



Revista Direito e Práxis

ISSN: 2179-8966

Universidade do Estado do Rio de Janeiro

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Bourdieu meets Pachukanis
Revista Direito e Práxis, vol. 11, no. 1, 2020, January-March, pp. 117-144
Universidade do Estado do Rio de Janeiro

DOI: 10.1590/2179-8966/2019/38793

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Bourdieu meets Pachukanis

Bourdieu encontra Pachukanis

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Artigo recebido em 12/12/2018 e aceito em 13/04/2019.



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Abstract

Following the model developed by Michael Burawoy in *Bourdieu meets Marxism*, the purpose of this paper is to suggest an additional dialogue between the French sociologist and the Soviet jurist Pachukanis. Our intention is to demonstrate that many of the intuitions presented in *The Force of Law* were actually anticipated by the author of *General Theory of Law and Marxism*. We argue that these theoretical frameworks are not only complementary but also offers fruitful possibilities for empirical investigation in the legal field.

Keywords: Relational Sociology; Marxism; Legal Field

Resumo

A partir do resgate dos diálogos imaginados por Burawoy entre os marxismos e Bourdieu, sobretudo o capítulo dedicado a própria obra marxiana, o objetivo do presente trabalho é sugerir uma conversa adicional entre o sociólogo francês e o jurista soviético Pachukanis, demonstrando como muitas das intuições apresentadas em *A força do direito* foram antecipadas pelo autor de *A teoria geral do Direito e marxismo*. Conclui-se pela complementariedade dos marcos teóricos como possibilidade de investigação empírica no campo jurídico.

Palavras-chave: Sociologia Relacional; Marxismo; Campo Jurídico.

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Introduction*

The central part of our argument was thought as a complementary development of the work developed in *Bourdieu meets Marxism* (BURAWOY, 2010). In this piece Michael Burawoy sought to imagine dialogues among different authors within the Marxist tradition and Bourdieu's work. Each dialogue was developed imagining how these authors would respond to the critique presented by the French sociologist against Marxism in general, besides pointing out eventual insufficiencies and / or flaws in the Bourdieusian theory.

Burawoy's work begins with the relations between theory and practice in Marxian thought, it goes through the discussion of hegemony and the role of intellectuals in Gramsci, through Simone de Beauvoir and the gender issue, through Frantz Fanon and (de)colonial thought and then considers Burawoy's own work about the notion of false consciousness. In addition to Marxist tradition, there is a chapter with a dialogue between the French sociologist and US scholar Wright Mills, presented somehow as a precursor to Bourdieu's work.

In Burawoy opinion, those authors compose a special set of society theorists who "wander like ghosts" through Bourdieu's work. The main difference between this group of thinkers and the French sociologist would be that:

They believed that the dominated people (perhaps some part of them) could under certain conditions perceive and appreciate the nature of their own oppression. Indeed, I refer here to the Marxist tradition that Bourdieu employed without admitting it, refusing the Marxist tradition (BURAWOY, 2010, p. 29).

In this fashion, Bourdieu may appear to be identified in the ranks of a postmodernist pessimism, given (i) the abandonment of the emancipatory perspectives inherent to the great narratives and (ii) the apparent denial of the possibility for the exploited to become aware of their own oppression. We do agree that in Bourdieu's work there is no place for a triumphant optimism based on the exploited classes, however it is not correct to presume from that fact that the dominated people would not be able to "perceive and appreciate the nature of their own oppression."

* All text, included texts quoted by the authors, has been freely translated from Portuguese or Spanish to English.



The question, by the way, is an important dispute point about Bourdieu's work: his critical description of society could be considered “neutral”, in the sense that it does not (or wish not to) intervene in the portrayed domination or if, in the manner of Marxism, it also seeks to pluck out the imaginary flowers of the shackles that bind the dominated people, not to endure dominance without illusion, but to contribute to set free the dominated from exploitation. In other words, it would exist or not a theory of action in its sociology and, if so, what role intellectuals should play in this process.

Indeed, sometimes Bourdieu seems to assume a conservative position, due to the absence of social and political alternatives to the existence social relations, also its theoretical construction demands of the social scientist a detachment from its object of inquiry, that is, the social scientist should keep a fare distance from the dynamics of social objectivity. The author argues that this distance becomes a prerequisite of quality social intervention. At this point lies an apparent paradox, because this detachment is not absolute, not an end in itself, nor does it mean the abdication of intervention; the distancing, on the contrary, must precede and inform a transformative action.

The fact is that the counselor could hardly follow his own advice. Indeed, at various times in his biography, Bourdieu assumed the position of a “public intellectual”, doing interventions in large auditoriums, appearances in demonstrations organized by social movements and even participation in television programs. At such times, his posture was always based on a harsh criticism of neoliberal reason, which also brought him closer to the labor-union cause. The frequency of these interventions has grown in proportion to his prestige in the intellectual field, having peaked with their participation in the strike movements of France during the 1990s. The author published a collection of these intervention texts, with a title that leaves no doubt about their intentions, *Counterfires: tactics to confront the neoliberal invasion* (BOURDIEU, 1998).

Among the discussions imagined by Burawoy, without doubt, the most important chapter is precisely the initial dialogue, imagined between Bourdieu and Marx himself, more specifically, how could the latter counter the criticisms made to him by the former.

At the end of the considerations about Bourdieu's dialogues with the Marxist tradition, following the exposition method of the dialogues imagined by Burawoy, we propose an additional conversation between Bourdieu and the Soviet jurist, Evguéni Pachukanis (2017), centered on the understanding of the juridical moment. In fact, it



seems to us to be a grave shortcoming that the main Marxist theorist of law is absent on Bourdieu's (1989a) criticisms of the Marxist analysis of law.

