




DIALOGUE AND DEBATE: SYMPOSIUM

# Classes and individuals in the European Union: Marxist and cosmopolitan approaches

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(Received 29 September 2023; revised 26 January 2024; accepted 13 February 2025)

## Abstract

The article proposes a historical materialist reading of the European Union, placing the class struggle at the heart of the analysis of the EU project. A central idea is that historical development is the result of social conflict, a ubiquitous force which materialises unevenly at multiple levels, nationally and internationally. As far as the European Union is concerned, it is argued that class struggle occurs predominantly at the level of Member States rather than transnationally at the level of the Union. This reading has several repercussions. An important repercussion is that by anchoring the understanding of the EU to the struggle born out of the material clash between interests of national collective forces, this contribution distances itself from liberal idealistic readings of the Union that see the EU as an example of Kantian cosmopolitan right. Where the latter approach sees the European Union as a real-life example of universal hospitality, historical materialism sees a Union divided along class- and national lines. The article supports that the latter understanding is in a better place to describe the nature of the EU project.

**Keywords:** Marxism; cosmopolitanism; Laval; collective capitalist; EU working classes

## 1. Introduction

This article attempts a historical materialist reading of the European Union, placing the class struggle at the heart of the analysis of the EU project. A central idea is that historical development is the result of social conflict, a ubiquitous force which materialises unevenly at multiple levels, nationally and internationally. As far as the European Union is concerned, it is argued that class struggle occurs predominantly at the level of Member States rather than transnationally at the level of the Union. This reading has several repercussions. An important repercussion is that by anchoring the understanding of the EU to the struggle born out of the material clash between interests of national collective forces, this contribution distances itself from liberal idealistic readings of the Union that see the EU as an example of Kantian cosmopolitan right. Where the latter approach sees the European Union as a real-life example of universal hospitality, historical materialism sees a Union divided along class- and national lines. The article supports the latter understanding is in a better place to describe the nature of the EU project.

The article suggests that working classes and capitalist classes in the Union remain manifestly national and that the class struggle is ultimately mediated by the state. The reason for this is that the Union lacks the breadth of competence and the institutional design that would permit European workers to coalesce and build class consciousness at European level. Simultaneously, the integration of international capital into the domestic conditions of host states limits the likelihood of a pan-European capitalist class. With the class struggle remaining predominantly national, the

European Union is bereft of collective European subjects. That is not to say that the EU does not intervene in domestic social conflicts. Despite the lack of class struggle at the transnational level, the Union impacts on Member States from within by intervening in different ways within domestic class struggles and affecting the domestic consensus. The internality of intervention coupled with the centrality of *domestic* subjects in the Union suggests a more complex picture than the one proposed by cosmopolitan law, which sees the EU and its citizens in terms of autonomous universal subjects enjoying an autonomous universal/pan-European civil condition.

The argument proceeds as follows. The next section (Part 2) lays out some fundamental premises of the Marxist methodology. It discusses the centrality assumed by the contradiction between labour and capital in the dialectical and historical materialist method and explains the choice to place the class struggle at the heart of the analysis of the European project. The following two sections analyse classes in the EU. Part 3 explores the possibility of a European-wide working class and finds that lack of commonality of interests among European workers rules out the formation of a collective subject. At the same time, the absence of collective worker struggles makes the development of a European working-class consciousness a distant possibility. This section contains snapshots of institutions, like the ETUC, or of recent legal developments, like the minimum wage directive, to corroborate its findings. Part 4 makes a similar argument, this time rejecting the possibility of a European collective capitalist. It focuses on the concept of total social capital to argue that individual capitals are always subsumed within the domestic order into which they travel, thus foreclosing the possibility of a collective European capitalist. To demonstrate this viewpoint, this section uses the case of Laval, a judgement usually invoked to attest to the EU's neoliberal direction. This time, however, Laval is used to show how it is ultimately the capitalist class of the Member State that will determine its own economic, legal, and political fate, always depending on the conditions and outcomes of the domestic class struggle. These findings lead to the further conclusion that, while the EU clearly influences domestic conditions, it does so by penetrating the domestic class struggle and affecting the domestic balance of powers from within, rather than as an autonomous external force.

Part 5 uses the above analysis to confront the strand of liberal thought that sees cosmopolitan law as the optimum way to describe the European Union. One of the main arguments of this school of thought is that the Kantian idea of universal hospitality best describes the situation in the European Union's internal market: states peacefully receive European citizens who enjoy a universal civil condition. This situation leads to eternal peace in the European Union. Building on the preceding analysis of class, the article makes several interconnected claims contesting the notions of eternal peace and the European citizen's universal civil condition. First, the idea of universal hospitality is in discord with the reality of a Union rife with differential treatment of EU citizens according to their economic status or type of economic activity – in short according to their place in the production process. This discord is, secondly, not an accidental misunderstanding by cosmopolitan theory, but rather a result of liberal methodology which examines reality from the point of view of rational autonomous individuals rather than materially constituted classes. The liberal cosmopolitan reading, it is argued, pulls EU citizens out of the historical context of the Union and the material context of their class, and treats them as transhistorical subjects. This compels cosmopolitan theory to construct a picture of the EU that is hardly verifiable. At the same time, by viewing the relationship between subjects, states, and the EU as a relation of externality, cosmopolitan theory fails to account for the more complex reality of *internal* intervention of the EU project into domestic conditions. This does not allow cosmopolitan theory to go beyond a linear unidirectional understanding according to which free movement in the internal market creates universal citizens and perpetuates peace in the Union's territory.

The last section (Part 6) concludes by reiterating the contrast between the analysis of class and the theory of cosmopolitan right.

## 2. The class struggle and Marxist methodology

To interpret the world, and therefore the EU, through a historical materialist lens means to place the material condition of societies at the centre of attention. Focus on the material condition denotes that the evolution of societies historically is primarily subject to and determined by the relation of production and the productive forces. At the same time, a dialectical reading of the world necessitates that all observable phenomena are analysed as parts of a complex totality. For Marxist dialectics, no phenomenon historically has autonomous standing. Instead, everything is read with reference to its historical context which is always in the last instance determined by the material condition. Additionally, in a dialectical understanding of the world, history does not transpire unidirectionally towards advancement or progress. The world is instead perceived through its ceaseless, non-linear, multipatterned and multidimensional unfolding of events and elements. Causes and effects may overlap and, importantly, they are always permeated by multiple contradictions. Dominant among these contradictions is the conflict inherent in the process of production, namely that between labour and capital. Out of this conflict spring not only the classes of labour and capital as collective subjects, but also a continuous motion which Marx and Engels famously described as the history of all human society.<sup>1</sup> This continuous motion is the class struggle, a force decisive for the condition and fate of societies.

The class struggle is considered a pivotal factor for the fate of societies for several reasons. First, as already remarked, it is through the class struggle that classes come into existence but also that they acquire consciousness of themselves as classes. A class is born objectively through its conflict with another class. Thus, for example, the working class is formed at the same time as its interests are taking a shape opposite to those of the capitalist class, which is itself born as a collective subject out of precisely this opposition. The question of class consciousness is broadly speaking the question of awareness of this clash of interests. Class consciousness does not transpire in a vacuum, nor does it relate to what liberalism would see as autonomous preferences or the psychology of individual workers. Instead, it is itself a product of collective struggle which generates awareness by a class of what it needs to do in order to 'obtain and organise power.'<sup>2</sup> Thus, while the class struggle exists objectively as part of the same continuum with the capitalist relation of production, it is class consciousness that determines the strength of the position of workers in it. As George Lukacs argues, the crucial question in every class struggle is which class possesses the capacity and consciousness to organise society according to its own interests.<sup>3</sup> Second, the centrality of class struggle in Marxist theory is attributable to the fact that workers' struggles are historically responsible for all concessions that have resulted in a fairer redistribution of wealth and more humane working conditions. In short, the outcome of the class struggle, which always depends on the degree of working-class consciousness, is responsible for the (material) advancement of societies. Class struggle drives change.

Such a material and dialectical reading has several repercussions for the choice of questions asked, and the methodology through which Marxism approaches a phenomenon like the EU and its development historically. First, the EU must be approached in its historical context and as part of a capitalist totality determined in the last instance by economic relations. Second, this framework of analysis adopts the category of European class, and not that of the European individual citizen, as the focal point of analysis. To the Marxist eye, the people of the EU are not a mass of isolated individual citizens, as liberalism would have it, but instead different classes with vastly opposing interests even if invested with formally equal rights. This means, thirdly, that the EU is seen itself as a product of class struggle,<sup>4</sup> but also as a force intervening into class struggle. At this point, several important questions arise. What are the terms of this intervention? Is there a

<sup>1</sup>K Marx and F Engels, *The Communist Manifesto* (Samuel Moore tr, Independently Published 2020) 2.

<sup>2</sup>G Lukács, *History and Class Consciousness* (Aakar Books 2016) 53, 73.

<sup>3</sup>*Ibid*, 52.

