an ideal of the constitutional state. The state under the rule

of law stands as an authority above the citizens' opposing interests; it is solely bound to the law and its assertion and it treats every citizen equally (before the law). While this, in fact, is not wrong, it is commonly idealised because it is usually understood as an offering. Law is seen as a means for one's own interest. Thankfully, the state is there to help the citizens to enforce their rights – rather than to enforce its own, the state's law. There is a widespread appreciation for and acceptance of such idealising pictures of law and of the constitutional state as well as the actual institutions in the economically successful democratic states.¹⁰ How is that encouraged?

An important social institution is school where one learns to not only put one's own interests into relationship with other's interests but especially to relate them to rules. Already as pupils many accept such rules as vital, i.e. they are unquestionable.¹¹ Based on their own will they learn to live up to the standards at school that they are confronted with. Sooner rather than later they learn to worship the fact that the rules of performance assessment apply universally (i.e. to every pupil). Put more abstractly, they come to appreciate justice as a supposedly good means to pursue their own interests. Within this ideology then the fact that the same rules apply to everyone also means, usually, no child is favoured or disadvantaged. Everyone has the same opportunities in standardised performance comparison. In their later daily routines citizens find this esteem for justice and the

rule of law, which they have internalised during education and through experience, to be true. Hence, what you already learned at school is "useful" later on in the competition of "the real life". The lesson is given not only through what teachers and parents might say, but also because of the form in which education is organised.

When explaining what law is and does, it appears to many as an "achievement of civilisation": because it protects the interests of those who abide by the law; because it protects the landlord's property just as well as the tenant from arbitrary evictions; because the Employment Protection Act, a protective action by the state offering oneself *as worker* some security, inhibits an immediate "hire and fire".

If people do question the law then it is not the law as such but rather its ostensible false implementation. Then an ideal of the law is compared to a specific rule and this rule is disputed in the name of this ideal. Or else, the demand is put forward that the executive power shall apply the intrinsically just law correctly. But that the law itself might be the issue very rarely appears in the debate.

People who base their appreciation for the law on their practical interests, e.g. as tenants or employees, draw this conclusion from the standpoint of the market participant, i.e. they remain within the realm of the existing legal and economic conditions. In these conditions they want to get by. Sooner or later, as politicised citizens, they find a reason to think in more general terms about how worthy such a

⁹A more detailed analysis of the bourgeois, or subject on the market as a competitor, and the citizen, the politically-thinking citizen, who also cares for the "common good", can be found in "Why anti-national" available at <http://antinational.org/en/why-anti-national>.

¹⁰The political integration of the working class into bourgeois society, for example, is a historical prerequisite for this.

¹¹For example, there are experiments at schools in which 10 year old pupils are asked to suggest actions to improve everyday life at school. Even though the introduction of this task may not be biased the kids rarely think of questioning or wanting to change the authoritarian relation between pupil and teacher, everyday life at school or other ground rules at school.

well-functioning constitutional state is for the citizen. This leads to roughly the following conclusion: if there were no rights and no state seeing to it that these rights apply equally to everyone (every citizen, that is), it would be impossible that everyone, including oneself, has the same opportunities to defend one's interests against others. To workers, for example, it seems rather easily conceivable that companies would not pay them their wages on time if this was not regulated in law. By means of its legal order the state facilitates the "anyway existing" conflicts so that they are carried out without violence – this is the usual ideology. It goes on: by being impartial the constitutional state ensures that also the weak get their rights. From this point of view the state with its monopoly on violence and legal order joins with the citizens to ensure a civilised way of dealing with their conflicts.

This same idea applies when it comes to justifying state violence and penalties by the state. The starting point of this ideological thinking is the conditions of a bourgeois society. Then thoughts are made about how "this world" would be if the state did not have a monopoly on violence and if there were no fines and penalties inflicted by the state. In this picture the conditions are such that no one would take rights seriously any more, hence, it would be all out chaos and misery, and anarchy as imagined by its opponents.¹² Department stores would have to close down, transport services would have to stop their service because their business would no longer be profitable – their would be too many thieves and people dodging the fare. All this, such the conclusion, because there were no rule of law, no state monopoly on violence preventing people from ruthlessly enforcing their colliding interests. Given such an alternative then the state monopoly on violence and penalties seem inevitable for (a) human(e) coexistence.

These considerations serve to "prove" that state punishment is effective because potential offenders are deterred from breaking the law by way of threat of punishment. The central mistake with this line of argument for the imperative existence of state punishment is to simply think the conditions – which are constituted by the state in the first place – can exist without the state. That is, a society based on everyone competing against each other and the misery caused by this are thought to be (even naturally social) conditions already existing before and outside the state's existence. In this ideological train of thought cause and effect are twisted. By justifying democratic punishment in this way the state is not seen as responsible for establishing

the conditions that give rise to crime but rather as a response to those conditions.

If such thought experiments "prove" anything at all it is not that punishment is useful. Indeed it shows that a reasonably peaceful communal life is not possible in a world of property, competition and socially produced scarcity.

Criminal law: not a realisation of an ideal of justice but a manifestation of political will to protect the bourgeois legal order

Before we turn to the popular belief that by criminal law some sort of true justice is realised, it seems apt to give a brief overview of the criminal law, more precisely, the Federal German Criminal Code.

This article is based on a German text which extensively refers to German law. Yet, any principles we present here and illustrate using German law are valid in most or all democratic states as we attempt to demonstrate by reference to British law. Therefore we spare the reader from anything too specific and will focus on the principles of democratic law, exemplified in German law.

Germany's Criminal Code consists of a general and a particular part. The former contains abstract definitions of when an action is a criminal offence, whereas the latter deals with defining and listing such criminal offences (such as manslaughter, murder, fraud, theft and many others).

In order to determine when an action is a criminal offence the following criteria have to be met: a deed (i.e. an act according to law) has to exist, which has to meet the criteria of being unlawful so that the so-called *actus reus* is given; and the mental element, which means the guilty mind (or *mens rea*) of the offender has to be proven – then the offender is criminally liable.

Besides defining criminal offences the Criminal Code also contains (in the particular part) regulations for the sentencing range for each criminal offence. The sentencing range determines a minimum and maximum punishment one has to face for a given crime. So, the actual punishment for each single offender is not specified in law but is determined by the respective court in the course of assessing the penalty. Hereby, the Criminal Code follows the principle that every punishment has to conform to the extent and severity of the offender's guilt.

When defining offences and the relevant range of sentences the state in its capacity as legislator

acts as follows: everything that people do – or could do or do not do¹³ – is related to the state's basic legally protected interests.¹⁴ On the basis of its political interests the state decides which and to what extent actions are considered to be, and are punished as, a fundamental threat to the legal order. Here, the state does not act according to a timeless ideal of justice. The mere fact that a number of criminal laws presuppose private property, shows that the criteria for the selection of goods that are worth protecting do not originate from (timeless) measures, but are measures essential for a bourgeois society. Criminal law, like the law in general, is the materialisation of a bourgeois state's political programme.

There is disagreement about what this programme is: political parties have quite different opinions and the "valid opinion" prevails only in dispute. But, this does not substantially affect the basic standards of assessment of criminal law, respectively punishment itself. There is a political consensus in many cases about what constitutes a crime: the activity of smugglers or traffickers, for example, is not perceived as a job like any other, but as a crime.¹⁵ While the intentional killing of another person is punished by law, the intentional killing of other soldiers does not constitute an offence if it happens under lawful orders in war.

It may also well occur that the criminal law changes. This happens, for example, if behaviours which had previously been judged either useful to or disruptive of the legally protected interests are now assessed differently. In these situations the state has decided either that activities which used to be criminal are no longer a problem, or that activities which used to be lawful are now a threat to bourgeois society. Rape within marriage, for example, was not recognised as a crime in Germany until 1997 (in England and Wales it was 1991, in Scotland 1982). In the past, sexuality within marriage, be it consensual or exactly not, constituted a part of the sexual entitlement of the spouses towards each other (i.e. in practice usually the husband's entitlement towards his wife). By recognising rape within marriage as a crime women's status as subjects was enforced also within marriage and the legal entitlement was lost. This said, sexuality as an entitlement and performance of an obligation within marriage does still exist as a demand of people against each other, but it is no longer covered by the law.

As much as sexuality was taken as a given within a marital relationship until roughly World War II, it was also limited to it. The bourgeois state treated sexuality outside of mar-

¹²Regular news about pillage and violence from parts of this world in which state monopoly of violence does not exist or is temporarily suspended seem to encourage or even confirm this position. In 2005, for example, the latter was the case when the flooded city New Orleans was temporarily not state-controlled any more. People looted because either they were desperate – or simply happy to not have to pay for once. What characterises these news though is that they either concern temporary break downs of the order maintained by the state – and hence do not offer a glimpse into a world without state violence – or concern parts of the world where the local (subsistence) economy was destroyed by the world market.

¹³Denial of assistance or failure to render assistance in an emergency is a criminal offence.

¹⁴Legally protected interests have a special ideal quality to them. A bicycle, for example, entails, besides its concrete usefulness of being a means of transport, the quality of being property. The quality of being property, though, has nothing to do with the object itself, but is solely related to the state establishing such a social relation. In other words, the quality of being a legally protected interest refers to the state's self-commitment to protect these interests. Life, personal freedom, health and honour (in German law in this order according to their value) are also legally protected interests.

¹⁵Actions by traffickers and facilitators of illegal entry are regarded as especially reprehensible in and by the public. Besides illegally crossing borders they are reproached of carrying out their action (which is quite a risky one) for mere profitable reasons, i.e. against payment of money, and not the least caring for the people they smuggle.

riage as a threat to society. It demanded subjugation, surrender, modesty and subordination in this field. A sexuality for the mere reason of lust did not quite fit the moral system. The state took action accordingly and allowed only one way of socially accepted and state-served practice of sexuality: in a marriage. Thus, until 1969, the so-called matchmaking-clause existed in German law, by which it was a crime to provide an unmarried man and woman an opportunity to commit “fornication”.¹⁶ Also until the same year homosexuality was a criminal offence in Germany. “Deviating forms” of sexuality were criminalised and sanctioned. Among the parties of government and in the public the opinion became prevalent, though, that “deviating forms” of sexuality would not compromise marriage and its duties – namely, the compulsion to mutual care and commitment to the education of the next generation – but rather stabilise it. So the state took action and at the end of the 1960s and the beginning of 1970s it abolished a series of laws, which earlier had made its citizens lives (even) harder.

The definition of guilt in criminal law: lack of will to subjugate under the bourgeois legal order

The state’s interest in its citizens’ voluntary subjugation (to the law) comprises an explanation for an important principle of criminal law: no punishment without guilt, nor without culpability. The state very carefully differentiates between law breakers on the one hand and law-abiding citizens on the other.¹⁷ When judging a crime it is not sufficient that an action of the accused constitutes an offence and is unlawful.¹⁸ Only if, in addition, the accused has a so-called guilty mind, can she be punished. This is usually referred to as the “mental element” as distinct from the actual deed. For criminal liability to exist the accused, thus, must be (cognitively) able to realise that her action was unlawful *and* be capable of acting accordingly.¹⁹

For guilt to exist there is a presupposition that the criminal had ignored the fact that something is prohibited by law, even though she would have been able to act differently.²⁰ The state’s basic assumption (here) is that every offence re-

sults from the fact that someone (actively) decided to break the law, i.e. to not subordinate herself to the legal system, but to (deliberately) defy it. The German Supreme Court puts it as follows, “guilt is culpability. If convicted, i.e. if considered guilty, the offender is accused of not having behaved lawfully. He chose (to do) wrong, although he would have been able to decide (to do) right”.²¹ This definition of guilt shows that the state does not merely assess the act itself, but always also the exercise of one’s will. This means, for example, theft always implies the active intention to break the law (as such).²² Hence, besides charging the accused with a particular deed she always is also accused of a lack of will to subordinate herself to the legal system.

In respect of the definition of guilt in criminal law it may be seen what the state expects of each of its citizens: she has to absolutely subjugate herself to the legal order, irrespective of her social and individual situation and reasons for committing a crime. If a citizen breaks the law, then the state judges this as a lack of the will to subordinate. The penalty is not only the consequence but also the substitute for this denial of voluntary subordination.

Levels of hostility?

When judging someone’s lack of will to subordinate, the law looks to determine the severity of guilt. This means, the severity of guilt is not only measured against the violation of a legally protected interest, but it is asked to what extent the alleged offender deviated from the legal order.

Therefore, the extent of the individual’s hostility towards the law, which apparently shows in the respective offence, is important both with regard to the range of the sentence and the sentence itself in each individual case.

Now, how are the differences of a hostile attitude towards the law characterised in criminal law? A first distinction is made between what is called deliberate act(ion) and (act of) negligence. She who commits an offence, such as deliberately placing paint on an exterior wall of a house without the owner’s consent, conducts a deliberate action. On the contrary, she conducts

an act of negligence if to paint the wall was ordered by the owner, but the work was carried out without the necessary caution.²³ The state considers the former to be more serious than the latter.²⁴ Crimes where the action was deliberate are punished harder by the state because it considers the offender’s respective disposition to be more dangerous than with regard to negligent acts. Deliberate actions are identified by a hostile or indifferent attitude of the offender towards the legal code of conduct as opposed to a careless or thoughtless attitude with regard to acts of negligence.

In cases of deliberate actions, however, the crime is further distinguished with regard to the alleged hostility towards the law. For the same conducted deliberate actions, such as the unlawful, culpable killing of a person – in legal terms: the violation of the legally protected good “life” – very different levels of minimum and maximum penalties apply. For example, murder and voluntary manslaughter (both offences that constitute homicide) both describe the intentional killing of another human being in law. But, murder is punished much harder because the accused has the so-called guilty mind for murder, which in short means that the intention was deliberately to cause grievous bodily harm (i.e. serious harm) and no partial defence applied.²⁵

As part of the judgement the extent of individual guilt is further explored: the German Criminal Code highlights the offender’s particular attitude and will, which it determines in (and from) the committed crime as well as the acts’ circumstances. This is considered by the judge when determining the punishment, i.e. how high or low the sentence should ultimately be. Similarly, the British Sentencing Council suggests to reduce the severity of a sentence to reflect an early guilty plea or when the accused is cooperating with the authorities. In both cases, the accused signals her willingness to subjugation. Inversely, it suggests to punish those harder who commit crimes while on bail, have offended before, planned their offence, are “professional” offenders (even they put that in scare quotes), attempted to conceal or dispose of evidence or are “motivated by hostility towards a minority group”.²⁶

¹⁶A landlord, for example, could be liable to prosecution if she allowed her premises to be used for illegitimate sexuality.

¹⁷In the process of prosecution this differentiation becomes apparent in the fact that actions are prosecuted as offences only if they have legally been defined as such at the time those actions were performed.

¹⁸To put it simply: With respect to offences, this means all actions defined as crimes in the Criminal Code. Theft, for example, means someone (unlawfully) takes away an object (of someone else) for the purpose of possessing it herself; one has accessed and taken an object without the owner’s consent. Regarding the unlawfulness of an action, defences such as self-defence, state of emergency, or enforcement powers have to be ruled out.

¹⁹If someone has performed an action, which constitutes a crime and is unlawful, but is not liable because she is mentally ill, then the state will not prosecute her. But, if the court reaches the verdict that the offender still is a threat to the community, restriction orders may be imposed on her. Preventive detention and forensic commitment are different from punishment. They are measured according to the offender’s ostensible threat to the community not the action performed.

²⁰This does not mean that someone has to be aware that an action performed constitutes an offence. It merely means someone was not forced to carry out the action. Drunkenness does not “protect” from being punished.

²¹Klaus Riekenbrauk, *Strafrecht und Soziale Arbeit* [Criminal Law and Social Work], München: 2004, p. 76, our translation.

²²It is entirely irrelevant for the legal determination of guilt during trial that thieves do not steal to break the law (but to get access to the stuff they steal). This becomes relevant when the offence is determined and the offender’s guilt has basically been “proven”. At this stage, namely, the length of sentence is determined within the range set (which is defined in criminal law for a particular offence).

²³The Sentencing Council’s guidelines know four levels of culpability for the sentencing purposes: intention, reckless behaviour, knowledge of the risks and negligence. See Sentencing Guidelines Council, *Overarching Principles: Seriousness*, available at http://sentencingcouncil.judiciary.gov.uk/docs/web_seriousness_guideline.pdf (last access 16. August 2013).

²⁴Furthermore, and among other aspects such as base motives, the deeds’ circumstances and purposes are also considered when determining someone’s “hostile attitude” towards the law.