Although, before developing our core arguments about the relationship between Bourdieu and the Marxism tradition, we intend to highlight a biographical dimension that approach Bourdieu and Marx live experiences and significantly influenced their works. Both the individual trajectories of the authors considered here [Marx and Bourdieu] have a “forced meet with the practice” that led them, each one in its own way and in its time, to break with the scholastic philosophical tradition in which both were inserted.

While Marx, for reasons of financial necessity, was impelled to perform the role of journalist at the Rhine gazette (1842-43), where he had the opportunity to dwell on material issues and to be awoken to economic studies, Bourdieu was forced to serve the French army in Algeria and faced the tensions and contradictions of French imperialism. Both events are narrated by themselves as a turning point with the philosophy of their time: by Marx in the 1859 preface to *Contribution to the Critique of Political Economy* (MARX, 2008) and by Bourdieu in his *Sketch for a Self-Analysis* (BOURDIEU, 2005).

As far as Marx is concerned, the conclusions he has drawn from this meet with practice are well known in the academic field and are documented in the text mentioned. On the occasion, he wrote that:

The Legal relations as well as State forms cannot be explained by themselves, nor by the so-called natural evolution of the human spirit; on the contrary, these relations have their roots in the material conditions of existence, in their entirety, which Hegel, like the French and the English of the eighteenth century, understood under the name of "civil society." I also came to the conclusion that the anatomy of bourgeois society must be sought in political economy (Marx, 2008, p. 47).

In the following discussion, he explains that the men, in the social production of their existence, enter into relations of production by necessity and unrelated to their wills. The totality of these relationships, the sum of the social interactions of the existence, constitutes the economic base of society, upon which legal and political superstructures are built corresponding to the state of development of this economic infrastructure. Thus, “the mode of production conditions the process of social, political and intellectual life”, because “it is not the conscience of men that determines their being, it is their social being that determines their conscience” (MARX, 2008, p. 47).



This important passage has served the many deformations of Marxian thought. It is in this same text that the metaphor of the relationship between infrastructure and superstructure is contained, read by many as a relationship of economic determinism of others social spheres. This passage indeed lead to misconceptions, partially due to different translations in different languages, as well as the choices of verbs made by the author in describing the relations between economics, politics, and law: after all, the mode of production determines or only conditions the social reality?

However, considering the Marxian work as a whole, it will be seen that the best interpretation is one which understand the reflexive relationship between base and superstructure in a weak sense, but without denying the economic sphere its preponderant moment.

On the contrary, Bourdieu's main criticism of Marxism stems from the fact that the author selectively chooses reductionist interpretations from this tradition, and then contradicts his own notion of how to overcome mechanistic materialism. From this point of view, he presents his own sociological grammar - with notions such as *habitus*, field, symbolic power, and so on - as the best option to describe how and why social beings are not determined - or at least not completely determined – by the economic moment, despite being heavily influenced by it, in the formation of evaluative filters and on subject decision made by the individual.

In our view, the author seems to take this position not necessarily because he was convinced that this was the “true” content of Marx's expositions, but acts strategically within the intellectual field. Bourdieu does so to oppose the hegemonic forms of structuralism Marxism of his time – seen as mechanistic readings of materialism - while seeking to separate himself from the Marxist tradition, searching for a distinguished spot within the intellectual field where he acted. In this sense, Bourdieu himself has more than once stated that the intellectual field is also a kind of battlefield (BOURDIEU, 2005, p. 183).

The fact is that both authors hold very harshly to their criticisms of the different manifestations of 'pure thinking' that each one faced, thinking structures understand as apart from reality, as well as to criticize other positions that, although progressive, understands insufficiently or too simply the objective reality.

For Marx, conservative or bourgeois socialism professed a kind of impossible dialectic, in an innocent or malicious way, which aimed “at the living conditions of



modern society without the struggles and the dangers arising from them”, in other words, these authors only desired the benefits of modernity without their negative aspects, seen by Marx as inherent to capitalism itself. Economists, philanthropists, humanists in general, and especially jurists, who are dedicated to alleviating the effects of exploitation without addressing its causes, constitute the category of conservative socialists, “cabinet reformers of all kinds” (MARX; ENGELS, 2010, p. 64).

The socialism and utopian-critical communism, although contained critical elements that bound all the foundations of the society and were of great value for the enlightenment of the labor movement, it still had “a purely theoretical sense.” About utopian socialism, Marx recognizes its practical value, in serving to enlighten the working masses, and a theoretical one, in pointing out to the emancipation of men. However, this happen because of the contemporary objective conditions of their time and not because of the authors' lack of commitment or capacity. Marx argued that it was not possible for them to develop a scientific view of socialism, which only became possible in his time, after the Industrial Revolution effects. Marx referred to the fact that in Owen, Fourieau, and Cabet's times class antagonism existed only in its early stages, manifested in very inaccurate forms (Marx; Engels, 2010, p. 67).

Centuries later Bourdieu pointed out to the existing distance from intellectuals and the objective reality, a distance that often resulted in “pathetic” attempts of reconciliation with the real. This detachment was promoted by the scholastic method of doing philosophy, hegemonic in the period, as well as by the existence of an intellectual field surrounded by privileges and shared by individuals of very homogeneous *habitus*. This scenario promoted the proliferation of scholastic reason and attempts to “return to the real world [...] by making political commitments (Stalinism, Maoism, etc.) whose irresponsible utopia and unrealistic radicalism are an absurd way to deny the realities of the social world” (BOURDIEU, 2005, p. 20).

Bourdieu's critique of the merely theoretical critical thinking of his time, therefore, is even more severe than that which Marx addressed to utopian socialists, which is perfectly understandable in the logic we have been describing. While in Marx opinion it was impossible to construct a scientific commitment to socialism before industrial revolution, because of the level of the development the objective conditions was not appropriate, Bourdieu sustain that the will to keep up with the merely scholastic exercises was partly conscious, since the conditions for its overcoming were already set.



