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The Modern State After Kant
A Materialist Approach

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Abstract

This article proposes an encounter between Kant's political doctrine and Marx's materialist method. The primary aim of this materialist critique of Kant is to discern the structure that determines the specific mode of functioning of the modern state. The article starts with Kant's conception of freedom and law and relates these concepts to his theory of history. In the first and second sections, Kant's political doctrine is subject to a critical reversal that more closely engages with Marx's critical materialist approach. The article then concludes upon a new, topological approach to the ternary structure involving the intersection of three "rings"—capitalist circulation, the state in its legal effective reality, and measured labor forces in production.

Keywords: The modern state, Kant, Marx, Law, capitalism

Introduction

In the relatively short history of modern philosophy, the encounter between metaphysical concepts and a rising modern state form may be counted as one of the defining moments. Kant and Hegel, Hobbes and Locke, in different ways, conceptualized a world fraught with social revolutions that introduced multitudes into what would later be called public space. In spite of all meaningful differences, the rising modern state presented a challenge to the philosophers —both in form and essence: To

what extent can philosophical concepts account for the substantial, unconditioned ground of the state and its legislative power as separated from multitudes?

This quest should be measured against the reality of the modern state, whose power is mainly exerted through a stratified administrative presence at all societal scales, based on a spatial divide between private and public spheres. This omnipresence should be contrasted to the nebulous reality of the pre-capitalist state form, whose body was "earth and gold", and whose soul was the extraction of fiscal revenue, *fiscus reipublicae anima*, as the late medieval author Baldus de Ubaldis summed it up (Kantorowicz 1955, 86). From the eighteenth century and onwards, the capitalist, modern state has gradually discarded or greatly modified local customs, local spoken languages and forms of human habitat. It has created uniform and national curricula, and re-defined the control of territorial boundaries and the mode of subjection of individuals to the societal totality, all in the name of its universal claim sanctioned by law. Along with the state's increased presence, at a later stage, we find the employment of statistical methods, medical devices and surveillance techniques that enable the modern state to regulate human beings' biological life (Foucault 2003). On a geographical scale, the modern state form has come to dominate remote corners of the planet. Henri Lefebvre once pointed out a crucial historical detail that we easily forget: "the globalization of the state" is a relatively recent and still ongoing process (1976, 27).

If the modern state appears as a constituted site of power that represents a lawfully ordered collection of social relations within the space of a sovereign territory, then this appearance will be the subject of what I call a materialist reversal of terms in this essay.

Such a materialist approach is certainly not a novelty. Outside the boundaries of academic philosophy, the radical materialist tradition developed theories in order to grasp the persistence and actual increased power of the state in capitalist societies. Friedrich Engels' *The Origin of the Family, Private Property and the State* from 1884 was a genealogical quest for the origins of the separation between the state institutions and multitudes, which led Engels to attribute the origin of the state to the accumulation of wealth and the formation of classes. Much later, in the second half of the twentieth century, Gilles Deleuze and Felix Guattari (1972) developed their theory of the "Urstaat", which can be viewed a radicalized version of Engels's endeavor. A positive and clearly anti-Hegelian conception of desire or, more precisely, of desiring machines orients their theory, which ultimately regards the state as the ensemble of devices for capturing, recoding, and "re-territorializing" these desiring machines, starting from the earth-bound societal orders to the dialectics of a capitalist present.

In the Marxian and Marxist controversies of the 20th century, we find equally a slightly different line of inquiry. Louis Althusser's theory of reproduction of power relations, singled out ideological state apparatuses, which was argued to explain the subjection of the individual in the modern state through the process of interpellation (Althusser 1995). However, Althusser's account relies on an unquestioned distinction between production and reproduction. One of the points that this article problematizes, without diminishing the importance of interpellation process as described by Althusser, is to what extent the distinction between production and reproduction in a capitalist, modern society, has a satisfactorily explanatory value in face of the overlapping conjunction between the reproduction of social relations and capitalist production. More recently, Antonio Negri and Michael Hardt proposed a theory of the post-modern state, which they oppose to the modern state's relation to social production of commodities through the exploitation of labor (Hardt and Negri 2003). They contend that the post-modern state has been bereft of the mediating role played earlier by civil society, and is therefore further separated from the society. Instead, the post-modern state "poses its interests in social production as an external observer, only concerned with the fact that autonomous social production reproduces (or is forced to reproduce) the conditions of command, or rather the conditions of the reproduction of the State and capital as purely autonomous powers of disposition over society" (295). In later works, the idea of "reproduction of conditions of command" becomes solidified in a theory of biopolitical capitalism, inspired by Michel Foucault's concept of biopolitics as the counterpart to biopower of masses (Hardt and Negri 2001). We shall return to Negri and Hardt's idea in the last section of this article.

