

Liberté, Égalité and such matters

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

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

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

We disagree. Our argument has two parts, one on freedom and one on equality. In each we discuss what it means when states guarantee their subjects freedom and equality. In summary, our claim is that in this society indeed particular forms of freedom and equality are realised, which cannot be brushed aside. Instead, these are the forms in which (economic) exploitation and (political) domination happen. The critique of domination and exploitation must hence take on this freedom and equality.

Yet, before we get started a short word of caution on inversion of arguments. Analysing how well the guarantee of freedom works for domination does not imply partisanship for domination. Highlighting indifference towards material dependencies as an obstacle to satisfaction of needs and wants does not imply subordination of needs and wants to some central committee. Critiquing the justifications by bourgeois democrats for suppressing Stalinists and Fascists does not imply

partisanship for the latter two – our enmity to Stalinism and Fascism simply does not make us followers of bourgeois-democratic coping mechanisms.

1 – Freedom

Private property: a realm of freedom

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

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

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

A central realm of freedom exists in a sphere where people *necessarily* interact: the economy. People get to deal with their private property – the stuff they own – in the way they see fit. In fact, this is precisely what private property means: the exclusive right of disposal over stuff. It defines a perimeter in which my interest is unchallenged, a realm of freedom.⁷

The capitalist state insists that, for instance, Alice may dispose over her widget shop exclusively.⁸ Nobody else has a say in what she does with it and its products, because it is her property; her will applies exclusively. While others are in need of the products produced in her shop, she can be completely ignorant towards these needs and wants. Just because they need her widgets does not compel her to give them widgets – the shop belongs to her and not to them. This freedom is guaranteed by the state.

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

This exercise of one's freedom, this acceptance of the offer that is posed by the democratic state's guarantee of freedom, implies collisions of interests. When we confront each other on the market we try to exploit each others dependency on our stuff to get the stuff we need. While Alice and Bob come to some sort of agreement – the contract –, this does not mean that the positions they started off from vanishes: they still exploit each other's dependency.⁹

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

Freedom and the means of realisation

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

Private property, i.e. the freedom which guarantees the right of indifference towards material dependencies, implies another kind of dependency: the dependencies of people in their role as commodity owners. Here, we restrict ourselves to one particular point on these social relations.

There are people who do not own any property worth mentioning, all they have is freedom.¹⁰ They are thus required to come to an agreement with those who are not only free like them but also own property. Firstly, they must buy food, housing, entertainment, etc. from those who sell them. Secondly, to earn the money to buy what they need they must sell something to capitalists, i.e. to those who own property in sufficient quantity (and in the right form). Namely, what people without property can offer to capitalists is their services and so millions of people are wage labourers and work for other people as long as this is beneficial to the latter. Capitalists are, of course, free to disengage from this relationship if they see fit.¹¹ For most people the guarantee of their personal freedom means perpetual dependency. Far from being able to do “what I want” they are dependent on others. It is not only a mutual dependency, but a dependency which is the basis for and is based on exploitation.

More generally, the freedom to do what I want is of little use without the means to actually do it. For example, when Eastern German citizens took to the streets in 1989 to demand – among other things – the lifting of travel restrictions by the East German state, this eventually culminated in the annexation of Eastern Germany by Western Germany. As a result, such travel restrictions do not exist any more. The then popular slogan “No visa til Shanghai!”¹² is realised¹³, but many people in Germany still cannot afford flights to Shanghai. The right to travel does not imply the means to do so. When you are only granted freedom, all you get is freedom.

Sure, the world puts a limit on our freedom to act: we are not pure thought but natural beings – meaning that we have to engage with nature in order to eat, have shelter, or play video games. However, by studying and applying the laws of nature, we can form it according to our will, leading to a great degree of freedom. In that department humanity is doing pretty well – understanding nature and the application of its laws is rather developed. It has advanced to a stage where we can share videos of the best nature has to offer worldwide in seconds.¹⁴ While it is worth stressing that we are not free from nature and we can only realise our freedom by obeying nature's laws, the limit to realising our purposes these days is usually not a lack of understanding of natural laws, but rather of how society is organised. For producing the things we need and want “I do as I please” is a shabby standard.¹⁵ On the contrary, the adequate approach would be to

reflect on the mutual dependency that comes with the division of labour and to consciously work together so we all get what pleases us.

