



Capitalism, imperialism and European Union Law: towards a Marxist approach

Robert Knox¹, Eva Nanopoulos² and Andrew Woodhouse¹

¹Law, University of Liverpool, Liverpool, UK and ²Queen Mary University of London, London, UK

Corresponding author: Andrew Woodhouse; Email: hsawoodh@liv.ac.uk

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Abstract

This article establishes a foundation for the development of Marxist approaches to European Union (EU) law. While Marxist scholarship has engaged with European integration throughout its history, it has largely overlooked the legal architecture of the EU. Conversely, EU legal studies have remained largely insulated from Marxist thought, even as critical approaches have begun to gain traction. Bridging this mutual neglect, the article argues that EU law must be understood not as a neutral or technocratic system, but as a central element of capitalist social relations both in Europe, and in terms of Europe's wider integration in the global market. In this way, EU law is bound up with processes of accumulation, imperialism, and racialised social reproduction. Drawing on key currents within Marxist theory, the article situates EU law within the historical dynamics of capitalist development, demonstrating how a materialist legal analysis can deepen and enrich existing critiques of European integration.

Keywords: Marxism; Imperialism; Capitalism; EU Law; law and political economy

1. Introduction

Since the 2008 financial crisis, Marxism has experienced a marked revival, including within legal scholarship. This is not necessarily surprising. On the one hand, the financial crisis was symptomatic of a long and deepening crisis of capital accumulation that lingers to this day, which Marx's work, particularly his critique of political economy, can help us both understand and overcome. On the other hand, although Marxist scholarship has not always prioritised legal analysis, it has long acknowledged law's critical role in sustaining capitalism. Given the centrality of both capitalism and law to our current predicament, therefore, it is unsurprising that several legal scholars have turned to Marxism to examine law's role in shaping the present and exploring its potential in the pursuit of emancipatory objectives.

Not so, however, in the field of European Union (EU) law. In the aftermath of the Eurocrisis, the EU has come under more political and theoretical scrutiny than ever before, particularly by the left, challenging its self-understanding as a 'force for good' in a variety of areas, from austerity and migration to climate and war. Despite this and despite the EU's relevance in the shifts of global capitalism, however, there have been few Marxist engagements with EU law. Marxists have paid attention to the EU but have rarely offered close analyses of the essential legal structures which have constituted and sustained the project. Scholars of the EU law, for their part, have mostly avoided the use of Marxist frameworks.

Marxist critiques of EU law, however, are essential. The very creation of the EU was closely bound up with the rejuvenation of capitalism on the European continent, and its evolution has

likewise been shaped by the modern trajectories of capitalism. The EU's multi-dimensional and systemic crisis,¹ moreover, is intimately linked to political-economic questions or, more specifically, to the contradictions of contemporary capitalism. At the same time, law occupies a particularly pervasive place in the EU, which could be described as a quintessentially 'juridical' organisation. Thus, any attempt to grapple both with the history and nature of the EU and the present-day issues it faces needs a thorough grasp of capitalism and its relationship to the law. As this article demonstrates, this is something that even the most critical work in EU law has yet to fully grapple with.

This article breaks new ground by charting a framework for the development of Marxist approaches to EU law and outlining concrete avenues for integrating materialist analyses into EU legal scholarship. Section 2 begins with a brief sketch of the core elements of the Marxist tradition. It first sets out Marxism's distinctive theoretical and methodological approach before mapping some Marxist debates over those areas and/or themes directly relevant to EU law – most notably the law, the state, imperialism, racialisation, and gender. Having set out this theoretical scene, we then chart the 'mutual neglect' of Marxism and EU law. Section 3 outlines how Marxists from various 'disciplines' have understood the EU, showing how, notwithstanding the richness of their analyses, the legal dimension of integration has remained underexplored and undertheorised in the Marxist tradition. In order to illustrate the distinctiveness and potential of a Marxist approach to EU law, Section 4 then tackles some key critiques of EU law in the light of relevant Marxist themes, highlighting their relationship to and differences with the Marxist tradition. By offering an in-depth account of Marxist approaches in general and specifically in relation to the EU, this paper highlights how Marxist analysis can offer a route beyond existing critical approaches to EU law. In so doing, the paper seeks to recast the terms of debate within EU legal scholarship, challenging the marginalisation of Marxist thought and laying the groundwork for future materialist legal analysis of the role of EU law in reproducing capitalism, imperialism, and the many racialised and gendered forms of exploitation and oppression that characterise them.

2. Marxist theory

To begin with some of the key tenets of Marxist theory, Marxists are not primarily concerned with offering positions 'internal' to particular legal regimes. As a political-intellectual project that is concerned with analysing and – ultimately – radically transforming the existing order, Marxism is unlikely to offer legal analysis and/or reforms within the coordinates of the existing order. Indeed, as Mark Tushnet observed, the practical-legal consequence of adopting a Marxist position in a legal order is to pursue those positions and arguments which 'advance the cause of socialism'.²

What, then, can a Marxist approach offer to the study of EU law? This question cannot be answered in isolation. As will be discussed below, the Marxist tradition is concerned with setting legal relations in the context of the broader social totality. In so doing, Marxists seek to map out how legal questions both affect and are affected by these social relations. Accordingly, in order to understand what the Marxist tradition has to offer to an analysis of EU law, it is necessary to understand how Marxists have understood the social realm – and its connections to both law and the state – more broadly.

A. Social forces and social relations

As noted elsewhere, setting out any definitive account of Marxism is difficult.³ Marxists not only disagree about substantive questions of theory and politics, but even – perhaps especially – about

¹E Nanopoulos et al, *The Crisis Behind the Eurocrisis: The Eurocrisis as a Multidimensional Systemic Crisis of the EU* (1st edn, Cambridge University Press 2019).

²M Tushnet, 'The Dilemmas of Liberal Constitutionalism' 42 (1981) *Ohio State Law Journal* 411, 424.

³R Knox, 'Marxist Approaches to International Law' in A Orford, F Hoffmann and M Clark (eds), *The Oxford Handbook of the Theory of International Law* (Oxford University Press 2016) 306.

the very nature and boundaries of the Marxist tradition itself. Despite this, the only way to unpick what is *distinct* about Marxist approaches to EU law is to give some account of how Marxist theory has approached questions of law and its relationship to wider social structures.

Perhaps the common sense understanding of Marxism boils down to ‘it’s the economy stupid’. In such an account, Marxism conceives of the ‘economic base’ of a particular society as determining a legal and political ‘superstructure’. Whilst there are certainly some *soi-disant* Marxists who hem to such a position, such vulgar Marxism ultimately misses the core breakthrough of Marx’s theory. Marx does not argue that there is an eternal and transhistorical ‘economic’ sphere. Rather, for Marx, the emergence of the idea of an ‘economic’ sphere, isolated and autonomous from the rest of society, *was a specific product of capitalist society*.⁴ It is only in capitalism, where the fulfilment of social needs is achieved indirectly through the pursuit of profit, that such a situation can obtain.⁵

This gives us a better sense of the Marxist approach, which argues that ‘political forms’ and ‘legal relations’ cannot be ‘comprehended whether by themselves or on the basis of a so-called general development of the human mind, but that on the contrary they originate in the material conditions of life’.⁶ These material conditions of life are the manner and processes through which human beings collectively produce and reproduce their social existence.⁷

Crucially, for Marx, the collective reproduction of social existence is not simply *random*. Rather, human beings engage in such production ‘only by working together in a specified manner and reciprocally exchanging their activities’ and, in so doing ‘they enter into definite connections and relations to one another’.⁸ These definite connections and relations come to form ‘modes of production’ with their own specific internal logics. As Marx eloquently put it – predictably in a footnote:

In the opinion of the German-American publication this is all very true for our own times, in which material interests are preponderant, but not for the Middle Ages, dominated by Catholicism, nor for Athens and Rome, dominated by politics. In the first place, it strikes us as odd that anyone should suppose that these well-worn phrases about the Middle Ages and the ancient world were unknown to anyone else. One thing is clear: the Middle Ages could not live on Catholicism, nor could the ancient world on politics. On the contrary, it is the manner in which they gained their livelihood which explains why in one case politics, in the other case Catholicism, played the chief part.⁹

Crucial to these internal logics was the question of class. For Marx, these different modes of production were structured by relations of production. These relations of production concern who produces the social product and who is then able to appropriate that product.¹⁰ Crucially in class societies, such relationships – in their different forms – are *antagonistic*, as the producers of the social product – slaves, serfs and workers – do not have ultimate control over the means of production.¹¹ Accordingly, these modes of production are marked by class struggle.

In this way, Marxists understand the specific social forms prevalent in particular societies as tied to how these societies materially reproduce themselves. The social dynamics of these forms of

⁴K Marx, *Capital: A Critique of Political Economy, Volume 3* (David Fernbach tr, Penguin Classics 1993) 496.

⁵K Marx, ‘On the Jewish Question’ in *Marx and Engels: Collected Works*, vol 3 (Lawrence and Wishart 1976) 145–74.

⁶K Marx, ‘Preface to A Contribution to the Critique of Political Economy’ in *Marx and Engels: Collected Works*, vol 29 (Lawrence and Wishart 1987) 261–5, 262.

⁷K Marx, *Wage Labour and Capital and Value Price and Profit* (International Publishers 2006) 28.

⁸*Ibid.*

⁹K Marx, *Capital: A Critique of Political Economy* (Penguin 1990) 176.

¹⁰*Ibid.*, 163–77.

¹¹*Ibid.*, 449.

production and reproduction – the struggles between classes, the invention of new technologies, forms of competition – are both mediated through these social forms and give shape to them.

B. Capitalism

In order to understand how a Marxist approach might tackle EU law, then, we need an account of our contemporary mode of production: *capitalism*. As with the definition of Marxism itself, there has been much disagreement over what precisely constitutes a capitalist society, but on a very simple level, we can say that a capitalist society is one in which production is mediated through the pursuit of *profit*. Individual capitalists – those who own the means of production – will only produce insofar as they are able to make a profit. In this system, social needs are fulfilled only if they produce a profit for capitalists.

At the heart of the capitalist system, Marx argued, is the production of commodities. It is through the sale of commodities that capitalists are able to realise their profits, and the market is thus a central site through which capitalist societies are reproduced and human needs are fulfilled. For Marx, this dual function – that of fulfilling needs and being exchanged – is embodied in the very form of the commodity, which is composed of a ‘use value’ and an ‘exchange value’.

Marx argued that insofar as commodities can be exchanged, there has to be some common standard against which they can all be assessed.¹² For Marx, this standard is *labour* – since human labour is the ultimate source of all commodity production.¹³ However, if commodities are simply exchanged for other commodities of equivalent value, there would be no way – *on the aggregate social level* – for profit to be generated. This is where Marx’s crucial distinction between labour and labour power comes in, where the latter refers to one’s capacity to labour.¹⁴

Workers, lacking access to and control of the means of production and dependent upon the market for survival, must work for capitalists in order to obtain a wage. This involves the worker selling the commodity of labour power. However, the capitalist does not pay for the ‘amount’ of labour a worker expends on producing a particular commodity; rather, the capitalist pays for the worker’s capacity to labour in a given amount of time. The point here is that the price of labour power – that is to say the wage – can be lower than the amount of labour workers expend in the production process and thus the value of the final product. Accordingly, insofar as labour serves as the index of value, labour power represents a unique commodity which can produce more value than its cost.¹⁵

Crucially, this is not an individualised process but is rather a social one. Marx understood that a central element of capitalism was the existence of many capitals. The competition between these capitals means that the question is not how much ‘actual’ labour produces a particular commodity; rather, it is how much labour is ‘socially necessary’.¹⁶ The difference between this socially necessary labour and the price of labour power produces what Marx calls surplus value, which appears to capitalists in the form of profit.

In this way, capitalism is a system structured around the competitive search for profit, with the exploitation of labour at its core. From this set of relationships, Marxists argue, a complex totality emerges. In particular, given the decentralised, ‘anarchic’ nature of capitalist production – structured as it is around *private* ownership of the means of production – capitalists will constantly seek to increase the productivity of labour so as to realise greater rates of surplus value.