However, and in spite of the immense heterogeneity in these critical projects, Marxist theories of the state present a further —and productive— development in the wake of the question that we qualified as a defining moment for modern philosophy. An early work in Soviet legal resumed clearly what is at stake in these critical investigations (Pashukanis 1980, 94): "…why is the apparatus of state coercion created not as a private apparatus of the ruling class, but distinct from the latter in the form of an impersonal apparatus of public power distinct from society?"

In these lines from 1920s, in the midst of a debate on whether a socialist state requires a constitution, we recognize the modern quest for the foundational necessity of the formal and institutional separation of the state and multitudes. The dilemma, the antinomy between the state and capital as determining terms within a historical configuration, has its roots in an ontological quest for an unconditioned ground that account for the above mentioned separation.

Instead of a quest for a social or unconditioned ontological ground, this article views the modern state as that which corresponds to a question that it, in its real exercise of power, constantly represses. The emergence of the modern state through the social revolutions is a materialized reaction to the unarticulated but historically articulable question as to why there is a state rather than none. We first explore the persistence and ontological significance of the aporia presented by the modern state through the early modern philosophy of Kant. In the second section, a materialist reversal of Kant's doctrine is presented.

I. The General Idea of Any State According to Kant

Kant's theory of the state, or more specifically public right (*Staatsrecht*), should be weighed against the dominant ambivalence towards the historical projects of the time, the American and French revolutions. Friedrich Schlegel's *Athenaeum Fragments (*1797) is a clear example of this ambiguity. While he praised the French revolution "as the greatest and most remarkable phenomenon in the history of states, as an almost universal earthquake" (Fragment 424), he also characterized the revolution in the same passage as a display of "French national character" thrust into "a fearful chaos and woven as bizarrely as possible into a monstrous human tragicomedy" (Schlegel 1971, 233).

In the same year that Schlegel wrote his fragment, Kant published *The Metaphysics of Morals.* The book, in which Kant develops his theory of rights, has been the object of critical scrutiny since its publication. Hannah Arendt, in her otherwise original lectures on Kant, approvingly cited Schopenhauer who wrote: "It is as if it were not the work of this great man, but the product of an ordinary common man" (Arendt 1992, 8). However, as I will show, the arguments put forward in *The Metaphysics of Morals* are firmly rooted in Kant's critical project. In fact, the dominance of juridical terminology is found throughout Kant's critical project from the onset. In the first Critique, Kant attributes to reason a self-legislating power, the power of judgment, which "institutes a court of justice, by which reason may secure its rightful claims while dismissing all its groundless pretensions, and this not mere decrees but according to its own eternal and unchangeable laws; and this court is none other than the critique of pure reason itself" (Kant 2000a, 100-101/AA 4: 9.08-10). *The Metaphysics of Morals* follows logically Kant's critique by tracing the deployment of the same self-legislating reason in a world in which the relation between the state and society was going through a revolutionary transformation.

> In *The Metaphysics of Morals*, Kant gives the following definition: A state *(civitas)* is a union of a multitude of human beings under laws of right. Insofar as they follow of themselves from concepts of external right as such (are not statuary), its form is the form of a state as such, that is, of the state in idea, as it ought to be in accordance with pure principles of right. This idea serves as a norm (*norma*) for every actual union into a commonwealth [*einem gemeinen Wesen*] (1991b, 124-125/AA 6: 313.10-16)[1]

This definition is free from any transcendent justification. In the first line, a simple collection of people, conditioned by external right, is established. In the second half of the quoted passage, the condition of possibility of a state in general is described as the presence of an inner guiding principle (*im inneren Richtschnur*) for an actual union (*wirklichen Vereinigung*) based on a common essence. Only when a particular state adheres to this general idea of the state, the earlier collection of individuals becomes a truly lawful totality. We notice in this passage a transitional move from a given multitude to a set that is well-defined according to a shared essence. That which was first called "external" becomes in the end an internal principle. This transition stems, as we will see, from the way Kant tries to conceptualize the revolutionary disintegration of the old regime.