The right to freedom

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

If someone grants others the right to something, e.g. the right to protest, this someone first of all claims the authority to grant this. It is an entitlement to rule over actions and speech. If we – the authors of this piece – would start granting our readers the right to form their own opinions about our writing, it would be laughable, we clearly are in no position to grant or withhold such a right.

Our readers would reject our jurisdiction over the matter.¹⁶ The state, however, successfully manages to do this, it grants the right to something people do on their own and without anybody's permission anyway. That is quite a claim to authority. A claim which is successful because the state has superior force, which is accepted by the vast majority of its citizens. Domination is already presupposed with the granting of such a right – not only when it restricts those rights, as any rights whatsoever cannot be had without domination.¹⁷ Of course, this also clarifies that the state and no one else gets to decide what can legally be done or said and what not, i.e. what the scope of any right is. Giving permission also implies the power to withhold it.¹⁸ Yet, the point here is that domination does not start with restriction or withdrawal of a right but is presupposed when granting rights in the first place.

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

Freedom of speech

Freedom in a democratic society is of course not limited to exclusive access to things. To take an example where freedom is not immediately concerned with the economic sphere, which also enjoys appreciation in the Left, let us take freedom of speech, which is also considered to be one of the most fundamental democratic rights.¹⁹

A productive force for democratic governance

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

Bourgeois society is characterised by a motley all against all, an ensemble of conflicting interests. The guarantee of this situation by the state indicates that it has an interest in the persistence of this status quo. The state guarantees this situation and has an interest in maintaining it: it wants the economic success that is produced by the universal competition of its subjects. The competing actors confront the state with their demands for the conditions of success – either for themselves or for what they think is best for economic growth overall. Some want higher, others want lower

taxes to promote economic success, some lobby for workers to receive better healthcare so they have less sick days, others oppose this asserted “pampering” of workers, others yet argue that environmental protection should trump short-term growth etc. For all these questions, citizens have conflicting answers. The freedom to announce and argue for these answers is recognised by democratic states as an ingredient for effective governance in a society based on competition.²⁰

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

The defence of speech against its consequences

Freedom of speech has its limits like any other freedom guaranteed by the state. No democratic state in the world grants freedom of speech without restriction. Firstly, no state grants its citizens the right to say whatever they want.²¹ Secondly, democratic states ask their subjects to restrict themselves to freedom of speech, i.e. to refrain from letting actions follow words. Thirdly, they take particular care of that restriction, when it comes to the political system itself. For example, the British state asserts its existence in all eternity with the assertion that Parliament is sovereign and that “no Parliament can pass laws that future Parliaments cannot change”²². Parliamentary democracy is eternal and not even Parliament can change that. The one thing that is not up to the free competition of ideas under the protection of the state is the political system itself.

Case Study A: The worries of the British constitutionalists

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

For example, Albert Venn Dicey, a well-reputed author on the UK constitution, believed that in certain extreme circumstances the monarch could dissolve Parliament single-handedly, on the condition that “an occasion has arisen on which there is fair reason to suppose that the opinion of the House is not the opinion of the electors ... A dissolution is allowable, or necessary, whenever the wishes of the legislature are, or may fairly be presumed to be, *different from the wishes of the nation*”²³, i.e. that the dissolution of Parliament in extreme situations is part of the royal prerogative to assert the “opinion of the electors” against actual election results.

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

²⁴

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

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

When in 1956 the Federal Constitutional Court of Germany banned the Stalinist Communist Party of Germany, it quite nicely expressed this logic of freedom of speech granted by the state: “This [multi-party] principle wants to ensure the existence of multiple political parties, at least the possibility, that at any time new parties can be founded freely. This not only constitutionally excludes the position of one party as ‘unity party’, but this also sets the tenet that no political party can claim a monopoly on correct political insight and objective, on correct political behaviour; because such a monopoly party is in its essence not directed to take part in the state but directed to embody state power by itself in itself. *Contrary to this, liberal democracy must avow the opinion, that in the area of political basic views provable and irrefutable truth does not exist.*”²⁵

When the court banned the Stalinist communist party it did not examine the arguments presented by this party, it did not investigate whether they were right or wrong, but insisted that there could not possibly be proof that they were correct.²⁶ The irrefutable truth of the Federal Constitutional Court is that there must not be irrefutable truth: it decreed the abstinence from such truths to anyone involved in politics.