Therefore, due to the authors' proximity to the material issues of their time, Marx and Bourdieu were driven to go beyond purely theoretical thinking and highlight the moment of practice. While Marx had been driven to this place by economic necessity, and later, after the closing of the *Gazette Renana* (1842-43), by his exile period in France and England, in which he met directly with the labor movement of Western Europe; to Bourdieu, it was his period in Algeria during the twentieth-century imperialist wars that convinced him of the need to break with scholastic reason.

The author summarizes the importance of his time in Algeria for his transition from philosophy to sociology, which represented his migration from the merely theoretical field to the field of practical reason - which, however, did not mean the abandonment of theoretical reflections, but rather their dialectical association following the praxis demands:

The worldview transformation was concomitant with my move from philosophy to sociology, and with my Algerian experience which undoubtedly represents the critical moment. It is not, as I said, easy to describe, because it is made of imperceptible accumulation of changes that life's experiences have gradually imposed on me and the changes I made at the expense of a great work about myself, inseparable from the work I have done in the world (BOURDIEU, 2005, p. 65-66).

Concluding this first moment, we emphasize that the desire to break with idealistic or scholastic thought - a desire that it is the result of a premature contact with the material questions of their respective contexts - is a strong common thread which connects the origins of Bourdieu and Marx's works and, in a way, it will condition their future developments and findings.

For Marx, through the religion critique, the man discovered in the fantastic reality of heaven only himself; he discovered that mankind was responsible for making not only his own religion, but also the social world in which he lives (MARX, 2013, p. 151). Social reality is entirely contingent in history, and it is precisely here that the foundations of State and law must be sought; it is in this sense that we must understand the statement that only one science is known, the science of history. Remembering that everything is historical, however, it does not mean defending a historical or sociologizing reductionism, but denying any *a priori* entities, creator of absolute truths and values - whether god or reason - as well as denying the absolutely free individual: it is "to give



back to history and society what was entrusted to a transcendence or transcendental subject” (BOURDIEU, 2001, p. 139).

Drawing these first lines on the relationship between Marx and Bourdieu, centered on the biographical aspects, we will finally advance to the analysis of the relationship between Marxism tradition and Bourdieu (BURAWOY, 2015). After this moment, we will try to demonstrate, through direct quotations, the validity of one of our main arguments, namely: how, more often than not, the Bourdieusian critique is specific and appropriate only to a variant of Marxism, which had been hegemonic in France at the time of his intellectual formation, although the author sought to broaden it in order to reach the Marxist tradition as a whole.

During this exercise, we will highlight three of Bourdieu most important works: *Distinction* (BOURDIEU, 2007), because it is his most renowned academic work, *Pascalian Meditations* (BOURDIEU, 2001) and *On the State* (BOURDIEU, 2014), due to represent his mature work, where the French sociologist seeks to differentiate his historical method from the one he presents as Marxist.

1. Theory and practice in Marx and Bourdieu: Burawoy's considerations

The texts chosen by Burawoy to trace the dialogue between the two authors were, especially, the *Pascalian Meditations* - in his opinion, “the apex and the consummation” of Bourdieu’s theoretical achievements - and the *German Ideology*. The choice was due to the fact that the works have important parallels, both in their structure and their arguments:

Both writings were a kind of reckoning with their respective philosophical inheritance, underlining and denouncing the scholastic fallacies of the associated intellectuals, distanced as they were from the relations and practices of the concrete world (BURAWOY, 2010, p. 15)

For Burawoy, despite the parallels between the works, while Marx, after his reckoning with the philosophical tradition, set out to study history as a result of the succession of economic production systems, Bourdieu does not focused on succession but on coexistence and reciprocal interference of the economic fields, scientific and cultural production, understanding them as relatively autonomous. In this sense,



"Bourdieu's works constitute both a revision and a complement to Marx's works" (BURAWOY, 2010, p. 16).

It is exactly in this sense that we understand the authors. Naturally, the century that separates them does not allow a simple application of Marxian categories to the present time. On the other hand, it is not a mere update, since a whole space of a cultural production which had been left un-worked by Marx – either due to the limits of human capacity or even the author's eventual lack of interest – are considered in Bourdieu oeuvre.

Indeed, it is precisely this claim to deal with wholeness, which is present in the Marxist tradition continues and, in some extent, in Marx himself, one of the main points of Bourdieu's critique. His deliberated attempt to escape from the production of a "grand theory" was manifested in his dedication to understanding specific social fields in their particularities (BOURDIEU, 1996), as well as the option for collective research ventures that, from the sum of the contributions of various areas and various researchers, could then approach some notion of totality (BOURDIEU, 2001). These kinds of research procedure dismiss the figure of the pure and polyvalent intellectual who, although radically distant from practice, believes he can understand and explain the world in all its complexity.

Thus, not only the proximity in time, but, above all, the fact that the French sociologist has devoted himself exhaustively to understand particular social spheres - among them the legal field - that makes his proposal of a relational sociology, in our view, a more appropriate theoretical framework for conducting empirical research on the legal field. However, we do not believe that the choice of the Bourdieusian theoretical framework necessarily means a contradiction or overcoming of Marxism tradition, but rather, it has the sense of complementing its correct intuitions at the same time that update those that have become outdated or were mistaken.¹ In addition to develop passages that did not have the opportunity to be better worked - as the understanding of the law is nothing more than the mere recognition of the facts (MARX, 2004a, p. 85).

¹As we have already had the opportunity to point out, Bourdieu by himself understands that his work can, not often by a number of factors that influence the field dynamics, confirm before negating many of the Marxist hypotheses. The author provides an example of how the analysis of the culture field confirms the notion that "the dominant culture is the culture of the ruling class." Thus, the author concedes that, although part of his work was built "against" Marxism, at the same time, it does not contradict it (BOURDIEU, 2015, p. 28).