<sup>4</sup>See D Kivotidis, 'E Pluribus Unum . . . Forum': A Marxist Approach to the EU's Democratic Deficit' in this symposium.

pan-European, class struggle unfolding? In other words, is there a collective EU worker interest and a collective EU capitalist interest sufficiently well- defined to allow an EU-wide struggle to unfold and therefore to also precipitate a common EU class consciousness? Or does the EU, alternatively, intervene into class struggle through the national level, namely through the medium of the Member States?

To answer these questions, a necessary step is to examine the possibility of EU-wide classes, namely of the collective EU worker, and the collective EU capitalist. As part of this process, we will necessarily also look more closely at the process of class formation in Marxist thought.

### 3. In search of the European proletariat

A fundamental principle of Marxism is that the transformation of a group of individuals into a class necessitates the existence of common interests opposite to those of other classes. Marx repeats this basic principle in various places, among which the introductory paragraph of the *German Ideology*: 'The separate individuals form a class only insofar as they have to carry on a common battle against another class . . .'.<sup>5</sup> This definition would possibly make it safe to speak of a European working class, if not of a global proletariat materially rooted in the processes of globalisation. This line of argument, not unpopular with certain strands of Marxism, notably the neo-Gramscian tradition, asserts the possibility of global classes, ie of a global bourgeoisie and so inevitably of a global proletariat.<sup>6</sup> From this starting point, one could embark on a discussion regarding the existence of an EU-wide bourgeoisie, or an EU collective capitalist, pitted against the EU working class and vice versa.

However, in his 18<sup>th</sup> Brumaire, Marx commenting on the post-revolutionary French society remarks the following as to the inability of small peasants to form a unitary class:

Insofar as millions of families live under conditions of existence that separate their mode of life, their interests, and their culture from those of the other classes, and put them in hostile opposition to the latter, they form a class. Insofar as there is merely a local interconnection among these small-holding peasants, and the identity of their interests forms no community, no national bond, and no political organization among them, they do not constitute a class.<sup>7</sup>

Marx introduces a significant, if maybe obvious, qualification to the understanding of class. If class formation is unlikely in the absence of some kind of community, a national bond or political organisation, then the prospect of EU wide classes becomes thin. What is more, Marx continues, failure to constitute a class in the above sense sets off a series of risks, including lack of power to represent oneself and succumbing to a patronisingly protective executive authority.<sup>8</sup> Based on the above, perhaps it makes sense, with a degree of abstraction, to search for those features that could coalesce the workers of the EU into a single unitary class with common consciousness. In other words, it makes sense to explore the possibility of EU-level political organisation of the working classes, even in the absence of a national bond.

The academic discussion around political organisation and democracy in the EU rarely adopts the language of class but often alludes to the European masses. For example, one of the dominant tendencies of mainstream EU constitutional law literature, and a silent premise of much of the

<sup>5</sup>K Marx, *The German Ideology* (Prometheus Books 1998) 87.

<sup>6</sup>See, eg, R Cox, 'Gramsci, Hegemony and International Relations: An Essay in Method' 12 (2) (1983) *Millennium: Journal of International Studies* 162–75; K van der Pijl, *Transnational Classes and International Relations* (Routledge 1998); S Gill, *Power and Resistance in the New World Order* (Palgrave Macmillan 2003); B van Appeldoorn, 'Theorising the Transnational: A Historical Materialist Approach' 7 (2) (2004) *Journal of International Relations and Development* 142–76.

<sup>7</sup>K Marx, *The 18th Brumaire of Louis Bonaparte* (Marxists Internet Archive 1852) <<https://www.marxists.org/archive/marx/works/1852/18th-brumaire/ch07.htm>> accessed 14 February 2025.

<sup>8</sup>*Ibid.*

democratic deficit discourse,<sup>9</sup> is that the constitutional history of the EU is permeated by an active effort, never mind successful or otherwise, to strengthen democratic political participation.<sup>10</sup> Other accounts of the Union's history, however, speak of an entity designed in such way as to foreclose any possibility of popular democratic processes.<sup>11</sup> This latter approach has been characterised as 'so much better than [that of] the hosts of political scientists specialising in the study, not to say the celebration, of "European integration."'<sup>12</sup> The quote's confrontational tone is justified. In the face of the conspicuous absence of EU-wide political activity, political scientists have gone as far as to argue that a European society actually exists, even if it is available only or mainly to 'the educated, owners, managers, professionals, other white collar workers, and the young.'<sup>13</sup> Different versions of this multiply flawed understanding, misrepresenting both the nature of the EU and that of societies, have been adopted even by critical scholars. An example of a similar, if more nuanced critical analysis, asserts the existence of EU-wide 'political activity and struggle for social (or civil society) forces, mostly for (business) associations, but also for trade unions and NGOs.'<sup>14</sup> This statement merits some consideration. For the purposes of ascertaining the existence or otherwise of political organisation of the kind that could consolidate EU working classes into one unitary collective subject, the possibility of EU-wide trade union activity is compelling and indeed deserves attention, given that trade unions have traditionally been one of the primary forces of political organisation and mobilisation.<sup>15</sup>

Next to the obvious difficulty of coordinating trade union action in 27 Member States with as many different versions of labour and employment law, tax law, national budgets and so forth, EU-wide trade unionism appears to face another problem. The European Trade Union Confederation (ETUC) is arguably the closest that there is to an EU-wide trade union movement and its language bears all attributes of a collective pan-European worker subject. The ETUC describes itself as an organisation '[speaking] with a single voice on behalf of European workers for a stronger say in EU decision-making.'<sup>16</sup> However, the ETUC has not escaped the tendency to uncritically accept, or even celebrate, European integration, something that has often caused it to align itself with the Commission's agenda.<sup>17</sup> This occasional alignment does not determine

<sup>9</sup>For an overview of this discourse and its development through the decades, see, eg, K Featherstone, 'Jean Monnet and the Democratic Deficit in the European Union' 32 (2) (1994) *Journal of Common Market Studies* 149–70; EO Eriksen and JE Fossum (eds), *Democracy in the European Union: Integration Through Deliberation* (Routledge 2000); G Majone, 'Transaction-Cost Efficiency and the Democratic Deficit' 17 (2) (2010) *Journal of European Public Policy* 150–75; J Hoeksma, 'Beyond the EU's Democratic Deficit: From Union of States to European Democracy' 21 (2) (2022) *European View* 178–85.

<sup>10</sup>In terms of formal constitutional arrangements, this is reflected in the Treaty on the European Union (TEU) Arts 10 and 11. See also Commission of the European Communities, 'European Governance: A White Paper' (COM/2001/428 final), 24.7.2001.

<sup>11</sup>See, eg, P Mair, *Ruling the Void: The Hollowing of Western Democracy* (Verso 2013) 99ff.

<sup>12</sup>W Streeck, *Critical Encounters: Capitalism, Democracy, Ideas* (Verso 2020) 76.

<sup>13</sup>See N Fligstein, *Euroclash: the EU, European Identity and the Future of Europe* (Oxford University Press 2010) 165. For an analysis of the EU's class bias as reflected in the law of citizenship, see E Spaventa, 'Earned Citizenship: Understanding Union Citizenship Through Its Scope' in D Kochenov (ed), *EU Citizenship and Federalism: the Role of Rights* (Cambridge University Press 2017) 204–25.

<sup>14</sup>H-J Bieling, 'European Statehood' in A Gallas et al (eds), *Reading Poulantzas* (Merlin Press 2011) 209. He combines European level developments and institutions into what he terms 'contractual constitutionalisation', a process which accompanied economic integration and transferred competencies from the national to the European sphere shielding them from national democratic control. As such, he seems to argue that some of the political control lost at the national level reappeared at European level in the form of, inter alia, trade unions. A more consistent understanding of European constitutionalisation is developed by Vachez, who speaks of constitutionalisation as a Euro-jurist project that has locked political contingency in pre-determined limits. See A Vachez, *Brokering Europe: Euro-Lawyers and the Making of a Transnational Polity* (Cambridge University Press 2015).

<sup>15</sup>There is TH Marshall's seminal work, *Citizenship and Social Class* (Pluto Press 1992), but see also, eg, T Goes, *Aus der Krise zur Erneuerung? Gewerkschaften Zwischen Sozialpartnerschaft und Sozialer Bewegung* (PapyRossa Verlag 2016).

<sup>16</sup>See the European Trade Union Confederation's home page <<https://etuc.org/en>> accessed 14 February 2025.

<sup>17</sup>M Seeliger, 'Trade Union Politics as a Countermovement? A Polaniyan Perspective' 4 (1) (2019) *Culture, Practice and Europeanization* 5–23.

whether or not meaningful pan-European trade union activity is *possible*. This matter is not susceptible to the casual preferences of the ETUC in favour or against Commission policies. In other words, the difficulty with the ETUC would be of a structural nature on the assumption that there are no objective conditions for the coming together of the working class in the EU and would not relate to its casual political orientation. It still bears mentioning, however, that the ETUC's stance resonates with Marx's fear about non-unified workers' lack of power to self-represent and their likely yielding to patronising executive authorities.<sup>18</sup> To sum up, the relevant question at this point would be whether, despite the ETUC's consensual position, European-wide trade union activity is possible. Crucial in this respect is the commonality of workers' interests.