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

Yet, this relativism does not violate freedom of speech. First of all, freedom of speech indeed makes no guarantee beyond speech itself. Secondly, freedom of speech is a guarantee of freedom in disregard of the content of speech: a statement is defended on the grounds that it is a statement, not because it is right, correct, important etc.²⁷ The logic of which shines whenever people respond to critique by pointing to their entitlement to opinion and their freedom to voice it. This is both presumptuous and humble. It is presumptuous because it insists on opinion, it disregards

critique instead of engaging with it. It is humble because it wants nothing but voice an opinion. It makes no attempt to change or influence the world around them.

2 – Equality

Equality as a matter of principle

*The state's treatment of its subjects as equals is a matter of principle: first of all, the state relates to all of its subjects as subjects and as nothing else.*²⁸

Democratic states grant their citizens equality before the law. This means, firstly, that laws apply to everyone and secondly, laws apply *without exception*. To return to the capitalist state's general declaration of intent, the Universal Declaration of Human Rights,²⁹ article 7 of this declaration states: "All are equal before the law and are entitled without any discrimination to equal protection of the law."

Firstly, this stipulates that "all are equal before the law".³⁰ This presupposes all are before the law. Everybody is subjugated by the state and in this regard everybody is equal. As subjects of the state we are all equal, we all have to obey. Equality before the law means unquestioned authority of the state without exception.

Subjects are not only subjugated, but they also receive "equal protection of the law". With that, the state declares all its subjects equal with one-another, i.e. they all have the same authority over each other, authority in the sense of what they are allowed to do to each other. This, together with the state's guarantee of freedom prohibits immediate coercion of one citizen against another. Equality before the law posits the state as the *only* ruler. Examples of excluded immediate forms of coercion are racketeering³¹ or – historically – the former role of the church, an authority which laid claim to set its own rules; hence, state and church had to cope with the respective other interfering with their rule.

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

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

Equal treatment and its outcome

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

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

Indeed, equal treatment of people in a certain regard who are different in this regard does not extinguish the existing differences. If we ask a short and a tall person to fetch a bottle of wine from the top shelf – winner gets to keep it –, this is a form of equal treatment. We abstract from the existing differences and because of this the tall person has an advantage.³²

The reality of equal treatment of people who are not in that regard sets a standard everybody has to live up to. In the illustration above being tall enough was the standard both people were compelled to live up to if they wanted that wine.

An example almost everybody has experienced is public education. Everybody has to live up to the same standards such as the GCSE set by the state. Within certain bounds these standards apply regardless of whether students need more time to learn, become nervous during exams or take an interest in the subject. By enforcing these standards the differences between students impact not only their learning, but also their future life choices. This way, the differences between students take full effect.

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

Private property is universally and equally guaranteed for people both with and without sufficient wealth to live off. The state thereby declares that whatever the social relations generalising on the basis of this guarantee – capitalism –, their detrimental effects on many people are of no immediate concern to the state. It only sees citizens – that most of them are poor, that is their private plight.

When declaring its indifference towards the differences between people, when the state abstracts from rich and poor, from workers and capitalists, from landlords and tenants, in short: when the state considers its subjects as citizens, it declares that it – at the very least – tolerates these differences. It declares: your struggles, problems, differences, these do not concern me as something I should remedy; I will ignore these differences in my treatment of you; that these differences come about does not concern me.³³

But the state does not react to circumstances it simply comes upon. The state does not come across landlords and tenants and then chooses to ignore their difference.³⁴ The circumstances which it declares as none of its business are in fact guaranteed, protected and sanctioned by the state. The characters of landlord and tenant require – for example – the granting of ownership of land by the state. Private property means that landlords can make use of their titles to land by letting it to people without such a title, i.e. tenants. Because the standard of private property applies equally to all, the latter depend on finding a place to rent.³⁵

Equal treatment needs convincing

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

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

Put differently, equal treatment necessarily means disregard for the particular; it treats what is unequal as equal,³⁶ in particular, if equal treatment is metered out in disregard of material means, i.e. that what counts in this society. The assertion of equality requires exactly that: assertion, authority and – in the last instance – violence.