I.II. Revolution: From External Events to Inner Dutifulness

In section V of *The Conflict of Faculties* (published in 1798, the year after *The Metaphysics of Morals)*, Kant states that the real event beyond the revolutionary upheavals of his time, notably the French revolution, is "a change of the mode of thinking of the spectators which reveals itself publicly in this game of great revolutions, and manifests such a universal yet disinterested sympathy for the players" (Kant 1979, 153/AA 07: 85. 9-12). Michel Foucault sees in this section of *The Conflicts of Faculties* the advent of modernity and the emergence of a new, critical agenda for philosophical reflection. Philosophers now treat questions that mark the present, Foucault explains that the question Kant treats is "What is a revolution?" (Foucault 1993). However, Foucault's reading does not elaborate on the peculiarity of the answer Kant provides to this question. A closer examination shows that Kant's answer does not address the question that Foucault wanted to read in Kant's arguments. What is intended by qualifying a social event, the revolution in this case, as a "sign" by Kant, and why should a historical

[1] In this article I will indicate references both in the English edition and *AkademieAusgabe* (AA [AkademieAusgabe] volume: page. line).

change be connected to the moral predisposition of spectators? What happened to the direct participants in the revolutionary events?

Kant's answer to these questions can be found in the same text. He states that the spectators' sympathy is founded in a moral cause (*ursache*) that inserts itself, or flows into (*einfließende*) the course of events (Kant 1979, 153/AA 07: 85.30-33). A few pages later, he adds: "In the principle there must be something moral, which reason presents as pure; but because of its great and epoch-making influence, reason must present it as the acknowledged duty of the human soul" (Kant 1979, 157/AA 07: 87.5-9). It is this acknowledged duty that is actualized by the event as a sign to be recognized by the spectators. The event itself, its social composition and the acts of the revolutionaries is merely an observable fact on par with any other factual event such as a sublime volcanic eruption —to employ Schlegel's romantic language. What matters to Kant is that the revolutionary event serves as the sign of a predestined duty in human soul for a privileged observer, that is the enthusiastic spectators.

The duty, as Kant also clearly explains, is the moral sense presented by reason. The ultimate guiding principle of reason, the shared ground for both inner freedom (virtue and duties) and outer freedom (public right) (Kant 1991b, 208/AA 06: 407), is the free will of reason. He further qualifies this free will as "the will … which is a capacity for desire that, in adopting a rule, also gives it as a universal law" (Kant 1991b, 208/AA 06: 407). This line of argument relies on Kant's theory of freedom and categorical imperative in *Critique of Practical Reason*.

I.III. A Lawful Freedom

In *Critique of Practical Reason*, freedom is defined as the causality proper to the free will (Kant 2015). As such it is distinguished from causality in nature, this latter being the object of study by concepts of Understanding (Kant distinguishes the concepts of understanding from activities of reason). Pivoting on the spontaneity of reason (Insole 2013, 127-134), the free will is conceived by Kant as an unconditioned power whose cause must be independent of the empirical course of events in the world of senses (Kant 2000a, 543/AA 03: 375.06-07). Kant calls this power of the free will desire grounded in a moral choice after purging sensation-based choices and pathological desires. The power of reason is the immediate source of an actual force. Kant writes:

> Practical reason, on the contrary, since it does not have to do with objects for the sake of cognizing them but with its own ability to make them real (conformably with cognition of them), that is, with a will that is a causality inasmuch as reason contains its determining ground" (2015, 73/AA: 05 89. 25-28).

He distinguishes his philosophy from any crude empiricism on this crucial point. The free will as an actuality, as a desiring activity, is grounded in the thing in itself (i.e., a thing withdrawn from relations in the realm of empirical facts). The point is clearly stated by Kant in a discussion on an inevitable divide. He ascribes "the existence of a thing so far as it is determinable in time, and so too its causality in accordance with the law of natural necessity, only to appearance, and to ascribe freedom to the same being as a thing in itself." (Kant 2015, 78/AA 05: 95.18-23). This unconditioned "thing in itself", not only sets the limits of epistemological endeavors of understanding, it also provides the condition of possibility for the desiring actuality of reason qua moral agent in the world.