Exploring the possibility of common interests would require looking into the scope allowed by the Union's formal constitutional arrangements, mainly including its competences, for the creation of common European labour policies. The TFEU includes 'the promotion of employment, and improved living and working conditions' in the fields eligible for harmonisation but blocks competence in the areas of 'pay, the right of association, the right to strike or the right to impose lock-outs.'<sup>19</sup> The removal from EU competences of areas as indispensable to the commonality of workers' interests as pay, and the rights of association and strike is a blow to what has been referred to as 'the transnationalisation of democratic class struggle.'<sup>20</sup> Indeed, as Marx notes 'the maintenance of wages, this common interest which [workers] have against their boss, unites them in a common thought of resistance.'<sup>21</sup> As such, commonality of wages arises as a necessary condition for the formation of class and class consciousness. Accordingly, the transnationalisation of class struggle, so the above argument continues, would require at a minimum a single European minimum wage.<sup>22</sup> If a European minimum wage was institutionalised, the same argument goes on, the transnationalisation of class struggle would be contingent solely on the willingness of trade unions to coordinate the fight outside national borders.<sup>23</sup>

While this argument is correct in that it anticipates that no transnational form of struggle can transpire in the absence of harmonised interests, it overlooks a series of structural obstacles that the EU imposes on the vision of transnationalisation. It has correctly been counterargued that a single pan-European minimum wage is simply unrealistic due to the chaotic differences between Member States' economies and production levels.<sup>24</sup> Besides, even a relative harmonisation of minimum wages would not only fail to transnationalise class struggle – it would, instead, be treated as a defeat by the working classes of northern European Member States, would create feelings of resentment against the Union and would push the possibility of transnationalisation of class struggle further away.<sup>25</sup> The content of and reactions against the recently adopted minimum wage directive prove these fears accurate.

Directive 2022/2401 on adequate minimum wages in the Union was adopted at the end of 2022 with a two-year implementation window.<sup>26</sup> Contrary to the above hopes for a pan-European minimum wage, the Directive's framework is, not unexpectedly, wholly contingent upon each Member State's specific conditions, including cost of living, the national growth rate of wages and national productivity levels.<sup>27</sup> The technicalities of the Directive are beyond the scope of the

<sup>18</sup>See Marx (n 7).

<sup>19</sup>See the Treaty on the Functioning of the European Union (TFEU) Arts 151 and 153 (5).

<sup>20</sup>H Brunkhorst, *Das Doppelte Gesicht Europas: Zwischen Kapitalismus und Demokratie* (Suhrka 2014) 160, 166ff.

<sup>21</sup>K Marx, *The Poverty of Philosophy* (Marxists Internet Archive 1848) <<https://www.marxists.org/archive/marx/works/1847/poverty-philosophy/ch02e.htm>> accessed 14 February 2025.

<sup>22</sup>Brunkhorst (n 20) 166ff.

<sup>23</sup>*Ibid.*, 167–8.

<sup>24</sup>M Höpner, 'Der Integrationsistische Fehlschluss' 43 (1) (2015) *Leviathan* 29–42.

<sup>25</sup>*Ibid.*

<sup>26</sup>See Directive (EC) 2022/2401 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union, OJ 20/04/2023.

<sup>27</sup>*Ibid.*, Art 5(2).



current discussion.<sup>28</sup> Briefly, it is a piece of legislation that relies heavily on the idea of adequacy of statutory minimum wages, a term that it defines according to the International Labour Organisation's Minimum Wage Fixing Convention,<sup>29</sup> but does not impose a duty to establish statutory minimum wages on those Member States where minimum wages are the product of collective agreements. The Directive may improve the working conditions of many workers in the Union, given also its emphasis on the significance of collective bargaining. However, it does not in any way harmonise wages or otherwise create opportunities for the coming together of EU workers' interests. Quite the opposite, it has been robustly opposed by left parties and trade unions in Nordic states, mainly Sweden and Denmark.<sup>30</sup> In the absence of wage harmonisation, it remains the case that the only areas adequately harmonised at Union level are health and safety requirements, including some minimum working-time standards and equal opportunity.<sup>31</sup> These two areas offer at the very best a watered-down version of a social Europe and do not constitute an opportune occasion for the creation of commonality of interests among national working classes, as they lack the universality and, therefore, the unifying force of wage-related matters.

In the absence of common labour policies, the prospects for EU-wide political organisation become weak. This weakness is exacerbated by the institutional design of the Union. Space forbids a comprehensive account of the workings of all institutions, but the Court deserves a special mention. In preparation of his 1851 coup, Louis Bonaparte addressed the French public with a message that was, according to Marx, 'overloaded with detail, redolent of order, desirous of reconciliation, constitutionally acquiescent, treating of all and sundry, but not of the *questions brûlantes* [burning questions] of the moment.'<sup>32</sup> The message praised 'the people' to whom Bonaparte hypocritically declared to owe his power and whom he promised to serve. But there was something akin to a condition: 'that passion, surprise, or violence may never decide the destiny of a great nation.'<sup>33</sup> Like this, if the people cooperated with Bonaparte's 'good endeavours', then 'God [would] do the rest.'<sup>34</sup> There is a parallel here with the Union's 'political messianism' – the idea that the destiny to be achieved, that of a great community, of a peaceful order, of 'fairness, justice and dispassion' justifies whatever means will be used to achieve it.<sup>35</sup> The exaltation emphasis on EU Law, a tendency followed mainly by the European Court of Justice (ECJ), has construed Member States as a collective entity only to self-referentially justify the authority of EU Law: 'the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights . . .'<sup>36</sup> As such, if Member States and their people cooperate

<sup>28</sup>For a legal analysis, see E Sjödin, 'European Minimum Wage: A Swedish Perspective on EU's Competence in Social Policy' 13 (2) (2022) European Law Journal 273–91. On the negotiating process, see M Aranea, 'German Trade Unions and The EU Minimum Wage Debate: Between National Elite and Transnational Working Class' in B Colfer (ed), *European Trade Unions in the 21st Century: The Future of Solidarity and Workplace Democracy* (Springer 2022) 233–57.

<sup>29</sup>See International Labour Organization (ILO), C131 – Minimum Wage Fixing Convention, 1970, No 131, 22 June 1970. <[https://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C131](https://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C131)> accessed 14 February 2025.

<sup>30</sup>See, eg, H Haapanala, I Marx and Z Parolin, 'Does the Minimum-Wages Directive Get It Right?' (Social Europe 2022) <<https://www.socialeurope.eu/does-the-minimum-wages-directive-get-it-right>> accessed 14 February 2025.

<sup>31</sup>W Streeck, 'Progressive Regression' 118 (2019) New Left Review 117–39.

<sup>32</sup>Marx (n 7).

<sup>33</sup>*Ibid.*

<sup>34</sup>*Ibid.*

<sup>35</sup>J Weiler, '60 Years Since the First European Community – Reflections on Political Messianism' 22 (2) (2011) European Journal of International Law 303–11. I borrow the phrase 'fairness, justice and dispassion' from D Chalmers and L Barroso, 'What Van Gend en Loos Stands For' 12 (1) (2014) International Journal of Constitutional Law 105–34, 113.

<sup>36</sup>Case 26/62, *NV Algemeine Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration* ECLI:EU:C:1963:1 at 12. See also Chalmers and Barroso, (n 35), who, however, see Member States, and not the ECJ as the subject of deification.

with the Union's good endeavours, then the ECJ will do the rest; perhaps with a little help from EU scholars.<sup>37</sup>

As the ECJ assumed for itself the role of the Union's constitutional author, radically rewriting the constitution alongside the Treaties while always reportedly serving the Treaties' telos, its authority could, in technical legal terms, no longer be called into question, but rather only self-validated.<sup>38</sup> For all these reasons, the Court's early jurisprudence has been labelled from 'a genuine revolution' to 'a coup'.<sup>39</sup> To make sense of what revolution exactly it was that the Court began, perhaps a last look at the 18<sup>th</sup> Brumaire could help:

Bourgeois revolutions . . . storm more swiftly from success to success, their dramatic effects outdo each other, men and things seem set in sparkling diamonds, ecstasy is the order of the day – but they are short-lived, soon they have reached their zenith, and a long [lethargic hangover] takes hold of society before it learns to assimilate the results of its storm-and-stress period soberly. On the other hand, proletarian revolutions . . . constantly criticize themselves, constantly interrupt themselves in their own course, return to the apparently accomplished, in order to begin anew.<sup>40</sup>

What more was the ECJ's revolution than the beginning of a long process of sober assimilation of whatever it was that it decided – from direct effect<sup>41</sup> to negative harmonisation decisions<sup>42</sup> and from the attack on collective labour rights<sup>43</sup> to the limitation of citizenship rights to those in least need of them.<sup>44</sup> The ECJ's dominant role in the Union left no space for political organisation by the Union's masses. This is not so much because of the Court's own weak vision of 'the peoples' of Europe, whom the Court made appeals to whenever it seemed convenient for the justification of its own authority.<sup>45</sup> It is mainly because it juridified all things European thus putting at a further distance a possibility that seemed already too thin: that of political organisation from below.