¹²This could not be supply and demand, since supply and demand can only determine the *movement* of prices, but they cannot explain the value around which this movement fluctuates. See Marx, *Wage Labour and Capital and Value Price and Profit* (n 7).

¹³Marx, *Capital* (n 9) 128.

¹⁴*Ibid.*, 128–9.

¹⁵*Ibid.*, 272.

¹⁶*Ibid.*, 129.

They do this because of the constant threat of competition, which acts as a ‘coercive law’ as rival capitalists might increase the productivity of labour and thus bankrupt other capitalists.¹⁷

This also makes capitalism an intrinsically crisis-prone system in which overproduction and underconsumption continually occur.¹⁸ Given the close interconnectedness of different circuits of capitalist production, problems in one area can spread rapidly.¹⁹ Such crises can be temporarily salved through credit and financialisation, but such ‘fixes’ are themselves ultimately subject to the same crises of capitalism.²⁰ The combination of these different elements pushes capitalists towards unlimited expansion in order to seek new sources of profit, to fend off crises, and to outcompete their rivals.

This endless need for expansion also leads to two further tendencies. First, an endless drive towards *transformation*, as capitalist profits can only be generated through the creation of new workers, new markets and new sites of accumulation. Second, a trend towards the concentration and centralisation of capital. As successful capitalists successfully reinvest in productive processes and acquire smaller capitals, they are also able to wield increasing power within capitalist markets and within capitalist societies more broadly. As such, the tendency of capitalism is the accumulation of greater and greater wealth in a smaller number of hands and – crucially – in a narrower geographical field.²¹

All of this is, of course, further structured by class antagonism between the working class – who are forced to collectively produce surplus value by the ‘silent compulsion of economic relations’²² – and the capitalist class, whose social power lies in their control of the means of production.²³

C. Marxism and law

In grappling with EU law, it is not enough to understand capitalism and its laws of motion. Whilst these insights can yield information of the broader environment in which EU law operates, they tell us very little about the nature of EU law as a *particular* collection of social forms. In order to fully understand this, it is necessary to turn to how Marxists have conceptualised both law and the state, the relationship between the two, and – crucially – their relationship to capitalism.

In some ways, there is a temptation – one that has been acted upon in some more ‘vulgar’ iterations of Marxism – to collapse law and state, understanding the law as simple ‘state will’. In such accounts, the social character of the state – in particular its class nature – is responsible for the social character of the law. Such accounts reflect, in some respects, the relative absence of specific theorisation of law in the Marxist tradition. Yet this claim can be overblown. Whilst Marx left no explicit treatise on law itself, law featured heavily in much of his analysis of capitalism.²⁴ Such fragments have proved fruitful ground for broader Marxist theorising about law.

As noted elsewhere,²⁵ the Marxist tradition has tended to analyse the law in three interlinked registers. Roughly put, these are: (1) those that focus on the way in which law articulates and embeds the social relations of capitalism, particularly in terms of the class struggle; (2) those that

¹⁷R Luxemburg, *The Accumulation of Capital* (Routledge 2003) 12.

¹⁸S Clarke, *Marx's Theory of Crisis* (Palgrave Macmillan UK 1994).

¹⁹K Marx, *Capital: A Critique of Political Economy Volume 2* (Fernbach tr, Penguin 1978) 156–7.

²⁰D Harvey, ‘The Spatial Fix – Hegel, Von Thunen, and Marx’ 13 (1981) *Antipode* 1; D Harvey, ‘Globalization and the “Spatial Fix”’ 2 (2001) *Geographische Revue* 23.

²¹N Bukharin, *Imperialism and World Economy* (Merlin Press 1972); VI Lenin, *Imperialism, the Highest Stage of Capitalism: A Popular Outline* (Foreign Languages Press 1970).

²²Marx, *Capital* (n 9) 899.

²³S Clarke, *Keynesianism, Monetarism and the Crisis of the State* (Edward Elgar Publishing Ltd 1988) 9.

²⁴See eg, ME Cain and A Hunt, *Marx and Engels on Law* (Academic Press 1979); P Phillips, *Marx and Engels on Law and Laws* (M Robertson 1980).

²⁵R Knox, ‘Law’ in B Skeggs et al (eds), *The SAGE Handbook of Marxism* (SAGE 2021) 876–9; Knox, ‘Marxist Approaches to International Law’ (n 3).

conceive of law in terms of *ideology*; and (3) those who understand law's connection to capitalism *structurally*, or logically, through the nature of the form of value under capitalism.

The first and most straightforward of these approaches analyses how law embodies and responds to social relationships, in particular – although not exclusively – class relationships. As Marx famously put it, law is a ‘form’ through which classes ‘become conscious’ of class conflict and ‘fight it out’.²⁶ In this way, law can be said to *crystallise* and embed the results of the class struggle whilst tending to advantage the ruling class. Thus, for instance, Marx was attentive to the role of the law in dispossessing feudal peasants of their common land²⁷ – and thus creating the conditions in which they would be forced to sell their labour power – as well as its role in limiting the working day – as compelled by the social power of organised labour.²⁸ Particularly relevant in the context of EU law is the work by those scholars who have pinpointed how international and transnational legal arrangements have been central to the spread and consolidation of neoliberal globalisation in the context of the defeat both of the labour movement in the advanced capitalist economies and of Third Worldism on a global scale.²⁹

Whilst these accounts give a powerful sense of law's changing content, they do not tell us very much about law's wider functions. It is for that reason that – again following Marx – many Marxists have turned to accounts of law as ideology. In so doing, these Marxists have looked at how law serves to *represent* capitalist social relations in ways which ultimately justify and reproduce these social relations.

Most famously, perhaps, Marx and Engels themselves – in *The German Ideology* – argued that ‘in all ideology men and their circumstances appear upside-down as in a camera obscura’.³⁰ By this, they meant that ideological forms inverted mechanisms of social causation. Specifically, for them, the ideological function of law was to take the social relations between human beings, which occur ‘behind the backs’ of individuals,³¹ and present them as if they were the result of conscious individual human ‘will’. In this way, the exploitative social relationships at the heart of capitalism could be presented as ‘property’ and ‘contract’, legal forms that flowed from the volition of the participants in capitalism.³² Indeed, as Engels noted, in capitalist society, ‘the *juristic world outlook*’ became the ‘classical outlook of [the] bourgeoisie’, which:

[W]as a secularization of the theological outlook. Human right took the place of dogma, of divine right, the state took the place of the church. The economic and social conditions, which had formerly been imagined to have been created by the Church and dogma because they were sanctioned by the Church, were now considered as founded on right and created by the state.³³

Later Marxists extended these insights. Louis Althusser, for instance, famously dubbed ideology the ‘imaginary relationship of individuals to their real conditions of existence’.³⁴ For Althusser, this imaginary relationship has a material existence, in the form of ‘Ideological State

²⁶Marx, ‘Preface to A Contribution to the Critique of Political Economy’ (n 6) 263.

²⁷Marx, *Capital* (n 9) 877–95.

²⁸*Ibid.*, 340–416.

²⁹BS Chimni, ‘International Institutions Today: An Imperial Global State in the Making’ 15 (2004) *European Journal of International Law* 1; AC Cutler, *Private Power and Global Authority: Transnational Merchant Law in the Global Political Economy* (Cambridge University Press 2003).

³⁰K Marx and F Engels, ‘The German Ideology’ in *Marx and Engels: Collected Works*, vol 5 (Lawrence and Wishart 1976) 19–539, 36.

³¹Marx, *Capital* (n 9) 135.

³²Marx and Engels (n 30) 91–2.

³³F Engels, ‘Lawyers’ Socialism’ in *Marx and Engels: Collected Works*, vol 26 (Lawrence and Wishart 1990) 597–616, 598.

³⁴L Althusser, ‘Ideology and Ideological State Apparatuses (Notes towards an Investigation)’ in *Lenin and Philosophy and Other Essays* (New Left Books 1971) 127–8, 162.

Apparatuses'.³⁵ The function of these apparatuses is to turn concrete, actually existing individuals into subjects. Insofar as one becomes a subject, one is called to 'occupy the place' in the world designated by ideology, which then becomes 'a fixed residence'.³⁶ Crucially, this is not simply an external process. Rather, Althusser argues, this operates through a process of 'interpellation', whereby one recognises and accepts this process of subject formation.³⁷ As one might imagine, law is absolutely crucial in this process of interpellation, 'help[ing] men and women around the globe to "arrive", so to say, into certain positions within the global class structure and not others'.³⁸ At the same, as Nicos Poulantzas argued, this legal ideology recast the classes of capitalism into atomised individuals, and thus held 'together the social formation under the aegis of the dominant class', under an 'ideological mechanism of imaginative representation'.³⁹

Crucially, then, Marxist accounts of ideology – whilst focusing on 'ways in which meaning helps to ground, support, and perpetuate relations of domination'⁴⁰ – are not simply concerned with ideas in people's heads. Rather, legal institutions force people to act 'as if' the exploitation and domination under capitalism are simply contingent⁴¹ occurrences without deeper roots in the structural logic of capitalism itself.⁴²

It is this focus on the structural logic of capitalism that brings us on to the third mode of Marxist theorising about law – those Marxists who have sought to understand the connection between law and capitalism on a structural and logical basis. The foundation for such an approach can be found in Marx's *On the Jewish Question*. There, Marx argued that prior to capitalism, one could not distinguish between 'state' and 'civil society' – or 'politics' and 'economics' – because in pre-capitalist societies the reproduction of society was achieved through a complex web of politico-religious obligations.⁴³ However, the rising bourgeoisie sought to dismantle this structure in order to free themselves from these shackles and enable them to seek profit.⁴⁴

The victory of the bourgeoisie necessarily brought about the destruction of this order, and its replacement with one characterised by the separation of the 'state' and 'civil society', and accordingly the emergence of the 'economic' as a separate and autonomous realm. In such a society, disputes could no longer be resolved through the status-based mechanisms of the old feudal order. In such a situation, the 'rights of man', the rights of 'egoistic man, of man separate from other men and from the community'⁴⁵ came to predominate.

It was this insight that animated the work of Evgeny Pashukanis and his 'commodity-form theory' of law. Pashukanis argued that previous Marxist attempts to understand the law, particularly those rooted in a class struggle approach, could not delimit what was *specific* about law as compared to other forms of social regulation, giving instead 'a history of economic forms with a more or less weak legal colouring, or a history of institutions'.⁴⁶

³⁵At the same time, Althusser thought those elements of social life that existed to directly enforce the law – 'the Police, the Courts, the Prisons' – were part of what Althusser called the 'Repressive State Apparatus', *Ibid.*, 143.

³⁶*Ibid.*, 178.

³⁷*Ibid.*

³⁸A Rasulov, "'The Nameless Rapture of the Struggle': Towards a Marxist Class-Theoretic Approach to International Law" 19 (2008) *The Finnish Yearbook of International Law* 243, 291.

³⁹N Poulantzas, *State, Power, Socialism* (Verso 2000) 88.

⁴⁰S Marks, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (Oxford University Press 2003).

⁴¹S Marks, 'False Contingency' 62 (2009) *Current Legal Problems* 1.

⁴²S Marks, 'Human Rights and Root Causes' 74 (2011) *The Modern Law Review* 57.

⁴³Marx, 'On the Jewish Question' (n 5) 165–6.

⁴⁴*Ibid.*, 167.

⁴⁵*Ibid.*, 162.

⁴⁶EB Pashukanis, 'The General Theory of Law and Marxism' in P Beirne and R Sharlet (eds), *Pashukanis, Selected Writings on Marxism and Law* (Academic Press 1980) 42.

Against this, Pashukanis centred on the statement that ‘under certain conditions the *regulation* of social relationships assumes a *legal character*’.⁴⁷ The point was to delimit this legal character, situating it in the particular historical and material conditions in which it arose. In this way, Pashukanis argued, we can understand that law ‘is a mystified form of some *specific* social relationship’.⁴⁸ Following Marx’s observations in *On the Jewish Question*, Pashukanis located the conditions in which law came to be as those of commodity exchange, with law serving as a form of appearance of commodity exchange.