²⁵With regard to voluntary manslaughter the intention to kill or cause grievous bodily harm also is present. But, a partial defence applies, e.g. diminished responsibility or loss of control (provocation).

²⁶See Sentencing Guidelines Council, *Overarching Principles: Seriousness*, op. Cit.



There is no right degree of penalty, no “proper sentence” and no “fair punishment”

As already mentioned above, a common idea of criminal law is that it contributes to justice being realised. Along with moral ideas of “the good” in law this ideology forms the basis for regular discussions on the “right” degree of penalty. In such discussions, citizens, encouraged by politicians and the media, feel compelled to express their ideas about which crimes should be punished harder than others for the sake of justice. Just like in criminal law it is assumed by these citizens that there is a general moral measure which determines and forms sentences. Furthermore, it is assumed that it is this general moral measure, which makes it possible to compare and evaluate such diverse offences as fraud, theft, assault and the killing of a human being with regard to the severity of the underlying crime. Otherwise, it would be absurd to claim a fair punishment for each offender, i.e. adequate to the “seriousness” of her guilt. Not only are these acts equated with each other in quality, but they are also related in quantity in terms of the sentence being a certain number of months of imprisonment or a certain amount of money to be paid as a fine. But what could possibly be the ob-

jective conversion factor of handbag robbery to prison months? These are, as such, incommensurable; there is nothing in the act itself, that would make the stolen handbag equate to a certain amount of time in prison. Punishment can never fit the crime.²⁷

Crimes are, of course, made commensurable, i.e. measurable by the same standard. The common standard is very real as it is set by the state. How hard the state judges one crime or another depends on how much it considers it to endanger the social order it wants. However, there is no such thing as a common measure *immanent* to these diverse crimes.

Both in criminal law and in some ideological deliberations an effort is made to not consider the crimes for themselves but the *extent* of damage done as a measure. This way they ought to be made comparable. This is nonsense: admittedly, the mentioned examples do each cause a form of harm. But, it is absurd to say that someone who was shot experiences much more damage than a battered person and she in turn is much more damaged than someone whose handbag got stolen. Every attempt to determine the quantitative relation of sentences for different crimes in proportion to the degree of damage caused must fail because damages and harm always have a subjective side. After all, how bad a car theft really is for the owner also

depends on whether she is insured against this, if she has the money to buy a new car and if she needs it for her job. Also, again we would have to ask what the conversion factor is between really really needing that car to go to work and months in prison. So, there cannot be an objective justification for fair punishment on the basis of determinants, which correspond to the actions constituting the offence or the harm caused, no matter how much sentencing guidelines would like it to be true.²⁸ The determination of a sentence therefore always is arbitrary and the determination of the degree of guilt is solely based on political assessment. The main principle in this context is: how serious is the threat of the respective crimes towards the basic legally protected interests (personal freedom, life, property, etc.) and the legal order as a whole?

Legally protected interests equal protection from harm?

Crimes do often involve harm to the victims. This suggests another common misconception: actions are criminal acts simply because people are harmed by them (no matter how much) – be it physically, emotionally or materially. This implies that punishment foremost is about peo-

²⁷When activists, for example, decry that certain hacking related crimes, leaking certain state secrets or public order offences can be punished more harshly than, say, assault, they may appeal to a sense that this does not fit the respective crimes. However, this ideal is just as wrong as claiming it was realised in bourgeois law: punishment cannot fit the crime.

²⁸In the beginning, the aforementioned Sentencing Guidelines state that indeed harm is not something that can be objectively measured quantitatively: “The types of harm caused or risked by different types of criminal activity are diverse and victims may suffer physical injury, sexual violation, financial loss, damage to health or psychological distress. There are gradations of harm within all of these categories. The nature of harm will depend on personal characteristics and circumstances of the victim and the court’s assessment of harm will be an effective and important way of taking into consideration the impact of a particular crime on the victim.” That is, the guidelines almost immediately turn around and advise to translate harm to seriousness to prison time, community service or fines.

ple's well-being or one's individual means to be able to live, i.e. to protect the individual from harm. But this is wrong. The following examples will illustrate this:

- A company sacks 2,000 of its employees because it is cheaper and therefore more profitable to produce its commodities in another country. This is not criminal. Regardless of what it means for the people sacked to lose their income and thus their means of subsistence.
- The right to life, liberty, and security of person applies to everyone: an employee may rely on the protection of her person if she is assaulted by her boss. But this does not apply if she is worn out by work. While deliberately harming someone is punishable as a crime with severe penalties, the destruction of body, mind and psyche occurring in capitalist factories are not to be found as offences in the criminal law. If the work exceeds an average and as such even allowed amount of damage, the company may have to expect a fine in civil court – at most.
- There are actions in which no one is harmed and where no threat of damage exists, but which nevertheless are punished, for example, consensual incest. This might be because it contradicts the currently prevailing idea of the institution family and its function for population policy.

This clearly demonstrates: criminal law works as a standard imposed on the actions of the citizens. And for this standard to operate it is not crucial that an action causes harm. The important difference between the protection of legal rights and the protection from harm is: when the state punishes crimes it acts as the affected party. Where it reacts to harm caused by crime by means of its criminal law, the state is merely and only from the outset interested in this damage from the point of view of the violation of its legally protected rights.²⁹ Hence, protection of legal rights is not protection against harm. If at some point protection of legal rights also entails protection against damage, then that is

a by-product. As to the rest, viewing the law as designed to provide protection from harm is purely ideological.

Let's take a look at how the state acts when its citizens are damaged as a result of a breach of the law. Take an owner of an off-license who was deprived of goods worth £400. But, the damage to be "atoned for" is not directly the damage, which has occurred to the off-license owner – she is not reimbursed that stolen £400 from the state. According to the state of law the off-license owner was harmed in his capacity as an owner, therefore the legally protected interest *property* was damaged, i.e. the legal order. Following the rule of law the state judges accordingly: theft means the offender has questioned the legal order.

There is a section in law – at least in Germany and the UK – in which compensation for damage suffered as a result of crime is dealt with. In the UK it is called a "criminal injuries compensation award". This provides cash payments to people who have suffered injury to their bodies (not their property). However, it is not a determinant factor for punishment by the democratic state.³⁰

The kind of "compensation", however, that criminal law may well be concerned with, rather consists in restoring the unconditional validity of the law. And this is not measured against the compensation of material or harm to the health of the victims, but against the offender's subordination under the violence of the state, which corresponds to the offender's severity of guilt.

Purposes of sentencing in criminal law

What is the purpose of sentencing? Within much legal scholarship it is common sense that criminal law serves to protect rights. Hence, its existence is justified if the citizens' peaceful and materially secured coexistence can only be preserved by the threat of punishment.

Criminal law itself attempts to serve various purposes of sentencing. For example, Section 141(1) of the British Criminal Justice Act 2003

lists: "(a) the punishment of offenders (b) the reduction of crime (including its reduction by deterrence) (c) the reform and rehabilitation of offenders (d) the protection of the public (e) the making of reparation by offenders to persons affected by their offence."³¹ Public, politicians and legal scholarship³² hold differing views on the importance of these different purposes.³³ But, it is common ground and a basic prerequisite that there must be punishment and that punishment has a certain benefit, at least for the society in general, if not for the offenders themselves.

(a) "Each to his own" – the punishment of offenders

For this purpose, penalties are not inflicted in order to mitigate the crimes' effects or to protect the victims. Instead, the punishment adds to (the violence of) the crime one more violent act to break the offender's will. Why? From the state's perspective the citizen by breaking the law has violated the law's unconditional validity. Through the penalty the law-breaking citizen's subordination under the law according to the respective degree of culpability is demonstrated. Thereby the law's unconditional validity is restored. But, how is one to imagine such restoration of the violated right by means of punishment? After all, the crime itself, i.e. the breach of law cannot be undone. By means of punishment the law-breaker is damaged in freedom and/or property until she has paid for her "debts", which is to say the degree of her culpability found by the state. She is forced to go to jail, pay a fine or do community service. This way, punishment is compensation for the subordination owed by the law-breaking citizen. It is in this way that the state achieves "restoration" of the violated law.

Critical approaches sometimes equate the retribution of the state with revenge. However, this retribution is something other than revenge because it does not respond to a need or want of an individual person or that of a group but it is a reaction of the state to a breach of its generally valid law. While it is usually people's

²⁹The citizen's interests and those of the state may coincide – in the citizens' consciousness, that is. Jean and Jane Lunchbucket got deprived of their motorbike once again. They plead for more police presence in their neighbourhood. The reason for their demand is not their personally stolen motorbike, but they express a particular concern about the safety of their area, which they share with the state and other fellow citizens. However, local police headquarters turn down the plan – too expensive and too much staff needed. In other words, Joe and Jane Lunchbucket's interest in this case does not coincide with the state's resp. its local representative's concept of order. The constant police patrol may also bring a disadvantage: the Lunchbuckets' enthusiasm may be dampened when they suddenly get caught jumping their usual red light.

By aligning their own interest in protection with the common good, the Lunchbuckets have at the same time signed off on subordination: the willingness to serve the general public interest. Depending on where problems for the common weal are located, the question of where the state effectively takes action against criminals and establishes orders may become more important for the individual than improving their own material living conditions. Such an opinion is quite widely spread.

³⁰The Criminal Justice Act 2003 lists "the making of reparation by offenders to persons affected by their offence" as one of five purposes of sentencing. So, reparation also plays a role as part of assessing the penalty, i.e. this aspect in combination with others has an effect on the court's decision on the actual sentence (meaning: to what extent will the range of sentence be exploited).

³¹Points (a), (b) and (c) are discussed in the following. Points (d) and (e) were already discussed above.

³²Theories of punishment within jurisprudence differ with regard to what purpose resp. use punishments are supposed to have. All have in common to not ask the question if and why punishment is necessary at all. Instead these theories justify punishment in itself as well as the violence in connection with it. In an article on the spirit and purposes of punishment it says: "Punishment means (to) deliberate(ly) harm (someone). (...) Such dictated and accomplished harm-doing by the state needs to be legitimised in a particular way; not only formally, i.e. secured by law. It also needs a legitimisation in relation to content, based on ethics and common sense. This is what theories of punishment have been developed for" – Heribert Ostendorf, *Vom Sinn und Zweck des Strafens* [On sense and aim of punishing], available at <http://www.bpb.de/izpb/7740/vom-sinn-und-zweck-des-strafens> (last access 27. August 2013), our translation. Such theories and discussions of specialists around them seem faulty. None of the theories is able to give sufficient reasons for the purposes of punishment. But this lack does not seem problematic, because the one crucial point is already certain anyway: there must be punishment. And the explanation for that? The usual: a "civilised" coexistence would not work otherwise.

³³For example, in German law the purpose of retribution is prioritised against the other purposes of punishment. The Criminal Code makes clear that the importance of reintegration as a principle is not as significant as that of ensuring retribution. In the law it reads: "The offender's guilt is the basis for the assessment of penalty. The effects on the offender's future life in society to be expected from the punishment are to be taken into account." In other words, firstly, the court determines the offender's guilt so that the general range of punishment is clear, on the basis of which the assessment of penalty has to be carried out. Secondly, it is evaluated how the punishment could effect the offender's expected reintegration into society. This can have a mitigating effect on the actual extent of penalty.

subjective concern that is the relevant measure for taking revenge, this is irrelevant with regard to prosecution, judgement and punishment: for example, the prosecutor's action in the process of prosecution and the Court's evaluation of the crime exist entirely separate from any personal concern. Prosecutions can be initiated by the prosecutor irrespective of the victim's desires.³⁴

(b) "Crime doesn't pay" – the reduction of crime (including its reduction by deterrence)

In order for deterrence to work, which means that citizens actually consider it more useful to not break the law, the state's violence against offenders must prevail. In this respect, the restoration of the law's unconditional validity by violent subjugation necessarily aims at an additional effect. Tools such as the process of criminal prosecution, criminal justice and carrying out sentences always serve as demonstrations of the superiority of the force of law towards potential offenders. But, the force of law gaining ground against the criminals not only deters crime but also encourages the state's citizens in their confidence in state authority and in its protective function and efforts to enforce justice.

A justification of punishment by reference to its deterrent effect implies that punishing some criminals is needed to prevent many other crimes. However, if to prevent crime really was the aim of punishment then one could doubt its success as a means of deterrence. Depending on the offences and time served in prison the re-offending rate of offenders is around 60%.³⁵ The good opinion people have about punishment as a means of preventing crime often comes about because the law-abiding actions of many citizens are attributed to the deterrent effect of punishment. So the common opinion – "punishment deters" – prevails, even when the number of crimes increases.

The popular opinion that punishment is necessary to deter people from acting against the law contradicts the equally popular idea that there are a good many moral and material reasons to appreciate the law. Even if the argument that people would not obey the law without force holds true for this social reality, it is neither an argument for the existing current social conditions nor for the violence that is entailed in enforcing the law.

(c) "You don't stand a chance, so take it" – the reform and rehabilitation of offenders

Punishment not only serves as retribution and prevention of (repeated) crimes. Punishment shall also have the effect that the offender in the future abides by the law. The German Prison Act states that by completing the sentence the prisoner should "become able to lead a life without crime and be socially responsible in the future". This results in specific requirements as an educational comment on punitive law states: "Imprisonment shall be designed so that the life of the detainees is aligned with the general conditions of life as much as possible. The – necessary – negative effects of imprisonment such as deprivation (breakup of personal ties) and adaptation to the artificial world of the institution shall be reacted to". On the one hand, rehabilitation in respect of imprisonment means a number of measures to prevent the prisoners from being completely mentally and physically destroyed and entirely unable to reintegrate into society when leaving prison. On the other hand, rehabilitation also means preparing for an independent life "outside of prison". This can be educational achievements and training, work, therapeutic treatments in jail but also relief from imprisonment and a transition to open prison. This may all sound friendly, but it is not. Rehabilitation does not seek, as the literal sense of the word may suggest, reintegration into social life in the sense of the supply of jobs and other things. Instead, rehabilitation measures are intended to prepare the prisoners for everything that comes after jail without re-offending – be it to endure a life on benefits, precarious jobs on minimum wages and an often destroyed social environment.

The state wants punishment also to be designed in accordance with the objective of reintegration into society. The state wants retribution, yes, but not in the way that its offending citizens turn their back on it for all time. The attempt is to turn criminals into law-abiding citizens. It is widely acknowledged that the risk of becoming criminal is somehow related to people's "unfavourable living conditions". Hence, imprisonment's negative effects are being limited and plenty is undertaken to not make subsequent survival impossible from the outset. Every now and then the damaging effects of imprisonment are pointed out in order to show that the legal guideline of rehabilitation is poorly implemented. This, however, does not concern the

vast majority of politicians much. They shrug and refer to what rehabilitation really is about according to the law: rehabilitation means the forced voluntary adjustment of offenders to the bourgeois legal and property order. All rehabilitation programmes are solely to enable the released prisoner to remain "clean" – despite unemployment, lack of money, social isolation and stigma(tisation).³⁶ The crucial condition for rehabilitation to be a success or failure is therefore seen mainly in the adaptability of the offender, showing that she successfully internalized the external coercion. But, this often fails and the reasons of politicians and journalists to explain this differ (too lax penalties versus lousy prison conditions).

Most people agree that rehabilitation is subordinated to other purposes of punishment, namely retribution and deterrence, even though there may be disagreement about the details of how to organise imprisonment. Even with high re-offending rates no politician questions punishment as an ineffective means for reintegration. To avoid any misunderstandings: we have no objections to the demand for improved conditions for prisoners. But we object to the arguments provided. A critique of conditions within the prison system that shares the aim of rehabilitation but complains about failure is mistaken about its real purpose. This critique goes hand in hand with the position that it does not substantially object to the state's violence for the sake of punishment – and this is to be criticised. A critique of prison and its effects which finds its ideal in rehabilitation, is to be called naive at best. These critics do correctly describe the physical and psychological destruction that imprisonment causes. But, they do not at all object to imprisonment itself and the purposes it serves, instead, they campaign for proper rehabilitation. This way, they then judge prison conditions according to their operation and ask whether and to what extent an "improvement" is actually achieved for the prisoners. In all this, the violence imposed through law and the misery this causes only become problematic insofar as they are considered an obstacle for a successful "recovery" and (re-)integration into the order protected under the rule of law. Those who criticise imprisonment on behalf of a better rehabilitation stand up for a more successful penal system. It is not a critique of the rule of law which always comes with violence and punishment. But, instead these critics contribute, intentionally or not, to morally legitimising the violence of the state.