With political organisation ruled out, given the absence of common interests and the prevention by design of political opposition, it is very difficult to imagine a European proletariat. The question now arises whether there is a European-wide capitalist class, which could potentially also provide an impetus for the coming together of European workers. Given the transnationalisation and internationalisation of European capital, this question invites some deeper reflection.

#### 4. In search of the collective European capitalist

One reading of global capitalism presents states as intermediaries in a process of financial enrichment taken up by international institutions like the IMF or regional bodies like the EU, which lay down guidelines for economic policy.<sup>46</sup> Here, the relationship between the state and

<sup>37</sup>On the EU scholars and their contribution to the furthering of the ECJ's ambitions, see K Alter, *Establishing the Supremacy of European Law: The Making of an International Rule of Law in Europe* (Oxford University Press 2003). On the role of the ECJ in completing the integration process, see among many others, D Grimm, *The Constitution of European Democracy* (Oxford University Press 2017) 4–5.

<sup>38</sup>P Anderson, *Ever Closer Union: Europe in the West* (Verso 2021) 156–7.

<sup>39</sup>For the former quote, see M Rasmussen, 'Revolutionizing European Law: A history of the Van Gend en Loos Judgment' 12 (1) (2014) *International Journal of International Law* 136–63. For the latter quote, see Anderson (n 38) 56.

<sup>40</sup>Marx (n 7).

<sup>41</sup>See *Van Gend en Loos* (n 36).

<sup>42</sup>The first seminal case in this area is Case 8/74 *Procureur du Roi v Benoît and Gustave Dassonville* ECLI:EU:C:1974:82.

<sup>43</sup>C-438/05 *International Transport Workers' Federation and Finnish Seamen's Union v Viking Line ABP and OÜ Viking Line Eesti* ECLI:EU:C:2007:772. and C-341/05 *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet* ECLI:EU:C:2007:809.

<sup>44</sup>See Spaventa (n 13).

<sup>45</sup>See *Van Gend en Loos* (n 36) at 11.

<sup>46</sup>van der Pijl (n 6) 47.



social classes is one of gradual release whereby ‘[the] bourgeoisie [becomes] increasingly active in the global political economy on its own account, as part of an immanent world capital facing the working classes.’<sup>47</sup> As such, the state ceases to be the locus of class struggle which is instead transferred to the international terrain. Globalised power precipitates global forms of resistance.<sup>48</sup> The theoretical tools supporting similar approaches to class struggle vary from the already mentioned neo-Gramscian concepts of global hegemony, transnational class formation and global capitalist social relations<sup>49</sup> to the related concepts of multitude and empire.<sup>50</sup> An older version of these ideas is the concept of a world economy which includes the individual ‘national economic organisms’ into a structural whole – into an international division of labour within which the global proletariat is pitched against the world bourgeoisie.<sup>51</sup>

Because capital is internationalised, these approaches deserve attention, especially in as much as the European Union is a highly integrated market. The relevant question is whether internationalised capital precipitates or presupposes the existence of a transnational capitalist class or whether instead capital remains tied to a nation state despite its tendency to escape borders. In defence of the latter approach, a theory supporting the idea of overdetermination of individual national capitals by the national economic system of which they form part, focuses on Marx’s concepts of ‘total social capital’ (Gesamtkapital), free competition and class struggle.<sup>52</sup> In what follows, I will try to highlight the most central aspects of this approach.

### A. The making of the capitalist class

In *Grundrisse*, Marx describes free competition as a positive force. Competition is not solely a force that dissolved pre-capitalist modes of production;<sup>53</sup> it additionally triggers an active movement of individual capitals. Through that movement, capitals come together into a structural whole:

Free competition is the relation of capital to itself as another capital, ie the real conduct of capital as capital. The inner laws of capital . . . are for the first time posited as laws; production founded on capital for the first time posits itself in the forms adequate to it only in so far as and to the extent that free competition develops, for it is the free development of the mode of production founded on capital; the free development of its conditions and of itself as the process which constantly reproduces these conditions . . . The reciprocal compulsion which the capitals . . . practice upon one another, on labour etc . . . is the *free*, at the same time the *real*, development of wealth as capital.<sup>54</sup>

Here, free competition appears as a force which structurally ties individual capitals together transforming them into a single whole. This unity is expressed as a social relation characterised by the domination of capital over labour. Crucial in this process is the equalisation of the general rate of profit, a tendency resulting from free competition and permitting the consolidation of individual capitals into a single class. According to Marx, through the tendency towards equalisation, ‘capital becomes conscious of itself as a social power in which every capitalist

<sup>47</sup>*Ibid.*, 117.

<sup>48</sup>See, eg, Gill (n 6).

<sup>49</sup>See, eg, van Apeldoorn (n 6).

<sup>50</sup>See Cox (n 6) but also, among other seminal works, M Hardt and A Negri, *Empire* (Harvard University Press 2000).

<sup>51</sup>N Bukharin, *Imperialism and World Economy* (Monthly Review Press 1973) Chapter 1.

<sup>52</sup>Much of the following discussion draws on Giannis Milios’ and Dimitris Sotiropoulos’ work on imperialism and the state. Γιάννης Μηλιός και Δημήτρης Σωτηρόπουλος, *Ιμπεριαλισμός, Χρηματοπιστωτικές Αγορές, Κρίση* (Νήσος 2011) 200ff.

<sup>53</sup>K Marx, *Grundrisse* (Martin Nikolaus tr, 1st edn, Vintage Books 1973) 650.

<sup>54</sup>*Ibid.*

participates proportionately to his share in the total social capital.<sup>55</sup> Equally indicative of the ways in which the rate of profit constantly tends towards equalisation merging individual capitalists into a single class founded on the exploitation of labour is the following extract from the third volume of *Capital*:

[If a capitalist] produces more cheaply and can sell more goods, thus possessing himself of a greater place in the market by selling below the current market-price, or market-value, he will do so, and will thereby begin a movement which gradually compels the others to introduce the cheaper mode of production, and one which reduces the socially necessary labour to a new, and lower, level.<sup>56</sup>

In forcing individual capitals to enter into a relation of exploitation and domination over labour, free competition, and therefore the equalisation of the rate of profit, become structural principles determining the innate laws that control not only the movement of individual capitals, but more importantly for our purposes, their unification into total social capital.<sup>57</sup> As such, the collective capitalist is defined by a common interest, even if individual capitals are in competition with one another. This common interest emerges from the very terms of the class struggle.

The relevant question then becomes whether this is a process that necessitates a nation state or whether instead it can be replicated beyond the national level. The question is, in other words, whether something akin to an equalisation of the global rate of profit would allow an international class of capitalists to form against an international proletariat. A quick response could be that protectionist policies as well as the divergence between national currencies at international level reduce the likelihood of common international prices of production and therefore of an international rate of profit.<sup>58</sup> However, no such claim can credibly be made in relation to the internal market of the EU, and even more so in relation to the EMU, given that the former is a tariff-free area, and the latter has additionally adopted a common currency. An alternative way of exploring this would be to insist on the concept of capital. From the above discussion follows that individual capitals are conceivable only as parts of a wider structural whole – the total social capital. As already implied, the total social capital is not the aggregate of individual capitals; rather, like them, it can only be conceived as a relation: ‘the circuits of the individual capitals intertwine, presuppose and necessitate one another, and form, precisely in this interlacing, the movement of the total social capital.’<sup>59</sup>

A consequence of being part of the movement of the total social capital is that individual capitals necessarily bear the stamp of the class struggle as this has historically unfolded in the specific social formation in which they find themselves.<sup>60</sup> In other words, seen as relations, individual capitals carry the historical imprint of national conditions; they have been shaped by national circumstances as these have historically unfolded through social conflicts. This is so because it is the class struggle that determines how the aggregate of the relations of production will develop in a particular social formation – their exact tendencies, and whims. To give one example from a place and a time of intense proletarian militancy, the relations of production in the FIAT factory in Turin during the 1960s and 1970s cannot be severed from the condition of the Italian working class and the terms of the national class struggle of the time: there was, at the time, a cultural chasm on the shopfloor between new Italian workers from the south and ‘their older workmates’ alongside a ‘coherence that the transmission and filtering of memory between

<sup>55</sup>K Marx and F Engels, *Capital Vol 3, Marx and Engels Collected Works Vol 37* (Lawrence & Wishart 2010) 194.

<sup>56</sup>*Ibid.*, 193.

<sup>57</sup>Milios and Sotiropoulos (n 52) 210.

<sup>58</sup>*Ibid.*, 283–4.

<sup>59</sup>K Marx and F Engels, *Capital Vol 2, Marx and Engels Collected Works Vol 36*, (Lawrence & Wishart 2010) 351.