In essence, Pashukanis’ argument was that the particular character – or form – of law was that of an abstract mutual equality. Insofar as commodities must necessarily be ‘equal’ to each other, so too must their owners be recognised as possessing the abstract capacity to exchange. Yet commodity exchange is also an inherently conflictual relationship with the continual potential for dispute. As such, commodity exchange necessarily throws up a mode of social regulation which continually maintains the abstract equality of commodity-bearers – law. In this way, commodity exchange has always ‘assumed a dual nature – economic and legal’.⁴⁹

As capitalism came to be the predominant mode of organising social production, commodity exchange was generalised throughout the world, with ‘random acts of exchange turn[ing] into a broad systematic circulation of commodities’.⁵⁰ As capitalism comes to dominate the entirety of global production – and reshape the world in its image – a qualitative transformation occurs:

Simultaneously, social life is reduced on the one hand to the totality of elemental objectified relationships in which people appear to us as objects (such are all economic relations: the level of prices, surplus value, profit etc.) and, on the other hand, those relationships which define man only by reference to an object, ie as a subject, or in legal relationships. These two basic forms are different in principle, but at the same time are very closely connected and mutually dependent. The social, productive relationship appears simultaneously in two incongruous forms: as the value of a commodity and as the ability of man to be the subject of rights.⁵¹

In this sense, then, Pashukanis established a structural connection between law and capitalism. The abstract, formal character of the law reflects its status as a form of appearance of commodity exchange; as capitalism spread throughout the globe, and subordinated more areas of social life to its abstract logics, the legal form itself became ever more abstract.

D. From law to state

Although, as noted above, law and state cannot be simply collapsed into one and other, Marxist debates on the state have a similar dynamic to those described above. Again, Marxists have understood the state in terms of both its relationship to class struggle, its social form and in the context of ideology. Famously, in the *Communist Manifesto*, Marx and Engels characterised the ‘executive of the modern State’ as nothing ‘but a committee for managing the common affairs of the whole bourgeoisie’.⁵² As Engels put it in *Anti-Dühring*:

Moving in class antagonisms, society up to now had need of the state, that is, an organization of the exploiting class at each period for the maintenance of its external conditions of

⁴⁷*Ibid.*, 58.

⁴⁸*Ibid.*

⁴⁹*Ibid.*, 67.

⁵⁰*Ibid.*, 77.

⁵¹*Ibid.*, 76.

⁵²K Marx and F Engels, ‘Manifesto of the Communist Party’ in R Tucker (ed), *The Marx-Engels Reader* (WW Norton and Company 1978) 475.

production, that is, particularly for the forcible holding down of the exploited class in the conditions of oppression (slavery, villeinage or serfdom, wage-labour) given by the existing mode of production. The state was the official representative of the whole of society, its concentration in a visible body, but it was so only in so far as it was the state of that class which in its time represented the whole of society: in antiquity, the state of the slave-owning citizens, in the Middle Ages of the feudal nobility, in our time, of the bourgeoisie.⁵³

For Marx, these questions became particularly acute in the context of the emergence of the 1871 Paris Commune. Marx's crucial insight here was that 'the working class cannot simply lay hold of the ready-made State machinery, and wield it for its own purposes'.⁵⁴ This was because – as Engels wrote in his introduction to *The Civil War in France* – of the peculiar character of the state as a social institution. Whilst

[s]ociety had created its own organs to look after its common interests, originally through simple division of labour . . . these organs, at whose head was the state power, had . . . in pursuance of their own special interests, transformed themselves from the servants of society into the masters of society.⁵⁵

On the one hand, then, the state was a device for class rule. This meant that in a revolutionary struggle the state could not simply disappear, as the state would be needed to secure the rule of the oppressed classes. On the other hand, according to Marx, the state was a specific social form that would continually push back against the emancipatory interests of any revolutionary movement. Marx and Engels navigated this tension through their concept of the 'dictatorship of the proletariat', the 'political transition period' between capitalism and communism.⁵⁶ With the victory of communism and its subsequent ending of class antagonisms, the state would 'wither away'.⁵⁷

Disagreements about these formulations became central to practical-political debates about revolutionary transformation during the Russian Revolution and its aftermath. In particular, questions about the form of the dictatorship of the proletariat – which Marx had understood as a revolutionary democratic break with the old state form – were central. For the Bolsheviks, the dictatorship would require a revolutionary rupture with bourgeois or parliamentary democracy,⁵⁸ whereas reformist elements – particularly those around Karl Kautsky – argued that the 'dictatorship of the proletariat' was a condition and not a specific form of government. Accordingly, the election of a socialist government within a parliamentary democracy could form this 'dictatorship'.⁵⁹

In this sense, then, more than the legal debates tracked above, debates over the class nature of the state have had immediate and obvious consequences for revolutionary politics and served as the dividing line between, eg, anarchists and Marxists; reformists and revolutionaries; social democrats and communists, and Marxist-Leninists and Eurocommunists. In some ways, however, these more immediate debates about the relationship between state and revolution are undergirded by a broader set of questions, which – outside of an immediately revolutionary situation – are crucial to Marxist understandings of the state. Such questions include: what is the

⁵³F Engels, *Anti-Dühring (Herr Eugen Dühring's Revolution in Science)* (Foreign Languages Press 1976) 362–3.

⁵⁴K Marx, *The Civil War in France* (3rd edn, Foreign Languages Press 1977) 66.

⁵⁵*Ibid.*, 15.

⁵⁶K Marx, 'The Critique of the Gotha Programme' in *Marx and Engels: Collected Works*, vol 24 (Lawrence and Wishart 1990) 75–99, 95.

⁵⁷Engels, *Anti-Dühring (Herr Eugen Dühring's Revolution in Science)* (n 53) 363.

⁵⁸VI Lenin, *The State and Revolution: The Marxist Teaching on the State and the Tasks of the Proletariat in the Revolution* (Foreign Languages Press 1970).

⁵⁹K Kautsky, *The Dictatorship of the Proletariat* (University of Michigan Press 1964).

relationship between the state, individual capitals and capital as a whole? Can the state represent interests *other* than those of capital? And, if the state is a class state, how does the ‘ruling class rule’?

Arguably, the most well-known of these debates was the somewhat caricatured exchange between Nicos Poulantzas and Ralph Miliband in the late 1960s and 1970s. In *The State and Capitalist Society*, Miliband had pushed back against ‘pluralist’ theories of the state, which understood the state as mediating between different elite groups.⁶⁰ Miliband argued that the institutions of the state systematically drew upon economic elites to serve as their personnel,⁶¹ with the social composition of bourgeois political parties drawn from the upper and middle classes.⁶² At the same time, governments have necessary ties with these economic elites, who are able to bring to bear significant pressure on any government.

Although Miliband’s argument effectively demonstrated the ‘factual’ dependence of bourgeois states upon economic elites, many Marxists felt such an ‘instrumentalist’ position was insufficient. Particularly important in this respect was Nicos Poulantzas and his Althusserian-inspired structuralism. For Poulantzas, Miliband’s account was too empiricist, and so it missed the structural relationship between the state and capitalist society. In particular, for Poulantzas the issue was not whether members of the capitalist class participated in the state, but rather that:

The relation between the bourgeois class and the State is an *objective relation*. This means that if the *function* of the State in a determinate social formation and the *interests* of the dominant class in this formation *coincide*, it is by reason of the system itself: the direct participation of members of the ruling class in the State apparatus is not the *cause* but the *effect*, and moreover a chance and contingent one, of this objective coincidence.⁶³

Indeed, Poulantzas went on to note that, in fact, ‘the capitalist State best serves the interests of the capitalist class only when the members of this class do not participate directly in the State apparatus, that is to say when the *ruling class* is not the *politically governing class*’.⁶⁴ Such a ‘relative autonomy’ allows the state ‘to organize the hegemony of the whole of this class’.⁶⁵ In his later work, Poulantzas would develop this position further, arguing that the state is the ‘condensation of a relationship of forces between classes and class fractions’.⁶⁶ In this way, particular struggles between and within classes are fought out *within* the structure of the state, and then find themselves embedded within that structure. This appears as a process ‘separate’ or ‘outside’ of the economy, owing to the specificity of capitalist social relations.

Whilst Poulantzas’ approach has seen wide acceptance,⁶⁷ it has often been criticised for not specifying *how* and *why* the state ultimately reproduces the logic of capitalism and the interest of the dominant class. Fred Block, for instance, argued that accounts of relative autonomy ultimately collapse back into instrumentalism.⁶⁸ Against this, Block proposed that ‘state managers’ remain autonomous and separate from the capitalist class. However, he also argues that these state

⁶⁰R Miliband, *State In Capitalist Society* (Basic Books 1969) 4–5.

⁶¹*Ibid.*, 119–45.

⁶²*Ibid.*, 66.

⁶³N Poulantzas, ‘The Problem of the Capitalist State’ 58 (1969) *New Left Review* 67, 77.

⁶⁴*Ibid.*

⁶⁵*Ibid.*, 74.

⁶⁶Poulantzas (n 39) 132.

⁶⁷See, eg, B Jessop, *State Power: A Strategic-Relational Approach* (1st edn, Polity 2007); R Khachaturian, ‘The State as Social Relation: Poulantzas on Materiality and Political Strategy’ in *Research Handbook on Law and Marxism* (Edward Elgar Publishing 2021) <<https://www.elgaronline.com/edcollchap/edcoll/9781788119856/9781788119856.00016.xml>> accessed 27 June 2025; A Gallas, *The Thatcherite Offensive: A Neo-Poulantzasian Analysis* (Haymarket Books 2017).

⁶⁸F Block, ‘The Ruling Class Does Not Rule: Notes on the Marxist Theory of the State’ in T Ferguson and J Rogers (eds), *The Political Economy: Readings in the Politics and Economics of American Public Policy* (Routledge 2021) 34.

managers must – in an internationally competitive system – manage the national economy in such a way as to secure revenues and its reproduction. In a capitalist system, this means managing ‘business confidence’ to ensure processes of capitalist accumulation can continue.⁶⁹ At the same time, they must meet the demands of the struggles from the working class in such a way as to maintain this confidence, as such:

The structural position of state managers forces them to achieve some consciousness of what is necessary to maintain the viability of the social order. It is this consciousness that explains both the reluctance of state managers to offend business confidence, and their capacity to rationalize a capitalist society. However, the fact of consciousness does not imply control over the historical process. State managers are able to act only in the terrain that is marked out by the intersection of two factors – the intensity of class struggle and the level of economic activity.⁷⁰

Whilst Block’s solution to this problem is ingenious, it does not pose the question of *why* the capitalist state cannot simply be a direct expression of capitalist interests. It was this question that Pashukanis famously posed – not of the law, but of the state – in his *General Theory of Law and Marxism*, asking:

[W]hy does the dominance of a class not become that which it is, i.e. the actual subordination of one part of the population to another, but instead assumes the form of official state authority? Or, what is the same, why is the apparatus of state coercion created not as a private apparatus of the ruling class, but distinct from the latter in the form of an impersonal apparatus of public power distinct from society?⁷¹

For Pashukanis, this could not simply be an ideological project designed to mystify capitalist society – although such ideological effects were certainly real. Instead, it was the historical and material conditions of commodity exchange which gave rise to such a situation. Firstly, such conditions require the formal separation of the state from civil society – since production for profit cannot be mediated through status and hierarchy. Secondly, in such a situation, coercion cannot appear to emanate purely from private will. Instead, it must be ‘coercion proceeding from some abstract, general person, as coercion exercised not in the interest of the individual from whom it proceeds – for each person in commodity society is an egoist – but in the interest of all the participants in legal transactions’.⁷²

Pashukanis’ approach has been core to the emergence of a wider ‘state-derivationist’ school. The crucial insight of this tradition is that ‘we have to look behind the institutional separation of economics, law and politics to see money, law and the state as complementary economic, legal and political forms of the power of capital’.⁷³

E. The world market and imperialism

Thus far, we have seen that the Marxist account involves situating law and state – as specific social forms – within the context of the logic of capitalism and its attendant class dynamics. As such, the particular changing patterns and forms of capitalism become crucial in understanding any particular legal regime. However, particularly when it comes to a Marxist analysis of EU law, it is

⁶⁹*Ibid.*, 38–40.

⁷⁰*Ibid.*, 44.

⁷¹Pashukanis (n 46) 97.

⁷²*Ibid.*, 96.