In fact, to treat as a dogma the statement that “the law is nothing more than the official recognition of the fact” (MARX, 2004b, p. 84) means to argue that the law always comes in the *post festum*, that is, only after eventual transformations in the economic and political sphere have been stabilized and the force relations have been reorganized, only at this moment the law lend its legitimacy stamp, which formalizes and guarantees the new order, which is often nothing more than the old order remodeled into a new form. This kind of conception, which dogmatizes the Marxian statement, assumes that the law is completely determined by the political-economic forces, as the legal field did not participate in the disputes that precede the new order to be recognized.

In another sense, although considering the economic sphere as the preponderant moment of social relations, the Marxian tradition - properly continued by authors such as Paschukanis and Lukács -, recognizes some scope of autonomy to the law and politics spheres, but understands that any alternative projects of society, which will be elaborated exclusively or mostly in these spheres, have their actions thought and conditioned in a very scarce universe of possibilities, being often mere deceits that ends helping the reproduction of the very order that intends to transform (SARTORI, 2010, p. 113).

This conception, in spite of its conceptual merits and its explanatory capacity of objective reality, seems to fail in restricting too deeply the cultural spheres. Thus, we prefer the Bourdieusian departure – or others, as Bloch, who sees utopian potential in certain dimensions of natural Law, or Neumann with his defense of the possibility of the reengineering bourgeois law by other collective subjects. Although recognizing that the historical and current tendency in fact presents the Law as merely a recognition of the fact, nevertheless, these approaches do not rule out any possibility of social transformation mediated by this field. In spite of the history of the Western legal tradition that, with very rare flashes of exception, has always promoted the conservation of the unequally and violently established order, especially in the periphery of the world system, such as in the Brazilian context.

Of course, it is not a matter of replacing the overriding moment of the economic or political field with the Law, as if a simple modification of a constitution could endow politics and economics with some moral dimension; rather, it is a question of understanding the real possibilities of this relative autonomy carried by the legal field



and inquire about their possible contributions to the progress of the human emancipation.

Returning to the issue of the parallelism between the authors, we point out once again their emphasis on praxis. As Marx, Bourdieu also intended to highlight the moment of human practice. For the French sociologist, it was necessary “to draw attention to the primacy of practical reason that Fichte spoke of, [...] as Marx suggested in the *Theses on Feuerbach*, the active side of practical knowledge that the materialist tradition [...] had abandoned” (BOURDIEU, 1989b, p. 61). The passage, like many others, proves that Bourdieu effectively differentiated the Marxian moment, when there would be the practice appreciation, from the mechanistic materialist version that succeeds it in materialism, in which the active side of practical knowledge is mistakenly abandoned.

This passage, in fact, sets the tone of the ambiguous relationship with Marxism. Although Bourdieu harshly critic this very tradition – especially in its French structuralist current – much of his intuitions, its method of research, and its view of the relationship between theory and practice are significantly influenced by the works of Marx, as suggested by Michel Burawoy (2010). Even if Bourdieu does not recognize the full extent of the debt, it still nonetheless makes some sparse praise for Marx's work, such as the passage mentioned of the eleven theses.

Thus, the question of practice is central to the work of both authors. Their intentions are quite analogous, while Bourdieu denounces the differences between the logic of theory and the logic of practice, Marx and Engels speak of the things of logic and the logic of things, in short, to argue that the social conditions of the scientific knowledge production is radically different from the conditions in which knowledge is concretely used and developed in praxis. Once again it is the question of false opposition between those who project science on everyday life and those who reduce it to practical knowledge. Bourdieu's considerations on the subject run through his entire academic production, beginning with him since *Outline of a Theory of Practice* (1972), through *The Logic of Practice* (1980), and reaching the *Pascalian Meditations* (1997).

The question, for Marx and Engels, was the artificial division between intellectual and manual labor. Only after this apparent split that the consciousness can imagine itself as radically different from human practice (Marx; Engels, 2007) and, to a certain extent, come to believe that we can modify the objective reality through pure thought. Even the young Hegelians in their supposedly radical criticism could not



overcome this split, because they opposed Hegelian philosophy to words alone. The Marxian proposal was precisely to produce a “real epistemological break” (BURAWOY, 2010, p. 32) that left Hegelians only believed they had accomplished.

More than a hundred years later, the intellectual field in which Bourdieu struggles seems to suffer from the same problems pointed out by Marx and Engels. The French sociologist proceeds with his criticism through a different grammar, but the parallels are evident. For the author, there are over the whole intellectual field “scholastic illusions” which he calls *skholè* - summarized by Burawoy as “worldviews that are projection of the privileged conditions of the existence of intellectuals, namely, their carefree life and free of the immediate material needs ” (BURAWOY, 2010, p. 33). Thus, by sublimating the privileged conditions of their existence, intellectuals have a propensity to treat their own point of view in a scholastic manner, as indeed seems to be the case of the Habermasian ideal of a communication free of domination (BURAWOY, p. 33).

Also, according to Burawoy, the *leitmotif* of the Bourdieu's entire work can be summarized in Marx's first thesis against Feuerbach, which is, not by coincidence, the epigraph of Bourdieu's first excursion about the logic of practice, in his *Outline of a Theory of Practice*.

The main flaw of materialism until Feuerbach - insufficiency that Marx saw and sought to overcome and that a century later Bourdieu still felt the need to criticize - would be that this incomplete type of materialism conceives things, objective reality, only as external objects in thinking and not them as a result of a sensitive human activity.

Convergences between the authors go as far as here. From this point Marx immerge on to the analysis focused on economic activity and, to some extent, places human practice as a reflection of the production relations, while Bourdieu directs himself to conceive human practice more as the production of goods, not only material but, above all, cultural ones.