<sup>60</sup>Milios and Sotiropoulos (n 52) 210.

successive generations of workers lent to the immediate experience of production.<sup>61</sup> Separating the Turin FIAT factory from the above context and viewing it instead as an autonomous individual capital with a tendency to escape the Italian border would only offer a distorted, or at best incomplete, image of the reality of production.

The following section will elaborate on why individual capitals cannot be seen as autonomised entities with a tendency to geographically expand beyond the political span of a state, unless the concept of the total social capital is rejected.<sup>62</sup> Some advocates of this tendency maintain that a possible remedy to capital's expansion – an expansion which results in an incongruence between the economy, ie internationalised capital, and politics, ie the definite territory of national markets – is regional integration of the type present in the EU.<sup>63</sup> In particular, regional integration is presented as 'the internationalisation of state functions' able to counteract the territorial mismatch between capital and the state.<sup>64</sup> Such an approach to individual capitals would imply a rejection not just of the total social capital but, more broadly, of the nature of capital as a social relation. This is so because only by understanding capital as a social relation and as part of the movement of total social capital, is there sufficient weight given to the fact that capital must be reproduced and that its reproduction is made possible only under certain conditions. What secures these conditions is the mechanism of the state.

### **B. The state and the capitalist class**

It is not possible to discuss the state at full length here, but there follows a summary of a few central aspects. The state is crucial to the organisation, development and reproduction of the relations that comprise capitalist societies. Capitalist domination over the working class is not merely economic, but rather also political and ideological. The state condenses capitalist domination thus understood.<sup>65</sup> It does so by representing and establishing capitalist interest as the common interest.<sup>66</sup> Of critical importance in this context is the political and ideological role of nationalism which makes universal the interests of the capitalist class.<sup>67</sup> According to this reading, total social capital is always national in the sense that the long term capitalist interests are guaranteed when articulated as national interests. It is also self-explanatory that the notion of national interest either conceals or relativises class domination allowing collective capitalist interests to reign supreme.<sup>68</sup>

In this way, the state is also necessary for ensuring the political unity of the capitalist class – the transformation of their interests into a collective capitalist interest. As already remarked, social relations within a state bear the stamp of class struggle which has determined the balance of powers within the relevant social formation. Individual capitals are subsumed within the social relations that class struggle has historically built up to. Decisions and movements of individual capitalists are never truly autonomous but rather always connected to the specific characteristics of the national total social capital that they belong to.<sup>69</sup> If this reading of the state and of individual capitals is correct, then the formation of a transnational capitalist class, whether regional or international, is ruled out: individual capitals, despite likely inter-capitalist conflict, cannot

<sup>61</sup>S Wright, *Storming Heaven: Class Composition and Struggle in Italian Autonomist Marxism* (2nd edn, Pluto Press 2017) 72.

<sup>62</sup>Milios and Sotiropoulos (n 52) 348.

<sup>63</sup>A Statz, 'Die Entwicklung der Westeuropäischen Integration – Win Problemaufriß' in F Deppe, J Hufschmid und K-P Weiner (eds), *Projekt Europa. Politik und Ökonomie in der Europäischen Gemeinschaft* (Pahl-Rugenstein 1992) 13–38, 16.

<sup>64</sup>*Ibid.*

<sup>65</sup>Milios and Sotiropoulos (n 52) 182.

<sup>66</sup>See, among others, N Sultany, 'Marx and Critical Constitutional Theory' in P O'Connel and U Özsu (eds), *Research Handbook in Law and Marxism* (Edward Elgar 2021) 209–41.

<sup>67</sup>Milios and Sotiropoulos (n 52) 186.

<sup>68</sup>*Ibid.*, 187.

<sup>69</sup>*Ibid.*, 210.

separate themselves from total social capital, the unity of which is guaranteed by the state. The question that remains unanswered is what happens to individual capitals that migrate. More specifically, would individual capitals that travel between EU Member States be sufficient to generate a collective European capitalist?

According to Leo Panitch, a 'fruitful point of departure' in answering this question could be the work of Poulantzas who in his discussion of 'internationalisation and the nation state . . . insisted that it was wrong to think of globalization as an abstract economic process in which social formations and states are seen "merely as a concretization and spatialization of the moments of this process."' <sup>70</sup> Poulantzas here is in line with the approach adopted so far, which sees states as more than mere 'moments' of global economy. However, Poulantzas's reading, Panitch continues, allows him to see:

- (i) that when multinational capital penetrates a host social formation, it arrives not merely as abstract 'direct foreign investment', but as a transformative social force within the country;
- (ii) that the interaction of foreign capital with domestic capital leads to the dissolution of the national bourgeoisie as a coherent concentration of class interests . . . <sup>71</sup>

This is indeed a good point of departure in the quest of the fate of migrating capitals. It is clear in the first part of the above extract, that for Poulantzas, capital is not introduced into the host state as, say, an imported commodity, but rather as a social relation. In the second part of the above quote though, the hypothesis appears to be that the foreign capital entering a host state maintains a relation of mere interaction rather than full integration within the relevant social formation. The relation of externality between migrating individual capital and host state that is implied in the above scheme would have as a consequence that the foreign capital would remain antagonistic to domestic capitals and resistant to absorption by the total social capital. It would in other words remain over and above the host state's class struggle.

For example, when a parent company owns a subsidiary abroad, how much genuine ability does it have to decide on the terms and conditions of production of that subsidiary? And is this a matter of a hierarchically superior capitalist who decides on how individual capitals will behave abroad? <sup>72</sup> Or is it circumstances such as the host state's rate of profit, its conditions of class struggle and balance of powers and concomitant strength of employment and labour rights that will determine how the incoming individual capital will behave in the host state? *Laval* is a case, which together with *Viking*, is broadly used in EU literature to denote the EU's and ECJ's hostile stance towards collective labour rights. <sup>73</sup> It is, however, also a good example of how there is an innate tendency of foreign capital to be integrated into the host state and subsumed into the host state's conditions of class struggle.

Briefly on the facts, Latvian company Laval posted Latvian workers to its Swedish subsidiary company, Baltic Bygg, to rebuild a school close to Stockholm. The Swedish construction trade union started negotiations with Laval pushing it to employ the Latvian workers under a collective agreement with terms equivalent to those in force for Swedish workers. When negotiations failed, Laval signed a collective agreement with the Latvian construction union instead. According to that agreement, the workers would be paid significantly less. The Swedish trade union then proceeded to a blockade of a Laval's construction site complaining that no Latvian collective agreement could apply in Swedish territory. Secondary industrial action was also employed in support. As a result of these developments, Laval took the trade unions before the Swedish courts. Upon request for a

<sup>70</sup>L Panitch, 'The New Imperial State' 2 (2000) *New Left Review* 5–20, 5.

<sup>71</sup>*Ibid.*

<sup>72</sup>See Milios and Sotiropoulos (n 52) 352–3.

<sup>73</sup>For a comprehensive literature review, see M Freedland and J Prassl (eds), *Viking, Laval and Beyond* (Hart Publishing 2016).

preliminary ruling by the ECJ, the latter notoriously found that the action of the Swedish trade union disproportionately restricted Laval's freedom of services and was therefore in breach of EU law.

At first sight, the background of Laval gives a mixed message. On the one hand, it shows that there is a reflex tendency of foreign capital to be absorbed in the class struggle and the various forms that it may take in the host member state. On the other hand, it shows that foreign capital may retain a type of proof of origin by remaining immune against class conflict, industrial action, local collective agreements and so forth – even if this immunity is artificially imposed by the ECJ rather than being the result of an individual capital's innate protective shield against foreign class struggle.<sup>74</sup> If the latter were the case, then there may indeed be a relationship of externality between capital and the state which would potentially allow us to speak of a pan-European, even global, economic structure and, therefore, of a European bourgeoisie. However, it has been correctly remarked that the decision in Laval is the result of a striking 'contrast between the internationalisation of capital and the strict maintenance of labour frameworks within national boundaries.'<sup>75</sup> In other words, the ECJ's response to the dispute can be seen as an institutional 'counter-reaction' to the encounter of individual foreign capital with the class struggle of the host state.<sup>76</sup>

The developments that followed Laval in Sweden prove that this encounter cannot be indefinitely blocked, and that foreign capital always becomes integrated into the host member state in one way or the other: 'capital may not have a homeland but it always acquires one.'<sup>77</sup> Indeed, shortly after the ECJ rendered its judgment, the Swedish government amended its laws on posted workers to officially restrict domestic trade unions from taking industrial action against companies that refused to subject posted workers to the national collective agreements.<sup>78</sup> The amendment, known as Lex Laval, was strongly opposed by Swedish workers until 2017 when a change of government brought its repeal.<sup>79</sup> In its current version, the law subjects foreign companies which use posted workers to the rules of collective agreements concluded domestically. In both cases, it is the domestic law, itself a product of domestic class struggle, that determines how the incoming foreign capital will be treated. What is worth noting here is, in other words, that foreign capitals would have been integrated into the domestic terms of the class struggle even if Lex Laval had not been repealed. The difference in this last case would have been that the internal balance of powers would have been tilting in favour of employers, something that would have equally been a result of domestic class struggle.