⁷³Clarke (n 23) 15.

also crucial to understand that capitalism can be analysed as operating at different *scales*. Although, given the nature of capitalism as a global totality, one cannot purely isolate a ‘national’ and ‘international’ sphere,⁷⁴ it is also the case that the global market has a very specific set of dynamics. These dynamics must be concretely analysed in order to understand the particular juridical regimes to which they give rise. In the context of the EU – operating as it does at a supra- and international level – this is especially important.

Marx himself was well-aware of the global nature of capitalism, both in terms of capitalism’s birth (via the dispossession of non-European peoples)⁷⁵ and in terms of its consolidation into a world market.⁷⁶ However, Marx never really delved into the full dynamics of capital on the international stage, such as its unevenness and geopolitical competition. This lack became especially apparent during the late 19th and early 20th century, when European capitalist powers engaged in a furious struggle for the control of colonial territory, culminating in the First World War. This occasioned a split within the workers movement – between reformist social democrats and revolutionary communists⁷⁷ – with much of that split oriented around the question of *imperialism*.⁷⁸

The reformist social democrats argued that the spread of global capitalism had led to the emergence of an ‘ultra imperialism’ in which the advanced capitalist states would rule the world in a relatively peaceful ‘trust’.⁷⁹ Against this, revolutionaries – particularly Lenin and Bukharin – argued that imperialism was a process of super-exploitation and intense, and sometimes military, competition.⁸⁰ Vladimir Lenin and Nikolai Bukharin – and with them much of the Marxist tradition that followed – rooted imperialism in capitalism’s quotidian laws of motion. As noted above, capitalism’s tendencies toward crisis and competition lead to a continual need to expand in search of greater and greater profits. This, of course, eventually leads to capital systematically transcending national borders. As such, in the advanced capitalist countries, there is a greater and greater drive towards the export of capital outside of national borders.⁸¹

This export of capital also crucially requires the *transformation* of its targets: pre-capitalist societies must be made amenable to capitalist social relations; and, in less advanced capitalist states, investments must be ‘protected’.⁸² With the increased concentration of capitalism resulting from capitalist crises, as well as the increasing connection between capital and the state, such investment and export requires backing from the capitalist state. Of course, given the nature of capitalist development – and its tendency to concentrate wealth into smaller and smaller hands – this is not an even process. In this context, advanced capitalist powers are able to gain *super profits* from the intensified exploitation of the less advanced capitalist powers. These super profits could be used to facilitate concessions – both in terms of wages and the ‘social wage’ – for the working class in the advanced capitalist world.⁸³ This creation of an ‘aristocracy of labour’ partly explained the seeming willingness of the European working class to compromise with capital at home.

At the same time, capitalism is structured by *competition*, with the advanced capitalist states constantly struggling amongst each other to gain a foothold in the peripheral territories.⁸⁴ Such

⁷⁴A Gramsci, *Selections from the Prison Notebooks* (Quintin Hoare and Geoffrey Nowell Smith eds, International Publishers Co 1971) 240.

⁷⁵Marx, *Capital* (n 9) 915.

⁷⁶*Ibid.*, 929.

⁷⁷RC Nation, *War on War: Lenin, the Zimmerwald Left, and the Origins of Communist Internationalism* (Duke University Press 1989).

⁷⁸VI Lenin, ‘Imperialism and the Split in Socialism’ in MS Levin (ed), *V.I. Lenin, Collected Works*, vol 23 (Progress Publishers 1964) 105–20.

⁷⁹K Kautsky, ‘Ultra-Imperialism’ 59 (1970) *New Left Review* 41.

⁸⁰Lenin, *Imperialism, the Highest Stage of Capitalism: A Popular Outline* (n 21); Bukharin (n 21).

⁸¹Bukharin (n 21) 84.

⁸²Lenin, *Imperialism, the Highest Stage of Capitalism: A Popular Outline* (n 21) 79.

⁸³Lenin, ‘Imperialism and the Split in Socialism’ (n 78) 114.

⁸⁴Lenin, *Imperialism, the Highest Stage of Capitalism: A Popular Outline* (n 21) 98.

competition does not simply remain at the economic level but is frequently militarised, resulting, Lenin and Bukharin argued, in the First World War. Crucially, Lenin argued that this constant and intense competition was an *intrinsic* part of imperialism, since the potential to make greater and greater profit would always undercut any ‘unified’ imperialism between the major capitalist powers.

The net result of this is:

[W]orld capitalism, the world system of production, assumes in our times the following aspect: a few consolidated, organised economic bodies (‘the great civilised powers’) on the one hand, and a periphery of undeveloped countries with a semi-agrarian or agrarian system on the other.⁸⁵

Whilst the classical Marxist theorists of imperialism lived in an epoch marked by formal colonialism, these formulations do not make formal, or even informal, domination a necessary aspect of imperialism. Indeed, following the end of the Second World War, Marxists – especially those in the non-European world – explicitly formulated accounts whereby ‘colonialism’ was an *aspect* of the wider system of capitalist imperialism.⁸⁶ As such, contemporary imperialism is in some sense *neo-colonial* insofar as an international division of labour continues to exist even without formal colonial control.⁸⁷ Imperialism is not exhausted by colonialism, and – crucially – contemporary imperialism is not simply the legacy of colonialism.

Of course, in the time since the first and second world wars, global capitalism has undergone many transmutations and transformations. However, the basic picture outlined above remains.⁸⁸ Global capitalism is still organised around an international division of labour of a wealthy ‘core’ of advanced capitalist states and a larger number of less developed peripheral states. These centres of global capitalist accumulation support major capitalist corporations and have large financial centres. Finance here is able to exercise disproportionate power in global capitalism, and – through legal arrangements – these states are able to capture some of the surplus value of the periphery. This is matched by a global periphery characterised by a preponderance of cheap labourers producing for the multinational corporations in the imperialist countries. Coterminously with this, we find powerful imperialist states intervening militarily – in, for example, Afghanistan, Iraq, Libya and Ukraine – to secure their interests and sustain capitalist accumulation. At the same time, despite ‘unipolar’ and ‘hegemonic’ moments, the world economy remains firmly structured by forms of competition and rivalry at varying degrees of intensity. One need only observe the early 21st century tensions between the US and Russia or China here.

Throughout these processes, as one might expect, law has been crucial.⁸⁹ Historically, international law played a crucial role in buttressing the spread of colonial capitalism and impelling the social and economic transformations of non-European societies.⁹⁰ Following

⁸⁵Bukharin (n 21) 75.

⁸⁶K Nkrumah, ‘Address at the First Seminar at the Winneba Ideological School’ in *Revolutionary Path* (Panaf 1973) 170–80, 172.

⁸⁷K Nkrumah, *Neo-Colonialism: The Last Stage of Imperialism* (Reprint edn, Panaf LTD 1974).

⁸⁸For the best overview of the debates see A Brewer, *Marxist Theories of Imperialism: A Critical Survey* (Routledge 1990). The wider Marxist literature on imperialism is voluminous, for some important work – historical and contemporary – see S Amin, *Modern Imperialism, Monopoly Finance Capital, and Marx’s Law of Value: Monopoly Capital and Marx’s Law of Value* (Monthly Review Press, US 1981); PA Baran, *The Political Economy of Growth* (Monthly Review Press 1962); A Callinicos, *Imperialism and Global Political Economy* (Polity Press 2009); S Gindin and L Panitch, *The Making of Global Capitalism* (Verso 2012); D Harvey, *The New Imperialism* (Oxford University Press 2003); Luxemburg (n 17).

⁸⁹See C Miéville, *Between Equal Rights: A Marxist Theory of International Law* (Brill 2005); R Knox, ‘Valuing Race? Stretched Marxism and the Logic of Imperialism’ 4 (2016) *London Review of International Law* 81; R Knox, ‘International Law, Race, and Capitalism: A Marxist Perspective’ 117 (2023) *AJIL* Unbound 55; N Tzouvala, *Capitalism As Civilisation: A History of International Law* (Cambridge University Press 2020).

⁹⁰Tzouvala (n 89).

independence, international law was crucial in *limiting* the radical scope of the Third Worldist movement and integrating – on a subordinate basis – newly independent nations into the capitalist economy. In subsequent years, international institutions – especially the World Trade Organisation, the International Monetary Fund and the World Bank – took on a lead role in opening up the global market for imperialist capital.⁹¹ And when such ‘peaceful’ strategies have been insufficient, international legal arguments have been central in structuring and justifying imperialist military interventions.⁹²

Whilst Marxists have stressed the political-economic underpinnings of imperialism, they have not argued that this exhausts the social phenomena associated with the concept. In particular, anti-imperialist Marxists have insisted that imperialist social relations have always been accompanied by patterns and practices of racism.

Vitally, these Marxist understandings of racism do not start from the proposition that there is a pre-existing, natural category of ‘race’, with racism simply being discrimination based upon this category. Rather, Marxists have insisted that race is a socially produced notion that is brought into being via exploitation, oppression and domination. As Eric Williams famously put it, ‘slavery was not born of racism: rather, racism was the consequence of slavery’.⁹³ As such, Marxists have paid attention to processes of racialisation, that is to say, the process through which race has been and is being ‘formed’.

In this sense, then, race is understood as a mode of abstraction, where a particular set of characteristics – which could be ‘biological’ or cultural – are used to characterise entire groups of people. Such an abstraction is, of course, not innocent. Instead:

Racism is a practice of abstraction, a death-dealing displacement of difference into hierarchies that organize relations within and between the planet’s sovereign political territories. Racism functions as a limiting force that pushes disproportionate costs of participating in an increasingly monetized and profit-driven world onto those who, due to the frictions of political distance, cannot reach the variable levers of power that might relieve them of those costs.⁹⁴

As one might expect, there have been lively theoretical and political debates and disagreements about the precise relationship between capitalism, racism and imperialism.⁹⁵ But the crucial point is that capitalism – as a system organised around dispossession and unequal forms of accumulation – systematically racialises people in a way that other forms of organising social life have not. The initial expansion and consolidation of global capitalism was mediated through racialised languages of ‘backwardness’ and ‘civilisation’, in which non-capitalist social practices were cast as needing social transformation by capitalist powers.⁹⁶ Once these transformations were achieved, forms of racialisation shifted to help guarantee and structure the uneven and differentiated forms of exploitation that characterise global capitalism.⁹⁷

The point, then, is that Marxists have understood ‘race’ as a social form rooted in relations of exploitation and domination. Critically, this means that race is not a fixed essence but rather an ensemble of relationships and techniques that shift with changing capitalist social relations.

⁹¹Chimni (n 29).

⁹²R Knox, ‘Civilizing Interventions? Race, War and International Law’ 26 (2013) Cambridge Review of International Affairs 111.

⁹³Eric Williams, *Capitalism and Slavery* (University of North Carolina Press 1944) 7.

⁹⁴RW Gilmore, ‘Fatal Couplings of Power and Difference: Notes on Racism and Geography’ 54 (2002) The Professional Geographer 15, 16.

⁹⁵For an overview of some of these debates see R Knox and A Kumar, ‘Reexamining Race and Capitalism in the Marxist Tradition – Editorial Introduction’ 31 (2023) Historical Materialism 25.

⁹⁶Tzouvala (n 89).

⁹⁷F Fanon, ‘Racism and Culture’, *Toward the African Revolution: Political Essays* (Grove Press 1988).

Concretely, this also means that the targets of racialisation are not necessarily defined by any particular characteristics (eg, skin colour) and can change. If anything, with shifts in imperialism, particularly moves away from direct forms of imperial control, new forms of racism actually proliferate. In particular, the circulation of racialised stereotypes and characterisations can enable forms of intervention through, for example, the mechanism of debt and the assumption that certain groups of people are simply unable to manage their own affairs.⁹⁸

F. Gender and feminism

Finally, another key theme for developing a Marxist critique of EU law is exploring its relationship to gender. The approach of the Marxist tradition to such questions has been mixed. On the one hand, many have accused Marxists – not always without reason – of sidelining gender in favour of questions of *class*. For some Marxists, the very fact that gender is always stratified and structured by class has been enough to subordinate gender issues. On the other hand, the question of gender has been crucial both theoretically and politically for several Marxists.⁹⁹ These Marxists have rooted their analysis of gender in Marxist discussions of social relations of production and reproduction. Such intellectual and political resources have also been deployed by non-Marxist, radical feminists.¹⁰⁰

As is the case with many of the issues discussed in this article, Marx never constructed a full treatise on gender. However, both Marx and Engels continually engaged with gender questions throughout their corpus.¹⁰¹ Central to their inquiries was the question of the ‘division of labour’, which Marx and Engels understood as *initially* rooted in ‘the sexual act’ and the division of labour which develops spontaneously or ‘naturally’ around it, ‘by virtue of natural predisposition (eg, physical strength), needs, accidents, etc’.¹⁰² The question of this division of labour, and the various forms that the family took, were key to Marx’s and Engels’ discussions of the social position of women.