The second and equally crucial term in Kant's theory of freedom is the law as the expression of freedom. In *Critique of Pure Reason*, Kant explains that reason "yields laws that are imperatives, i.e., objective laws of freedom that say what ought to happen, even though perhaps it never does happen" and these laws are distinguished from "laws of nature, which deal only with that which does happen" (2000a, 675-676/AA 03:521. 21-25). The argument is stated more clearly in this passage from *Critique of Practical Reason*:

> … had not the moral law already been distinctly thought in our reason, we should never consider ourselves justified in assuming such a thing as freedom (even though it is not self-contradictory). But were there no freedom, the moral law would not be encountered at all in ourselves. (Kant 2015 4n/AA 05: 4n)

Since the law exists, an initial choice had to be made, which testifies to the existence of the free will. As he writes in *Groundwork of The Metaphysics of Morals,* "a free will and a will under moral laws [*ein Wille unter sittlichen Gesetzen*] are one and the same" (Kant 1997, 53/AA 04: 447). This determining connection between the free will (a desiring that is caused by the thing in itself beyond all empirical constraints and pathological desires) and the moral law is intended to establish a definition of freedom that grants the independence of the subject from deterministic relations.

The overarching logic employed by Kant seems to suggest a separation between two poles. On the one end, there are the series of facts, empirical phenomena as objects of understanding, and on the other end there exists the will, the intervention of reason in the world, which starts a series of events by itself. This duality of reason and empirical causality or of the free will and empirical determinism has been a challenging point for later readers of Kant. Theodor Adorno, in his lectures on *Critique of Pure Reason*, points out that while the first critique blocks reason's access to reach the thing in itself, the selfsame reason in the *Critique of Practical Reason* reaches to the thing in itself. In the first critique, freedom is inaccessible to the theoretical knowledge without ensnaring itself in antinomies, but the same freedom and

absolute degree of certainty is achieved in the moral knowledge that is also another aspect of the activity of reason in the world. Adorno sees here a sign of German ambiguity towards enlightenment: both utopian in its ambitions and reactionary when reason claims its critical faculty at a subjective level (Adorno 2001, 76-77).

However, Adorno's interpretation, like ontological or methodological parallelism (Beck 1987; Allison 2004; Guyer 2005), barely do justice to Kant's philosophy on this point, because Kant does provide a synthesis of the two poles, a mode of unity of the world, wherein resides the central importance of the imperative of the law.

The foundational schema is already present in the first critique:
this systematic unity of ends in this world of intelligences, which, though as mere nature it can only be called the sensible world, as a system of freedom can be called an intelligible, i.e., moral world (*regnum gratiae*), also leads inexorably to the purposive unity of all things that constitute this great whole (Kant 2000a, 682/ AA 03: 529).

Kant defines the moral law as part of the intelligible world here, but attributes to the law a unifying, synthetic function, above and against the separating line between the sensible and the intelligible. The two, facts and rights, *ought* to be synthesized. This synthesis, as one contemporary Kant scholar, Henrich already noted (1994) plays a crucial role in Kant's architectonics. The law, in its imperative reality, synthesizes principles of moral and the cognized world of phenomena. Otherwise, nature, considered by pure concepts of understanding, lacks moral ends; its purposiveness becomes a reality in its reunion with reason. Practical acts do not need to happen by some intrinsic or natural necessity. They can hypothetically cease to happen, but they ought to happen, if lawfulness already exists. This deduced purposiveness, as it deploys in the world, provides the rationale for Kant's theory of historical progress.

I.IV. The Law and History: The Construction of the Universal

If it is true, as Hannah Arendt once argued (1961, 75-89), that the defining feature of modernity is the dominance of history over and against politics, then Kant is a forerunner in this respect. However, Arendt in her presentation underestimate the role played by Kant in German and early modern philosophy concerning a turn towards history as the arena where ontology becomes a social and political reality. Instead, she underlines Hegel's and—more questionably—Marx's contribution to such a shift. I will discuss below the extent to which a modern conception of history is indebted to Kant's deductive system.

In the essay "Idea for a Universal History with a Cosmopolitan Purpose," Kant states that history corresponds to the fact that the seemingly

"planless aggregate of human actions" a posteriori need to be reconciled with the idea of "a whole" or a "system" (1991a, 52/ AA 08: 29.15-16). The "ruse of history", a point of affinity between Kant and Hegel in the view of some commentators (D'Hondt 1996), is that this irregular appearance is necessarily a part of a more systematic totality. In order to clarify his point, Kant contrasts it to alternative conceptions of historical time (1991a, 48/ AA 08: 25.9-33). In the eighth and central section of the essay, Kant mentions Atomist materialist concept of *clinamen*, as well as the Stoic idea of cyclical historical time. All are raised so as to highlight the difference from what Kant proposes, namely that history— insofar as it is a part of a universal history— is the site where the relation of the parts to the whole, of an overarching finality with local purposiveness, *ought to* be systematized. This is guaranteed by the realization of the imperative in the world. The conclusion clarifies this point and qualifies it in historical terms:

The history of the human race as a whole can be regarded as the realization of a hidden plan of nature to bring about an internally —and for this purpose also externally perfect political constitution as the only possible state (1991a, 50 /AA 08: 27.2-5).