Next to the integrationist tendencies of international capital into the state in which it is introduced and the subsumption of individual capitals into the national total social capital, the above discussion has implied another relationship between the EU and its Member States. The aftermath of Laval projects an image of Europe as an entity which, while thin in terms of political and social integration, maintains significant capacity to influence the political and social situation

<sup>74</sup>Relevant here is the Bolkestein Directive, which in the Commission's initial proposal included a country of origin provision, according to which foreign companies would be free to keep complying with the laws of the home Member State ignoring the labour standards of the host Member State. The provision was opposed by the Parliament and other actors and finally took the form of 'freedom to provide services' in art 1(6) of the Directive, which does not include a country of origin principle as such but still allows the ECJ a lot of interpretative leeway. See Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376/36.

<sup>75</sup>E Pataut, 'The Aftermath of the Laval Affair: The Swedish Lex Laval Before the European Committee of Social Rights' in HM Watt et al (eds), *Global Private International Law: Adjudication Without Frontiers* (Edward Elgar Publishing 2018) 484–92, 484.

<sup>76</sup>*Ibid.*

<sup>77</sup>Milios and Sotiropoulos (n 52) 335.

<sup>78</sup>See for a background to the national law, N Bruun and J Malmberg, 'Lex Laval: Collective Actions and Posted Work in Sweden' in R Blainpain and F Heindrickx (eds), *Labour Law Between Change and Tradition* (Kluwer Law International 2011) 21–34.

<sup>79</sup>Also opposed by the ILO. See for a background to the repeal, E Sjödin, 'The Latest Revision of Lex Laval in Sweden' 24 (4) (2018) *International Union Rights* 21–8.

of its Member States from within – whether in the form of assimilation of the EU’s strategic plan into domestic systems or, more rarely, in the form of resistance to EU policies. This resonates with Poulantzas’s reading of the internationalisation of capitalist relations in the 1970s where he argued that the transformation of the national state corresponded to a change in the inside/outside dialectic. With a tweak of his argument, we could argue that Europeanisation ‘is not a process influencing the state from the outside but a development internal to it.’<sup>80</sup> This finding about the nature of the EU project is largely ignored by liberal accounts, which often describe the relationship between Member States, citizens, and the EU as relations between external, autonomous actors. The article now turns to these accounts.

## 5. EU, class struggle, liberalism

Having found that Union structures significantly impede the formation of pan-European classes with a consciousness strong enough to meet the demands of a European-level class struggle, we are now in a position to offer some answers to the questions posed at the beginning of the discussion. First, while acknowledging that class struggle can simultaneously diffuse through numerous sites, it seems to remain a relation predominantly anchored in the national level. In other words, class struggle appears to insinuate itself in Union politics through the filter of Member States. At the same time, the terms of the national consensus and power equilibrium in Member States is partly shaped by the intervention of the EU project into the domestic class struggle. This intervention is not external but rather penetrates the national class struggle altering its terms from within. Within this context, the implementation of EU policies in Member States is also determined by the national class struggle, as demonstrated by the aftermath of Laval. Second, there appears to be no mechanism in place that would allow the development of class consciousness through collective struggle. Not only is the Union structurally hostile to collective forms of action; the absence of a European capitalist impedes the formation of a European working class. What is more, the uneven development and budgets of Member States do not permit an extension of competences to areas that would be conducive to the generation of common interests and common struggles, both of which constitute conditions for the making of class and of common consciousness among capitalists and workers in the EU.

These findings are important because they offer a reading of the nature and prospects of the EU which stands in stark opposition to dominant liberal interpretations of the European project and EU law. There is, in particular, a widespread interpretation of the Union according to which the law of the internal market is ‘cosmopolitan law in Kant’s sense because it creates rights and duties that bear on the relation between each member state citizen on the one hand and each member state on the other.’<sup>81</sup> In this way, the argument continues, the participating states advance peace.<sup>82</sup> This prevalent understanding of the Union professes a narrative opposite to the one supported so far. Where Marxism sees history as contingent on power relations between collective subjects, the liberal interpretation sees relations between each citizen and each Member State. Where a historical materialist reading tries to decipher the movement of internationalised capital, liberalism sees relationships as the outcome of the creation of rights and duties by cosmopolitan law. Where a Marxist reading sees the EU as a capitalist project penetrating national relations of power and altering them from within, cosmopolitanism sees an external intervention altering relations between individuals and individuals and states. Finally, where the Marxist sees a

<sup>80</sup>J. Wissel, ‘The Transnationalization of the Bourgeoisie and the New Networks of Power’ in Gallas et al (n 14) 216–30, 216.

<sup>81</sup>B. Wolthuis and L. Corrias, ‘Europe’s Cosmopolitan Union: A Kantian Reading of EU Internal Market Law and the Refugee Crisis’ in E. Herlin-Karnell and E. Rossi (eds), *The Public Uses of Coercion and Force* (Oxford university Press 2021) 204–25, 205.

<sup>82</sup>*Ibid.*



ubiquitous struggle between opposite societal forces, the cosmopolitan sees the EU as an example of perpetual peace.

Given the gulf that separates the above two understandings of the EU project, EU subjects and EU law, the cosmopolitan interpretation warrants some more examination. The remainder of this article elaborates on the cosmopolitan view placing it in a wider framework of liberal thought and argues that its explanatory power is found lacking when tested against the Marxist analysis of national and regional class struggle.

### A. Europe is not an example of cosmopolitan law

The analytical toolbox of liberal thought focuses on the principles of individualism, universalism and liberty, free trade and rationality. Contrary to the historical materialist understanding of individuals as actors determined by their social existence, the liberal individual is a rational self-interested actor.<sup>83</sup> Unlike the Marxist understanding of historical development as the outcome of a struggle between collective forces, for liberalism it is the individual that provides the starting point of any analysis. Thus, according to the liberal reading, (world) politics is fundamentally driven by rational 'individuals and privately constituted groups with autonomous preferences.'<sup>84</sup> Individuals are invested with liberty, an innate universal value, that allows them to act freely and to uninhibitedly pursue their motives and intentions in the market. The autonomous individual thus occupies a central place in liberalism's understanding of the world.

Liberalism, like all political theories, has many strands. As noted above, among these strands, cosmopolitanism often claims to be 'an appropriate tool for understanding the European Union.'<sup>85</sup> Therefore, while cosmopolitanism is itself a multifaceted theory with many variants, it seems appropriate to discuss its main tenets, at least regarding its EU-related claims. EU cosmopolitanism sees the Union's process and method of integration as an example of the Kantian ideal of perpetual peace.<sup>86</sup> Despite the many nuances of relevant accounts, there appears to be a commonly agreed claim that Kant's cosmopolitan law finds practical application in the EU. In this, this specific strand of cosmopolitan thinking also defies the generally normative aspirations of cosmopolitanism and takes a more descriptive turn. Kant's idea of a cosmopolitan law envisages a world in which states and individuals would be legally obligated to guarantee that everyone is treated with hospitality on foreign territory irrespective of their nationality.<sup>87</sup> Cosmopolitan law exists 'in so far as individuals and states, coexisting in an *external relationship of mutual influences*, may be regarded as citizens of a universal state of mankind (*ius cosmopoliticum*).'<sup>88</sup> Thus, Kantian cosmopolitan right is meant 'to include all members of the earth *as if they were* universal citizens.'<sup>89</sup>

Many of the liberal principles discussed above, such as universalism and individualism, come into play in this Kantian portrayal of cosmopolitan law 'as a juridical framework for the intercourse of men and states, considered in their status as bearers of the attributes of citizenship in an ideal universal state that [extends] to embrace all mankind.'<sup>90</sup> As already remarked,

<sup>83</sup>For a discussion of some of these themes, see A Somek, 'Cosmopolitan Constitutionalism: The Case of the European Convention' 9 (3) (2020) *Global Constitutionalism* 467–89, 472ff.

<sup>84</sup>A Moravcsik, *Liberalism and International Relations Theory*, Center for International Affairs (Harvard University 1992), Paper No 92-6. <[https://www.princeton.edu/~amoravcs/library/liberalism\\_working.pdf](https://www.princeton.edu/~amoravcs/library/liberalism_working.pdf)> accessed 14 February 2025.

<sup>85</sup>P Eleftheriadis, 'The European Constitution and Cosmopolitan Ideals' 12 (1) (2001) *King's Law Journal* 17–38.

<sup>86</sup>*Ibid.*; Wolhuis and Corrias (n 81). See also among others, J Habermas, *The Divided West* (Polity Press 2006); D Ion, *Kant and International Relations Theory* (Routledge 2012) 150.

<sup>87</sup>I Kant, 'Perpetual Peace' [1795] in H Reiss (ed), *Kant's Political Writings* (Cambridge University Press 1970) 105.

<sup>88</sup>I Kant, 'Theory and Practice' [1793] in Reiss (n 87) 98.

<sup>89</sup>G Wallace Brown, 'The European Union and Kant's Idea of Cosmopolitan Right: Why the EU is not Cosmopolitan' 20 (3) (2014) *European Journal of International Relations* 671–93, 683.