This theme was particularly pronounced in Marx and Engels’ studies of anthropological work on indigenous, pre-capitalist societies. Marx himself only made preliminary notes on the matter,¹⁰³ but Engels systematised these into his *The Origin of the Family, Private Property and the State*. There, Engels sought to link the changing forms of the family to the social position of women. In particular, Engels argued ‘ancient’ societies were characterised by a ‘mother-right’ that not only significantly empowered women but also resulted in more communal forms of organisation as property and wealth were not passed on to children but re-absorbed in the clan.

⁹⁸R Knox, ‘Haiti at the League of Nations: Racialisation, Accumulation and Representation’ 21 (2020) *Melbourne Journal of International Law* 245.

⁹⁹For a small sample from a range of different periods see C Arruzza, T Bhattacharya and N Fraser, *Feminism for the 99%: A Manifesto* (Verso Books 2019); T Bhattacharya and L Vogel (eds), *Social Reproduction Theory: Remapping Class, Recentering Oppression* (Pluto Press 2017); B Bhandar and R Ziadah, *Revolutionary Feminisms: Conversations on Collective Action and Radical Thought* (Verso Books 2020); AY Davis, *Women, Race, & Class* (1st Vintage Books edn, Vintage 1983); H Draper, A Bebel and C Zetkin, *Women and Class: Towards a Socialist Feminism* (CreateSpace Independent Publishing Platform 2013); S Federici, *Caliban and the Witch: Women, the Body and Primitive Accumulation* (Penguin Books 2021); S Federici, *Revolution at Point Zero: Housework, Reproduction, and Feminist Struggle* (PM Press 2020); N Fraser, *Fortunes of Feminism: From State-Managed Capitalism to Neoliberal Crisis* (Verso Books 2013); M Mies, *Patriarchy and Accumulation On A World Scale: Women in the International Division of Labour* (Palgrave Macmillan 1998); L Vogel, *Marxism and the Oppression of Women: Toward a Unitary Theory* (1. paperback pr, Rutgers University Press 1987).

¹⁰⁰See most prominently S Firestone, *The Dialectic of Sex: The Case for Feminist Revolution* (Farrar, Straus and Giroux 2003); CA MacKinnon, ‘Feminism, Marxism, Method, and the State: An Agenda for Theory’ 7 (1982) *Signs: Journal of Women in Culture and Society* 515.

¹⁰¹HA Brown, *Marx on Gender and the Family: A Critical Study* (Brill 2012).

¹⁰²K Marx and F Engels, ‘The German Ideology’ in *Marx and Engels: Collected Works*, vol 5 (Lawrence and Wishart 1976) 44.

¹⁰³K Marx, *The Ethnological Notebooks of Karl Marx: (Studies of Morgan, Phear, Maine, Lubbock)* (Van Gorcum 1972); K Anderson, *Marx at the Margins: On Nationalism, Ethnicity, and Non-Western Societies* (The University of Chicago Press 2010).

With the development of class society, however, this ‘mother-right’ was destroyed, which Engels characterised as ‘one of the most far-reaching’ revolutions ‘ever experienced by mankind’.¹⁰⁴ The increase of wealth, he explained, on the one hand gave men a more important status in the family than women and, on the other hand, created a ‘stimulus to utilise this strengthened position in order to overthrow the traditional order of inheritance in favour of the children’.¹⁰⁵ According to Engels, this change marked no less than ‘the world-historic defeat of the female sex’.¹⁰⁶ In this way, Engels linked the emergence of private property with women’s oppression and went on to trace how changing iterations of private property and family structures rearticulated the subordinate position of women.

The positions of Marx and Engels have been challenged by subsequent Marxists. Engels, in particular, has been criticised for being overly deterministic, rooting the fate of women in rigid structures, and failing to engage with women’s agency in social struggle. This question of the role of women’s emancipation in the struggle for socialism became increasingly important after the deaths of Marx and Engels. Thus, in the 1900s – particularly in German Social Democracy and in light of the Russian Revolution – figures like Alexandra Kollontai, Rosa Luxemburg and Clara Zetkin refused to simply confine themselves to the ‘Woman Question’, or ally with bourgeois feminism, but nonetheless insisted that Marxists must tackle it head on.¹⁰⁷

Up until the mid-twentieth century, therefore, gender was an important element in the Marxist tradition, but it was not theoretically central. It was only in the 1960s and 1970s when distinct strands of ‘Marxist feminism’ and feminist Marxisms began to emerge, spurred by a renewed wave of feminist activism.

The crucial question became ‘what is the relationship between women’s oppression and capitalism?’ For many in the wider feminist movement, the Marxist critique of political economy – and its attendant political focus on class – missed the forms of oppression suffered by women, and the necessity of addressing these politically. For those Marxists who sought to take gender seriously, however, the question was not whether the critique of capitalism was relevant to the gender question, (it was), but rather where and how to locate gendered relations *materially*, that is to say within the totality of capitalist social relations.

One crucial question here was to think about the way in which *labour* is gendered. Particularly important in this respect were debates over the status of domestic labour. As Cinzia Arruza notes, Marxist feminists:

sought to expand the concept of labor by taking into account the indispensable role of women’s reproductive labor, which was rendered invisible . . . This was meant to challenge the exclusive priority and focus that Marxist analysis placed upon the sphere of wage labor, particularly factory work. On the other hand, and as a consequence of this, Marxist feminists insisted on a broader concept of class and class struggle.¹⁰⁸

The key participants in this debate argued that the advent of capitalism had seen a degradation in the importance of domestic, reproductive labour. Such labour had been shunted into the ‘private’ sphere, and so was understood as unimportant. In particular, the capitalist system did not see such labour as *productive* and thus left it unremunerated.

Some Marxist feminists went further than this – particularly Mariarosa Dalla Costa and Selma James – arguing that housework was in fact directly productive of surplus value. In particular,

¹⁰⁴F Engels, ‘The Origin of the Family, Private Property and the State’ in *Marx and Engels: Collected Works*, vol 26 (Lawrence and Wishart 2010) 129–7, 164.

¹⁰⁵*Ibid.*, 164.

¹⁰⁶*Ibid.*, 165.

¹⁰⁷S Marik, ‘Gender and Sexuality in Early Marxist Thought’ 65 (2004) *Proceedings of the Indian History Congress* 946.

¹⁰⁸C Arruza, ‘Three Debates in Marxist Feminism’ in Beverley Skeggs et al (eds), *The SAGE Handbook of Marxism* (SAGE 2021) 1354–72, 1356.

women's domestic labour produces the commodity of *labour power*. The wage is at once a 'labor contract' and a 'sexual contract', and as such 'gives men free access to the bodies of women and their children'.¹⁰⁹ The logical result of this was the 'Wages for Housework' campaign,¹¹⁰ which used the unwaged nature of domestic – surplus-producing – labour as the basis to argue for a radical social transformation.¹¹¹

For other Marxist feminists, the idea that domestic labour was *directly* productive of surplus value did not make sense.¹¹² This did not mean that such labour was unimportant. Rather they argued that the structure of capitalism – in particular its separation between the public and private – *necessarily* rendered the labour necessary for the reproduction of capitalism invisible: with capitalism appropriating such 'free' work.¹¹³ The process of delimiting a 'private' and 'public' sphere, is of course, structurally connected with legal and juridical processes.

Such a position – that women's oppression was rooted in a particular division of labour engendered by capitalist social relations – was a crucial counter to the 'dual systems' theories which became central to various radical and left-wing feminist accounts from the 1970s onwards. Whilst such theories often had materialist dimensions, they ultimately held that the system of 'patriarchy' was conceptually and historically separate from capitalism.¹¹⁴ This did not necessarily mean that capitalism was unimportant, but rather that it had to be understood as *interlocking* with patriarchy. Such a position, of course, was generalised by those working on both race and gender into the concept of 'intersectionality', whereby oppression cannot be understood as experienced on a single axis. Instead, multiple oppressions *intersect* in people's experiences.¹¹⁵

Against this, Marxist feminist work has insisted on a 'unitary system', in which specific oppressions can be understood as rooted in the totality of capitalist social relations.¹¹⁶ The system is 'unitary' because crucially, for Marxist feminists – particularly those writing in the present day – these social relations cannot be reduced to a gendered division of labour. Rather, as above, they denote the entire ensemble of relationships through which capitalism is reproduced. In that context, three further important theoretical and political advances were made to our understanding of the capitalist totality. The first followed on, but went beyond, the domestic labour debate by challenging more generally artificial dichotomies between waged and unwaged or informal forms of labour. As Alessandra Mezzadri pointed out:

in contexts dominated by the informal economy and informalised labour – in which almost two-thirds of the people of the world make their livelihood – approaches to value proposing a neat separation between what produces and what does not produce surplus are based on an inaccurate and highly dualistic understanding of how capitalism works.¹¹⁷

¹⁰⁹*Ibid.*, 1357.

¹¹⁰MD Costa and S James, *The Power of Women and the Subversion of the Community* (Falling Wall Press Limited 1975); E Callaci, *Wages for Housework* (Random House 2025); L Toupin, *Wages for Housework: A History of an International Feminist Movement, 1972–77* (Pluto Press 2018).

¹¹¹Costa and James (n 110) 53.

¹¹²Arruzza (n 108) 1357.

¹¹³For a more thorough of the debate, see A Mezzadri, 'A Value Theory of Inclusion: Informal Labour, the Homeworker, and the Social Reproduction of Value' 53 (2021) *Antipode* 1186.

¹¹⁴See, eg, HI Hartmann, 'The Unhappy Marriage of Marxism and Feminism: Towards a More Progressive Union' 3 (1979) *Capital & Class* 1.

¹¹⁵K Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color' 43 (1990) *Stanford Law Review* 1241.

¹¹⁶Vogel (n 99).

¹¹⁷A Mezzadri, 'On the Value of Social Reproduction: Informal Labour, the Majority World and the Need for Inclusive Theories and Politics' (2019) 204 *Radical Philosophy* 33, 39.

Second, in that context, Marxist feminists also directly engaged with the question of imperialism. Scholars and activists such as Silvia Federici and Maria Mies¹¹⁸ not only showed the historical connections between colonialism and women's oppression,¹¹⁹ but also how the international division of labour is mediated through both the categories of gender and race. This perspective not only rooted different forms of oppression within the context of a single capitalist social totality, but it recognised that this totality is inherently global and imperialist in character. Finally, particularly in the advanced West, what has come to be known as 'social reproduction theory' (SRT) also extended Marxist Feminist outlooks to the broader sphere of social and societal reproduction, and opened debates about the institutions through which the labour force is made and remade.¹²⁰

Today, the insights of Marxist feminists remain critical to many of the issues that have become of central concern to the EU and the world at large. Marxist feminists' attention to the totality of racialised, classed, and gendered processes through which the workforce and capitalist social relations are reproduced has allowed them to theorise a variety of developments, from the neoliberalisation of the economy to the enclosure and destruction of the global commons, the feminisation of poverty or the crisis of care and social reproduction. As Federici recently highlighted, 'important changes have occurred in the organisation of social reproduction, with the restructuring of the global economy and the international division of reproductive work, that need to be theorised'.¹²¹

3. Marxism and the European Union

Although largely ignored in mainstream EU studies, Marxists have been at various points engaged in questions surrounding European integration and, subsequently, the EU. Most of these interventions did not occur in the abstract but were rooted in the specific historical context of their time and directly linked to questions of political strategy, ie, how to protect the interests of the working classes and advance the aims of socialist revolution. Although the periodisation below is schematic, we could broadly distinguish between four waves of Marxist analyses of European integration: (A) the early engagement with the question of Europe, particularly the slogan a 'United States for Europe' by the so-called 'classics' which pre-figured some of the key theoretical and political issues that will shape later debates about the EU; (B) Marxist analyses of the common market, including, in the United Kingdom (UK), those that unfolded in the context of the 'Brentry' referendum regarding the UK's accession to the common market in 1971; (C) the more 'academic' currents or schools that developed over the course of the 1970s and 1980s following the general defeat of the left on the European continent and the transition to neoliberalism; and (D) the 'revival' of Marxist analyses following the financial crash of 2008, which kick started a series of crises – the 'Euro-crisis', the so-called 'migration crisis'; the populist crisis and, in the UK, Brexit. Throughout these periods, different Marxist thinkers built on various aspects of Marxist thought outlined in the previous section, including Marxist theories of imperialism, of the state, and of historical change.