³⁴This does not apply to every criminal offence. There are criminal offences liable to public prosecution and for those the above holds true as the expression implies. It is not the case for criminal offences prosecuted only upon application by the victim (e.g. trespass or assault).

³⁵For more on the current numbers see, e.g. <http://www.guardian.co.uk/society/2011/may/10/reoffending-rates-short-jail-terms> or <https://www.gov.uk/government/publications/proven-re-offending--2> (last access 15. May 2013).

³⁶The convict's addiction, poverty and immiseration are only taken into account in terms of being barriers for her to be able to lead an independent life in compliance with the rules. But, such conditions must not prevent someone from leading a law-abiding life, so the demand. Rehabilitation is the tool to overcome such obstacles and it is the prison staff, psychologists, teachers and social workers offering "help" in order to master them.

Hard to Believe!

A critique of religion

Religion first of all is belief or faith – as opposed to reason. More specifically, it is the belief in supernatural agency. People believe that these powers rule and guide the world and its inhabitants (often after having created all of it in the first place). They believe in the influence of those powers over everything that is going on in the world. To the women and men abiding by its rules, almost every religion promises happiness and success, either in this world or the next (Christianity, Islam, Judaism, Sikhism, the Bahá'í Faith). Other options include a first-class rebirth (Hinduism, Mormonism) or, at least, an end to the cycle of reincarnation (Buddhism¹).

Religion started out as an attempt by human kind to make sense of the way nature works in order to influence it. Magical practices were supposed to influence the outcome of hunts and harvests, protect from plague and pestilence, ensure healthy offspring and even affect matters not directly connected to nature like the fortunes of war. In those days, forces of nature like thunder, lightning, wind, rain and the sun were uncontrollable and incomprehensible. Transforming those forces into human-like gods that could be called upon (by whatever absurd means) was a way for human kind to declare itself master over nature.

Swaying the (seemingly) unswayable

Nowadays, we have a much deeper understanding of the forces of nature and we know how to use the ones known to our advantage. Sadly, that knowledge did not affect the popularity of religion. Its core attractiveness still lies in the promise of influencing the (seemingly) uninfluenceable, be it natural or indeed social issues: whether it concerns social conditions that a single individual has no hope of changing (unemployment, poverty, lack of success in competition) or whether it concerns problems even a social humanity might not be able to overcome like heartache, disease or death.

With a religious mind-set, one can consider each headache and every written warning by the boss as punishment from god or, vice versa, every successful date and the passed A-levels as reward. Religion accomplishes this through the subjectification of the objective. Instead of seeing the world as it is – a poorly set-up world, uncontrollable by just one individual – religion offers gods, who are treated as people, most of the time, equipped with will and consciousness. Even if thought of as supernatural beings, reli-

gious people still think of them as loving, hating and, hopefully, forgiving ones. These gods see and hear everything and never leave their loyal subjects alone: in this respect, a religious mind could be described as being afflicted by a more or less serious case of paranoia. For anything happening, good or bad, a religious individual looks for and finds a meaning relating back to him- or herself.²

The Gift of Meaning

This sense of paranoia has an undeniable charm for those affected: it makes them feel important and gives a sense of deeper meaning to one's own existence. Hence, it is no wonder that religious people speak about a feeling of security and comfort their religion provides them with. This even (or especially) applies when things go wrong.

For a modern subject it can be extremely comforting to find meaning in everything. Whatever this individual might suffer from – the misfortune always goes along with a sense of grandeur and greater truth. From this perspective it can even be treated as a boon in that it provided a lesson in humility or a test of faith. If you are convinced that the friendly spirit in the sky must have had good reason for creating a world so grossly inadequate for one's needs, you are not likely to rebel or even complain about it. Even though one could easily argue that god cannot be all that friendly considering how inconvenient he set up this world and how much suffering his loyal servants have to endure as a result of this. Thoughts of that kind would inevitably lead to a crisis of belief – or so one would think. But no, religion demands submission, even grateful acceptance of everything the religious consciousness attributes to the unfathomable will of the gods.

Centre of the world

The modern religious mind is surprisingly focussed on the self – or to say it with Freud: magical. It interprets everything that is happening as a reaction of the godly power to any of one's actions, inactions, wishes, wants etc. This fits in rather well with the modern capitalist world. Here, everyone is materially required to see her environment as a variety of chances and opportunities, ignoring that state and capital do not care for anyone's individual happiness and well-being.

Nevertheless, the modern human being is encouraged to believe that the world was created as an opportunity to exert her individuality. Hence, the markets are not to be seen as the unpleasant competitive proving grounds they are, but as a plentiful collection of fascinating opportunities.

This kind of self-delusion (which can be quite beneficial in order to function well as a modern subject) does not necessarily need gods. But they are a convenient addition and reconciliation for the burdens one accepts when wanting to be successful.

In a religious mind, the rest of the world tends to be treated as an instrument for the divine reward or punishment of the self. This weird impotent omnipotence of one's own thinking is a political issue from the outset. If someone regards the improvement of his relation to god as life's very substance, then consequently any attempts to change the world are nothing more than a means to influence this deity/these deities. This religious build-up might be done by individuals or as an explicit political movement.

I pray – you bless

To influence the god(s), one has to follow a certain set of rules. There are ceremonies of worship and praise intended to show respect to the respective god or goddess. There are prayers intended to communicate the believers' requests to the higher power. Some of these traditions of offerings and pledges that work as submission under the sacred power via sacrifice happen in open form (Hinduism, Shintoism, Buddhism, Catholicism), some are masked (Protestantism, Judaism, Islam).

Neither of these practices usually improve the quality of life of their followers.³ In the end, not even those desperate attempts for appeal can hide the fact that an important part of the spiritual message consists of abstinence and deprivation.

Apart from grand declarations of renunciation (fasting for instance), there exists a wide range of nasty practices of self-flagellation and self-punishment that some religious zealots inflict on themselves and from their beloved followers, without contemplating what kind of sadistic weirdoes their gods must be to ask for such self-destructive behaviour. While there might be some individuals who gain pleasure from this kind of treatment, this is certainly not the point of these practices.

¹By the way, whenever Buddhism is mentioned in this text, we mean the religious practice in commonly Buddhist countries, not its use as a sort of "meditation/philosophy" in Western countries.

²Some argue that god is too much of a godly figure to be meddling in the everyday world – after all, s/he already created it perfectly. Yet, that does not keep a lot of religious people to look for the godly meaning in all sorts of things – even if these things are far from "perfect".

³In themselves these actions may well be a harmless pastime – and even for followers not always extremely exciting. In order to make those rituals more interesting, some movements try to turn spiritual celebration into a happening.



The underlying idea of those attempts to influence the deity is that there will hopefully be some kind of trade: “Good behaviour for good fortune”. This exchange was practised in a literal sense when the old heathen gods were offered sheep, pigs and cows for their favour. Nowadays the exchange may happen in an individual and subtle way, but the whole concept remains very much unchanged and alive. It is one of the foundations of the modern systems of belief, though the scholars of theology, the “study of god”, have always condemned such notions: making demands is seen as a lack of humility, which is in itself suspicious. It could also give rise to doubts about the existence of a higher power if people took this idea too seriously and started putting it to the test.

So the pious women and men have to console themselves with attempts to win god’s favour through humbleness, blind faith and abstinence, albeit knowing that it is a deal with an uncertain outcome; knowing that one should never tempt god.

Submission as agenda: At first, oneself...

No matter how charming some of their customs may be, religions are fundamentally infused with an attitude of servitude which has an extremely conservative quality. Instead of changing the world, one submits oneself to the will of its creator through self-restraint in order

to get special treatment. Sin is a concept known to every religion and every cult, even the ones known to regard worldly pleasures with favour. One of those sins is hubris, e.g. overstepping the line separating god from man in an act of insurgency. Another popular sin is materialism, e.g. being interested in seeing ones needs fulfilled, leaving heaven to the pigeons and sparrows.

Sensual pleasure, whether it is tasty food, refreshing beverages or enjoyable sexual intercourse, is generally frowned upon amongst the men and women of faith. If they do not outright declare “gluttony” and “lust” as deadly sins (Christianity), they still find a whole catalogue of restrictions to take the fun out of life (Judaism, Islam) or are devised as sermons of restriction and pain from the outset (Buddhism). Even the few still existing religions that do not condemn sexual pleasure per se (e.g. Hinduism) are very rare (most of them are polytheistic ones) and accept it primarily as a way of honouring their deity. It is through the submission of the self that the religious personality places itself in the centre of its world.

... and then the others as well!

Now, a religious mind could just wallow in its delusions and leave the rest of the world alone and, spiteful as they are, find solace in the thought that the unrepentant materialists will

one day have to face the fires of hell or reincarnation as slugs.

Annoyingly, the gods insist quite vehemently on being worshipped by all their creation, so the recruitment of new followers is one of the best ways to score some favour-points with them (except in Judaism). In which way the higher power is supposed to benefit from listening to the drivel of its countless subjects remains a mystery, as well as the question why the gods do not just admit everyone to paradise without obstacles like free will, sin, the devil etc. Those, who not only ask those questions but also really care about getting an answer inevitably have to leave the terrain of the spiritual at some point since they do not want to believe – they want to know.⁴

If a religion has tasks like charity on its agenda, it is practically a must that the heathens, for their own sake, are confronted with its divine truth. And should they refuse to take the teachings to heart or if the holy book contains the commandment of jihad (the fight for god against oneself as well as non-believers), well, then there is always the option of “saving” them by fire and sword.

Even in a religion like Buddhism which renounces conversion by force disciples undertook several crusades of considerable magnitude. Those who cannot understand these contradictions should not try to find answers in the holy books but ask themselves what purpose

⁴There are some inner-religious debates that are based on reason. But you have to start with believing in God – at least this very foundation is not subject of a religious debate. Then there are attempts to *proof* the existence of a higher power by reason, but they failed.

has been (and still is being) pursued by this interpretation of religious lore – and to what end. What makes those “misinterpretations” so easy is related to the “supernatural nature” of religious texts. Gods do not get in touch with humans – if they did, we would seriously reconsider criticising religion – therefore leaving no actual “proof” that supports one interpretation of a gospel or another. So there is always a lot of arguing about what the will of the respective deity might be. Both the Koran and the Bible emerged as a co-production 30 to 70 years after their founder’s demise – assuming that we accept Jesus as an actual historical figure. These writings are wonderfully contradictory, so there is room for interpretation to everyone’s taste. The reasoning behind some dos and don’ts, which are now characteristic of these religions, is quite often nothing but a complete over-interpretation of the respective texts (e.g. issues with meat and milk in kosher Judaism, prohibition of alcohol and the obligation for women to veil themselves in today’s mainstream Islam). Some of them even contradict scripture (e.g. the disregard of the Christians for the Jewish commandments concerning food, clothing, etc.).

Fundamentalists especially pick out parts of their religious scripture and interpret them in accordance with their world-view, which often is rather misanthropic. While the prophet makes various points about Jews and Christians, the Koran says nothing about the United States, about capitalism or about suicide attacks.

How you can reconcile “love thy neighbor” with blessings of guns or signs reading “God hates fags” – is a line of reasoning that is as irrational as it is futile. In order to find answers here, one has to leave the realm of rational thought. A discussion about the right reading of scripture is a task one should leave to the believers.

Fundamentalism and refoundations

Reformative movements of any kind are rooted in the very nature of religion. The living conditions in a world filled with domination, no matter if secular or clerical are always miserable enough for people to turn to a higher power for help. When things have turned bad enough, some people may try to appease their god with a “return” to what they deem the true path. ‘Fundamentalism’ claims to re-establish the unity between the word of god and the actions of his followers. Such a “restoration” is always a big fat lie about the past. It is a typical conservative shtick: their respective ideals are being projected into a supposedly glorious past, while the return to the traditional values is displayed as a cure for all current problems. Furthermore,

every religion has to deal with its own separatist movements. Some of them have diverged greatly from the religion they originated from (e.g. Christianity from Judaism). This is also part of the essence of religion: if a mind with an overly strong affinity for the spiritual starts hearing voices, it does not consult a psychiatrist. Instead it either goes on a killing spree or it founds a new cult (Protestants, Chassidim, Shiites, Alevites) assuming the position of the next prophet or Mahdi, as Jesus Christ reborn, the true messiah or Buddha reincarnated. Or, in some cases, they just invent their own religion from scratch (Sikh, Bahai, Mormons). That is not to say that these cults were or are founded based on visions in every single case – there are exceptions. The answer to the questions of why and where some new religions and cults become popular often depends on whether they are compatible with changes in social conditions (e.g. Protestantism on the dawn of the capitalist development).

In other cases the reason is simply force: which part of the modern world is Christian, Muslim, Buddhist or Hindu is neither the result of some heated discussion between theologians, nor were there ever any forms where people could just fill-in a religion for themselves. In the world of today, religion is part of the “national culture” – that is why it brings nationalists to the scene when citizens start praying to new gods rather than to the traditional ones.

Religion as a resource of morals for leaders and protests

Private property (“Thou shall not steal!”) and the power of control of men over women and children are implicit in the moral codices of almost all the existing religions. Poverty and paucity are not to be abolished; if anything they are being glorified and/or morally mitigated. Being dissatisfied with the conditions of one’s life is seen as insolence for “who are we to question the will of god?” He must have his reasons for imposing all these hardships on us. Why exactly it is that people are at each other’s throats all the time is of no concern to religion. It is content to waggle its finger with threats of punishment in the afterlife.

And for every problem in this mortal world that cannot be dismissed as “god’s will” amoral misbehaviour is blamed. It is no wonder that rulers in pre-bourgeois times (when they still actually ruled as kings and lords) thought of the various faiths – whether they shared it or not – as something quite useful. So, somebody religious is allowed to criticise this life. He is allowed to take religion up on the great offer it has to make for our coexistence: justice as a standard used to evaluate the behaviour of his neighbour (not of god, though). Ab-

stract morality is the basis of religious reasoning, which separates itself systematically from every positive reference to the needs of human kind, and only thinks in categories like “if everyone would do that”, “it’s all right as long as you’re honest”, “Sometimes you just have to deny yourself some things ...”, etc. Accordingly, religious moralists are quite self-righteous and cold-hearted when they are intent on reforming their fellow men and women. They also like to accuse each other of not being humble enough, which tends to happen when one dares to make a judgment-call that others think is due to themselves.

In spite of their belief that the god(s) already put everyone and everything in its right place, there are some social protesters among the religious. Sometimes god’s servants even support uprisings of the servants of the mundane rulers or at least declare sympathy for their cause. As we mentioned before, the fact that the esteemed supernatural world leaders very rarely give direct orders to their loyal subjects leaves room to justify pretty much every activity.

The uprisings that join forces with god these days protest against an immoral, heretic rule, demanding justice and morality.⁵

They do not strive to be up to a reasonable, but instead a very irrational standard. Even a “Theology of deliverance” is nothing but a demand for justice and dignity for god’s faithful servants. It might seem more likeable for someone to deduce a right to own land, bread and milk from the bible than attacking abortion clinics, for example – it still does not provide a reasonable programme for a satisfaction of needs, and, from its line of reasoning, still has more in common with the Taliban than a fight for a world without oppression and poverty.

Buddha, Jesus and Mohammed are no comrades

Religion takes a hostile position towards a sensible constitution of the world, towards the recognition and sensible determination of human needs and towards any effort to satisfy those needs in a planned manner. If everything is or can be god’s will, unfathomable and all, all we can do is to surrender ourselves to it, then there is, consequently, a limit to every reasonable analysis. If someone looks for meaning (instead of cause) in all the bitter aspects of life, diseases, natural disasters or unemployment, she endows all human tragedy with god’s blessing and comes to a moral conclusion ultimately justifying it.

Not just institutionalised religion, but religion itself, not the “corruption” of the doctrine by some priests, but the doctrine itself is the problem. Buddha, Jesus and Mohammed are no comrades, nor will they ever be.

⁵We refrain from discussing the Peasants’ War and the like; up to the French and American Revolution every political matter was expressed religiously and even in those two wars, people were convinced that “the Maker” and his “natural law” resp. a “higher power” was on their side.

Free Property

On social criticism in the form of a software licence

The open-source/free-software movement has quite a good reputation on the Left.¹ This is not simply because of the fact that open-source developers provide things for free which usually cost money, but also because the free-software movement often is regarded as an opposition or even a practical counter project to capitalist private property. Hence, this text investigates the apparent contradiction that a licence – an assertion of ownership – guarantees universal access, while being simultaneously adopted and promoted by multinational IT corporations for their own profit.

Intangible goods are different ...

Indeed, at least some people within the movement do seem to be bothered about property, at least where it specifically affects digital goods. Indeed, in terms of what they actually are, physical goods and so-called “intangible” goods differ.