<sup>90</sup>C Covell, *Kant and the Law of Peace: A Study in the Philosophy of International Law and International Relations* (Palgrave 1998) 141; See also D Archibugi, 'Immanuel Kant, Cosmopolitan Law and Peace' 1 (4) (1995) *European Journal of International Relations* 429–56.

according to the proponents of EU cosmopolitanism, the above Kantian ideal provides an appropriate description of the EU project and EU law. Nuances include the recognition that the EU is not a universal state, but rather composed of states, or to the fact that some parts of EU law, notably the internal market, satisfy the Kantian ideal while others, such as the EMU, do not.<sup>91</sup> There is, however, a prevalent and common claim that Kant's universal hospitality, namely one's right to be received peacefully by another state, is the principle that best describes the EU.

In its most common understanding, universal hospitality refers to relations between individuals and states in the internal market. It is based on the right of European citizens to 'work, trade and move freely' in host Member States.<sup>92</sup> As such, for the cosmopolitan, the core idea upon which the essence of the EU project and EU law is based is the citizen of an EU member state and her right to 'freely bring goods, services and capital', as well as to 'travel, work, study, and retire' in a foreign member state.<sup>93</sup> Here EU citizenship is seen as a universal condition – albeit limited territorially within the EU – which comes into existence by virtue of one's participation in the internal market and which contributes to the advancement of peace. Despite the claims of cosmopolitan theory to be best suited to *empirically* describe the European project in the above way, there is an abundance of empirical phenomena that the idea of peace advancement through universal hospitality fails to explain. Cosmopolitan theorists are careful not to extend the argument on peace advancement beyond the borders of the Union. They are careful, for example, to exclude immigration law, and as already argued sometimes even the EMU, from the framework of the analysis of universal hospitality and cosmopolitan law. However, their claim to be well equipped to describe the EU project does not withstand scrutiny even when limited to the internal market. Before elaborating on this point, it is worth adding a note on the underlying premises of liberal thought.

The incongruence between what cosmopolitan law describes as universal hospitality, and the reality of the Union's internal market is the result of at least two interconnected tendencies of the liberal cosmopolitan method. First, the severance of the internal market from the rest of the European project and its underlying causes and roots, presents the internal market as a timeless suprahistorical phenomenon that exists in a vacuum.<sup>94</sup> Connected to this acontextual treatment which is oblivious to the power dynamics of capitalism in the Union and its internal market, there is, secondly, the focus on the rational autonomous EU individual and the treatment of EU citizens as a single undifferentiated unit. The treatment of the Union and the internal market in terms of the Kantian 'Verkehr', which focuses on interactions between persons floating uninhibitedly and spontaneously around the internal market, removes from the analysis a whole set of questions. These include the material conditions of these persons, the relationships between them, the loci in which these relationships materialise, and the power dynamics between them, their states, and the Union. As a result, the belief that the reciprocal granting of rights in the internal market is the EU's innovative cosmopolitan way to eternal peace is not inaccurate by mere accident but rather because it largely rests on a transhistorical understanding and an acontextual evaluation of the EU and its subjects.

Critical assessments of cosmopolitan thinking of either this descriptive type or of a more normative variety do not always go all the way in dealing with the above shortcomings. For example, the post-financial crisis Habermasian approach extended his view of the EU as a locus of 'sharing of constituting power between EU citizens and European peoples' to the global level for

<sup>91</sup>See, eg, Wolthuys and Corrias (n 81) 212.

<sup>92</sup>Eleftheriadis (n 85).

<sup>93</sup>Wolthuys and Corrias (n 81) 205.

<sup>94</sup>For example, it is indicative that part of the cosmopolitan theorisation of the internal market refers to the clear demarcation of powers between the EU institutions but overlooks the fact that it is the very same institutions that have been discredited and delegitimised in the eyes of the European public in the context of the Eurozone crisis. See, eg, C Offe, *Europe Entrapped* (Cambridge University Press 2015) 77.

which Habermas championed a ‘world society’.<sup>95</sup> This has been endorsed by cosmopolitan constitutional scholarship, which, to reconcile the national with the international, has advocated constitutional adherence to rationality, legality, and subsidiarity all the while focusing on the free and equal individual as the main legitimating factor of this constellation.<sup>96</sup> Critical commentary on these approaches tends to focus on the depoliticised cosmopolitan subject evoked by these theories, the disaggregation or entire dissolution of the ‘collective entity of the people’ or on the fact that cosmopolitanism is structurally entangled in the neoliberal design of the institutions of ‘the world economic order’.<sup>97</sup> While undeniably these criticisms have merit, they appear to reproduce two false premises. The first one is that ‘the people’ is a collective entity waiting to transpire the moment it is located in a domestic framework. Depoliticisation is seen here primarily as a matter of locus rather than as contingent on the one element that is at the heart of democracy, namely conflict. Indeed, the state is more conducive to social and political conflict, but this is so mainly because it is the space where class struggle materialises. The second premise is that cosmopolitanism is flawed, or even non-egalitarian, not because it methodologically rests on the free and equal individual, but rather because the institutions it aspires to democratise are by design neoliberal. This argument does not consider that the state too is, structurally speaking, a machine of capitalist reproduction. Or, to put it differently, would European accounts of cosmopolitanism be less guilty of misconstruing reality or of furthering non-egalitarian purposes if the European Commission or the ECJ were less neoliberal by design? If the answer to this question is negative, and this analysis argues that it is, then the problem with cosmopolitanism is deeper.

To overcome these weaknesses, we need to return to the dialectical method. This means we need to see the European Union, and by extension the internal market, as part of a complex totality, overdetermined by the economic relation, and rife with contradictions, amongst which the dominant one is that between labour and capital. This theoretical background in combination with the discussion of the difficulties inherent in the creation of pan-European classes and class consciousness opens up the way to a number of conclusions which are radically different to cosmopolitan law’s eternal peace, and which seem to be in a better place to describe the European reality. It further enables a reassessment of the cosmopolitan project that reaches beyond the neoliberal charge or unitary understandings of the people. First, what is described as a universal civil condition of the European citizen produced by universal hospitality is hardly verifiable in empirical terms. Notably, to describe the EU as a project advancing peace due, *inter alia*, to the universal civil condition of its citizens<sup>98</sup> is perhaps at odds with the reality of an EU divided along national lines at the level of states<sup>99</sup> and besetting more than one in five of its citizens with the risk

<sup>95</sup>For the first quote see J Habermas, *The Crisis of the European Union: A Response* (Oxford University Press 2012) 28–37. For the second quote, see J Habermas, ‘The Constitutionalization of International Law and the Legitimation Problems of a Constitution for World Society’ 15 (4) (2008) *Constellations* 444–55, 444–5.

<sup>96</sup>M Kumm, ‘The Cosmopolitan Turn in Constitutionalism: On the Relationship Between Constitutionalism in and Beyond the State’ in J Dunoff and J Trachtman (eds), *Ruling the World? International Law, Global Governance, Constitutionalism* (Cambridge University Press 2009) 258–326, 322–3.

<sup>97</sup>M Loughlin, *Against Constitutionalism* (Harvard University Press 2022) 189, 190, 186 respectively for the three quotes. Here Loughlin endorses much of Alexander Somek’s criticism in his *The Cosmopolitan Constitution* (Oxford University Press 2014). The focus on neoliberalism’s global reach which insulates transnational institutions and markets from the state’s democratic control is also a central theme in Q Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Harvard University Press 2018). Neoliberalism, being a form that capitalism takes, is not a central concern of my discussion which is focused more on permanent structures of capitalism and capitalist reproduction.

<sup>98</sup>*Ibid*; See also, among others, E Eriksen, ‘Regional Cosmopolitanism: The EU in Search of Its Legitimation’ 51 (2) (2014) *European Journal of Future Research* 1–9.

<sup>99</sup>See, eg, for statements of Josep Borrell (High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the European Commission) speaking of external affairs: EEAS, ‘When Member States Are Divided, How Do We Ensure Europe Is Able to Act?’ (EEAS 2020) <[https://www.eeas.europa.eu/eeas/when-member-states-are-divided-how-do-we-ensure-europe-able-act-0\\_en](https://www.eeas.europa.eu/eeas/when-member-states-are-divided-how-do-we-ensure-europe-able-act-0_en)> accessed 14 February 2025; For similar divisions over internal market

of poverty and social exclusion.<sup>100</sup> The cosmopolitan focus on European citizens tout court cannot sufficiently account for why not all EU citizens benefit from the purported universal hospitality of the European (internal market) project or why, instead of the universal civil condition of the cosmopolitan European citizen, we are confronted with increased discrimination in the internal (labour) market,<sup>101</sup> and intensified nationalist tendencies among the citizens of Member States.<sup>102</sup>

The substantial literature produced by the *Viking*- and *Laval*-style clash between labour rights on the one hand and freedom of services and establishment on the other testifies to the unevenness of benefits that the internal market offers to EU citizens depending on their place in the production process.<sup>103</sup> Indeed, it is difficult to see the universality of European hospitality when, according to internal market law, market freedoms override all other interests and become the yardstick against which workers' interests are measured. Similarly, it is, for example, difficult to see the universality of European hospitality when the employer's freedom of establishment is considered *prima facie* breached by a member state's protective legislation against collective redundancies of workers.<sup>104</sup> The same can be argued in relation to more aggressive cases of social exclusion of EU citizens depending on their economic, or otherwise, activity. Indeed, the social exclusion faced by economically inactive citizens or jobseekers in the EU has been confirmed and reinforced by the Court since the previous decade.<sup>105</sup> In conclusion of this first point, the EU is habitually hospitable to capitalist interests while being hostile to the unemployed, to economically inactive jobseekers, to workers collectively dismissed, or to workers undertaking collective action. There is nothing universal in this treatment. However, any analysis oblivious to the idea of class, including any anti-cosmopolitan analysis which unqualifiedly relies on the idea of 'the people', is structurally incapable of making sense of this reality.