A. Pre-figurations: the 'Classics' and the question of Europe

Early Marxists, from Marx and Engels¹²² to Lenin, Luxemburg and Trotsky, never witnessed the formal process of European integration. Yet, they did engage with questions surrounding European unification, particularly in the context of 19th and early 20th century debates about the

¹¹⁸Mies (n 99).

¹¹⁹Federici, *Caliban and the Witch* (n 99).

¹²⁰See Bhattacharya and Vogel (n 99).

¹²¹S Federici, 'Social Reproduction Theory: History, Issues and Present Challenges' (2019) *Radical Philosophy* 55, 56.

¹²²On which see J Herres, 'Karl Marx and the IWMA Revisited' in F Bensimon, D Quentin and J Moisand (eds), *"Arise Ye Wretched of the Earth": The First International in a Global Perspective* (Brill 2018) 299–312.

slogan ‘a United States of Europe’. The context in which they wrote varied – from the 1848 European revolutions, to the institution and crushing of the Paris Commune, to the outbreak of WW1, the first imperialist war. Partly as a result, their views on European unity differed and, for some, even changed over time. Yet, two points are worth noting about how they all approached the question of Europe.

First, their analyses never consisted of abstract idealist reflections on European unity but bore instead an explicitly political character. As we pointed out in the previous section, Marxism, at its core, is primarily about advancing the aims of socialist revolution and indeed, all of these early Marxists wrote explicitly from the perspective of the interests of the working classes, often in the context of concrete debates within the communist movement.

This explicitly political and revolutionary outlook¹²³ meant that the question of greater European unity was essentially about the prospects and desirability of greater unity among the working classes. As Lenin emphasised, European unity would be both ‘meaningless and false without the revolutionary overthrow of the German, Austrian and Russian monarchies’.¹²⁴ In addition, given the international character of capitalism, and hence of the working class and the class struggle, greater European unity was never an end in itself. A ‘united States of workers and peasants’ would always be a transitional phase to communism, which entailed the worldwide abolition of class and the withering away of bourgeois institutions, including national frontiers, the state and indeed the law, including ‘national’ laws. To this day, the slogan ‘workers of the world, unite’ continues to define the communist movement. From those two perspectives, and following Robert Knox’s distinction between strategy and tactics,¹²⁵ then, we could say that, from a Marxist position, support for a United States of Europe was always only a question of short-term tactic designed to advance the interests of the working classes as part of the broader strategy of worldwide social revolution.

Second, the decision of whether to embrace or reject the tactic of greater European unity was never a purely political question but had to proceed from a close examination of the underlying social relations. What mattered, Lenin stressed, was not the political attractiveness of the slogan but its ‘economic content and significance’. On that basis, Lenin himself concluded that, however politically attractive, ‘[f]rom the standpoint of the economic conditions of imperialism – i.e., the export of capital and the division of the world by the “advanced” and “civilised” colonial powers – a United States of Europe, under capitalism, is either impossible or reactionary’.¹²⁶ In doing so, he also explicitly rejected the argument, later made by Leon Trotsky, that the slogan should nonetheless be revived because ‘only in the closest economic co-operation of the peoples of Europe lies the avenue of salvation for our continent from economic decay and from enslavement to mighty American capitalism’.¹²⁷ For Lenin, as for Rosa Luxemburg, inter-imperial rivalries could not provide the material basis for a ‘European United States of Workers and Peasants’.¹²⁸

Lenin’s famous pamphlet laid out some of the building blocks of a Marxist critique of European integration, which mirror those we outlined in Section 2: the capital-labour relation, imperialism, and particularly inter-imperial competition and rivalries. Like Luxemburg, he was clear that lasting peace was impossible under capitalism: any temporary agreement between capitalist powers could therefore only be intended to suppress European socialism at home and/or protect ‘colonial booty’ against the then rival imperial powers of Japan and the USA. Indeed, as we shall

¹²³Knox (n 98).

¹²⁴VI Lenin, ‘On the Slogan for the United States of Europe’ in J Katzer (ed), *Collected Works*, vol 21 (Progress Publishers 1964) 339–42.

¹²⁵R Knox, ‘Strategy & Tactics’ 21 (2011) *The Finnish Yearbook of International Law* 193.

¹²⁶Lenin (n 124).

¹²⁷L Trotsky, ‘Is the Time Ripe for the Slogan: “The United States Of Europe”?’ (1923) <<https://www.marxists.org/archive/trotsky/1923/06/europe.htm>> accessed 27 June 2025.

¹²⁸Lenin, ‘On the Slogan for the United States of Europe’ (n 124) 340.

see, many Marxist scholars stress the class nature of the European project, as well as its role in taming the class struggle and in enabling imperial expansion.

B. The early days: debating the common market

By the end of WW2, yet another imperialist war between the ‘great powers’, the slogan a United States of Europe (or Socialist States of Europe) became the staple of a distinctively reformist strand of ‘socialist’ thought and socialist organising, as can be found in the work of such figures as Altiero Spinelli¹²⁹ and organisations such as the Movement for the United Socialist States of Europe (MUSSE). The communist left, by contrast, was under no illusion as to the capitalist nature of both the European Coal and Steel Community and then the European Economic Community (EEC). As Anderson put it, this development of European integration was ‘the last great world-historical achievement of the bourgeoisie’.¹³⁰

In the anglophone world, Marxist analysis of the causes and nature of the European Union (EU) (then EEC) acquired a more theoretical outlook with the creation of the common market. Particularly significant was the publication of Ernest Mandel’s *Europe Versus America? Contradictions of Imperialism* and the resulting Mandel-Poulantzas debate as part of a broader debate about the internationalisation of capital.¹³¹ Drawing on the classical Marxist theory of imperialism, Mandel contended that European economic integration stemmed from three tendencies: (a) the expansion of national capitals beyond their border; (b) the increased concentration and amalgamation of European capital; and (c) the competition between American and European capitals, which pushed European bourgeoisie to unify against American capital.

Poulantzas, by contrast, thought classic theories of imperialism and their emphasis on inter-imperial competition and an international division of labour between core and periphery were inadequate to understand global dynamics and the common market. Although he fell short of providing a theory of European integration and its relationship to the rise of US imperialism, he argued that American dominance had given rise to a new form of European dependency on American capital and hence the integration but also subordination of parts of European capital – what he called the interior bourgeoisie – to American capital.¹³²

Much like the contrasting views of Lenin and Trotsky, this debate highlights how the heterogeneity of the Marxist tradition produced different theories of European integration. However, it also highlights the distinctiveness of the Marxist approach. Whatever their differences, Mandel’s and Poulantzas’ analyses stood in sharp contrast with those of traditional EU studies. Theoretically, their understanding of integration as a product of specific social relations departed from idealist constructions of integration as a project designed to bring peace between European people and concocted by a few ‘great founding fathers’. Historically, the materialist approach situated the EEC in the context of concrete socio-economic and geopolitical conditions, from the rise of US dominance to the Cold War and the increased polarisation between pro-communist and anti-communist movements.

Both their contributions, moreover, were explicitly political. Poulantzas’ key concern was how this ‘new phase of imperialism’ and ‘the rise in the class struggle in the imperialist metropolises’ affected questions of revolutionary strategy.¹³³ Mandel too was all too aware that ‘European integration had been marked by a decisive shift in the balance of forces’ against the working classes and in favour of the capitalists and that this reconfigured, and raised pressing questions about, the possibility of socialist revolution. Just as their respective theories of imperialism and the state led

¹²⁹A Spinelli, E Rossi and E Colorni, *For a Free and United Europe: The Manifesto of Ventotene* (The Altiero Spinelli Institute for Federalist Studies 1941).

¹³⁰P Anderson, *The New Old World* (Verso 2011) 78.

¹³¹E Mandel, *Europe versus America: Contradiction of Imperialism* (M Rosedale tr, 1st edn, New Left Books 1970).

¹³²N Poulantzas, ‘Internationalisation of Capitalist Relations and the Nation-State’ (1974) 3 *Economy and Society* 145.

¹³³*Ibid.*, 145.

them to distinct understandings of the material basis of the EEC, so too did it lead to contrasting political positions. Mandel's commitment to classical theories of imperialism and the state ultimately led him to conclude that the more the internationalisation of capital would expand, the closer the world would get to supranational state institutions. As such, following the Trotskyist tradition to which he belonged, the only 'alternative to the interpenetration of European capital' was 'a united socialist Europe, not a return to bourgeois economic nationalism'.¹³⁴ For Poulantzas, the EEC only reconfigured the state, which remained a vital element in the reproduction of capitalist social relations and a site of class struggle.

C. The interregnum: open Marxism, Neo-Gramscianism, and the neoliberal turn

Beginning in the 1970s, Marxist analyses of the EU began to wane or, at least, retreat in the corridors of academic establishments. Several interconnected factors played a role in this conjuncture. In terms of general context, the period was characterised by a general decline of profitability and crisis in capital reproduction, which put an end to the capital-labour compromise characteristic of the 'trentes glorieuses'. The escalation of class struggle and social discontent, vividly expressed in the events of 1968, ultimately culminated in the defeat of the left and the labour movement. In parallel, on the world scene, the Stalinisation of the Russian revolution and of Marxist ideas, alongside the brutalisation of the regime, divided and undermined the international communist movement. This also led to the consolidation of Western Marxism, which was marked by a separation of the intellectual Marxist tradition from the labour movement.

These had important political repercussions at the European level. The Communist Party in France (PCF) had historically acted as a significant break to further integration, which they saw as inherently capitalist and imperialist. But hopes for a socialist alternative were crushed in the early 1980s, when President François Mitterrand renounced his promised programme of economic reforms, kept France in the European Monetary System, and began to implement harsh austerity measures. The emergence and consolidation of Eurocommunism, meanwhile, an ideology that favoured cross-class alliances, as well as democratic reform and transition in one country rather than world revolution,¹³⁵ was far less confrontational if it did not altogether embrace the project of European integration. From then on, the neoliberal consensus consolidated across European governments, the left retreated, and organised Euroscepticism took primarily a nationalistic right-wing bent.

Nonetheless, within academia, important developments took place within the field of political economy, which in many ways laid the ground for the Marxist analyses that would emerge after the Euro crisis. One was the emergence of more comprehensive theoretical treatments of the nature of the EU from an 'Open Marxist'¹³⁶ perspective. Notable works included Guglielmo Carchedi's *For Another Europe*,¹³⁷ the first book-length analysis of the class nature of the EU based on Marx's theory of value, and later the work of Werner Bonefeld. Another was the emergence of a distinct Neo-Gramscian strand in European studies, which mirrored the development of the Neo-Gramscian school of international relations.¹³⁸ The so-called 'Amsterdam school' included a group of scholars based primarily in Europe, particularly the

¹³⁴Mandel (n 100) 129.

¹³⁵E Mandel, *From Stalinism to Eurocommunism: The Bitter Fruits of 'Socialism in One Country'* (Verso 1978).

¹³⁶For a brief albeit somewhat schematic overview, see I Manners, 'Another Europe is Possible: Critical Perspectives on European Union Politics' in KE Jørgensen, M Pollack and BJ Rosamond (eds), *The Handbook of European Union Politics* (SAGE 2007) 77–96.

¹³⁷G Carchedi, *For Another Europe: A Class Analysis of European Economic Integration* (Verso 2001).