Insofar as reason produces its own conditions, i.e., reason as the free will, history *ought to* manifest a purposiveness embedded in the world defined as a totality of both nature and rational beings. What is uniquely established by Kant's theory, is that history is regarded as the privileged space for the manifestation of the imperative in the state form. What is hidden and unexpressed but awaiting its momentum, is this underlying purposiveness of reason.

Through the inclusion of the freedom of will *in* the world, a new conception of politics emerges, namely politics as the historical realization of lawfulness. Kant expounds on this theme in *The Conflict of the Faculties*: "His history [human being's] … not as a species according to the generic notion (*singulorum*), but as the totality of men united socially on earth and apportioned into peoples (*universorum*)" (1979, 141/AA 07:14-17). One implication of this modern conception of history is that it leaves out from this established historical time those who, from the point of view of the universal history of the modern state, live outside of historical time. The excluding mechanism is not a novelty, as many other imperial orders —or civilizations— also built their ideological boundaries upon spatial coordinates within mythical narratives. The novelty resides in the fact that the mechanism of exclusion is intimately connected to the claim of a state-centered universality.

Nevertheless, the singularity that is supposed to be excluded from the state-centered universal history, does not vanish; it is recognizable in Kant's own arguments on the political constitution of the modern state.

> … everyone (*omnes et singuli*) within a people gives up his external freedom in order to take it up again immediately as a member of a commonwealth, that is, of a people considered as a state (*universi*). And one cannot say: A state, man in a state has sacrificed a part of his innate outer freedom for the sake of an end, but rather, he has relinquished entirely his wild, lawless freedom in order to find his freedom as such undiminished, in a dependence upon laws, that is, in a rightful condition, since this dependence arises from his own lawgiving will. (Kant 1991b, 127/AA 06: 316)

The idea that a people must first give up their wild and lawless freedom in order to gain a lawful freedom that corresponds to the predicament of rational beings is nothing new; it is found in both Hobbes and Locke. What is overlooked by Kant (and others) is that "a people" before giving up their "wild, lawless freedom" are not the same people receiving their freedom as members of the state, even though Kant's argument employs the same signifier. Kant is right that in this exchange nothing is really lost; instead, something new is added, not that which he envisions, but something that is generated by this same logic and which changes the definition of the second subject, the second "people" in the same passage: those who find themselves at the outer limit of the boundary established by this logic. There is a precise name for this added, negative component in the same text by Kant: "exlex" or outlaws, conspirators and subversive elements, who should be exiled:

> If a subject, having pondered over the ultimate origin of the authority now ruling, wanted to resist this authority, he would be punished, got rid of, or expelled (as an outlaw, exlex) in accordance with the laws of this authority, that is, with every right (Kant 1991b, 130/AA 06: 318.32-34 & 319.1-2).

What is genuinely radical and new in Kant's argumentation, running from the free will to the constitutional state and public right as its historical expression, is the unconditional universal form of the law, ultimately based on a radically withdrawn, veiled object, that is the thing in itself. In the formulation *omnes et singuli*, all *and* every single one, the unconditional universality of the categorical imperative is the defining operator. The maxim of the categorical imperative is neither a *potentia* (what an agent can do, a Spinozist *conatus*), nor a predicative syntax (an "is"). Kant's solution, compared with other earlier thinkers, goes further than a justification of objectivity of the law as a condition of its fair exercise. Instead, an absolutely withdrawn object is identified as both the ground and condition of the

possibility of the impersonal exercise of law. The ontological premise in the construction of the universal in Kant's concept of the imperative form of the law has been taken up in Jacques Lacan's most political essay, "Kant avec Sade" (1966), and has already been discussed in the literature (David-Ménard 2009). For our purpose, it is essential to retain from Lacan the argument that the imperative of the universal form of the law, insofar as it is grounded in the thing in itself, conceals the fact that "all and every single one" is rather a negation of the case-that-should-not-exist. We have already seen that the willing power of desire arising from the thing in itself, and this latter was defined as the negation of all empirical and sensuous relations. This negation is positioned as the undetermined ground of the universal. If this negation as a ground is not a transcendent idea, but an immanent moment, then it is one of all cases subsumed under the universal, but the one that should not be there. The ramifications of this logic will be explored further in the next section.