In other words, while Marx reduces practical activity to economic activity and on this basis builds human history as a succession of production modes, Bourdieu extends the idea of practical activity to the spheres of intellectual production (BURAWOY, 2010, p. 34). .

Although the quote retains its truth, namely, what effectively best distinguish the authors are the fields on which they devoted their mature works, the criticism is



only partially fair in relation to the Marxian work. Indeed, Marx does not exactly reduce all human practice to the economic sphere and the consequences of its influence, as discussed before, but merely institutes the economic as the preponderant moment of the social and focuses his efforts on understanding this phenomenon, naturally, failing to explore other fields as a consequence of this decision. Bourdieu, on the other hand, takes Marx's economic analysis if not as a model, certainly as an inspiration, to perform the analysis of the intellectual spheres, having devoted himself to the fields of art, basic education, legal education, higher education, etc.

Albeit the description of fields as social spaces in which skilled agents act strategically in the dispute for the accumulation of a specific capital presented there, it takes into account the convertibility between these capitals. This, by the way, is easily discernible in the Brazilian reality, in which economic capital easily converts into political capital through the influence of financial assets in elections. Thus, as we have already had the opportunity to point out, the application of Bourdieusian relational sociology can often lead to the confirmation of fundamental Marxian intuitions, because in certain socio-historical contexts the economic field dominates and determines other fields in a more clearly manner.

In short, separated by over a century, Marx and Bourdieu came to similar conclusions about the need to overcome the fictional split between partial materialism and idealism. Them, due to their personal inclinations and the historical needs of their own time - if desired, due to their respective *habitus* and cultural fields -, they have taken different paths. While the former focused on identifying human history as a result of the succession of models of economic production over time, in order to understand the trends in the development of history that indicate the possibilities of the human emancipation, the latter focused on its present, understanding the simultaneous coexistence of several fields relatively autonomous - perhaps due to a greater skepticism that characterize his own *zeitgeist*.

However, in Bourdieu work, this strong skepticism resulted in a demand for a certain distance between the intellectual and his object of study - developed largely due to the lack of appreciation he had for Gramsci's notion of organic intellectual. But this distance does not necessarily imply sociology as a mere disinterested description of praxis. In our view there is a tendency towards emancipation that underlies his



descriptions of the social, albeit in a much more modest manner than presented in the Marxist revolutionary tradition.

Returning to the point where they diverge, as a consequence of their specific emphases in the economic sphere and the cultural fields, Marx and Bourdieu concerned themselves with distinct species of exploitation and domination, considered in the spaces of the production relations and the cultural fields. But similarities in exposure methods persist, as we shall see.

We will use another famous passage from the *German Ideology* to demonstrate how Bourdieu's later developments are connected with Marx's thinking. The passage we have in mind is one where can be read that "the ideas of the ruling class are the dominant ideas in every age." Marx and Engels argue that the class that possesses the means of material production, as a consequence of this possession, also possesses the means for spiritual production. Thus, by a conscious interest or not, the agents belonging to the ruling classes are also responsible for building the dominant ideas, that are "nothing more than the ideal expression of the dominant material relations".

Two important points of Bourdieu's critique of Marxism can be found in this passage. The reductionist simplicity of the claim that dominant ideas "are nothing more than the expression" of the economic relations and the confidence that individuals in the ruling class are fully aware of the domination they exercise and thus "they think as they dominate and determine the whole scope of a historical epoch". Nevertheless, the quote selected contrasts with other passages of the Marxian work which opens space for subject autonomy and the social spheres as partially independent, although always relative and conditioned by the preponderant moment of the economy. The same goes for the question of consciousness.

However, regarding the question of the consciousness of the exercise of the domination by the ruling classes, it seems to us that the Bourdieusian scheme is more complete because it is less Manichean. The space of the individual autonomy, although concretely strongly limited and influenced by the *habitus*, can appear on the surface for the individual and the society as an absolute autonomy, thus being able to mask the result of domination for those who are dominated and for the dominant ones.

This passage, in isolation, seems to suppose that Marx and Engels saw no mediation between the ruling and dominated classes, as if the ideas were mechanically moved from one sphere to another, dispensing, for example, the work of the



intellectuals. However, while it is true that Marx did not develop an investigation into the mechanisms and procedures by which ideologues create the illusions of a class about itself, this does not mean that it did not recognize the importance of such mediation.

In another passage from the *German ideology*, the authors talk about class divisions within the ruling class and how these divisions may even lead to certain oppositions and hostilities among them, provided these disputes never actually come to put the class as a whole in danger. Among these divisions is an important one, based on the spiritual and material labor division, because even among the dominants there are those who are farthest from the possession of the production means and who make the creation of the concepts and ideas their ways of subsistence and social reproduction (professional or traditional journalists, jurists, sociologists and political scientists).

Thus, it seems clear to us that the idea of a circumstantial split between class fractions - the dominant fraction of the bourgeoisie (composed, at that historical moment, by the big industrialists who actually owned the property over the means of production and now occupied by the main shareholders of the financial market) and the dominated fraction of this bourgeoisie (journalists, liberal professionals and other intellectuals) - was already present in the Marxian texts, or at least could be withdrawn as an almost necessary consequence of these. We call it a circumstantial split, because while these fractions may at times have antagonistic interests that lead to conflict, they nevertheless constitute a class that, when effectively threatened, tends to act in accordance with their common interests. This idea, elaborated through another perspective is central to Bourdieu work, at the same time it lays here a paradox about the author's treatment of the issue of autonomy.