Law – Concretisation of equality

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

Yet, when the state imposes rules on its subjects, one may wonder how the principle applies to all the situations it ought to regulate. The state posits that everybody has to follow the law, that punishment awaits if one does not, or more concretely that among other things everybody’s private property is protected. But because of the social relations that develop on the basis of these general rules its citizens confront each other in various “roles”: citizens meet as landlords and tenants, as workers and capitalists, as husbands and wives, as wives and wives etc. These situations produce the necessity for regulation by the state; hence, the law recognises not only citizens but also landlords and tenants, workers and capitalists, husbands and wives etc.³⁷

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

Anti-discrimination law

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

The state recognises only differences that are relevant to its purpose (worker/capitalist, tenant/landlord), but not differences that it considers accidental: “race”, “sex”, being called “Peter” etc.

³⁸ It is only the law and its intended purpose which rule. If, for example, the European Convention on Human Rights bans discrimination based on “sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”, it puts on record that it is not in the interest of the signing states that a person’s fate should be dictated by these categories. Put differently, their economic condition ought to be decided based on pure economic performance instead of – now considered to be – extrinsic reasons such as racism.

In anti-discrimination law, which outlaws discrimination not only in acts of the state but also in acts of its citizens, the state stipulates that a person’s fate is decided according to its principles only. It emphasises its authority by excluding other principles like racism. It demands of its subjects that their actions are guided by its principles. In affirmative action the state even goes so far as to positively discriminate against certain groups to reinforce its principles. For example, mandatory quotas for women in management express the concern that the exclusion of women from these positions undermines “the best person for the job” if that person happens to be a woman. Here, the state recognises that other principles potentially undermine its own and if it recognises this as a problem, actively counters them.³⁹

This is not to say that the state and its laws have nothing to do with, e.g. racism. On the contrary, its existence as a nation-state is a basis for racism. Here, the point is that it does not positively recognise “race” as a category on which it bases its laws.⁴⁰

Sure, (legal) reality is a different story. People in various positions of the state apparatus often enough are e.g. sexist in their decision making – explicitly or not, consciously or not. As long as that is not disputed (and substantiated in the eyes of a jury), this happens regardless of the law’s assertion to the contrary. For example, women are still discriminated against on an everyday basis such as earning less than men on average. This is due to a long history of the state itself treating women as only partial subjects, the gender roles that went with it and how capital dealt with it. These roles are still common and in some areas seem to be taken as even more self-evident than a few of decades ago. All this means that in law one can find what is legally valid and what can be brought to court if not abode. But it does not necessarily show social reality. Indeed, many laws exist exactly in reaction to what goes on in society, but should not in the eyes of lawmakers.⁴¹

It needs to be stressed that there is no necessity either in the past development of modern states that started to consider more and more groups as full subjects (women, disabled etc.) and has tended to an almost complete non-discrimination of those formerly treated as unequal. Besides children and mentally disabled people, many groups are now considered to be full subjects, but there might be reasons for a government to reverse this development again. We do not want to predict the future – e.g. if all modern states will treat homosexuals fully equally to heterosexuals

(e.g. in tax and adoption laws). This, only time will tell: the state is not on mission to realise some ideal of equality, but to rule over a capitalist economy for which equality is an adequate means.

3 – Beyond law and market

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

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

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

Moreover, one should be careful about what to wish for when campaigning in the name of freedom and equality. For example, when anti-racist or feminist campaigners call for, say, “equal wages for equal work” one should keep in mind that equality as such does not specify a particular outcome. This equality could very well be realised in a downward correction of those wages, which are higher than those of the people being discriminated. In either case, wages rising or falling, wage equality would be realised.⁴² Complaining that others have more can result in the demand (or outcome) that they, too, have less. Also, if poverty is decried in this form, e.g. when poverty and wealth in the UK are contrasted, this can be confronted with the contrast of poverty in the UK and, say, Romania. This is a criticism purely in form of a comparison, which criticises that some people have more than others instead of addressing that most people do not have what they want and need.