II. A Materialist Reversal of Terms

For a materialist critique of Kant, our starting point is Marx's oft-quoted, but seldom thoroughly examined passage in the Postface to the second edition of *Capital*: "the mystification which dialectic suffers in Hegel's hands." Marx wrote, and added: this dialectic that stands "on its head must be turned right side up" (2010a, 19). This idea is not a unique occurrence in Marx's writings. It can be traced back to *Contribution to the Critique of Hegel's Philosophy of Law* (1843). In that text, Marx pulled apart Hegel's theory of the state conceived as an organism whose substance is an ideal self-consciousness (mind knowing and willing itself). He "translated" arguments presented by Hegel by identifying which term functioned as an agent, and finally laid bare a certain shift in Hegel's argument. Marx pointed out that "'the idea' or 'substance' as subject, as actual essence, has been made into the starting point, whereas the real subject appears only as the last predicate of the abstract predicate." (Marx 2010b, 17). This line of critique reaches a more explicit formulation a few pages later, where Marx writes the following about Hegel's usage of "subjectivity" and "predicate":

Instead of conceiving them [concepts] as predicates of their subjects, Hegel attributes independent existence to the predicates, and subsequently transforms them in a mystical fashion into their subjects .... Subsequently the actual subject appears as a result, whereas one must start from the actual subject and look at its objectification. The mystical substance, therefore, becomes the actual subject, and the real subject appears as something else, as an element of the mystical substance. (Marx 2010b, 23).

Marx's remark does more than point out the displacement of explanandum and explanans. What is at stake here is the actuality of agent

subjected to a mystified substance through that displacement. The materialist reversal of terms is tantamount to demystification of substance as such. In our case and concretely, it is the thing in itself that occupies the position of a mystified, active substance. Further, the pivotal term in Kant's system that secures the actuality of reason's ideas in the world (in the form of a constitutional state) has been shown to be the power of free will. This power of free will has in turn been identified by Kant as the desire purged from sensation-based, "pathological" inclinations. If we invert this order of arguments, and replace the abstract substance (the thing in itself), the inversion will imply that moral desire is not the active origin, but the effect of the submission of all and everyone to the universal form of the law in the modern state. This also entails that those so-called "pathological" inclinations that were supposedly purged are in fact concrete sensuous activities externalized as Nature and opposed to history.

In Kant's lawful freedom, the "inner moral" yields the universal form of the law's effective juridical reality. This universality requires an already existing homogenized series of elements, members of the multitudes, that in a second step can be represented by the state. The transformation of a diversity of sensuous activities into a well-ordered and homogenized series is the first step towards formal equality. Capital's main function is that it establishes a new set of relations of domination called the production of values. This is the point of intersection between the modern state, in its representational function, with capital, in its capacity to homogenize human beings by reducing the sensuous bodies' "brains, nerves, and muscles" into equalized, measurable abstract labor, as Marx explains in Capital (2010a, 54).

Two intertwined moments are involved in this process. The modern state's legal foundation requires a first separation of a moral desire present as an inner quality inhabiting "All and every single one". Recall Kant's definition of the state quoted in the first section: it started from "the union of many (*die Vereinigung einer Menge*)" (AA 6: 313.10-16). This is the level of a simple presentation of a collection. Capital traverses and destroys the earlier existing strings of social references and regulatory systems (nobilities, family piety, congressional loyalties, guilds, etc.), and thus first frees human active powers and then recaptures them within production process that homogenizes producers as wage earners, as potential members of a civil society. Capital *presents* this particularized collection, whereas this collection (now, as the collection of juridical subjects) is *represented* by the state. These juridical subjects, which are presupposed to be the bearers of an inner moral desire corresponding to the general idea of the state, are nonetheless a condition for capital's accumulation process, because private ownership is first secured only when the universal representational claim of

the modern state is established. These two processes are co-extensive, meaning that there is no capitalism without the modern state's representational operation, and there is no modern state without homogenization of entities presented by capitalist production. This circular logic is what we should not leave aside. Its prefect circularity depends in turn on the collection of individuals represented by the state, their containment and presence in the form of laborers by capital. Labor forces, as a well-ordered collection, comprise the third component of the modern configuration.

The point of intersection between this third component, the labor forces, and the law is juridically expressed as the right to private ownership of the means of production. The labor force comes to existence after individuals being separated from direct access to the means by which they can sustain their lives. In the first section, Kant reasoned about an exchange of sensual reality and lawful freedom. Viewed from the point of view of Kant's lawful freedom, this sensual reality is less than a representation and more than nothing. For capital, this more than nothing is the starting point for the extraction of surplus value during production. What Kant calls pathological desires and inclinations turn out to be the sensuous reality of human beings, more precisely living productive powers that are transformed into exchangeable commodities by capital.