Bourdieu will repeatedly defend the relative autonomy of cultural fields, whether in the face of state regulation or in relation to market forces. The paradox is that the same autonomy that initially appears to be a positive feature in itself, by indicating that fields can potentially oppose economic and bureaucratic determinations, and even regulate them - an autonomy that therefore prevents the field from being conceived as mere photographic reflections of the external forces of the economy -; It is also a prerequisite for the mystification of the more or less arbitrary outcomes of these social spaces. It is at this moment that the symbolic power of cultural products resides: a



manifestation of power which appears to society as naturalized regardless of the contingent forces presented in its genesis.

It is never too much to stress that the considerations made about the fields of culture and science also apply to the juridical field, provided the appropriate mediations. It is precisely the belief in the absolute autonomy of the legal field in the face of economics and politics that sustain the misreading of positivist theories of law that compose the legal common sense (*doxa*) and consequently cover up a profoundly political judicial praxis. The same false idea that allows one to believe that law is capable of regulate the economic and political field in a strictly technically and neutral fashion.

Finally, after overcoming the main parallels between Marx and Bourdieu oeuvres, we will highlight one of the main aspects that move the authors apart. By appropriating the model of analysis present in the *Capital* and applying it to cultural fields, Bourdieu suppressed a fundamental category of Marxism, namely the concept of exploitation.

In place of this category, avoiding the grammar of class struggle that would be driven by exploitation, the French sociologist prefers to describe the fields as spaces of competition for domination rather than exploitation. But what are the practical consequences of characterizing social relations as centered on competition for domination rather than exploitation between classes?

It seems to us to be another of Bourdieu strategies to escape of the pitfalls of the great theories. Understanding social relations in terms of exploitation, as described in Marxist theory, necessarily means understanding the dynamics established in objectivity as negative and unfair, requiring redress through a theory of action that specifically aims at the emancipation of exploited labor. On the other hand, understanding these same relationships in terms of competition, in which subjects compete for more or less specific capital autonomously or not, it legitimizes the game by itself and thus eludes the need to answer the question "what to do?".

Once again, we are faced with the ambiguous issue of the sociologist's prudent disassociation from his object as a condition of the autonomy of his own work. Bourdieu even compared the ideal conditions of this autonomy with the ivory tower metaphor. However, as already mentioned, this description contrasted sharply with Bourdieu's engaged public activities, especially in the last decades of his life when he publicly devoted himself to the critique of neoliberal reason in alliance with other social groups.



This ambiguity about autonomy is not a result of Bourdieu's mature thinking in opposition to his younger writings, on the contrary, it manifests throughout all his work, in scarce but always very significant moments of his production - as in the passage about the genetic thinking and the practical utopia or in the defense of a political action oriented towards the guarantee of the social conditions of the exercise of reason.²

Thus, the closing in the “ivory tower” is intended to protect the field from the proliferation of doxosophos (ideologues) amateurs and it represents a necessary prerequisite for good public intervention. In the same sense, Burawoy understands:

The Autonomy does not mean solely the purpose of the pursuit of knowledge for knowledge - although it also means that, too. In the specific case of sociology, autonomy, if really desired, would guarantee the advance of science which, according to Bourdieu, would necessarily lead to the demystification of symbolic domination - if not within the sociological field, at least in the wider social world (BURAWOY, 2010, p. 46).

Therefore, the proper functioning of a specific field demands the overcoming of symbolic domination within it and not the mere substitution between dominant and dominated. Thus, notwithstanding the substantial differences between the categories of exploitation and domination, it is perfectly justifiable to investigate the conditions and possibilities of overcoming also what Bourdieu calls domination.

2. The Law Beyond Mere Ideology: Pachukanis Meets Bourdieu

As anticipated in our introduction, in the second part of this piece, we will propose an additional dialogue between another Marxist author and the French sociologist, namely the Soviet jurist Evguiéni Pachukanis. The works considered here will be mainly Pachukanis's *General Theory of Law and Marxism* (2017) and the already commented text *The Force of Law* by Bourdieu (1989a).

Our aim is to demonstrate that the core of Bourdieu's criticism of Marxist conceptions of law was already adequately considered and overcome by Pachukanis as early as the 1920s. The absence of references to Pachukanis in Bourdieu's work, especially in *The Force of Law*, when the author elaborated a specific critique of the juridical moment, can only be justified if seen as a strategic option of diminishing the

²Both passages are present in the collection *Practical reason*, respectively in the texts *Rethinking the State: Genesis and Structure of the Bureaucratic Field* and *The scholastic point of view* (BOURDIEU, 1996).



tradition that his “enemies” claimed,³ at the same time that underline his distance from Marxism while paradoxically hiding the presence of many intuitions from this very tradition.

This does not mean that the authors' propositions are identical or that Bourdieu does not bring any innovation to the discussion, on the contrary. Beyond the desired practical effect of his structuralism critique, that is, rescuing the sociological theory from the mechanistic materialism imprisonment, Bourdieu focused much more on the dynamics of social relations within the legal field as the decisive vector for the Law determination. Thus, its sociology gives less importance to economic relations per se than to the effects of the reconversion of economic capital within other social spaces.

In Bourdieu's view, the concentration of economic capital [means of production] in the hand of a small group of individuals is no longer the decisive or exclusive criterion for class belonging, but it is nonetheless influential in determining the agent's final social position. However, there are other forms of capital competing with its economic manifestation (notably cultural and social); all with the potential to manifest them, depending on each concrete situation, as a symbolic capital: the one that exercises the domination recognized by other subjects as fair and legitimate (BOURDIEU, 2013).

In Pachukanis works the question is completely different. Faithful to Marx's method of investigation in his critique of political economy (MASCARO, 2002), the Soviet author highlights the legal subjectivity as the central moment of the juridical form and, from there, builds a general theory of law that describes it as a result of capitalist production (KASHIURA JUNIOR, 2015, pp. 70-78). Diverging from the hegemonic legal thinking in the post-revolutionary Soviet Union, which understood Law as a mere ideology in the service of capital, Pachukanis had endeavored to demonstrate the indissociability between the commodity form and the legal form (NAVES, 2000, p. 53), consequently pointing to the need for its overcoming for the emergence of communism.