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

In contrast, an example of a slogan which completely disregards material improvements for anyone in the name of equality and justice is “Steals a bottle of water – goes to jail. Commits biggest financial fraud in history – no charges”.⁴³ It contrasts the LIBOR scandal⁴⁴ with the harsh sentencing of August 2011 rioters. Yet, the two cases contrasted in the slogan are not connected except by an ideal of equal punishment: justice. Rioters were not harshly sentenced because LIBOR fraudsters are let off the hook and vice versa. Sentencing the former head of Barclays does not get rioters out of jail. More lenient sentencing against rioters does not mean

harsher sentences against bankers.⁴⁵ In this slogan, the focus is not real material improvements, but an appeal to equality of punishment.⁴⁶

Appendix: Marx' Capital on Freedom and Equality and their Inversion

Against the arguments put forward in this text one could object that they are stuck on a superficial level: they talk about law and exchange but fail to recognise economic laws below the surface of bourgeois society as, e.g., developed by Marx in *Capital*, which on the other hand this text references and claims to have taken arguments from.

Indeed, in *Capital* Volume 1 Marx initially characterises circulation – i.e., the market – as perfectly realising freedom and equality: “The sphere of circulation or commodity exchange, within whose boundaries the sale and purchase of labour-power goes on, is in fact a very Eden of the innate rights of man. It is the exclusive realm of Freedom, Equality, Property and Bentham. Freedom, because both buyer and seller of a commodity, let us say of labour-power, are determined only by their own free will. They contract as free persons, who are equal before the law. Their contract is the final result in which their joint will finds a common legal expression. Equality, because each enters into relation with the other, as with a simple owner of commodities, and they exchange equivalent for equivalent. Property, because each disposes only of what is his own.”⁴⁷

But, and this is where this line of critique latches on, in the paragraph immediately following that passage Marx paints a rather different picture: “When we leave this sphere of simple circulation or the exchange of commodities, [...], a certain change takes place, or so it appears, in the physiognomy of our dramatis personae. He who was previously the money-owner now strides out in front as a capitalist; the possessor of labour-power follows as his worker. The one smirks self-importantly and is intent on business; the other is timid and holds back, like someone who has brought his own hide to market and now has nothing else to expect but – a tanning.”⁴⁸

So it seems freedom and equality are identified as *mere* surface appearances of capitalist society, i.e. not the real determination or that of its essence.⁴⁹ Marx takes this up again in Chapter 24, where he discusses the transition from surplus-value to capital – the surplus of one production cycle is reinvested to start another production cycle. Hence, the abstract wealth workers produced in the previous production cycle is used to pay for their wages in the current production process or even used to expand production. Workers are paid with the money form of their own products, but that fact is hidden: “The exchange of equivalents, the original operation with which we started, is now turned round in such a way that there is only an apparent exchange, since, firstly, the capital which is exchanged for labour-power is itself merely a portion of the product of the labour of others which has been appropriated without an equivalent; and, secondly, this capital must not only be replaced by its producer, the worker, but replaced together with an added surplus. The relation of exchange between capitalist and worker becomes a mere semblance belonging only to the process of circulation, it becomes a mere form, which is alien to the content of the transaction itself, and merely mystifies it.”⁵⁰

From these arguments, many commentators conclude that free and equal exchange is a sham and the only truth of capitalist society is that of domination and exploitation. Consequently one might think the points made above would miss the point. Hence, so the argument goes, unmasking this sham (in the name of real freedom and equality) was a logical consequence.

Yet, “sham” is not the same as “semblance” or “form”. The former denies that freedom and equality reign in the sphere of circulation and that this is how exploitation and domination in the sphere of production are made possible. Capitalists exploit workers in the work place who they confronted as free and equal on the labour market. The way they come together is as free and equal as no direct coercion is exercised by the capitalist. Workers are free to exercise their freedom but they are separated from the means of realising it. In order to understand the capitalist mode of production one must understand how freedom and equality as principles of the sphere of circulation are the basis for domination and exploitation in the sphere of production ⁵² instead of merely positing the ideal of freedom and equality against the reality of them. ⁵³

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

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

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

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

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

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

⁷ There are notable restrictions to this freedom such as environmental protection etc., but those limit rather than abolish the principle. These regulations are based on private property and specify exceptions.

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

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

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

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

12 It rhymes in German: “Visa-frei bis Shanghai”.

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

14 <http://youtu.be/0Bmhjf0rKe8> (last access 23. March 2013)

15 ... and so is “you do as I please” – at least for those being commanded.