III. Ternary Structure

The relation between capital, the state and the labor force is neither causal (the state in general is not the form versus capitalism as its content, and capital is not the material cause of the labor force), nor genitive (the state is older than capitalism, and workers, the bearers of labor capacity, are not owned by capital). The specific nature of the modern configuration is the interactions within a ternary structure with the domination of human productive powers as the common object.

One main challenge in critical studies of the modern state has been the articulation of this ternary structure. Either the ternary relations have been neglected and one component has been singled out as separated from the others, state *or* capital, or the relations have been expressed as a duality, state *and* capital. Devising an explanatory model that contains the dynamic specific to a ternary structure can be achieved using a formal model borrowed from topology, a branch of mathematics that studies geometrical figures.[2] Our use of topology is limited to three points: firstly, the visualization of three components as interlaced cycles or rings, locked into

[2] This discussion is inspired by the mathematician, philosopher, and poet René Lavendhomme. For the embeddedness of three rings in a toroid space, see specifically Lavendhomme (2001, 40-46).

each other. Secondly, we need to know that in topology the shapes or objects are not viewed as static as is the case in classic geometry, but as under constant deformation. This plasticity and its coordinates play —as we will shortly see— a highly clarifying function. Thirdly and more importantly, the configuration of three distinct rings can be embedded in a torus-shaped space. A toroid space is a donut-shaped figure, a curvature with an inner boundary. Without delving into further technical details, and in order to dissipate recurrent intuitive misconceptions, we only note that these three rings are differentiations within one continuous torus-shaped space. Translated to the field under study here, this entails that the ternary structure, now visualized as three interlaced rings are all deformed products of productive powers in different historical sequences, even though they may operate as if they were independent of each other at any specific, local conjuncture.

In our discussion, we singled out the interlacement of these three rings, capitalist circulation, the state in its legal effective reality, and measured, homogenized labor forces in production—and we called this ternary structure the modern configuration. The Kantian thing in itself, after our inversion, turns out to be that which occupies the middle point, the cavity in the torus-shaped space that is bordered by the points of intersection of these three rings. It is nothing in itself, except for the result of the interaction of the three rings and it is spatially approached by the intersections of all three rings, but conceived differently from within each single ring. For the state, thing in itself is, as Kant's philosophy explicated, the necessarily overlooked foundation for the will expressed in the universal form of the law and at the same time it is that which returns in the form of an excessive moment (outlaws), thus it ultimately re-appears as a repressed negation, as Lacan has already shown. For capital, the thing in itself is that mystified and valuable thing which is to be extracted from the commodified human powers; it is a greater magnitude of value than the use value of that labor, that which Marx called surplus value. For the ring of labor forces, directly expended in capitalist production, the thing in itself manifests as that which is supposed to have been lost when the deployment of productive powers has been blocked by social relations of domination. This mystified appearance of an active, social blocking expresses what Marx identified as "the separation of free labor from the objective conditions of its realization" (1986, 68). In sum and beyond all three points of view, the thing in itself objectifies a pure indeterminism that itself is a product of the interlacement of capital, the state and regimented productive powers as labor forces. 4

III.II. Separating Indeterminism from the Thing in Itself

Based on the plasticity of the three interlaced rings in a topological space, we can identify a number of tendencies. In the language of our simple topological model, a tendency is a deformation of the three-ring structure, as if one ring expands further and encircles another, or others shrink, are reduced to a point. The limits of these deformations are the fixed intersection points among the three rings. In the last instance, it is the number and placing of these intersections (over-crossing or under-crossing each other) that define the ternary structure of the configuration —to which we added a fourth component, namely indeterminism that the three rings try to encircle.