The first and most fundamental difference lies precisely in the fact that Bourdieu is not concerned with the construction of a general theory of law or with the possibilities of overcoming Law in an upcoming society, even though he recognizes the relations of domination within these social spaces.

³ It is common in Bourdieu's works to compare the fields, especially the intellectual field in *Homo academicus* (BOURDIEU, 2011) and *Pascalian Meditations*, to battlefields with their opponents and companions. Where strategies are developed with for the purpose of victory. In this sense, in *The Force of Law*, the Marxist camp is portrayed through figures such as Louis Althusser and Edward Thompson, while contemporary formalist currents would be represented by authors such as Niklas Luhmann.



In presenting his model of a rigorous science of law, Bourdieu does so by distinguishing it from neo-Kantian formalism⁴ and its opposite theories, which “sees in law and jurisprudence a direct reflection of existing power relations” (BOURDIEU, 1989a, p. 210). The second tradition would be represented by Marxism, especially its structuralism reading.

We will not dwell on the accuracy of Bourdieu's critique on the ideological apparatuses of the State, developed by Althusser's and his followers, who, according to him, would ignore the symbolic systems structure and, in this particular case, the specific form of legal discourse. In this regard, it is sufficient to mention that the work of the French Marxist goes through an important rescue period (MOTTA, 2014; NEGRI, 2014) and the analysis of the criticisms pointed to them would require a more detailed effort.

We are more interested in inquiring into the reasons and the consequences of the absence of Pachukanis, the most relevant author in the Marxist critique of Law, in a text that proposes to overcome this tradition. In this sense, it was expected that the Bourdieusian dialogue would be fought with this author and not with Louis Althusser. If this was not the case, another question arises: do Bourdieu's criticisms of the Marxist view of Law proceed when considered against Pachukanis?

Allegedly, according to Bourdieu, because they are too closely tied to the architectural metaphor of the reflex relations between the base and the superstructure, Marxists who, like Edward Thompson (2000) or more recently Perry Anderson (2016), mistakenly think they have broken with economism by replacing this analysis to the fetish of the historical moment, and then, as far as Law is concerned, they are content to declare it imbricated in the production and circulation relations. In short, according to Bourdieu, “the concern in putting Law in the deep place of historical forces prevents one from grasping the specificity of the [legal] universe” (BOURDIEU, 1989a, p. 210).

According to the sociologist, the two antagonistic views - internal or formalist versus external or Marxist - ignore in their own way “the existence of a social universe relatively independent of the external pressures within which it is produced and exerted legal authority” (BOURDIEU, 1989a, p. 211). To sum up, Marxist theories would be

⁴In which Kelsen's thought would be his ultimate achievement and the Luhmannian theory his contemporary version. “The theory of systems presents under a new name the old theory of the legal system that is transformed by its own laws, it now provides an ideal framework for the formal and abstract representation of the legal system.” (BOURDIEU, 1989a, p. 209-211).



exclusively concerned with the final content of norms to simply declare law as a mere ideological instrument of class domination, but only analyzing the superficiality of its contents. These perspectives would not address the specific form of law and the dynamic processes behind the application of the norm. But is law really seen in this way by the general theory of Pachukanis?

In fact, Bourdieu's exposition bears many similarities to the introduction put forth in Pachukanis's work, in which the author traces what seems to him to be the essential tasks of an adequate general theory of law, similar to what Bourdieu called the rigorous science of law. The similarity is such that it may lead a reader to the assumption that the sociologist "borrowed" such formulations without properly revealing the source.

Indeed, Pachukanis presents two different and competing legal theories: the neo-Kantian theories, for whom "the general theory of law can be defined as the development of fundamental concepts, namely, the most abstract legal ones," however seeing these concepts "as something that stands out from experience and makes experience itself possible" (PACHUKANIS, 2017, p. 67); versus sociological and psychological theories that, while claiming to explain Law as a historical phenomenon, by investigating its origins fails in making references to extra juridical characteristics. In his words:

And if your considerations point to purely legal definitions, it is only to denounce its fictitious aspect of ideological ghosts, projections, etc. This naturalistic or nihilistic approach can undoubtedly arouse true sympathy at first sight, especially if opposed to idealistic theories of law, imbued with theologism and moralism (PACHUKANIS, 2017, p. 71).

These sociological and psychological theories were developed also by "various Marxist comrades" (PACHUKANIS, 2017, p. 71), for whom it seemed sufficient to artificially insert the question of class struggle into the analysis of law to obtain a genuinely Marxist and materialistic theory of the Law. However, according to Pachukanis, through this process "the result we get is a history of economic forms with a more or less pronounced legal color or a history of institutions, but by no means a Marxist general theory of law" (PACHUKANIS, 2017, p. 72).

According to the Soviet jurist, the Marxist authors in general, when dealing with the legal moment, had only the concrete content of legal regulations in mind, but a Marxist general theory of Law must go much further:



[In sociological and psychological theories] The concept of law is viewed exclusively from the point of the content. The question of the form of law as such is not even raised. However, there is no doubt that Marxist theory must not only examine the material content of legal regulation at different times, but also offer a materialistic interpretation of legal regulation itself as a definite historical form (PACHUKANIS, 2017, p. 72).

The main shortcoming of this kind of approach would be its inability to grasp the concept of law in its real movement, in its praxis, "revealing all its interrelations and internal connections". They end by presenting a commonplace about the "external authoritarian regulation" of law which, by serving well at any time and stage of humanity's development, serves no purpose at all.

