

# CRITICAL THEORY, ORDOLIBERALISM AND THE CAPITALIST STATE

*Teoría Crítica, Ordoliberalismo y el Estado capitalista*

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## ABSTRACT

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

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

## RESUMEN

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

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

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

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<sup>57</sup> Cf. Alexander Rüstow (2017: 163-177).

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

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

<sup>60</sup> Cf. Alfred Müller-Armack (1933).

<sup>61</sup> Cf. Werner Bonefeld (2017b).



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

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

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

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

#### 4 FRANKFURT AND FREIBURG: THE STATE OF MASS SOCIETY

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

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

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<sup>63</sup> Cf. Victoria Haidar (2016: 31).

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

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

#### 4.1 Mass Irrationality

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

<sup>64</sup> Cf. Pollock & Adorno (2011).

<sup>65</sup> Cf. Joshua Charles Rahtz (2017).

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

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

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

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

<sup>67</sup> Cf. Alexander Rüstow (1980: 448).

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

#### 4.2 *Authoritarian Adjustment*

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

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

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

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

#### 4.3 *Institutions and the State*

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

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

#### 4.4 *The Decomposition of the Bourgeois*

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

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

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

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

#### 4.5 *The Form of the State*

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



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

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

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<sup>69</sup> Andreas Harms (2018: 852).

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

## 5 SUMMARY

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

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

<sup>71</sup> Cf. Karl Marx (1990: 178).

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

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

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

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

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

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

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

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

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

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

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<sup>75</sup> Cf. Andreas Harms (2018: 852).

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