The modern state, when faced with and trying to stave off social forces that should not exist on the one hand and thwarting capitalist circulation's destabilizing effect on the other, can envisage an anxiety-ridden solution. That occurs when the state, recoiling before the advances of productive powers or capital's unbounded expansion, is re-politicized beyond its representational, legal functions. As the thing in itself is supposedly withdrawn from all empirical constraints in order to grant the universality of the law, the state power tends to realize a certain phantasy in order to secure its representational function. It tries to assimilate the empirical private entrepreneur of the so-called civil society, while maintaining the juridical principle of private property, the separation of the means of production and producers. The sovereign power would assume both a presentational function capturing surplus value and a representational function, two of three rings tend to overlap. This tendency, in different forms and to varying degrees, has been present since the rise of the modern state, the historical extreme point of reference being National Socialism in the 1930s. However, the tendency is constrained by the intersections of the three rings, the ternary structure, and as a result the intermediary form the tendency represents inhibits the modern configuration by appearing as if the state enjoys direct access to the labor forces, that the state directly represents every single individual, or in Kant's language there is concordance between the "inner" and external moral duties. This point relates to the arguments and observations made by Negri and Hardt, quoted at the beginning of this article. The post-modern state and the biopolitical capitalism, terms used by Negri and Hardt, express intermediary forms of appearance of the logic described here, without changing the structure of the configuration. Contrary to Negri and Hardt (1994), these intermediary forms do not signal a separation of the state and society due to "the withering of civil society" (1994, 294) or to biopolitical production alone, rather it appears as a tendency toward overtaking the functions of civil society by the state without being capable of stepping outside the ternary structure. In this respect, biopolitics turns out to be a term that designates the phantasy that this

intermediary form represents. This phantasy itself (and its counterpart, the imminent but irrecuperable threatening collapse), as we have shown, ignores the ternary logic at play in the modern configuration.

The second tendency runs in the opposite direction. It conceives the question posed by the Soviet legal theorist Pashukanis, quoted in the opening pages, at its face value. Who needs the legal state form? Would the functionaries of capital wonder. This tendency is an effort by capital to overtake the state apparatus's administration and repressive instruments. The phantasy involved here is that the process of extraction of surplus value is completely independent of the state apparatus. The presentation of individuals does not need the representational apparatus of the state, or rather this apparatus itself can be a source of value accumulation through privatization. Neoliberal ideologies of the last decades do represent this tendency. However, as the labor force becomes increasingly unrepresented, the intersection between capital, and the labor force will be restrained, which will in turn provoke attempts to compensate for the increased instability of the configuration, either with a recourse to the first tendency, or in the form of a mosaic of religious, moral tribal entities that try to fill in the modern society's requirement of a totality. If the first tendency inhibits the configuration and reaches its limits, this second tendency increases the anxiety of societal disintegration.

Finally, a third tendency relies upon the intersection of the third cycle, labor force and the state. It believes that a juridical expression in terms of an infinite extension of the universal form of the law could be achieved, that such an endeavor would make the law more inclusive so that the rights of subaltern groups are represented in the public sphere of the modern state. It is a state-oriented universalism which, at times of crisis in the configuration, has to retreat. All three tendencies described above—explicitly or inadvertently—preserve the mystified thing in itself, presented in the circuits of capital and expressed by the universal imperative of the state.

Concluding Remarks: Indeterminism of An End in Itself

A truly Post-Kantian materialist philosophy envisages the conditions of possibility of collective activities by the ensemble of disparate but historically persistent elements that escape the modern configuration. While these collective activities inform an axis that runs across the modern configuration, they are neither for nor against any state, but instead defined by their heterogeneity toward the modern configuration's three circles. These collective forms of human interaction have been preserved in ephemeral phenomena even after the emergence of sedentary and state-centered societies. They may take different shapes, potlatch, aleatory encounters

across socially constructed divides, or inventiveness of a troupe of ambulating theater actors, in short, strings of collective movements that organize social life beneath the state level and capitalist accumulation. Some workers create a cooperative. A group of neighbors put out chairs and tables; their backs to the deafening sound of a roaring street, they invite passing people to join in for a spontaneous dinner. A Black woman climbs aboard a public bus, takes a seat next to a member of the so-called privileged race in a southern state in the United States in the 1960s and, much later, a group of refugees invent new ways to cross a border to traverse a desert or a dark, cold North European sea. These strings of collective, non-capitalist and non-bureaucratic realities are certainly an extension of desires that once were separated from labor forces in the third ring of our model, but these are neither an expression for a phantasy about returning to some pure state of nature, nor a replacement for the law in its universal form, nor a plea for a stronger, wider universalism. Nonetheless, these disparate instances of a different but shared form of collective freedom hollow out the metaphysics of the thing in itself, separate indeterminism from the phantom-like objecthood it has been assigned to, and thus transform indeterminism into a positive end in itself. One recognizes here the full significance of Marx's communist endorsement of a "true freedom" in "the deployment of human powers as an end in itself (die menschliche Kraftentwicklung, die sich als Selbstzweck)" (1998, 807).

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