It is not difficult to see that the authors agree on the inadequacy of neo-Kantian theories - which Bourdieu calls formalists or internalists, while Pachukanis labels them bourgeois philosophy, even though both refer to Kelsen's work as a major representation of these currents. But more than that, Pachukanis's criticisms of sociological and psychological theories - within which several Marxist "comrades" are contained - are similar to Bourdieu's critique on Marxism as a whole.

Therefore, Bourdieu's criticisms of Marxism do not proceed in relation to Pachukanis's work, because, as seen, this author is not limited to denounce the law as mere false consciousness or right reflection of the relations of production, but rather the Soviet jurist highlights the question of how dialectically connected to content, stating the need to apprehend the internal relations of the legal moment.

In this sense, the mechanistic economism that undeniably reaches some vulgar manifestations of the Marxist tradition is by no means an inherent feature of Marxian thought, on the contrary, the transposition of its research method from political economy to law, which Pachukanis effectively sought to undertake, led the conclusion about the need to understand the specific form of the legal and its "internal links". A very similar conclusion to the one Bourdieu will announce as in his *The Force of Law*, almost half a century later and without any quotation to Pachukanis.

But what would differentiate one from another? While Pachukanis aimed the overcoming of the State and the juridical form, developing a critique of the bourgeois jurisprudence made from the point of view of the scientific socialism – through applying the model of the bourgeois economy critique developed by Marx to the law; Bourdieu sought to describe the relatively autonomous universe where the legal authority is



produced and exercised (legal field), demonstrating the monopoly detained by the State and operated specially through legal language.

Bourdieu, therefore, did not have in view the horizon of a permanent revolution, associated with the Marxist tradition in which Pachukanis was inserted. Obiter, that fact is perfectly understandable when considering another adage from Bourdieu thinking. I refer to a methodological imperative that mandates the comprehension of the historical moment in which a given author is inserted, as well as the intellectual field from where he produces his interventions, that in favor of who and against whom the considered author stands.

Thus, while the French sociologist had his formation inserted in a context of discredit of the socialist and communist alternatives, marked by the authoritarian misrepresentation of the Revolution of 1917 and the failure of the Soviet Union to follow the progress of the technological development of the most developed countries of the West, the Soviet jurist wrote during the early years of concrete and socialist utopia.

Therefore, it is almost natural that they have distinct dispositions about the future, one marked by the militant optimism of the possibility of building a new society and another marked by the pessimism of the end of the utopian era and the consolidation of the neo-liberal consensus [doxa], a naïve proposition, however powerful celebration of the end of history itself and the consolidation of Western liberal democracies as the ultimate model of social organization.

Notwithstanding the political scene of hopelessness in which Bourdieu was inserted - indeed, in our view, a scenario that not only drags on until today, but is even more accentuated by the rise of the far-right populism that succeeds in electing Heads of State at the center and on the periphery of the capitalist system and a neoliberal policy of hyperausterity aimed mainly at the periphery of the system -, we believe is still possible to find in Bourdieu's works remnants of a theory of action, as we argued earlier, embodied in the possibility of universalizing the concrete conditions of reason through political effective compromises.

Bourdieu and Pachukanis have in common the critique of idealistic conceptions of law and the understanding that the legal is not mere ideology or false consciousness, having concrete effects on objectivity and relative autonomy in the face of the economic moment. However, Pachukanis, from the conception of the economic as the



preponderant moment - like Marx and authors like Lukács - sees this space of autonomy as much smaller than Bourdieu's relational sociology perceives.

From these commonalities, the authors set out for substantially different endeavors. In a way, we can say that Pachukanis sought a macro social understanding of law, focused on the application of Marxian methodology present in the critique of political economy to law, while Bourdieu sought a micro social understanding of the legal field, based (i) on the analysis of the meaning and dynamics of the historical disputes present in this social sphere, (ii) the *habitus* of skilled agents and their strategies in the competitive movement of seeking the monopoly of legal capital, (iii) as well as the relationship of this type of capital with other capitals (political, economic, cultural, etc.).

Conclusion

Throughout Bourdieu's work, Marxism was a sort of chosen enemy and hidden companion, in the sense that the French sociologist felt the need to differentiate himself from the structuralism currents of the Marxism, that held the hegemony of the French intellectual field at his time, trying to reposition his relational sociology and its symbolic materialism as an overcoming of economist Marxian currents, without redounding in the subjectivist theories of rational choice.

However, as demonstrated by Burawoy (2015), as well as by the description of similarities between Bourdieu and Marx's biographical and intellectual trajectories, there is no doubt that the work of the former, in many ways, came from questions and problems shared by the Marxian theory, as well as developed many intuitions of this tradition thought. His insistence on distancing himself definitively from Marxism is more the result of a strategic choice to position himself in the intellectual field than the existence of insurmountable incompatibilities among theoretical presuppositions.

Pachukanis's absence in the Bourdieusian critique of the legal field proves our hypothesis. By hiding the leading Marxist theorist of law, which anticipates much of Bourdieu's analyzes presented in *The Force of Law*, the French sociologist produces a caricature of the Marxist critique of law - though this reductionist conception was widely spread at that time and its confrontation was a fair and still current design.



In conclusion, we argue that the Bourdieusian critique refutes only a mechanistic materialism present in a certain kind of structuralism identified specially with Althusser's work or, at least, the Bourdieu's reading of this author and his thoughts, but it does not refute Marxist tradition as a whole; rather, in our view, it is complementary to it. It is our understanding that the association of these currents of thought is otherwise essential, very timely and capable of ensuring the best possible approximation of the legal phenomenon in its real movement. The considerations of the internal dynamics of the legal field and its relations with others social spheres through, as proposed in an Bourdieusian relational sociology, associated with the insertion of the legal phenomenon in a social totality (Marxism) is, in our view, the most adequate method for constructing a rigorous science of law.

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