16 We very much hope they would.

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

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

19 Fun fact: the UK only officially included freedom of speech into its domestic law in 1998 under the Human Rights Act. It has been common practice though for centuries and some rights

had been codified for just about as long. For example, the Bill of Rights granted freedom of speech in Parliament in 1689.

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

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

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

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

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

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

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

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

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

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

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

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

[32](#)

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

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

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

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

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

[37](#) Although the latter is – in many countries – being replaced by spouse and spouse.

[38](#) There are, however, some areas where states do not consider the question of "sex" to be accidental. In particular in areas concerning the reproduction of its population – the upbringing of children and marriage, for example maternity leave – some states including the UK have laws directly aimed at women. In recent decades some of the legislation in this area was revised

reflecting the realisation that the state's objectives can also be reached without the assertion of certain ostensible intrinsic qualities of women in the respective laws.

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

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

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

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

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

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

45 For a critique of punishment itself see "The logic of punishment in democratic states" in this issue.

46

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

47 Karl Marx, *Capital*, p.280, Penguin Edition

48 Karl Marx, *Capital*, p.280, Penguin Edition

49 A commentator who misses completely what is going on with the development from freedom and equality to domination and exploitation in *Capital* is David Harvey. In his *A Companion To Marx's Capital* he writes on page 100: “Today we are sold a bill of goods on the positive aspects of freedom and forced to accept as inevitable or even natural the negative aspects. Liberal theory is founded on doctrines of individual rights and freedoms. From Locke to Hayek and onward, all the ideologists of liberalism and neoliberalism have asserted that the best defense of such individual rights and liberties is a market system founded on private property and the bourgeois rules of independence, reciprocity and juridical individualism that Marx described (and, for purposes of inquiry, accepted) in chapter 2.” Instead of engaging with the argument presented by Marx that individual rights and liberties are requisites for capitalism, David Harvey investigates whether we need capitalism to defend these rights. He took Marx's argument and turned it off its feet, on which it was standing, and placed it upon its head. The most read commentator of *Capital* in the English language continues: “Since it is hard to protest against universal ideals of freedom, we are easily persuaded to go along with the fiction that the good freedoms (like those of market choice) far outweigh the bad freedoms (such as the freedom of capitalists to exploit the labor of others).” This author is so mired in the principles of this society that he thinks of market choice when asked to name a “positive” freedom and all he has to offer on the relation between “good” and “bad” freedom is that they are, well, that: on the one hand good freedom, on the other hand bad freedom, a ying and yang kind of dialects. “And if it takes a little repression to dispossess people of their access to means of production and to ensure the sustenance of market freedoms, then that is justified as well. Pretty soon we find ourselves in the midst of McCarthyism or Guantanamo Bay without an oppositional leg to stand on.” continues the man who apparently never had an oppositional leg to stand on.

50 Karl Marx, *Capital*, p.729-730, Penguin Edition

51 “Marx says that exchange is just a sham—the essential process, which is concealed through this act is the production of surplus value.” – Wildcat, *Is Capitalism a Market Economy?*, <http://libcom.org/library/capitalism-market-society>

52 “Therefore, however much the capitalist mode of appropriation may seem to fly in the face of the original laws of commodity production, it nevertheless arises, not from a violation of these laws but, on the contrary, from their application.” – Karl Marx, *Capital*, p.730, Penguin Edition

53 “The proper reply to them [people who wish to realise freedom and equality against their bourgeois realities, Ed.] is: that exchange value or, more precisely, the money system is in fact the system of equality and freedom, and that the disturbances which they encounter in the further development of the system are disturbances inherent in it, are merely the realization of equality and freedom, which prove to be inequality and unfreedom. It is just as pious as it is stupid to wish that exchange value would not develop into capital, nor labour which produces exchange value into wage labour. What divides these gentlemen from the bourgeois apologists is, on one side, their sensitivity to the contradictions included in the system; on the other, the utopian inability to grasp the necessary difference between the real and the ideal form of bourgeois society, which is the cause of their desire to undertake the superfluous business of realizing the ideal expression again, which is in fact only the inverted projection [Lichtbild] of this reality.” – Karl Marx, *Grundrisse*, p. 249, Penguin Edition