If someone uses my bike, I cannot use it at the same time. Ideas, however, such as those expressed in this text, can be distributed and shared with others without ever running out of them. For example, we do not know less of the content of this text when the readers know more about it. But still: reading the text, comprehending it, finding mistakes, that we might have made, are intellectual efforts every time we accomplish them – activities that are both time consuming and full of preconditions, e.g. one is required to have learned how to read. Hence, distribution is not to be had entirely “free” and without any (basic) requirements. The text itself, however, and the information it contains bears the particular feature that it can be copied (and, by implication, transferred, displayed, made available, in short: used) any number of times. Once certain (basic) requirements are established (e.g. a computer is at hand, an Internet connection is up and running), it is fairly cheap to duplicate a file containing this text – the effort becomes close to zero at some point.

... and with them, property appears differently

It seems an ‘artificial’ and unnecessary restriction to stamp private property on ideas, files or other ‘containers of information’ milling about

– for the single reason that one is used to copying those files. From this, first of all, it may be noted that the quality of being property is ascribed to things. It is not a characteristic inherent to them, i.e. necessarily or naturally ‘comes with’ things. Secondly, it is apparent that it is not *allowed* to make copies of some files, e.g. most music. It is illegal to distribute such files. With regard to files this seems, at first sight, rather absurd since their distribution neither changes nor damages their content. So, when it comes to ‘intellectual property’, property appears differently. Namely, it appears more obviously that state authority restricts its use through patent, copyright and other laws. This way it becomes very distinctly recognisable what property actually is – a barrier.

Moreover, scientific and technical results were products of collaboration long before the beginning of digital information processing. This is because even the smallest discovery or invention is based on a host of other discoveries and inventions; so many that the respective originators only know a fraction of the sources from which their content derives. Mathematical findings are based on other mathematical findings, software is based on ideas found in other software packages or relies on those packages directly.² Thus, in order to make progress in research and development, access to what is already known is required. If nowadays intellectual property titles continuously are used and defended, i.e. if access and applicability of existing information is restricted by law, then this prevents the development of new ideas. Property appears as something arbitrarily separating that which essentially belongs together. Not only is property a barrier to access to existing things or knowledge, but is even a barrier to the discovery and development of new ones.

The absence of property relations as norm

The concept of open source emerged alongside the development of mainframes, personal computers and the Internet and it also pushed these developments forward. The starting point for the open-source movement was the acknowledgement of some particular qualities of digital goods, especially their lossless reproducibility and the implications for software development that come with this quality. The movement’s protagonists knew how to take advan-

tage of those qualities in their work and, hence, focused on their social requirements. It was a new phenomenon to concern oneself with this topic in the beginning of the field of computer science. From around the 1950s on, free access to and a de facto unrestricted use of all required information went without saying – at least with regard to software. This, anyhow, applied to people with the respective knowledge working at the relevant, well-equipped research institutions. Software simply was a free add-on that came with massive, expensive mainframes. Accordingly, it was openly distributed, studied and changed.

Only from the mid-1970s, a market for proprietary software developed, i.e. software that one is not allowed to freely modify and distribute. Companies such as Microsoft started doing business by selling software and especially licences granting the right to use this software.³ People such as Richard Stallman – founder of the GNU Project, the best-known free-software licence, the General Public License (GPL) – stepped up against this new movement in order to retain the status quo. Stallman and his colleagues developed software together and their demand was that others should be able to study, use and distribute their products. Indeed, from the standpoint of well-planned production of useful things, this is a sensible position.

Property – a standard for the world of physical things?

The open-source/free-software movement started off with the GNU Project. It is important to this movement today that property relating to intangible goods has to play an inferior or different role than property regarding other, i.e. material, things. The reason for this – according to this movement – is to be found in the particularity of intangible goods themselves.

For example, the German Pirate Party – as other Pirate Parties concerned with issues at the crossroad of democracy and the digital life – writes in its manifesto, “Systems that obstruct or prevent the reproduction of works on a technical level (‘copy protection’, ‘DRM’, etc.) *artificially reduce* their availability in order to turn a free good into an economical good. The *creation of artificial shortage for mere economical interests* appears to us as amoral; therefore we reject this procedure. [...] It is our conviction

¹The open-source/free-software scene partly acrimoniously fights over the question whether it is “open source” or “free software” that they develop. The former is a particular mode of developing software the latter a comprehensive approach to software in general; it is a demand, sometimes even called “philosophy”, for what one shall be able to do with software. In our text we often use the term “open source” simply because it is better known. To be entirely correct, we would have to almost always write “free software”, though, as our criticism is directed towards the comprehensive claim of this movement, as opposed to the simple endeavour of making software development more effective.

²With regard to the production of software it is common (and quite sensible) to put frequently used features into separate packages which then are used in various products. Those packages of features are aptly called libraries.

³Bill Gates’ letter to the Homebrew Computer Club is an interesting historical document highlighting the necessity to justify privatisation in the beginning of this new development: http://www.digibarn.com/collections/newsletters/homebrew/V2_01/gatesletter.html (last access 14. August 2013).

⁴cited after <https://wiki.piratenpartei.de/Parteiprogramm> (last access November 2012), our translation, emphasis added.

that the non-commercial reproduction and use of works should be *natural*; and that the interests of most originators are not negatively affected by this – despite contrary statements of particular interest groups.”⁴

With regard to digital goods, the members of the Pirate Party complain that by means of a title of ownership access to information is “artificially” prevented, which goes against information’s “natural” feature of being copyable: “information wants to be free”. At the same time, they see no reason to make the same claim for material things. According to the logic of the party’s political programme, those are “economical goods” quite by themselves. An assumption that seems so self-evident to the authors that they do not explicitly mention it.

The GNU Project, on the contrary, explicitly addresses the assumed distinction between non-material and material: “Our ideas and intuitions about property for material objects are about whether it is right to take an object away from someone else. They don’t directly apply to making a copy of something. But the owners ask us to apply them anyway. [...] But people in general are only likely to feel any sympathy with the natural rights claims for two reasons. One reason is an *overstretched analogy with material objects*. When I cook spaghetti, I do object if someone else eats it, because then I cannot eat it. His action hurts me exactly as much as it benefits him; only one of us can eat the spaghetti, so the question is, which one? The smallest distinction between us is enough to tip the ethical balance. But whether you run or change a program I wrote affects you directly and me only indirectly. Whether you give a copy to your friend affects you and your friend much more than it affects me. I shouldn’t have the power to tell you not to do these things. No one should.”⁵

However, this distinction between material and non-material goods is not correct.

1) The GNU Project claims that a difference between spaghetti and a program is that the former can only be consumed by one person, while the latter can be used by indefinitely many people. Hence, for the GNU Project the former implies the need for private property while the latter does not. Yet, under the regime of property it does not matter whether an owner actually uses her stuff or not. When people think about property in material goods, they have their personal belongings in mind, things they need more or less regularly. But this is not the main point of private property – the way it works is much more far reaching and fundamental. For example, squatted houses get evicted to stand empty again, pieces of woodland are fenced in by their owners even if they live hundreds of miles away or supermarkets lock their bins to prevent people from dumpster

diving. The question whether someone could make use of something is subordinate to ownership, not the other way around. Property applies no matter whether the owner or someone else, e.g. in return for payment, uses it. Making successful claims to an absolute disposal over wealth of whatever kind and whatever quantity regardless of neediness – this is private property. Regardless of material or intangible goods, the regime of property does not care who wants to use what and how. Whereas it is true that only one person can eat one’s fill given only one serving of spaghetti, under the regime of private property to own spaghetti is the condition for eating them, but the desire to eat them does not establish ownership. So, in this respect the material vs. non-material distinction is wrong.

2) In one respect though, need does play a role, namely a negative one. Property in a machine indicates the exclusion of third parties from using that machine. One cannot enter into an ownership relation with a machine because a machine is not eligible for a legal relationship. It is the same with a disc containing a copy of a Windows operating system on it. One is not allowed to install it merely because this disc lies around somewhere unused. The particular function of a title of ownership for the owner is strictly that others may not use her property without her consent, even though they might want to and perhaps even be physically able to do so. What friends of free software notice and highlight with regard to digital goods could also be observed with regard to ordinary material things: it is a fact that property is a relationship between people in regard to things, but not immediately between things and people. If no one else is there, it does not really matter what belongs to me or what I simply use. This only becomes relevant when others want to have access, too. Property is a barrier between those who want to use a thing and the thing itself, between need and the means to satisfy it. The guarantee for property in material things does not exist despite but because people want, need, require them. To own bread and all the more to own a bread factory is significant because other people are hungry. Otherwise, what would be the point of guaranteeing the right of exclusive disposal?

3) Furthermore, with respect to reproducibility a rigorous contrast, material vs. intangible, does not exist either. It is possible to produce things and this means nothing else than to eradicate the detected scarcity. There is no such thing as a particular finite number of bread knives in the world, more can be manufactured. Indeed, one has to do something for it, but nothing simply is “in short supply”.⁶ However, in order to manufacture something one has to have access to the means of production which, again, are privately

owned. And in this regard – again – it does not matter whether one ‘really’ needs them or whether they are currently in use.

Yet, there is indeed a difference between software and bread knives: the contemporary means of production for software meanwhile are cheap mass products that most people have at home anyways. One can write a lot of state-of-the-art software with a five year old computer from a car boot sale.⁷ Thus, the production of software ‘only’ requires an investment of education and labour time, while when it comes to, e.g., bread knives one is excluded from the means of production at the level of the state-of-the-art. In order to be able to produce bread knives one would indeed need the corresponding factory, and this wants to be bought first.

4) The means of production are not simply “in short supply” either but can also be produced, by and large. One is excluded from the means of production as their purpose for the owner is access to the wealth of society in the form of money. The owner knows she has to come to agreements with others in order to get their products. Hence, she uses her factory – as well as people who do not have one, i.e. workers – to manufacture something that she can sell. With the proceeds she then can either buy goods for herself or she can reinvest in workers and means of production so that another round of fun may commence. In a society based on the division of labour one is dependent on others and their products, be it intangible or material goods. Because in this society this trivial fact does not lead to a self-conscious interaction of producers but rather the regime of property prevails, one is excluded from the products of others and therefore is required to exploit their needs to one’s own advantage. This absurdity can be put differently: it is precisely because one is dependent on others that one insists on the exclusion of others from what one owns. If everyone gives only if given an equivalent in return, then certainly it makes sense to deploy what one has as means of access to the stuff under the control of others by matching their exclusion with one’s own.

Property is characterised by exclusion whether it concerns material or immaterial goods. The free-software movement disagrees though – and it shares this fallacy with the majority of people. In other words: the political wing of the free-software movement insists on drawing a strict distinction between digital and material goods in order to criticise the regime of property regarding digital goods. Yet, it is exactly their line of argument that reaffirms the exclusion from the things people need: the regime of property. Some radical activists want to use free software as a tool for the abolition of private property, for example the slogan “free soft-

⁴<https://www.gnu.org/philosophy/why-free.html> (last access November 2012), emphasis added.

⁶Hence, it is ridiculous that economists, for example, constantly present beach houses and famous paintings to illustrate their theories. They choose examples that indeed have the feature of being in short supply in order to say something about things such as bread, flats, cars and clothing. In other words, they use things as examples whose quantity cannot easily be increased by production in order to explain the economy, i.e. the sphere where things are produced.

⁷This is currently changing so that this statement may no longer be true in a couple of years. If software runs on large networks of computers that together calculate something then a ten year old computer may not be the adequate means of production any longer.

ware today, free carrots tomorrow” can be read this way. This is futile as the the *reference* to the free-software movement’s ‘criticism of property’ takes up the false idea of free software proponents that carrots can never be free and for all instead of critiquing it.

Copyleft licences – critique of property law by legal means

Access to open-source software is defined and regulated in legal terms. First of all, copyright law applies regardless of what the author chooses to do. This law forms the general basis and is applied by the state to anything it considers to have a creator. But moreover, an open-source licence determines what anyone else is allowed and not allowed to do with, say, a piece of software by means of the law – no difference from other areas of bourgeois society. Usually open-source licences allow to read, modify and further distribute the source code.⁸ The various licences differ considerably in terms of their precise provisions. Roughly, there are two versions of openness. The above mentioned GPL determines that any program using software parts licensed under the GPL has to entirely be licensed under the GPL or a compatible licence as well. This means that the licence is ‘virulent’ and components mutually affect each other. It is, for instance, not allowed to simply take the Linux kernel (i.e. the operating system’s core) modify it here and there and then distribute the result without also releasing the source code of the modifications. In contrast, the BSD-family of licences is less strict.⁹ BSD programs are part of Microsoft Windows, for example, and there is no obligation to publish any source code. The licence mainly stipulates what must happen *if* source code is distributed, namely that copyright holders must be named. Secondly, it provides that no one may sue the authors in case something goes wrong. An exclusion of liability: the software is provided “as is”. Both camps – GPL vs. BSD – do not get tired arguing these differ-

ences. The GPL camp holds that liberty is to be protected by force whereas the BSD camp is convinced this way liberty is lost.¹⁰ Who is right, whether this question even can be settled or not or whether it cannot be conclusively answered because this type of freedom includes its opposite – domination – is perhaps better saved for another text. Here, we may conclude, though, that this kind of practical criticism of property necessarily presupposes a title to (co-)ownership in a software product. This is the reason why Richard Stallman calls the GPL a “legal hack”, i.e. a trick on legal grounds¹¹: one insists on one’s property by way of claiming the terms of a licence in order to guarantee free access.¹²

But, “you can’t hack the law”¹³. The legal system – guaranteed by the state’s authority – cannot be tricked: licences (no matter what kind) are legally binding contracts following the logic of the law that, if in doubt, always can be enforced in case one of the contracting parties claims its right.¹⁴ The result of this is that, e.g. scientists who make their research-software available to others have to deal with a maze of different incompatible licence versions. Hence, questions such as the following arise: am I legally allowed to combine another scientist’s open-source software with my own?¹⁵ A creative use of and tricking the law – Stallman & Co. creatively use the law – turns into principal submission to the law – the law dictates Stallman & Co. its terms – that is how the law works.

Moreover, such a “hack” develops its very own dynamic in a society of law appreciating citizens. The field in which licences are applied in this manner has meanwhile massively grown. The Creative Commons movement¹⁶ recommends scientists, creative artists as well as hobby photographers uploading their holiday snapshots to the Internet to claim ownership of their respective products of information. They are encouraged to exclude third parties more or less from using such products by choosing from a toolbox of legal restric-

tions. Contrary to Richard Stallman, the Creative Commons initiative by Lawrence Lessig does not problematise the really existing copyright regime. Hence, the initiative quite correctly notes: “Creative Commons licenses are copyright licenses — plain and simple. CC-licenses are legal tools that creators can use to offer certain usage rights to the public, while reserving other rights. Without copyright, these tools don’t work.”¹⁷ Meanwhile, even things that a few years back no one would have expected to be ruled by copyright law, such as the above mentioned holiday snapshots, are now subsumed under its regime.¹⁸

How deeply ingrained the formalism of the law is in these peoples’ minds is aptly expressed by the controversy around the DevNations 2.0 Licence and its subsequent withdrawal.¹⁹ The DevNations 2.0 Licence stipulated that people from ‘developing countries’ were allowed to use products under the licence free of cost whereas people from capitalist centres were not entitled to this. Hence, it was a licence that at least acknowledged real material differences.²⁰ The licence was withdrawn because of its discrimination against people living in rich countries. Hence, it violated the equality before the law; but this equality, i.e. non-discrimination, is a requirement for any licence hoping to be verified as an open-source licence by the Open Source Initiative. If the open-source movement is said to have started off with a criticism of property – even if restricted to intangible goods – or that it was bothered by people being excluded from the digital wealth of societies, then it is safe to say it achieved the opposite: you cannot hack the law. What remains is to (practically) critique it.

Software commons for profits

The open-source movement succeeds because it gets along well with an IT industry whose prosperity is otherwise based on every known principle of private exploitation. In the following we give some short examples to illustrate

⁸Source code means the software program in a certain language that humans are more or less able to read ... well, except Perl.

⁹BSD stands for Berkeley Software Distribution

¹⁰Which licence to choose sometimes simply may have economic reasons. Most of the open-source software in the field of applied mathematics is licensed under a BSD-style licence as companies within this sector often do not intend to sell but use the software themselves. They also only collaborate on the terms that they may do so quite unrestrictedly. On the contrary, most of the open-source software in pure mathematics is licensed under the GPL: the only companies interested in these software packages are those making money from selling such software. That way the (often academic) authors protect themselves from being sold their own software as part of such commercial software.