¹³⁸Its foundational text is RW Cox, 'Social Forces, States and World Orders: Beyond International Relations Theory' (1981) 10 *Millennium* 126. For an overview see S Gill (ed), *Gramsci, Historical Materialism and International Relations* (Cambridge University Press 1993).

Netherlands. Book-length analyses here included Bastiaan van Apeldoorn's *Transnational Class Strategy and European Integration*.¹³⁹

Open Marxists and Neo-Gramscians came from very different Marxist traditions.¹⁴⁰ Open Marxism positioned itself in opposition to, and sought to break away from, the 'closed' scientific and positivist interpretations of Marx that dominated the 1980s and 1990s (including analytical and structural Marxism), which were said to uphold a strict duality between base and superstructure. Open Marxists, by contrast, emphasised the 'openness of Marxist categories' and, therefore, the importance of the class struggle.¹⁴¹ Neo-Gramscians, for their part, grew out of the tradition of Western Marxism, particularly the work of Gramsci, who developed a theory of hegemony that highlighted the need for both coercion and consent vis-à-vis civil society to ensure the stability and reproduction of capitalism and used the term hegemonic 'historical blocs' to refer to the social forces that shaped historically specific hegemonic formations.

These differences led them to explore different facets of European integration. Open Marxists approached the EU as a historically specific social form, a specific articulation of the capital-labour relation designed to enable the State to continue to fulfil its basic function of reproducing capitalist social relations, as well as disciplining labour and containing the class struggle. For Neo-Gramscians, this was too abstract an approach. Their work, instead, sought to understand the EU in the light of the changing character of capitalist social relations, which, for them, had become increasingly transnationalised, and to understand the social forces that have pushed for different regimes of accumulation over time.

Despite these differences, however, in both cases, their methods and insights again dramatically differed from those of mainstream European studies. For Open Marxists, for example, the democratic deficit, the unaccountability of EU institutions or the ordoliberal inspirations of the EU, particularly in the context of the EMU, were not dysfunctionalities to be 'corrected' or 'remedied', but intrinsic to the European project and its relationship to capital accumulation.¹⁴² Neo-Gramscians, for their part, made several key contributions to our understanding of the historical development of the EU. At the structural level, they showed that the evolution of the EU was not driven by some kind of 'natural' pull towards greater integration but mapped onto different configurations of European capitalism. At the political level, they analysed how specific forms of integration were shaped not only by states or supra-national institutions but by different factions of European capital. These perspectives also led them to theorise the 'neoliberal turn' of the EU not as a rupture from the underlying logic of the EU driven by specific Member States or EU institutions, but as a new system of accumulation supported by a new ideology of competition and social cohesion led by a new hegemonic bloc comprising finance capital, different factions of industrial capital and parts of the working classes.

D. Crisis Marxism: an (ambiguous) 'Revival'?

Marxist debates about the EU regained traction with the Euro-crisis and the ensuing sovereign debt crisis in several member states, notably Greece, Ireland, and Spain. Importantly, this revival of Marxist theory was rooted in a broader revival of politics and politicisation of the European sphere in which, for a time at least, the radical left re-emerged as an organised force on the European scene. Indeed, what began as anti-austerity movements – the so-called 'movement of the squares' – evolved into the formation and election of new left parties or coalitions such as Podemos in Spain, and, in the case of Greece, Syriza's election to governmental power on an

¹³⁹B van Apeldoorn, *Transnational Class Strategy and European Integration* (Routledge 2002).

¹⁴⁰For a debate between their key figures see A Bieler, W Bonefeld, P Burnham, and AD Morton (eds), *Global Restructuring, State, Capital and Labour: Contesting Neo-Gramscian Perspectives* (Springer 2006).

¹⁴¹W Bonefeld, R Gunn, and K Psychopedis, *Open Marxism 1: Dialectics and History* (Pluto 1992).

¹⁴²Eg, W Bonefeld, *The Strong State and the Free Economy* (Rowman & Littlefield International 2017).

explicitly anti-austerity platform. The connection between theory and praxis also found expression in the academy, where Open Marxists and Neo-Gramscians were now joined by commentators and scholars who were directly involved in the unfolding of events, partially restoring the connection between Marxist analyses of the EU and grassroots movements.¹⁴³

In that context, at least three types of Marxist interventions emerged which could schematically be linked to the different phases of the Euro-crisis and the questions they each raised. A first set of analyses focused on the nature of the Euro-crisis and the EMU.¹⁴⁴ Contrary to orthodox narratives blaming the crisis on reckless borrowing and ‘overspending by irresponsible governments’,¹⁴⁵ these interventions demonstrated that the crisis was inherent to the EMU and its institutionalisation of unequal core-periphery relations. The core consisted of capital-exporting countries maintaining surpluses by lending to the periphery to finance imports, while the peripheral, capital-importing countries ran deficits and relied on debt-driven growth. Particular stress was placed on the role of German capital in significantly benefiting from the EMU, insofar as it has been able to export significantly more than it would have otherwise done owing to the Euro’s exchange rate, which is of course calculated with reference to the wider Eurozone, including European peripheries, whose own competitiveness is reduced by these exchange rates.¹⁴⁶ The subsequent trade surpluses also enabled Germany to become a significant lender, with the attendant power that flows from debt under capitalism.

A second set of analyses focused on the EU’s response to the crisis.¹⁴⁷ Neo-Gramscians identified a new stage in the development of European capitalism, ‘authoritarian neoliberalism’, which, contrary to other usages of the term, emphasised the crisis as having a double nature, both of capital accumulation and of legitimation, necessitating a far greater emphasis on coercion rather than consent. Other Marxist scholars analysed that stage as a form of ‘Bureaucratic Caesarism’ to capture the specific technocratic form that authoritarianism took in the EU.¹⁴⁸ Bonefeld produced a more systematic immanent critique of ordoliberalism, the ideology which shaped much of the EU’s stance towards ‘debtor’ countries.¹⁴⁹ And economic analyses focused on Germany’s hegemonic role as the primary exporter of surplus value, shaping and dictating the EU’s crisis management.

A final set of analyses had a more strategic orientation, particularly in the Greek context, with a particular focus on whether the EU could be reformed or whether a socialist strategy could only be pursued by breaking out of the ‘iron cage’ of the EMU. Contrary to the more reformist Eurocommunist position of the Syriza leadership, Costas Lapavistas, a political economist at SOAS, MP for Syriza and member of the parliamentary ‘left platform’, advocated a strategy of rupture with the EMU as the only alternative and laid out concrete steps for a left exit from the Eurozone for peripheral countries,¹⁵⁰ and particularly Greece.¹⁵¹ In this context, the

¹⁴³This connection also explains why many of these contributions were not necessarily only published in academic journals, but through a far larger and more accessible set of platforms.

¹⁴⁴On pre-crisis contributions to the critique of the EMU see W Bonefeld (ed), *The Politics of Europe: Monetary Union and Class* (Palgrave 2001).

¹⁴⁵G Dale and N El-Enany, ‘The Limits of Social Europe: EU Law and the Ordoliberal Agenda’ 14 (2013) *German Law Journal* 613, 627.

¹⁴⁶C Lapavistas and S Cutillas, ‘National States, Transnational Institutions, and Hegemony in the EU’ 19 (2022) *Evolutionary and Institutional Economics Review* 429, 433.

¹⁴⁷See indicatively, C Lapavistas, *Crisis in the Eurozone* (Verso 2012).

¹⁴⁸C Durand and R Keucheyan, ‘Bureaucratic Caesarism’ (2013) 23 *Historical Materialism* 23.

¹⁴⁹W Bonefeld, *The Strong State and the Free Economy* (Rowman & Littlefield International 2017).

¹⁵⁰H Flassbeck and C Lapavistas, *Against the Troika: Crisis and Austerity in the Eurozone* (Verso 2015).

¹⁵¹C Lapavistas, T Mariolis and C Gavrielides, ‘Eurozone Failure, German policies, and a New Path for Greece: Policy Analysis and Proposals’ (*Risa-Luxemburg-Stiftung*, 2017) available at <<https://eprints.soas.ac.uk/25435/1/lapavistas-mariolis-3-17-Online-Publ-EurozoneFailure-Web.pdf>> accessed 27 June 2025.

Mandel-Poulantzas debate was revived, exploring whether, as Mandel argued, the EU could now be seen as a proto-state representing the formation of European capital and a distinct European capitalist class, or whether Poulantzas's analysis remained applicable.¹⁵² The first option would mean that the class struggle and socialist revolution could no longer be pursued at the level of the nation-state. The second option would mean that the class struggle remained chiefly national, albeit with all the problems that this raised for the possibilities of revolution in the context of increased internationalisation of capital.

As the Eurozone crisis morphed into a more systemic EU crisis with multiple manifestations, other contributions emerged going beyond the field of monetary and financial union. Reframing the EU's migration crisis as a border crisis, for example, Nicola De Genova's work on the border, migration, and race shed light on how Europe's borders are

entangled in a global (postcolonial) politics of race that re-draws the proverbial colour line and refortifies "European"-ness as a racial formation of whiteness, and a comparably global (neoliberal) politics of transnational labour mobility and capitalist labour subordination that produces such spatialised (and racialised) differences, above all, to capitalise upon them'.¹⁵³

Brexit, too, spurred Marxist debates about EU membership. Again, these analyses were often explicitly framed as interventions in the referendum, including Lapavistas's left-wing case for exiting the EU.¹⁵⁴ With the defeat of Syriza and a Brexit vote over-determined by right-wing nationalist racist discourse, however, this 'revival' came to an end. Marxists today continue to write about the EU, but no longer with the sense of urgency that the conjuncture of the crisis brought about.

E. Law: the present absence

Overall, this section has sought to capture the broad sweep of Marxist approaches to the question of European integration. This final sub-section seeks to draw out the extent to which different approaches have touched upon, or had implications for, questions of law. The Mandel-Poulantzas debate, for example, had legal dimensions. Mandel's analysis was rooted in, or resulted from, an instrumentalist or determinist account of law as a mere reflection of the 'economic base'. On that basis, he predicted that the EU's legal and political superstructure would gradually adapt to the new forms of transnational property relations, opening the prospect of a pan-European state designed to secure the interests of European capital. As a result, he envisaged that EU law, rather than domestic law, would become the primary site of class struggle and the pursuit of socialist revolution. For Poulantzas, this analysis was based on an erroneous view of the state as an instrument of the ruling classes. While he agreed that European integration would lead the state to assume increased 'responsibility for the internationalisation of public functions with respect to capital', he argued that this new phase of imperialism would merely re-shape, rather than

¹⁵²On which see M Ryner, 'European "Integration"' in M Vidal, T Smith, T Rotta, and P Prew (eds), *The Oxford Handbook of Karl Marx* (Oxford University Press 2019) 519; A Jäger, 'Visions of Europeanism in the Mandel-Poulantzas Debate, 1967–1979', <https://www.academia.edu/30258064/Visions_of_Europeanism_in_the_Mandel-Poulantzas_Debate_1967-1979> accessed 27 June 2025, and T Auvray and C Durand, 'A European Capitalism? Revisiting the Mandel–Poulantzas Debate' in JN Ducange and R Keucheyan (eds), *The End of the Democratic State: Nicos Poulantzas, a Marxism for the 21st Century* (Palgrave 2019) 145–65.

¹⁵³N De Genova, 'The "Crisis" of the European Border Regime: Towards a Marxist Theory of Borders' (2016) 150 *International Socialism* available at <<https://isj.org.uk/the-crisis-of-the-european-border-regime-towards-a-marxist-theory-of-borders/>> accessed 27 June 2025.

¹⁵⁴C Lapavistas, *The Left Case Against the EU* (Polity Press 2018).

supersede, its political and legal structures.