This leads to the second point, which evokes in more explicit terms the earlier discussion of pan-European classes. The argument here is that the cosmopolitan EU citizen is not merely an empirically unverifiable logical fallacy in direct opposition to the actual functioning of the internal market; it is also a category ignorant both of the trajectory of individual capitals and of the thin prospects of pan-European working-class formation. Cosmopolitan theory overlooks the fact that workers and capitalists both anchor themselves to the national territory – an anchoring which moreover results, at least in part, from the EU's legal and institutional arrangements and division of competences. The cosmopolitan emphasis on autonomous individuals disregards the limits placed by EU law and its institutions on the prospects for development of an EU working class with a common European consciousness.<sup>106</sup> In a similar vein, cosmopolitanism, by approaching the capitalist as a rational autonomous actor, fails to grasp capital and its movement as a social relation. Here, cosmopolitan theory remains impervious to the unevenness of interests of European capitalists, who like workers are treated as self-interested universal subjects removed

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issues, see, eg Parlement, 'Brussel Richting Conflict' (2007) <[https://www.parlement.com/id/vhkdxwyddz8/nieuws/brussel\\_richting\\_conflict\\_over\\_eu\\_breed](https://www.parlement.com/id/vhkdxwyddz8/nieuws/brussel_richting_conflict_over_eu_breed)> accessed 14 February 2025.

<sup>100</sup>For the most recent Eurostat statistics at the time of writing this article, see Eurostat, 'Living Conditions in Europe – Poverty and Social Exclusion' (June 2023) <[https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Living\\_conditions\\_in\\_Europe\\_-\\_poverty\\_and\\_social\\_exclusion#:~:text=Highlights&text=In%202022%2C%2095.3%20million%20people%2C%2025%20of%20the%20EU%20population.&text=The%20risk%20of%20poverty%20or,%25%20compared%20with%2020.4%20%25](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Living_conditions_in_Europe_-_poverty_and_social_exclusion#:~:text=Highlights&text=In%202022%2C%2095.3%20million%20people%2C%2025%20of%20the%20EU%20population.&text=The%20risk%20of%20poverty%20or,%25%20compared%20with%2020.4%20%25)> accessed 14 February 2025.

<sup>101</sup>See, eg, M van Ostaïjen, U Reeger and K Zelano, 'The Commodification of Mobile Workers in Europe: A Comparative Perspective on Capital and Labour in Austria, the Netherlands and Sweden' 5 (6) (2017) *Comparative Migration Studies* 1–22.

<sup>102</sup>See, eg, B Wellings, 'Nationalism and European Disintegration' (2022) *Nations and Nationalism* 1–15.

<sup>103</sup>See Freedland and Prassl (n 73).

<sup>104</sup>C-201/15 *AGET Iraklis v Ypourgos Ergasias, Koinonikis Asfalis kai Koinonikis Allileggyis* ECLI:EU:C:2016:972.

<sup>105</sup>For a discussion and further literature, see Leonie Balze, 'The CJEU's Decisions Dano and Alimanovic – A Missed Opportunity to Re-embed European Integration?' TLI Think! Paper 77/2017 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3039701#](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3039701#)> accessed 14 February 2025.

<sup>106</sup>For a similar argument see C Zhang and N Lillie, 'Industrial Citizenship, Cosmopolitanism and European Integration' 18 (1) (2015) *European Journal of Social Theory* 93–111.

from any context, be it economic or national. As a result, the cosmopolitan outlook fails to see that the lack of pan-European classes combined with the increasing exclusionary effects of European integration leads the EU to a direction precisely opposite to cosmopolitanism's proclaimed universal condition. That is, the increase of nationalism and the deepening of economic cleavages in the Union – developments that are at least in part results of the EU's very own internal market policies.<sup>107</sup>

Finally, the above misconceptions are underlined by a more fundamental misreading of relations between the EU, its Member States, and its subjects as external relationships of mutual influences. The emphasis on externality of relationships between autonomous actors in the EU oversimplifies a social, political, and juridical terrain comprised of multiple, simultaneous, and uneven interpenetrating struggles and interactions between collective forces. The EU project has historically evolved through various socio-economic and juridico-political developments that cannot be accounted for adequately through the cosmopolitan reading. For example, in the 1980s the Single European Act reflected a transformation of the European project in line with the neoliberal experiment that was taking place (unevenly) in Member States, and which largely came as a response to the robustness of collective labour action of previous decades.<sup>108</sup> Here, the outcome of national class struggles, and the defeat of workers insinuated itself into the European Community project. In turn, the trajectory which the European Community was taking did not leave Member States unaffected. Rather, the Community re-intervened inside them to alter the domestic consensus, all the while blocking the formation of European collective subjects. Depending on each state's domestic condition, and domestic class struggle, this intervention took and is taking different forms.

This is what it means to see Europeanisation as a development *internal* to the state. Cosmopolitan theory's account of the European project in terms of external linear relations of universal hospitality is indifferent to these developments and this is why it is inconsistent with reality. The idea of universal hospitality cannot, for example, explain the contemporaneity of the deepening of both European integration and nationalism. This is so, because it misapprehends the terms of the intervention of one level into the other against a broader background of absence of European-wide subjects. According to the preceding account, that intervention is seen as rooted in domestic collective struggles that penetrate the EU, which then re-intervenes afresh into the domestic struggle of Member States. If this reading is correct, then liberal cosmopolitan thought has misconceived both the nature of the subjects operating in the Union and the nature of the processes of integration.

## 6. Conclusion

This article adopted a Marxist approach to the EU to show that the EU project develops in tandem with sharp divisions along class and national lines in the Member States. Rather than embodying a cosmopolitan law of universal hospitality, the law of the internal market is largely responsible for the confinement of struggles within national boundaries on the one hand and social hostility and social exclusion on the other. Three connected claims were made in this context. First, the idea of universal hospitality projects an image of the Union that is incompatible with empirically verifiable phenomena, including ethnocentrism, nationalism, and the exclusion of many EU citizens from the benefits of the internal market. Second, part of the reason for this misrepresentation of reality rests on the methodological focus of cosmopolitanism on autonomous individuals and processes removed from their historical and social contexts. By contrast, the dialectical method sees the EU as part of a historical process of capital accumulation situating it in a wider totality of overlapping causes, effects, and multidirectional contradictions.

<sup>107</sup>For a similar argument, see Wellings (n 102).

<sup>108</sup>See, eg. Anderson (n 38) 88–9.

Attention to contradictions elevates the class struggle to one of the decisive forces in history. Emphasis on class has allowed the discussion to paint a picture of the EU as an entity divided into classes rather than composed of autonomous individuals. More specifically, the long preceding discussion of the conditions necessary for the emergence of European-wide class struggle and class consciousness has shown that collective subjects in the Union are still firmly embedded in their national contexts. This class-divided rather than universal European society together with the ethnocentric rather than cosmopolitan European subject is largely a result of the EU's own legal and institutional structures. Finally, the focus away from the ubiquity of social conflict as a motor of historical development limits cosmopolitanism to a simplistic understanding of relations between the EU, its states, and its citizens as linear relations of externality. Cosmopolitan theory cannot grasp the possibility of multiple, uneven, and interpenetrating struggles as forces that have historically shaped, and continue to shape, the Union. For this reason, cosmopolitan theory cannot offer viable solutions to the problems confronting the EU and its people. By contrast, a Marxist approach sees how, for example, the European project is subject to the outcome of the struggle of domestic workers against domestic capital precisely because it intervenes into domestic class struggle to help embed the neoliberal consensus. As such, the intensification of class struggle in Member States can mean resistance to the oppressive elements of the EU project, which does not have to translate into exit. While different Marxist approaches may have nuances, their focus on the historical materialist method contributes novel and necessary perspectives to the study of EU law. This is what this contribution also tried to do – to describe what it considers a largely neglected reality and start a conversation about how that reality should change.

**Acknowledgements.** I would like to thank all the contributors to this symposium, Dimitris Kivotidis, Rob Knox, Eva Nanopoulos, and Andy Woodhouse, as well as Bill Bowring for their comments and suggestions.

**Competing interests.** The author has no conflicts of interest to declare.