¹¹It does not come as a surprise that he attempts to creatively apply the law. After all, he does not have a problem with the fact that daily needs cost money, i.e. that someone insists on his “every right” to get paid: “Many people believe that the spirit of the GNU Project is that you should not charge money for distributing copies of software, or that you should charge as little as possible – just enough to cover the cost. This is a misunderstanding. Actually, we encourage people who redistribute free software to charge as much as they wish or can.” – <http://www.gnu.org/philosophy/selling.html> (last access November 2012).

¹²By the way: in no way does an open-source licence mean that one gives up ownership. The licence terms always apply to others, i.e. the users, only, whereas the owner is of course free to do whatever she wants with her property. This is the base of a business model by which one makes available a (restricted) version of a product as open-source software and at the same time a(n optimised) version is sold as usual.

¹³Cindy Cohn, Legal Director for the Electronic Frontier Foundation. It should be noted, though, that her meaning of hacking the law is rather different, if not contrary, to ours. See <http://s.shr.lc/10xUcQo>.

¹⁴In the leading capitalist countries, the GPL “trick” meanwhile has been accepted as legally binding. This means that it is possible to sue someone in case of violations against the General Public Licence. If such a lawsuit is successful a party can be forced to release all source code of its product incorporating GPL code.

¹⁵It is possible that the answer to this question is “no”, an example from the area of mathematical software highlights this: <http://gmplib.org/list-archives/gmp-discuss/2008-May/003180.html> (last access November 2012)

¹⁶The Creative Commons (CC) movement emerged in response to branches of industry where direct producers such as musicians usually sign over considerable rights to record corporations – i.e. loose the ownership in their own products. That is somewhat similar to a factory worker who also does not own one single product he manufactured. In contrast, CC-licences first of all mean the claim of ownership of one’s own product.

¹⁷<http://creativecommons.org/weblog/entry/22643> (last access November 2012)

¹⁸On Flickr – a not as popular as it used to be photo sharing website – one is bothered with the question which licence ought to be applied to one’s photos, a rather absurd thought in the first instance.

¹⁹See <http://creativecommons.org/licenses/devnations/2.0/> and <http://creativecommons.org/retiredlicenses> (last access November 2012)

²⁰Our elaborations on property earlier indicate that poverty cannot be abolished by means of such licences.



how business and open source work hand in hand, i.e. to unpack the apparent contradiction of making money from something that is made available for free.

The Mozilla Foundation – best known for its web browser Firefox – receives a good deal of its income from Google Inc., as Google Inc. pays so that the browser's default search engine is Google. Apple's operating system OS X is built upon an open-source foundation: Darwin. Apple now and then even collaborates in open-source projects using the results of this collaboration to sell hardware, software packages, films and music – lately rather successfully we hear. Furthermore, according to a study only 7.7% of the development of the kernel of the Linux operating system was explicitly non-paid volunteer work.²¹ Red Hat Linux, IBM and Novell are the biggest companies directing their employees to collaborate on this operating system, each one of them a global player on the international IT-market. They co-develop Linux in order to do profitable business with it. For example, they sell applications that run on Linux or provide support contracts to companies: you buy our product, we make sure everything runs smoothly. Companies pay for this service even though it would be possible to compile the result by means of open-source projects themselves – to save the hassle. Google distributes its operating system Android and its web browser under an

open-source licence, especially so that users of smart-phones use Google's products by which Google directly or indirectly makes money by means of advertising. Many companies contribute to developing the GCC-Compiler because it is a central piece of infrastructure for every software company.²² Co-development is cheaper than to independently create alternatives. Meanwhile even Microsoft published some products under open-source licences.

Modern politicians concerned with the economic success of their respective nation-states have understood the power of open source – by all means, they promote and encourage the blossoming and expansion of this infrastructure which is available to all. Firstly, this is to strengthen the economy of their nation-state, secondly, it simply is cheaper for their own administrative bodies to use open-source products. By the way, long before the C64²³, bourgeois states provided fundamental research and knowledge for the benefit of the national economic growth by means of its university system. It is hence fitting that the two most popular open-source licences (GPL and BSD) were developed at American top-tier universities (MIT and Berkeley).

The bourgeois state also realised that its patent law not only enables the private exploitation of innovations but also serves as a barrier – and in this regard it does appreciate the worries of open-source/free-software activists. For if ex-

isting innovations cannot be used for the development of new ones that means bad prospects for economic growth. So the bourgeois state implemented a patent law that grants patents for a certain period of time only. Regarding the exploitation and perpetuation of technology it provides a mediating form for the competing interests of individual capitalists – in the interest of total social capital. On the one hand, individual capitalists want to massively exploit their patented inventions by excluding every non-payer from the use of those patents. On the other hand, they want to use others' patents as basis and means for their own success.

Within the cultural sector, where CC-licences are widely used, things are the same. Incidentally, this also applies to those that choose a non-commercial CC-licence for their products which allows the use on a non-commercial basis only and serves the purpose to exclude others from monetarily profiting from ones own output. This right is reserved to the person uploading a holiday snapshot or producing a music track. The whole concept has nothing to do with the critique of a society that is based on the principles of reciprocal exclusion from useful things and in which every individual necessarily relies on her own property or labour-power. There is no critique of the social conditions in which we live to be found in insisting on the right of the creator – this is the owner's competitive position vis-a-vis the competition.

²¹In case of 25% of the work it remains unclear if anyone or anything was paid. See <http://1wn.net/Articles/222773/> (last access November 2012)

²²GCC stands for the GNU Compiler Collection, a collection of compilers by the GNU Project. A compiler translates programs from the source code into a format which then can be executed on the respective computer. Free software does not make much sense without a free and reasonable compiler. If the compiler is not openly available it is in fact possible to change software in its source code, but the changes cannot be applied – unless you buy a licence for a compiler. If it is a poor compiler open-source programs are disadvantageous to the proprietary competition.

²³The Commodore 64 was a popular personal computer in the 1980s.

A new state in Africa: South Sudan

In 2011, the South Sudanese people voted on the question of independence for their region, which is about two and a half times the area of the UK. Chances were that the people would vote for an independent state – and they did. They did so, even though the citizens of the new state are neither united by the same language, nor by the same religion nor were they ever called ‘South Sudanese people’ (by themselves or others) beforehand. In fact, they were identified as Dinka, Nuer, Shilluk, Azande, Acholi and so on. Hence, those characteristics are missing that nationalists worldwide think of as crucial with regard to the founding of a state. Their common ground is merely negative. They have never been the ideal national citizens the various regimes of the (north-) Sudanese state propagated since its formation: neither were they Arab-speaking nor followers of Islam.

British colonial power had largely separated the south from the Arabic north. But when releasing the state into independence in 1956, it insisted that the Islamic-Arabic north and the “black African” south should form a united state. The reason was the fear that an independent northern Sudan would become a satellite state of the Pan Arabic and, at that time, Soviet-friendly, Egypt. Most of the time from then on (1955-1972 and 1983-2005), there was a war going on. At times the rebels demanded autonomy within Sudan; at times they demanded independence from the North. The government in the North for its part again and again tried to enforce Islamic law on the people in or from the South.

In 2005, a peace agreement between the government and the largest rebel group, the Sudan People’s Liberation Army (SPLA) and its political arm, the Sudan People’s Liberation Movement (SPLM – in the following, both are abbreviated together as SPLM/A), was achieved through mediation due to pressure from the western states. The two parties agreed on autonomy for the south and an equal sharing of raw materials revenues. At first, the southern rebels indicated they would relinquish Southern Sudanese independence if the government respected the autonomy agreement. However, after the accidental death of their leader, John Garang, in 2005, the SPLA/M continuously worked towards independence. Since the referendum, as expected, led to secession, a taboo of politics in post-colonial Africa was broken: the unrevisable borders set out by colonial powers.¹ It might not have been the last instance of breaking that taboo, since by granting preferential treatment to the Arab-speaking Muslims – who constituted 42% of the population, at least until the separation – the Sudanese state caused the development of further autonomy efforts in Darfur and on the Red Sea coast. Meanwhile,

several missions of the UN and the African Union have been running in the country to oversee the peace in Darfur and the South. But the most serious consequence of the referendum for the North is the withdrawal of substantial parts of its economic foundations: raw materials.

The economy

What would economically sustain the new South Sudanese state was clear even before statehood. Namely, what the previously Arab-Muslim dominated north Sudan has lived from: the export of oil available in vast quantities in the South. One of the reasons for the rebellion in the south was the fact that oil production destroyed the subsistence economy of the population, while profits from the export never benefited the southern region. Moreover, the government planned to redirect water from the southern springs to the dry north for agricultural purposes. The rebels retaliated with attempts to sabotage oil production. After Sudan had fallen out of favour with the West, China secured itself a privileged position in oil production. With the profits from oil exports Sudan in turn bought Chinese weapons² in order to keep the rebels from the oil fields.

Sudan is a country in which the capitalist economy is decreed by law, but there is hardly any capitalist economy. Chinese oil companies bring their own employees. The bourgeoisie trades imported goods. There is one other option for job seekers: working in the state apparatus (thanks to numerous regional conflicts, its armed division is not exactly small). In this occupation, one is less affected by nature, climate change, the state and hostile neighbouring “tribes” than with subsistence economy. Therefore, positions in the state apparatus are much sought after and usually given to loyal Arab-speaking Muslims – which again makes this group interested in the success of its employer, the state. Other groups are often less interested in its success. This is what Sudanese citizens have in common with the populations of most other African states – an important difference from the citizens of well-functioning capitalist countries in the West, whose own success in the field of economic competition is necessarily linked to the success of their state. Peasants – as opposed to wage labourers – can generally be indifferent about the state, because they are not used by capital, which requires a state as guarantor of business. All of these problems linger on with South Sudan’s independence. What will change, however, are the privileged groups in the state apparatus (Dinka instead of Arabs) and the benefiting major powers (EU instead of China).

Oil profits must be shared with the rest of Sudan, especially as the whole infrastructure for the export is located in the north. The powers that facilitated the independence of the south are working to address these shortcomings. German companies are building a railway line for the oil from the south to be brought through politically reliable countries to the ports of East Africa. In this way the new state would be able to deny oil access to the rest of Sudan which in turn could allow the West to increase the pressure on the government in Khartoum as well as – probably much more importantly – strike against rising Chinese power. The discovery of new oil reserves in the south make South Sudan even more interesting for the U.S. and the EU – in addition to the economic benefits of the oil itself, the control of the oil wells means the political weakening of those states that are trying to advance their position in world politics as oil exporters.

The founding party

Like so many “liberation movements” of the so-called Third World, the SPLA/M presented itself as being in some way left-wing and socialist at its founding in 1983. Since then, the SPLA/M has allowed itself to be supported by, amongst others, such different powers as Libya, (the state socialist) Ethiopia, Israel, Uganda and Egypt. When Sudan was put on the list of terrorist supporters by the United States in the 1990s, the SPLA/M was getting more and more help from the No. 1 world power – which led their sympathies for socialism to fall quickly. The pressure of the rebels was supposed to shake the regime in Khartoum.

For a long time, the SPLA/M was indecisive about whether they would prefer to fight for independence for the south or for the overthrow of the military regime in Khartoum. During the civil war, the southerners supply chains were cut off by the government again and again and for decades they experienced the Sudanese state as a hostile power. The SPLA/M had managed to establish itself as a de facto sovereign in the rural areas and saw the coming state as their own project. Already during the negotiations in 2005, the SPLA/M began to discuss the expansion of the term “South Sudan”. While the government defined the “South” along the lines of British administrative units, the SPLA/M also saw the neighbouring, resource-rich provinces with many “black African” residents as part of the South. The areas where the cattle nomads of the “black” Dinka graze their flocks should also be allowed to vote in the referendum on the independence according to the SPLA/M’s definition. Since there was no consensus reached on this question, the status of some provinces

¹There was one other case of secession in Africa since 1945: the separation of Eritrea from Ethiopia in 1993.

²In 2005, Western countries had instituted an arms embargo on Sudan.

is still unresolved – and the referendum there is pending. The Arab-speaking and government-loyal Misseriya nomads, who live in the same areas, are seen as foreign occupiers by the state founders of the SPLA/M. The fight for the extremely oil-rich region of Abyei³ seems lost to the SPLA/M for now – the Permanent Court of Arbitration in The Hague has given most of the territory, including the oil fields, to the Khartoum government. The SPLA/M officially accepted the decision, but continues to move their troops into the region. The affiliation of the provinces of South Kordofan and Blue Nile has successfully been called into question by the SPLA/M – where there was also a vote on independence –, but it was not allowed to act as a quasi-state power there before the referendum had taken place. In the rest of the south, however, they could do so. In 2012, the government in the north had conquered vast parts of the disputed territory, which resulted in a new flow of refugees.

There, the process of nation and state formation shows itself in all its glory. First, the state apparatus is built with international assistance, where all the heroes of the war of independence are accommodated. Whereas the SPLA/M has been outraged by the over-representation of Arabs in the Khartoum state apparatus, the South Sudanese state apparatus is now mainly occupied by Dinka – the group that also forms the entire leadership of the SPLA/M.

The process of state formation entails the classification into reliable and less reliable citizens: the foundation of minority parties who rebel against the domination of the Dinka are denounced by the SPLA/M as agents of the North. Nomads with “incorrect” language or religion are prevented from accessing water and pastures. Arabs in the South, whose families came to the region after the independence of Sudan in 1956, were not allowed to vote in the referendum. On the way to independence it also happened that an activist of the Communist Party

of Sudan – former allies of the SPLA/M under the National Democratic Alliance⁴ – went to jail for putting up their posters. The CP has not even agitated in favour of Communism (which would include the abolition of states), but for a common fight against the regime of the dictator Al-Bashir in Khartoum on behalf of secular democracy. According to the Sudanese Communists the Sharia law should be fought against by all residents of Sudan regardless of their religious or ethnic identity. That fits poorly with the concept of the SPLA/M, which justifies its independence project precisely with the differences in identities. Otherwise, the SPLA/M is busy trying to demobilise its troops under international control – according to some data they are now twice as strong as at the time of the peace agreement in 2005 (i.e. at the beginning of the demobilisation). From time to time, you will also hear that Somali pirates have hijacked a ship with tanks that were intended for arms embargoed South Sudan. The autonomy government spends about 40% of its budget on armed and security forces.

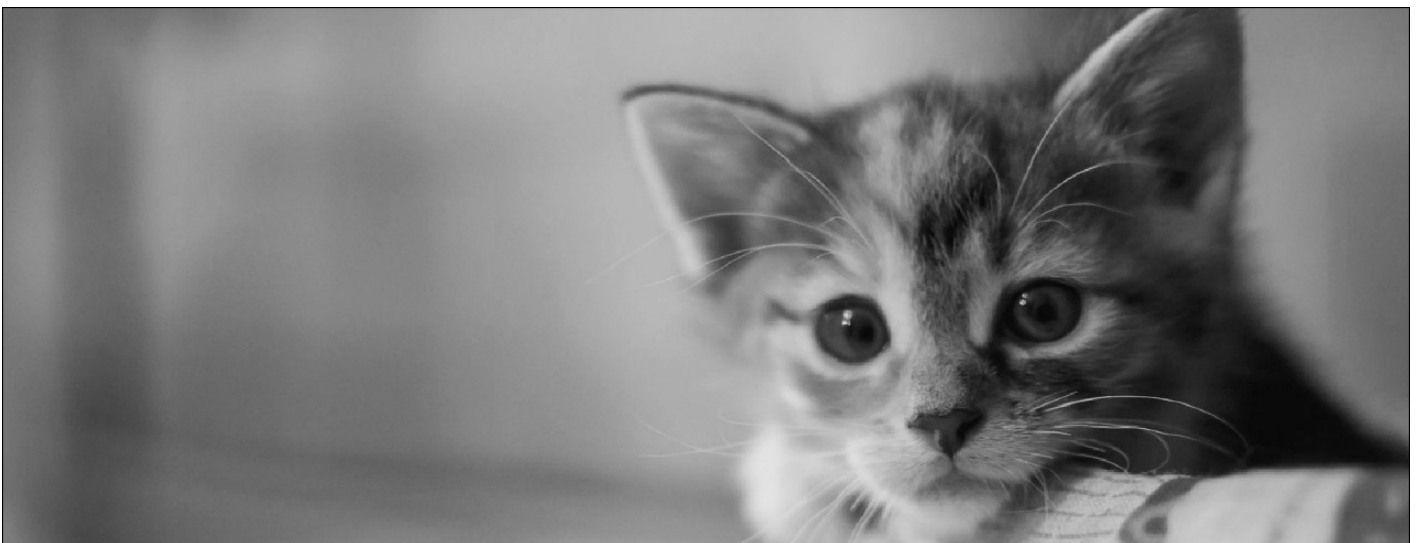
Thus, SPLA/M has everything you need for the foundation of a state in the so-called Third World: military power, export products interesting for the First World, cadres for the state apparatus and the blessing of a few world powers.

The enemy

The (North) Sudanese government, which came into power in 1989 after a coup by the military and Islamists, has used just about every means available in the fight against their unruly citizens. Military attacks and campaigns for islamisation were combined with the decimation of disloyal population groups by denying humanitarian assistance in the midst of a famine. Market reforms in accordance with the IMF (with whom the Islamists got along splendidly)

also contributed to economic hardship. In addition, Khartoum repeatedly managed to split the rebels, to integrate some fractions within the government and to send their supporters in the fight against the SPLA/M. Members of loyal groups were not only allowed to fight their rebellious neighbours on their own account, but also to enrich themselves with their property and abduct them into slavery. When nomads lost their livestock due to a drought, looting of other “tribes” and guarding oil fields against rebels became their new basis of existence.

For now the government seems to have accepted the separation of the South. World public opinion is puzzled: is this the beginning of the end of the North Sudanese regime, because the SPLA/M has given the go-ahead for state dissolution by various separatists or is the regime now being stabilised since the SPLA/M was the most powerful opposition group? President Al-Bashir, against whom an international arrest warrant for genocide is outstanding (the result of his attempts to maintain the state), would rather not have a direct conflict with the West. Some Islamists disappointedly turn away from attempts to convert the south to the true faith and prefer a core Sudan with fewer resources but without minorities. There they hope to finally realise their Sharia utopia. The opposition, however, feels let down by the SPLA/M. But the next dispute already dawns between the government and the south, namely about what should happen with the refugees from the South who now live in the big cities of the north. The SPLA/M wants to ensure that the electoral registers for the referendum only lists those people whose commitment to independence they can rely on. Similarly, the north-south battle is about determining the voting rights of Arabs living in the South. Depending on their respective interests, the government and the SPLA/M either apply the geographical or the ethnic factor. It will be interesting to know, which state may soon count whom as its subjects.



³Where the fighting is on again since 7 January 2011.

⁴The National Democratic Alliance (NDA) is an umbrella organisation of the opposition, which has been established after the coup of the military and the Muslim Brotherhood in 1989. It includes former government parties (Umma, Democratic Unionist Party), regional autonomy movements (SPLA/M, Beja Congress, Rashida Free Lions) and left nationalists (Ba'ath Party). On the subject of secession, the NDA could never come to an agreement.

Does capital always aim to suppress wages?

What it means for wage to be a cost factor of capital – the logic of the profit rate

On the surface, capital is a kind of economic activity where money is advanced in order to induce processes that aim at an increased sum of money: profit. Because wages are a deduction from profit, one often reads in our texts and other articles inspired by Marx that wage can never be low enough for capital. These kind of statements are supported by empirical evidence, in particular, by various companies' and economic policy makers' major efforts over the past few years to suppress wages in general.¹ Also, it is still common nowadays that workers slave away in cramped, stuffy rooms because the company wants to save on rent; companies try to avoid costs that are spent solely to keep workers healthy. On the other hand, there are companies, e.g. within the car industry that voluntarily pay their workers above the collective labour agreement and companies that provide extra rooms with foosball tables, couches and ping pong tables to their software developers. However, with respect to those two seemingly opposing situations the question is not whether management are mean, greedy, incompetent bastards or generous philanthropists. Both results are based on the same calculation of profits, which does not simply mean that the wage shall be as low as possible. A wage in a capitalist calculation of profits is a cost factor. This contains a contradiction which explains the phenomena outlined above.

Paying wages pays off – for companies

When thinking about *cost*, you would be forgiven for thinking about something that has to be minimised. However, a *cost factor* is a sum advanced in order to achieve something. The capitalist meaning of cost is to be an investment in order to make profit. Money buys means of production, leases a piece of land, purchases a workforce. All this is then commanded by capital and regularly – if no crisis or bankruptcy occurs – it creates piles of goods which may be sold for a profit. Money, once a certain level is reached, is a social means of command² over all sorts of things and her owner (be it a family owned company or a joint stock corporation)

has the potential to buy all the things needed to make a return of an even larger sum of money. Hence, it has to be noted that a capitalist does not intend to save money but to spend it, to invest it. Consequently, wages paid are not a deduction from profits but an essential and proper means to make profits.

Wages have to pay off – for what?

When something is needed (like expenditures for wages) in order to gain something (profit), it is not self-evident that, at the same time, considerations for thrift prevail for those expending it, as is the case with wages as a cost factor. Consider an example from the world of music: whoever wants to become a technically well-versed drummer in a speed metal band, such as Slayer, Anthrax or Metallica, has to “invest” time to practice. To succeed in changing the beat at high speed one has to practice every single beat on its own at low speed for a while for it to sound well at high speed, too. Changes of beats are then challenges in themselves and also have to be practised at low speed. Sometimes it may even be helpful to think it all through, to count bars and to convert. In short: whose aim it is to cut a dash behind the drums in a speed metal band, has to “invest” as much time as it needs. But, if one is not patient and always thinks of saving time, one simply will not become a sound drummer.

Capital is different.³ The logic of capital does not allow simply for an end profit to be defined. This comes down to the peculiar end or goal pursued by all businesses under the capitalist mode of production: profit itself. Because profit is a surplus over the invested advance, it is not only an aim such as learning to play the drums well as in the example above.

A first thing to note is that the actual sum of money a company has earned from selling goods does not show whether profit was made or not. It is possible that £1m as a result of the sale of goods includes a profit of £50k, if the advance was £950k. If the advance, however, was £1m, then a return of sales of the same amount is no profit at all. If the invested capital was higher than £1m, this sum even represents a loss. Whether the objective of profit was achieved can and may only be determined with reference to the investment. In this regard capital is different from the drummer. In case

of the drummer it is not about how many hours exactly she invested. Her skill can be heard. It is about whether or not the drummer performs the song well. The result is her ability to play the drums which stands for itself, whereas with capital, it is a sum of money – the success is visible only by comparison with the initial sum.

Moreover, the drummer has an aim that actually is achievable. Of course, one can always improve one's skills. But, at a certain level of playing one may conclude: she is fast, precise, masters difficult beats and fills. In short: she masters the songs of Slayer.⁴ At first sight, one could argue similarly in the case of capital: capital is meant to make profit. If £1m advance results in £1m + £1, then capital has achieved this objective. The amount of profit in this case is one quid. Mission accomplished? Everyone is likely to think of this being a rather poor result. But what about if the company would have made £1.2m? Does £200k of profit mean mission accomplished? The answer is no: the purpose is boundless, profit can never be enough.⁵ We will briefly outline three arguments in support of this:

Firstly, there is no reason to assume that “too much” of money is somehow adverse after some point. To own too much money does not have any negative consequences for the owner.

Secondly, the material of capital accumulation, i.e. money, is rather peculiar. Money is means of access and to own the right amount of money means to be able to access a whole world of useful things. Five pounds, these days, buy a t-shirt from China. With an amount of £1bn one is able to establish production plants for t-shirts all over the globe. When it comes to its quality, money is totalitarian: money is a means of access to everything. However, the quantity of money – how much – determines the extent of this access. From this perspective alone one can never have enough – just as common parlance teaches. But there is a second aspect to it: money is quite durable (under the normal course of the capitalist mode of production). Enough money does not only mean to be able to organise one's own life(style), to access the best medicine available, maybe even to be able to afford a little extra treat like flying to space. One can even make provisions for one's grandchildren's higher education. On top of that – if one is driven by a moral conscience – there

¹The way companies treat illegal migrants suggests that for capital the best wage is no wage at all as people without a legal right to work are often ripped off by their employers. They work for a while and are then either deprived of any wage or receive an extremely reduced amount compared to what initially had been agreed upon (and what those with a work permit are paid). Because they have to fear to be deported these people cannot turn to the state in order to enforce the labour contract. Evidently, this strategy pays off for some companies (where this practice is tolerated by the state or it fails to catch them).

²By “social access power” we mean the following: the state enforces that all social wealth is behind the barrier of private property of someone, it belongs to someone. The socially valid form of gaining access to this wealth is exchange for money to buy that property. The economic reality in this society is that without money one is excluded from all wealth but with money one can get access. “Social access power” hence presupposes the power of the state and its general command over all of society. A similar expression, “means of command”, goes further: with money in a certain quantity, I can command over workers, i.e. over capitalist production – all I need for that in principle is money.

³Capital is not like being a drummer in a speed metal band, you heard it here first!

⁴If Slayer does not do it for you, insert your favourite obscure speed metal band here.

⁵The way the success of a company is established is by comparing it to other companies or the average rate of profit. This is, however, not what is meant here. Here the point is that profit itself is boundless.

is never enough money raised and donated with all the misery in the world.

Thirdly, money has the particularity that everyone competes for it. With the goal of making the most money possible, everyone engages in foiling this aim for others. Workers regularly underbid each other in order to get a wage at all. Capitalists might reduce the price of their commodities in order to conquer markets from other capitalists. In short, in this society it is money alone that, if a certain amount is available, offers material safety to some extent. In competing for this safety and comfort, everyone makes earning money and life itself less safe and comfortable for everyone else.

From this perspective companies maintain the standpoint that they want to make more out of their money, i.e. augment it. Not only does the initially invested sum of money have to be reproduced during the process of production, but a surplus has to be made. In order to merely preserve its capital a company has to make profit, so that it has an edge, is able to conquer the respective market, and can maintain the current technical status quo. The uncertainty that one company represents to other companies by its endeavours is reflected back to this very company as well. It applies to all companies alike that profit compared to all others ought to be as high as possible and that it can never be high enough. This is because all others make profit as well and invest it and thereby use it as a weapon against others – putting pressure even on market leaders. It is obvious that all the advantages of possessing money in large amounts and using it as capital at the same time bears the compulsion to constantly invest this same money for the sole purpose of accumulation.

To avoid any misunderstanding: this aspect of “all against all” in competition is not simply something that is external to the purpose of making money; as if making money was a neutral thing and it was only because of competition – which arises from who knows where – that the results are damaging. Rather, competition is the consequence of the purpose of making money. Money in its quality of being the social power of access is a means of command if the quantity suits that purpose. Such a command implies, firstly, poverty and neediness, which subjects people to this command and this power. Secondly, money creates the successful “entities of command”, capital, which then by their actions create and preserve poverty.

If a medium-sized company grows immensely, then this is usually due to the fact that the business has continuously grown over the years. Profit is reinvested, then an even bigger profit may result which also gets reinvested and so on.⁶ This is called accumulation. From the fact that profit as a purpose is boundless, it not only follows that businesses expand this way but also

that maximum profit is to be made in every step on the way. Hence, the rate of augmentation of the invested money has to be maximal. This is called the rate of profit: the ratio of invested money to return ought to be as big as possible. For this, wages are a means.

When wages are worth it

The standpoint of the rate of profit can have various effects with respect to wages. This brings us back to the earlier question, why wage-labour as a means of profit to capital is, at the same time, an object of economising.

Say, a company invests £1m in one year, £900k are advanced on machines, raw material, buildings, etc., £100k are advanced for eight workers, each working 40hrs/week. Hence, their monthly wage is about £1,000. By means of this – the means of production and labour power – the company produces, say, advertising posters, which it is able to sell for £1.1m in total. The result is a profit of £100k. Hence, the rate of profit is 10%; £1m have turned into £1.1m.⁷

Now, there are unemployed people looking for a job. The company may take advantage of this and pressure its eight workers to agree to new conditions where their monthly wage is decreased to only £900. The wage expenses would then only be £86,400 instead of the former £100k. The overall expenses would be reduced from £1m to £986,400, whereas the sale of the advertising posters would still make £1.1m. The amount of profit is £113,600, and the rate of profit would be 11.36% now. Not only was the total amount of profit increased, but also the effectiveness of the investment of the same £1m has increased – investing £1m at a rate of profit of 11.36% makes more profit than at a rate of profit of 10%. Thus, reducing wages has paid off.

Let us assume the same situation once again and the company pins the wages as set out above. Now, the same number of orders came in but in the course of the year there has been some production downtime so that not all orders were performed properly and the company has only made £1,050,000 from the poster sale. Hence, the company has saved wages but, at the same time, it has made less money. The amount of absolute profit is £63,600, the profit rate 6.36%. Now, the company’s manager found out that the reason for the production downtime was that the workers’ performance decreased. She makes the following assumptions: maybe the workers were no longer able to eat as well; maybe the reduced wages led to more family trouble and arguments so that they could not concentrate on their work; or maybe the workers simply dawdle around at work because they feel ripped off but did not oppose the reduction when it was introduced. Either way: the profit

rate is reduced, the reduction of the wages did not pay off.

Our company is looking for relief. It would be possible to re-increase the wages to the original level, in the hope of the workers being more motivated again so that at least there is a chance of achieving the former level of the profit rate of 10%. This wage increase could pay off in relation to the bad year.

However, there are other solutions at hand. The company’s manager could have the machines improved so that they are less sensitive to workers’ lack of concentration or lesser performance. Maybe – if our company’s manager is lucky – the costs for this modification are reasonable because there is a clever engineering student at some university who wanted to contribute to humanity’s happiness and invented an easy solution for the company’s problem. Let us assume the company has to invest an additional £10k for machines. The balance sheet then looks much better: a £910k investment in means of production and an £86,400 payment for wages means a total advance of £996,400. The poster production is back on track and the sale may result in the original yearly amount of £1.1m. The total surplus would be an amount of £103,600, a rate of profit of 10.4%. Hence, in this case both *saving* money – for wages – and *spending* more money – for machines – has paid off.

There is yet another alternative the company may consider: instead of spending an additional sum of money in order to have the machines improved, the wage of one single worker could have been increased by a considerable sum, say £8,000, in connection with modified terms of employment. The new task of this worker would be to control and watch the other seven at all times, to motivate and push them to work. In this example the total wage would be a little higher again but the rate of profit could even be better in comparison to the previous example in which the machines were modified – if the former glory of £1.1 in revenue is restored.

For workers, the wage does not pay off

It should have become clear by the above examples that the capitalist’s standpoint is not simply to suppress wages or to pay as little as possible. Rather, the level of wages and the purchased expenditure of labour power must – in tandem with other costs – be worthwhile in producing a surplus over the initially advanced sum. However, this is no reason to lean back and draw the wrong conclusion that capitalism, after all, is not as bad as previously thought and to get one’s hopes up for a nice career with a good wage. All it takes is a simple look around to see that there are lots of low wages, extremely

⁶This is a simplification. Usually the path to becoming a global player is through credit. Companies do not wait until the profits allow expansion, but borrow money to expand to increase profits. For that a company must have good credit worthiness and this is better if a company makes good profits in relation to its size. With respect to making profit for credit worthiness the arguments presented in this text apply.

⁷That companies make profit is presupposed in the following, it is not explained. Furthermore, usually revenue varies from one year to another due to manoeuvres of competitors and effective demand of society. In the following, we abstract from all that and presuppose that effective demand remains constant.



long and intense working days and saving of expenses beneficial for workers' health that *are* worthwhile for capital. But what allows capital to be successful in negotiating these bad deals with workers?

Indeed, in this society all kind of different products can be used to make money, as long as others have a need for it. Private property guarantees that goods are separated from those who may need them which allows the property owner to ask a price for her possessions. If this is the case, one may ask, then, why workers usually get such a bad deal when they sell their possession labour-power, or their ability to work. After all, companies are reliant on this commodity for their production.

The poverty of the working class is connected to the particularities of the labour market. These set it apart from the market for shoes, mobile phones or automobiles. Here, commodities are manufactured, sold for profit and prices drop when total supply is too high.⁸ Companies go bankrupt or, in order to subsist, they change industry. The result is less supply and a 'recovery' of prices so that the profit for those companies that remain also 'recovers'. In terms of the commodity labour power, this almost never happens.

Firstly, if wages are continuously low, then workers are never able to say: to sell labour

power is not worthwhile any longer. I will start to manufacture mobile phones on my own because this is quite profitable at the moment, it seems. A worker is simply not able to change from one market to another because she lacks money and property.⁹

Secondly, the welfare state and its minimal provision for basic needs provides for the fact that workers do not simply go bankrupt and then are "out of business", but they are permanently available to the labour market. Hence, the situation on the labour market is always tense – sometimes more, sometimes less.

Thirdly, indeed, in the majority of cases the situation tends to become more and more precarious for workers. Workers supply to a market where supply steadily grows: each rationalisation results in more people out of work, in each crisis another million people end up being unemployed. The boom in which new workers are being employed is rarely strong enough to relax the labour market. Hence, competition within the working class never results in a stable average wage level to nicely live from in comparison to the average profit of companies. Instead, what always occurs is that one has to have an interest in selling oneself cheaper than the next guy to get a job at all. By this, workers destroy the wages for each other, which puts

them yet under more pressure to offer themselves cheaper and to work longer hours.

Reasons for extra pay

In many branches workers are replaceable. By employing machines and technology, companies ensure that this tends to remain the case. This method is also constantly being extended to new branches of industry.¹⁰ The production process is arranged in a way that special qualifications of workers have the tendency to become less important. Where this is not the case or not pursued for whatever reason, in a word, where special qualifications are in demand, companies do compete for a limited labour force. The effect of this is that skilled, not as easily replaceable workers, such as engineers, can demand a relatively high wage, i.e. that companies accept to pay. A general training in engineering might, however, not be sufficient to fill a certain role, which means that additional specialised training and induction costs extra money. The binding of workers to their company, e.g. in the form of a wage hierarchy depending on how long somebody worked in the company, might help to reduce induction and training costs, which otherwise would have to be paid (cheaper induction and training would

⁸It might seem odd for a text that refers to Marx to invoke a supply and demand argument. However, supply and demand are how prices change. The point of value theory is to account for the reasons why they do or, put differently, to explain the economic laws of this supply and demand.

⁹A change of jobs, on the other hand, might be an option if there is demand for it. Of course, if that other job requires specific qualifications, this switch is not that easy. This in turn means that those with that special qualification can command a higher wage (more on that later). The principle outlined here, why the sale of labour-power produces such poor results for the seller, develops its full force for activities where every worker can be employed. For other jobs it is just a tendency.

¹⁰When we write about technology and machines which dictate the production process to workers one should not only think about massive assembly lines in car plants. These methods are also common in the service sector. For example, in call centres where switches take care of dialling out and confront the worker with a new phone conversation at a fixed rate.

also do the trick). Furthermore, this wage hierarchy might help to increase efficiency: the longer someone did a job, the more experience that person has. For the case that workers can demand high wages because of their specialised education, the state “helps society” by organising education in such a way as to unburden companies from such problems.¹¹ In a capitalist society it ought not to happen that workers can extort a company for their own advantage.

Trade unions attempt to use the same supply-demand-principle to gain wage increases. Through the organised shortening of the labour supply, i.e. strikes, the organised temporary suspension of competition among workers might compel companies to increase wages. Hence, different levels of organisation and militancy – whatever the reason – in different branches are another reason for different wages. Yet, the trade unionist struggle is not a means for workers to rise to a position of power but it is merely necessary such that workers do not go to the dogs completely. Capital produces unemployment and these days temp agencies are happy to provide scabs whose interests are not aligned with that of the unions. At any rate, a strike cannot prevent the closing down of a company.

To prevent such organised opposition to develop, companies worry about the mood of their employees. In order to prevent that it takes a turn for the worse or in reaction to it, companies occasionally throw a party so that the idea of unions, organisation and shop stewards does not even come up. Such extra expenditures may be worthwhile for a company.

Workers are also rewarded for exposing themselves to potentially or definitely hazardous conditions such as extreme temperatures, acids, dust, fumes, noise, chemicals, bodily harm, etc. These bonuses replace expenditures which would be necessary to avoid such hazards. Again, one of those cases where workers pay for bonuses with a damage to themselves.

Some production processes are not that easy to standardise. For example, the advertising industry requires a certain level of creativity from its designers. In those branches it sometimes is worthwhile for a company to grant their employees more freedom in the form of breaks, nicer rooms, better wages, etc. The pressure on workers may then be exerted through tight deadlines.

For some companies it is crucial to be able to offer their product at any time. They demand from their workers to always be available. Most law firms that, say, offer consulting services to other companies in legal questions demand from their employees to work Sundays, if needed. They also expect from their employees to interrupt their vacation whenever necessary. For this, companies pay a higher salary. Many so called better paid positions, hence, come with an 80 hour week.

There are also wage calculations based on a rather different consideration: pressure on workers, firing them, suppressing wages, supervision, all that must be organised. The more some workers are given these kind of roles, the more capital is ready to pay extra for loyalty and careful conduct. In the most extreme case a manager might be paid enough to live like and become a capitalist. These relatively high wages of managers are worthwhile for capital because these managers exercise pressure for the masses of workers. When those roles are concerned, too much thrift would indeed be wrong.

The wage is the means of capital to purchase servitude from those dependent on wages. What matters for capital – as a factor entering its calculations – is the difference between the wage and the money-form of the result that the worker produced. Insofar as this difference can be increased with a positive effect on the profit rate then extra pay and wage increases pay off. As a general rule, though, workers’ fear is a reliable ally for companies to ensure that workers give everything while on the clock. Furthermore, companies structure the labour process as much as possible such that the specific motivation of workers does not matter. Yet, there are numerous circumstances in which motivation through wage increase can result in higher performance or lower costs in other places. If the relation between wage increase and increased performance or reduced cost are beneficial, then the additional wage cost pays off for capital. For workers, however, that is usually not the case.

The forms of extra pay and its cost

Time wages or pay by the hour are a form of payment with which the interest in long working hours is implanted in the interest of the worker. Because the wage is low, the worker wants to work more in order to increase her personal income. This way, the worker pays with a restriction of her free time to have more money in that free time. Because this has a ruinous effect on workers, states tend to limit the extent to which this can happen. They regulate a normal working day – and if they do they have to push these limits through against workers and companies. At the same time, the state does not want to overly limit capital and therefore allows extra hours beyond the normal working day by defining exceptions like overtime. Those extra hours are taken on by workers in large numbers, often simply because they do not really have a choice, and companies motivate this further by paying extra (sometimes beyond the legal requirements if there are any). By taking on overtime, a worker does not only pay the price of restricted free time but also the price of additional exhaustion, which makes the time off work even bleaker. On top of that, she usually

pays with additional health issues, which accumulate faster the longer she works.

Extra wages might motivate workers to exert themselves. In the form of piece wages a company implants its interest in a high density of labour into the interest of the worker. In this wage form, the wage is bound to the amount of produced pieces and a worker can earn more by working faster and by taking less breaks. This also simplifies supervision for the company, it only has to check whether the final products have the desired quality, otherwise the wage is reduced. The effect on the worker is the same as with time wage, extra pay is paid for with additional exhaustion and health issues.

These two forms of wage have a limit and this is the quality of the produced commodity. Where a single deficient commodity implies massive costs, it is not advantageous for capital to have tired out or scampered workers as part of the production process. This consideration also plays a role with respect to expensive machines, tools or raw material. If the machinery is fine-tuned in such a way that a small misstep can derail everything and can lead to heavy losses, piece wages can produce expensive collateral damage. In those cases companies voluntarily pay more in the form of a fixed wage. The extra wage ought to motivate workers to concentrate and to do their job with consideration. In those cases workers perhaps are not as much in a rush as with piece wages, but concentration takes its toll as well and exhausts.

With the model of Toyotism the car industry reacted to the phenomenon that wage-based incentives were ineffective in getting more productivity out of the workers. They changed this through a new social organisation of labour in the plant and a new form of payment. Toyotism is teamwork. Between seven and ten workers are responsible for a production step. These steps are coordinated more tightly which also means that interruptions of production in one step can lead to a large chain reaction which can cause huge costs. In Toyotism it is presupposed that all workers are able to do all activities within this one production step so that they can and do rotate. What might sound like a welcomed break from monotony has a more sinister motive. All workers ought to think about how to make production more efficient. They are encouraged to discuss these ideas in their group and to pass these ideas up the hierarchy. They are rewarded for productive ideas with extra pay. This way, the demand against workers is not only of highly intensive work, more training and long hours. What is more, the workers ought to support the company in coming up with better ways to intensify the work and extend the work day or even how to make certain jobs redundant, i.e. how to get rid of workers. Furthermore, because part of the wage is bound to the productivity of the whole group, workers supervise and rile up each other. This then is called a flat hierarchy.

¹¹The degree to which the state “helps” varies from country to country. All capitalist states organise some form of basic education, but not all capitalist states also organise higher education in the form of universities – this can be organised (partly) privately as well. Either way, what is taught in high school takes measure in what companies need from their prospective employees. See “Education is a Duty” available at <http://antinational.org/en/education-is-a-duty>.

Higher wages for capital's success

Some Left parties and the TUC claim that companies are being irrational when they suppress wages, and they do not mean the simple fact that workers are having a hard time to make ends meet. They point out that somebody has to buy the commodities with which capital makes its profits. Their proposal is: wage increases create more effective demand and this benefits everyone – workers have more wages and capital more profit. Capitalism could be a nice symbiosis if companies were not so short-sighted.

What is remarkable about this theory is that it is only ever proposed to support rather limited wage demands: a minimum wage, a wage increase of 3% or even an unconditional basic income of a few hundred pounds. Why are the proponents of this theory so humble? Why not an hourly wage of £50, a wage increase of 100% and an unconditional basic income of £5000? If the theory was right, then this would make the economy go pop. Their humbleness shows that they themselves do not really believe their own theory.¹² Rather, these advocates are looking for a reason to have their interest in higher wages recognised in the national discourse.

The theory is also simply wrong. For one, a single company has no advantage if it increases the wage. Even the workers of Nestlé spend only a small part of their wage on Nestlé products. Of course, if other companies pay their workers higher wages, then Nestlé might make more sales. However, it is not the logic of a single capital to pay its workers more for this effect.

Yet, sometimes competitors must be obliged for their own benefit. This is why the Left looks to the state which ought to enforce such wage increases. Workers get more money because the state mandates it. All companies sell more commodities to workers and, hence, attract more money from them. However, the imagined advantage for everyone is not realised: what companies pay more to their workers, they get back through their sales. Though these proponents of higher wages in the interest of capitalist success would not admit it from the standpoint of the rate of profit the ratio of advance and surplus becomes worse.¹³

Wage suppression for workers' interests

In other circles the efficiency and economy of capital is considered a good thing for workers. Only capital would be able to produce the wonderful world of commodities, which due to competition among companies would become more and more affordable for workers. Indeed, it is true, workers get money and can go shopping. But, modern economics claims that this way workers are enabled to satisfy their needs and desires in an optimal way.

Against this one must point out that the health of workers, the access to means of subsistence of any kind (= the wage), the free time of workers (as the other side of the length of the working day) are negative magnitudes when it comes to producing these commodities, which are then consumed by some workers. Under capitalism, workers pay for the potential advantage of cheaper commodities with lower wages, more stress and damaged health. Just because wages drop, prices do not necessarily fall. Often, wages and prices of commodities remain constant, profit for companies simply increases. Then, workers have to reconsider what they can do without because they cannot afford it any more. And that only works for people who have a job, hence, money in the first place, as being hungry is no sufficient reason in this society that any production is commenced – this hunger must be profitable.

Appendix on Marx's explanation of surplus value and the rate of profit in "Capital"

The considerations above presuppose that profits are produced on a large scale in this society while no explanation as to how this happens is offered. Furthermore, the wage and the performance of workers are discussed as a contribution to profit and it is not distinguished between the different contributions that labour and the means of production make towards profit. Marx, on the other hand, in *Capital* Volume 1 asks what the foundation of profit is. He realises that the abstract wealth, measured by money, has its basis in labour that is compared

on the market and that augmentation of abstract wealth is accomplished through the purchase and use of the special commodity labour-power. The abstract wealth or value of the means of production as constant capital only gets transferred to the final product. Labour-power, by contrast, can not only create value that corresponds to the advanced wage but can also create new value *beyond* this point. This way Marx explains what the substance for the growth of money-counted abstract wealth is: compared labour-power. In the chapters on absolute and relative surplus-value Marx, hence, only considers the rate of surplus-value, i.e. the efficiency of the utilisation of labour-power for this substance and mostly ignores the advance for the means of production.

However, when we consider the rate of surplus-value, a few things discussed here are included already: enough wage must be advanced such that the difference between created surplus-value and wage is as effective as possible. Hence, already with those categories one can explain foosball tables and couches in the worker's staffroom in some modern companies. If workers work like hell afterwards, these measures might make sense. Just as it is worthwhile at the same time to suppress the wage and to put pressure on performance such that workers collapse under exhaustion – if there are enough unemployed who are willing to take their job.

Moreover, already chapter 4 of *Capital*, Volume 1 clarifies that the end of capital is the valorisation of value and not the valorisation of the wage. The total advance ought to augment itself as efficiently as possible and that includes expenditures for the means of production. The logic of capital, hence, does not only demand a high rate of surplus-value or high surplus-value. It demands a high rate of profit and a lot of profit. For that the rate of surplus-value is a central, but not the only means. This is the object of volume 3 of *Capital*. The determinations developed there dealing with the effects of the profit rate on workers do not take anything away from those in volume 1. There, simply new demands against workers are added. That workers have to preserve and augment the total advance, including the advance in constant capital, is a mission that upsets the stomach.

¹²One could argue against this point that the unions bring up the "greater good" or "fairness" when explaining and justifying the restriction of their demands. However, if they did believe their own theory, they would still have to demand fantastic amounts of money in the interest of the "greater good", i.e. the national economy. If their theory was right, it would only be fair to provide capitalists with higher profits.

¹³The politico-economic nonsense that is the wage-increases-benefit-everyone theory becomes striking if one considers the foundation of abstract wealth that is counted in money and which makes the capitalist economy go round. How is it created, how is it augmented? In "Capital" Marx deals with this question. In this piece an attempt was made to highlight some principles of capital accumulation and the conditions of the working class without exemplifying the labour theory of value. On the relation of these considerations and the labour theory of value, see below.

Benefit envy without benefit

The government is undertaking a massive impoverishment programme, part of which is to cut housing benefits. In a (now not so) recent speech¹, Cameron argued: “If you are a single parent living outside London, if you have four children and you’re renting a house on housing benefit, then you can claim almost £25,000 a year. That is more than the average take-home pay of a farm worker and a nursery nurse put together.” He added: “For literally millions, the passage to independence is several years living in their childhood bedroom as they save up to move out; while for many others, it’s a trip to the council where they can get housing benefit at 18 or 19 – even if they’re not actively seeking work.”²

Cameron presents us with farm workers, nursery nurses and “literally millions” who struggle to pay for housing. He also presents a simple solution to the problems they are facing: get housing benefits. In fact, under current legislation people in work whose earnings and other income are below a certain threshold (set by the state) are entitled to housing benefits, too. But let us assume for the sake of argument that Cameron’s bogeyman was real: The same solution still applied, if two people working full-time take home less than a single parent on out-of-work benefits. A rational choice could be to stop working and to have kids. As for the millions saving up for their mortgage: that does not seem to be a rational choice either – again, assuming for the sake of argument that Cameron’s picture was correct, which it is not –, if all you have to do is quit your job and get a flat provided by the state.

Yet, the fact that there are still thousands of nursery nurses, farm workers and “literally millions” saving up for their mortgages hints that the picture David Cameron paints is not quite right.³ People save up for their mortgages because paying 20+ years for a mortgage after the down payment for buying a house is the only way to avoid poverty later on; people are usually farm workers and nursery nurses because on out-of-work benefits, they would get even less. Housing benefits may pay the rent, but being entitled to them implies neither owning a house as financial security nor having enough money to pay for other needs such as, say, furniture.

Does David Cameron need education about the economic reality of being a farm worker, nursery nurse, or simply being one of “literally millions” in the UK? Perhaps, but there would

be little point, as he continued to reveal his real problem with the situation just described: “...when so many people are struggling, isn’t it right that we ask whether those in the welfare system are faced with the same kind of decisions that working people have to wrestle with when they have a child?”⁴

Indeed, we might ask how the nursery nurse and the farm worker are better off by putting more people into misery? What is in it for them? Mind you, David Cameron does not propose to actually alleviate the poverty of “working people”, his problem is not that young people are stuck in their childhood bedroom. He did not propose a programme allowing young people to move out of their parents’ place, to educate them about the availability of housing benefits or to make sure that nursery nurses and farm workers take home enough money to support a family. All he plans to do, is to make people have less. Indeed, to pick up Cameron’s question, why on earth would it be right to ask those on welfare to face the same kind of decisions? Is it not bad enough that the working poor are faced with these decisions? Would it not be right if no one had to face these kind of decisions?

Reducing or eliminating material poverty is not the goal he is concerned with: he added in an interview with “Mail on Sunday” – speaking from the perspective of a fictitious couple: “We are engaged, we are both living with our parents, we are trying to save before we get married and have children and be good parents. But how does it make us feel, Mr Cameron, when we see someone who goes ahead, has the child, gets the council home, gets the help that isn’t available to us?”⁵

For him, the fact that these people are struggling is *not* the actual problem. His problem is not the poverty of “working people” or young couples. He is not proposing to help this fictitious couple out. However, he is concerned with how they *feel* about the fact that other people are (ostensibly) getting by better. He plans to improve their situation, i.e. that of our couple, by ensuring that other people are suffering. They are asked to content themselves with the conditions they are facing because they can be assured that no-one is exempt.

Their material interest, our fictitious couple cannot afford to move in together, is hence transformed into something quite different: a resentment of others in abstraction from their own material interest. This fictitious cou-

ple gets nothing out of the proposed welfare reform but the warm fuzzy feeling of other people’s suffering ... compassionate conservatism. Even before noting that this is kind of mean, one can note that this is not to the material advantage of those holding the resentment.

So much for the moralistic argument of the government’s campaign: to encourage resentment of poor people in work against poor people without work.

The other argument is an economic one. Namely, the claim that out-of-work benefits, or the contributions towards them, such as taxes, are the reason why wages are low. In fact, the actual relation between out-of-work benefits and wages is the opposite from what is often claimed: benefits effectively produce a lower limit on wages.

In this society, people need money to make a living, so they have to offer their services to others who have money but need workers. They become nursery nurses and farm workers for nursery companies and agricultural firms. A company will hire an employee when it expects that arrangement to be profitable somehow. The wage received by that employee is a cost on the books of a company. A cost in its capitalist sense is an investment to make a profit, for instance, money expended for materials and machinery, to lease some land, to hire workers. All of these combined under the command of the company ought to result in a product whose sale turns a profit. For a company to be successful, the wage (and other costs) must be lower than the sum of money a company makes by selling the products of labour produced by its employees. The lower the wage and the higher the efficiency of the workers, the higher the profit. The magnitude of wages is not determined according to some measure of what people need and want, or even what they deserve in some moral sense, as David Cameron tries to convince us when contrasting “working people” with benefit recipients.⁶ The magnitude of wages is determined according to the calculations of companies in competition for their profits and by the competition of workers for jobs, the suspension of this competition as well as collective action by workers. If they can find someone doing the same job with the same efficiency but cheaper, they will hire that person, the lower limit being only for how little people are willing to work. Working 40 hours a week for less money than the dole makes little sense and hence out-of-

¹Full text here: <http://www.politics.co.uk/comment-analysis/2012/06/25/david-cameron-s-welfare-crackdown-speech-in-full> (last access 14. August 2013)

²<http://www.guardian.co.uk/politics/2012/jun/25/cameron-tories-slash-benefits> (last access 14. August 2013)

³For example, there is no link – under current legislation – between being unemployed and being entitled to council housing. Council housing is provided to those who are both homeless and deemed “vulnerable” by the state, for example, single parents, under 18 year olds, people with disabilities, etc.

⁴Cameron’s speech, op. Cit.

⁵<http://www.dailymail.co.uk/news/article-2163773/David-Cameron-axe-housing-benefits-feckless-25s-declares-war-welfare-culture.html> (last access: 14. August 2013)

⁶Or when he says: “Compassion isn’t measured out in benefit cheques – it’s in the chances you give people ... the chance to get a job, to get on, to get that sense of achievement that only comes from doing a hard day’s work for a proper day’s pay.” That is, David Cameron claims that the pay a worker receives is based on her performance, while the separation between performance and wage is the basis of successful businesses.

work benefits effectively establish a minimum wage.⁷

What this means for our nursery nurse, farm worker, our fictitious couple and “literally millions” is that, if out-of-work benefits are cut, more people are competing on the labour market driving down the price of labour. Cutting benefits means worse conditions for those with a job. The resentment David Cameron tries to mobilise for his proposed welfare reform not only fails to deliver a material advantage to those addressed, the reform is even to their direct disadvantage.

This is the economic truth about the material poverty of nursery nurses, farm and other work-

ers. A truth David Cameron is not interested in. This does not mean, however, that David Cameron is mistaken, his project misguided. On the contrary, if the livelihood of everyone is subjected to economic growth, then driving down wages is not misguided.⁸ To put it differently, the British economy needs and the British state wants lower wages, it just is not to the benefit of “working people” – with or without a job. With this in mind, we can inquire about another instance of envy that does not benefit the envious. Occupy’s denouncement of bankers’ bonuses follows the same logic. Outrage about the wealth of other people: benefit claimants here, bankers there. In both cases fulfilment

of the demand “less money in the pockets of somebody else” does not materially benefit those who are invited to be outraged. Sure, the bankers are in a much better starting position than benefit recipients. Yet, denying them their precious bonuses will not sort out the material worries of the “working people”. And just like benefits are not the reason for low wages, it is not the bankers’ *bonuses* that cause mass poverty, but the content of the jobs bankers and other agents of capital get paid to do: to look after economic success and growth. For example, by making use of the heightened competition among workers for low-end jobs.

Occupy’s Process

On the politics of a-politics

In many respects the Occupy movement is similar to other protest movements in recent years. Just as anti-globalisation activists, social forums on all levels from the continent to the local area, or anti-war movements against any war waged by the US and its allies, the Occupy movement posits the ideals of this society (freedom, equality, justice) against its reality.¹

To point out the fallacies and mistakes behind upholding these ideals and to explain the capitalist reality is an important task for those not content with the status quo. However, it seems the reaction from this Left is characterised either by uncritical excitement about things kicking off or dismissing these protests as yet more middle class nonsense without much engagement with what the movement actually is about.

The latter position is perhaps reinforced by the fact that conspiracy theorists such as those from Zeitgeist also took to the squares as part of this movement. Yet, this is not a reason to not take the movement seriously and to fail to engage with its content, demands and forms. Instead, it is necessary to analyse (and possibly to critique) every social movement as what it is.

However, in this piece we do not want to take the Occupy movement as merely the most recent example of protest movements upholding the ideals of this society. Hence, here, we will not focus on pointing out what is wrong with ideals of justice, with imagining this society as a harmonic community project, and with singling out the banks and with appeals to the state.² Instead, we want to focus on what is generally taken to be the key “innovation” of the Occupy movement: its openness, facilitated by new forms of communication. One should not underestimate the relevance of this

aspect of Occupy. The explicit political content of this movement might differ from country to country, even from city to city, to some extent. Sure, these activists all think banks are somehow mean, but a Left-wing critique of the FED in the US perhaps has more in common with the Libertarian Party there than with AT-TAC, the TUC or even Occupy London in Europe. With regard to the “how” there seems to be more agreement – with pride and excitement one is pointed to Spanish “assembleas”, a kind of open meeting, as an example of “real democracy”.

One document being pointed to is a “Quick guide on group dynamics in people’s assemblies” written by Spanish 15-M activists.³ While it is meant to be a methodological guide to running people’s assemblies, it reveals a lot about the content of these protests.

“To our understanding, Collective Thinking is diametrically opposed to the kind of thinking propounded by the present system. This makes it difficult to assimilate and apply. Time is needed, as it involves a long process. When faced with a decision, the normal response of two people with differing opinions tends to be confrontational. They each defend their opinions with the aim of convincing their opponent, until their opinion has won or, at most, a compromise has been reached.

The aim of Collective Thinking, on the other hand, is to construct. That is to say, two people with differing ideas work together to build something new. The onus is therefore not on my idea or yours; rather it is the notion that two ideas together will produce something new, something that neither of us had envisaged beforehand.”

The new movement distinguishes itself from the rest of the political world – first and foremost – not through a different content but through its methods: from conflicting positions, something common ought to be worked out. Clearly, it does often happen that discussions are unnecessarily aggressive and far from being about the better argument. So far, so bad, so correct. However, from this the authors of the “quick guide” take that there cannot be disagreements which are grounded objectively. Neither the authors nor their various proponents and copycats think that there might be positions which exclude each other, that there can be good reasons for serious disagreement.

“This focus requires of us that we actively listen, rather than merely be preoccupied with preparing our response.

Collective Thinking is born when we understand that all opinions, be these opinions our own or others’, need to be considered when generating consensus and that an idea, once it has been constructed indirectly, can transform us.”

If we were to take this statement at face value, there is practically no disagreement that cannot be turned into a consensus by patient listening. Against this, however, it is worth pointing out that the rejection of a position can be based on careful listening and on taking the other side seriously. In fact, it should. Yet, these activists have a peculiar answer to the question of where these disagreements come from:

“What is a People’s Assembly? It is a participatory decision-making body which works towards consensus. The Assembly looks for the best arguments to take a decision that reflects every opinion – not positions at odds

⁷In-work benefits, on the other hand, allow wages to be lower than what is considered the bare minimum to live in this society, i.e. the state makes up the difference. We leave the question why it does that for another piece. For now, we content ourselves with pointing out that this implies that this economy apparently does not even provide for those which it makes use of.

⁸In fact, a lot of the proposed reforms aim at (re-)introducing currently unemployed people to the labour market, further escalating competition among workers there.

¹This in itself is not surprising. After all, almost all political forces in bourgeois societies uphold these ideals.

²We wrote about the opposition of “our economy” to “the banks” in <http://antinationa1.org/en/poor-future>; we wrote about calls to impoverish other people in the name of justice in “Benefit envy without benefit” and about freedom and equality in “Liberté, Égalité and such matters” in this issue.

³Commission for Group Dynamics in Assemblies of the Puerta del Sol Protest Camp (Madrid), Quick guide on group dynamics in people’s assemblies, <http://takethesquare.net/2011/07/31/quick-guide-on-group-dynamics-in-peoples-assemblies/> (last access 12. February 2013). If not specified otherwise, all quotes are taken from this piece.

with each other as what happens when votes are taken. It must be pacific, respecting all opinions: prejudice and ideology must [be] left at home. An Assembly should not be centred around an ideological discourse; instead it should deal with practical questions: What do we need? How can we get it?"

We are hence asked to sharply distinguish between "ideology" and practical questions. We may assume that the former is meant both generally (all explicitly political ideas) as well as derogatively: ideology is used as a term for the ideas of people who are too insistent on their line. However, while the distinction between, for example, the practical question of how to abolish the state and "Anarchist ideology" is not cleared up, a new way of making decisions is already presented as an alternative to Parliament.⁴

This conviction that all positions are in principle capable of consensus comes about because the movement's idealism of democracy works without any concept of interest.⁵ For this critique parliamentary democracy is not "real" enough. That is, when it comes to the decisions, which the state's political organs are entitled to make by the state's law, then protesting citizens in Spain and the UK feel overlooked. The true moment in this sentiment is that indeed this society does not ask for everybody's consent but is based on domination. Yet, when pressed for reasons for this disregard of their opinions, all these angry democrats have to offer is that not everybody is invited to contribute. It is a prob-

lem of process. Hence, not all solutions for whatever problem is on the table are heard. Yet, there is no agreement of interests, for example, between anti-cuts marchers and the government when it comes to austerity measures. They simply will not agree on whether mass impoverishment is a problem in itself, or instead a solution to the problem of making a successful national economy and a mighty state.

The Occupy movement wants the people – the "99%" – to really determine the course of action. While parliamentary democracy would create oppositions, assemblies allow the people to form into a community with common interests. The will of the people is not a rhetorical device for this movement: for them, this genuine will of the collective really exists. However, it is constantly distorted by special interests: "We demand an end to . . . our democracy representing corporations instead of the people."⁶

When employees and employers do not find common ground on the question of whether wages should be higher or lower or whether labour time should be shorter or longer, this is not because they do not know the right "gestures used to express common opinion of the assembly". The pursuit of success under capitalism produces fundamentally conflicting interests.⁷ The competition of capitalists for markets and of workers for jobs is not something that could ever be resolved with a new form of communication, not to mention conflicts between states or workers and capitalists.

These new forms of communication express a confusion between outrage and critique. Everyone can – as an affected party – present his or her personal concern and can enrich the assembly with his or her personal anger. The task is not to fight for specific interests but to show, through the medium of assembly and camping, that a majority of concerned citizens come together here.

The movement is so open for everything that it does not know what the common denominator of all participants is. Here, too, new forms of communication ought to help:

"We use Positive Speech avoiding negative statements which close the door to constructive debate. It is a less aggressive and more conciliatory type of communication. It is useful to open a debate with the points that unite before dealing with the points that separate. Examples:

(1) 'Don't touch that dog or it will bite you' could be phrased as 'Be careful with that dog because it could bite you and neither of us would like that.'

(2) 'If we don't reach a consensus here all efforts will go to waste' could be phrased as 'It's important we reach a consensus in this point or we could end up losing strength as a group and nobody wants that to happen.'

Any restriction to a concrete analysis, critique or programme would deprive the movement of its strength and special quality to be "open to all" and nobody wants that to happen.



⁴The sentiment to "leave ideologies at home" probably has resonance with many activists. Especially anyone who has ever been on the receiving end of a, say, Trotskyist party recruitment drive with their campaign or those who were confronted with a not so constructive critique by ultra-left critics like, say, us. Yet, in either case, the distinction is not between "ideology" (theory) and "non-ideology" (practical questions). These practical questions are expressions of theoretical verdicts themselves.

⁵For those quick on the Ctrl-F, the word interest does indeed appear in the document. However, when it does it is about mutual or common interest. Partial interests do not appear.

⁶<http://occupylondon.org.uk/about> (last access 12. February 2013).

⁷In "Why anti-national?" available at <http://antinational.org/en/why-anti-national> we explain the production of conflicting interests under the rule of private property as a step to explain the appeal of national unity.

About this Journal

Critique's failure does not usually derive from peoples' inability to see the misery around them; work, unemployment, war, hunger, racism, toxic waste, sexism, drowning refugees, homophobia, stress, to name but a few. Everybody knows and almost everybody resents these facts. However, as quickly as most people offer pity, they offer wrong explanations why these facts keep surfacing in the "most human of all societies".

We claim that modern misery ultimately is the result of capitalism and the nation state. The purpose of this journal is to prove this claim by explaining manifestations such as those listed above. The ideological conclusions people draw from this world make matters worse. We therefore criticise especially those theories that blur or even idealise the conditions we are forced to live under – whatever the well-meaning intentions behind them. In other words, with this journal we aim to criticise those conditions which ensure that wine and cheese are not available to everyone and to criticise everyone who justifies this.

Since we refer to Marx quite a bit, a few clarifications. Capitalism does not vanish by itself. Its crises are nothing but crises of its valorisation. On the other hand, the fact that it causes people harm is an inevitable part of its package in crisis and in boom. Modern democracies,

where politicians generally care about nothing except the well-being of the country, are the adequate form of government for the capitalist mode of production. The emancipation of politics from individual capitalist enterprises is a necessary condition for the existence of general capitalist relations. Nation states are not capitalist players on the market – they rather make markets possible.

We have found not much help for making sense of this society in sociological Marxism with all its classes, strata and social groups, with its "power relations" and "objectively progressive interests", which allegedly give rise to the right strategy. We do not follow the wide-spread "realism" which consists of doing stuff one does not want and to not talk about the stuff one actually does want. The lesser of two evils is still an evil. We do not want to be *somehow* successful, but rather do we want a particular critique to succeed.

We do not understand the Soviet Union as "state capitalism" nor do we think the "experiment" unfortunately deviated from and betrayed its true course after a few years. We do not follow the cult of the working class nor any other Leninist-Stalinist-Maoist nonsense. We do not believe that insight follows from one's social position in a positive (Autonomia) or negative (Marxism-Leninism) way. Arguments

do not have a standpoint, they are either correct or wrong, insufficient, incomplete. Declarations of love towards the workers, "the people" and "the little man" are absent from our texts since this prevents a proper critique of their wrong consciousness. But this critique is necessary because we need them in order for anything to change. The kind of anti-capitalism, which suspects evil parasites behind everything and conspiracies everywhere, will not be found in our texts; however, arguments against this rubbish will be.

Though our published results and conclusions might be misinterpreted as dogmatic we do not claim at all to have monopolised the truth. On the contrary: this journal is an invitation to critique. Every verdict based on scientific criticism we welcome.

We are not in the business of being the vanguard of the working class nor are we self-sufficient intellectuals writing about Marx behind closed doors. We want to criticise, discuss, engage, argue.

If you want to discuss our articles, offer critique, ask questions or want to be informed about our upcoming public meetings get in touch at

<https://twitter.com/portandcheddar>,

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<http://antinational.org/en>.