Later Marxist critiques also touched upon questions of law. Both Werner Bonefeld¹⁵⁵ and Stephen Gill¹⁵⁶ gave central importance to the EU's constitutional architecture in disciplining labour, depoliticising the class struggle, and entrenching neoliberal fiscal discipline. Inspired by regulatory theory, Neo-Gramscians scholars Magnus Ryner and Alan Cafruny linked their periodisation of the evolution of European capitalism to different modalities of legal regulation. Specifically, they associated what they call the Fordist period of the 1960s and early 1970s with a relative regulatory autonomy of Member States,¹⁵⁷ the ascendancy of neoliberalism in the 1980s with greater disciplinary legal mechanisms and tight legal constraints, and the post-crisis phase of neoliberalism¹⁵⁸ with new forms of authoritarian constitutionalism.¹⁵⁹

A handful of legal scholars have attempted to incorporate some Marxist insights into the study of EU law more systematically. In the first such attempt Gustav Peebles argued (a) that the structural primacy of the market under the Treaties reflected the primacy of the self-valorisation of capital; (b) that EU law rights are attached to humans mainly as personifications of commodities; (c) that the Court of Justice has had to deal with the contradictions and conflicts to which this gives rise, occasionally having to extend such rights beyond the immediate commodity bearer; (d) and that this is what broadly speaking explains the so-called 'spill over' effect of EU law into seemingly non-market relations, ultimately facilitating the commodification of non-economic spheres.¹⁶⁰ Focusing on the EU constitution, Maria Tzanakopoulou later showed how the EU immunised itself from the class struggle, as both the working and the capitalist class remain anchored in member states despite the internationalisation of capital.¹⁶¹ Supplementing Gill's account of the 'new constitutionalism' with Poulantzas' theory of authoritarian statism, Lukas Oberndorfer approached the exceptional constitutional framework that emerged after the Euro-crisis as the legal form corresponding to the radicalisation of the neoliberal project in the wake of the hegemonic crisis of the ruling class and the intensification of the class struggle.¹⁶² Eva Nanopoulos, meanwhile, sought to place that moment in the wider context of the evolution of the structural relationship between EU law and capitalist accumulation over time.¹⁶³ Yet, these examples sit at the very margins of the discipline and, as we show in the next section, Marxist theory has generally failed to register even amongst the more recent emergence of critical approaches to EU law.

¹⁵⁵W Bonefeld, *The Strong State and the Free Economy* (Rowman & Littlefield International 2017). See also W Bonefeld, 'The European Economic Constitution and the Transformation of Democracy: On Class and the State of Law' (2015) 21 *European Journal of International Relations* 867.

¹⁵⁶S Gill and AC Cutler (eds), *New Constitutionalism and World Order* (Cambridge University Press 2014).

¹⁵⁷M Ryner and A Cafruny, *The European Union and Global Capitalism: Origins, Development, Crisis* (Palgrave 2017) 31.

¹⁵⁸*Ibid.*, ch 2.

¹⁵⁹Eg, M Wilkinson, 'Authoritarian Liberalism in the European Constitutional Imagination: Second Time as Farce?' 21 (2015) *European Law Journal* 313; L Oberndorfer, 'From New Constitutionalism to Authoritarian Constitutionalism: New Economic Governance and the State of European Democracy' in J Jäger and E Springler (eds), *Asymmetric Crisis in Europe and Possible Futures: Critical Political Economy and Post-Keynesian Perspectives* (Routledge 2016) 186–7.

¹⁶⁰G Peebles, '"A Very Eden of the Innate Rights of Man"? A Marxist Look at the European Union Treaties and Case Law' (1997) 22 *Law & Social Inquiry* 581.

¹⁶¹M Tzanakopoulou, *Reclaiming Constitutionalism: Democracy, Power and the State* (Hart 2018).

¹⁶²L Oberndorfer, 'From New Constitutionalism to Authoritarian Constitutionalism: New Economic Governance and the State of European Democracy' in J Jäger and E Springler (eds), *Asymmetric Crisis in Europe and Possible Futures: Critical Political Economy and Post-Keynesian Perspectives* (Routledge 2016) 186–7.

¹⁶³E Nanopoulos, 'From Class Project to Imperial Formation: The Role of EU Law in the Reconstitution of Europe' in P O'Connell and U Ozsu (eds), *Handbook on Marxism and Law* (Edward Elgar 2021) 375–8.

4. Marxism and critical approaches to EU law

Compared with other branches of law, not least international law,¹⁶⁴ EU law has long been insulated from critical legal theory.¹⁶⁵ Unsurprisingly, as we already mentioned, this has been particularly true of the Marxist legal tradition. Thus, if Marxists have neglected the legal dimensions of integration, so have EU lawyers largely ignored the Marxist canon (or indeed critical theory more broadly).

Despite this, there is some history of critical approaches in EU law scholarship. Chronologically, these arrived on the EU scene later than Marxist analyses of the EU, even if here too, the EU's multiple crises were a major catalyst in the emergence of a more 'critical turn' in EU legal studies. In contrast to Marxist analyses, they also have been and remain largely divorced from political praxis. Still, some critical scholars have touched on some of the areas, themes, and debates we have set out in sections 2 and 3, which thus offer a helpful point of comparison with a Marxist approach. Four critiques, in particular, touched upon questions that have been central to Marxist legal theorising and that we consider here: (a) 'early critiques' of the democratic deficit that have culminated in more systematic critiques of de-politicisation and de-democratisation; (b) 'crisis critiques' which turned to the EU law's ideological roots and biases; (c) critiques engaging with the relationship between EU law, colonialism, and imperialism, and how this relates to race, and (d) critiques of the relationship between EU law and gender.

The aim of this section is to consider these existing critical approaches to EU law and to explore their limitations. For each of the themes, a Marxist approach is offered as an illustration of how these could be developed in a materialist direction. We then end with an outline of some general limitations of existing critical approaches (e), both in terms of their underlying assumptions and pre-suppositions, as well as their overall project. In doing so, we do not aim to offer a fully defined Marxist theory of EU law but to lay the groundwork for future materialist legal analysis of EU law and its reproduction of capitalism and imperialism by opening existing critiques to Marxist insights.

A. Marxism and the critique of the 'Democratic Deficit' and de-politicisation

One of the first and most enduring critiques of EU law has been the EU's so-called 'democratic deficit'. For a long time, within mainstream doctrinal analysis, the democratic deficit was understood in one of two ways. For some, it was a mere by-product of the uneven development between the internal market on the one hand and the EU's institutional structure on the other. It could be, therefore, corrected with some 'institutional fixes' designed to plug the gap in democratic accountability.¹⁶⁶ For others, there was no 'deficit' to begin with. The internal market concerned purely 'economic' objectives which could be more efficiently and effectively achieved by technocratic means and expert-led governance.¹⁶⁷

Critical scholars disputed both claims. The deficit was not some institutional defect but was instead baked into the structures of the EU law and its functionalist ethos. The architects of the EU were averse to mass democracy and thus pursued a 'rational and efficient administration that would ultimately dispense with the messiness, brutality, and particularism of politics'.¹⁶⁸ This

¹⁶⁴See indicatively Knox, 'Marxist Approaches to International Law' (n 3); Tzouvala (n 89); R Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (Cambridge University Press 2019); P Menon, 'Negotiating Subjection: The Political Economy of Protection in the Iraqi Mandate (1914–1932)' 2 (2021) TWAIL Review 180.

¹⁶⁵As Päivi Neuvonen has argued, critical theory has been 'largely absent' from EU law scholarship, particularly when compared with other disciplines, such as international law PJ Neuvonen, 'A Way of Critique: What Can EU Law Scholars Learn from Critical Theory?' 1 (2022) European Law Open 60, 63.

¹⁶⁶S Hix, *What's Wrong With the European Union and How to Fix It* (Polity 2008).

¹⁶⁷G Majone, 'Europe's "Democratic Deficit": The Question of Standards' 4 (1998) European Law Journal 5.

¹⁶⁸MA Wilkinson, 'Political Constitutionalism and the European Union' 76 (2013) The Modern Law Review 191, 212; MA Wilkinson, *Authoritarian Liberalism and the Transformation of Modern Europe* (Oxford University Press 2021); M Goldoni and MA Wilkinson, 'The Material Constitution' 81 (2018) The Modern Law Review 567.

sidelining of politics, moreover, could not be justified by the supposed ‘technocratic’ character of the EU’s objectives. The EU, including the internal market or the rules on competition, had significant redistributive consequences and reframing them as purely technocratic matters was, if anything, precisely to insulate them from electoral or democratic pressures by delegating them to undemocratic unaccountable bodies such as the Commission or the Court of Justice.¹⁶⁹ This depoliticising ethos and strategy had further consequences for democracy and self-determination. Thus, Fritz Scharpf highlighted how the ‘fear of capital flight and the relocation of production’ placed further real limits on national governments’ ability ‘to tax and to regulate domestic capital and business firms’, even though these fields remained theoretically within their area of competence.¹⁷⁰

Importantly, critical scholars highlighted the unique role that law played in these processes of de-politicisation and de-democratisation. Going beyond mere critiques of judicial activism, Michelle Everson, for example, analysed how the 1980s were characterised by ‘the over-eager, and sometimes arrogant, substitution of juridification for politicisation’.¹⁷¹ Such critiques became more systematic after the Maastricht Treaty when scholars deployed the notion of ‘economic constitutionalism’ to analyse the economic foundations of the EU’s constitutional settlement.¹⁷² Among other contributions, these highlighted how EU law provided the medium through which politics and democracy were brushed aside in favour of economic liberalisation.

Yet, however important these interventions have been, what such scholarship often misses is the deeper set of material concerns that drove these processes. Drawing on the work in the previous sections, we can take key insights from the Marxist analysis of democracy, de-politicisation and juridification by placing the phenomenon in the context of the overall logic of capitalism.

As regards the EU’s democratic deficit, Marxists have stressed that – *by definition* – capitalism undermines ‘democracy’. This is because – in Ellen Meiksens Wood’s terms – capitalism is founded on the ‘separation of the political and the economic’.¹⁷³ In capitalist societies, ‘the major economic determinants of social existence are outside of conscious social control’.¹⁷⁴ On the micro-level, many of the most consequential factors in shaping our lives are not grand political-economic concerns but rather result from the social power embedded in the employment relationship. On the macro-level, owing precisely to the separation of the political and the economic under capitalism, the amount of power that the state can exercise over ‘economic’ questions is always limited. As noted in Section 2D, state managers need to maintain capitalist accumulation patterns, which – in the context of a global capitalist economy – severely limits freedom of choice. As such, the EU’s sidelining of democracy and politics are not merely the result of policy choices that are somehow unique to the EU and that could be remedied through reform. Instead, they are structurally tied to the logic of capitalism and its necessary separation between the political and economic spheres and the ‘privatisation’ of core functions of production and distribution.

¹⁶⁹M Bartl, ‘Internal Market Rationality, Private Law and the Direction of the Union: Resuscitating the Market as the Object of the Political’ 21 (2015) *European Law Journal* 572.

¹⁷⁰FW Scharpf, ‘Economic Integration, Democracy and the Welfare State’ 4 (1997) *Journal of European Public Policy* 18.

¹⁷¹M Everson, ‘Beyond the Bundesverfassungsgericht: On the Necessary Cunning of Constitutional Reasoning’ 4 (1998) *European Law Journal* 389, 389.

¹⁷²C Joerges, ‘Europe’s Economic Constitution in Crisis and the Emergence of a New Constitutional Constellation’ 15 (2014) *German Law Journal* 985; AJ Menéndez, ‘The “Terrible” Functional Constitution of the European Union: “Sound” Money, Economic Freedom(s) and “Free” Competition’ in M Goldoni and MA Wilkinson (eds), *The Cambridge Handbook on the Material Constitution* (Cambridge University Press 2023) 351–6.

¹⁷³EM Wood, *Empire of Capital* (Verso 2003) 12–13; See also EM Wood, *Democracy Against Capitalism: Renewing Historical Materialism* (Verso 2016).

¹⁷⁴R Knox, ‘Imperialism, Hypocrisy and the Politics of International Law’ 3 (2022) *Third World Approaches to International Law Review* 25, 36.

As we will see in the next section, the post-1980s acceleration of juridification and depoliticisation was closely linked to the neoliberalisation of the economy and the institutionalisation of a specific neoliberal regime of capital accumulation.¹⁷⁵ However, juridification and depoliticisation also have deeper roots in the role of law in capitalist production. As we saw in section 2C, Pashukanis drew an immediate connection between law and commodity exchange and indeed between the juridification of social relations and the generalisation of commodity exchange. This structural connection between law and capitalism explains both the dominance of law in capitalist societies and shapes the content of legal norms, as the forms of appearance of capitalist social relations. Applied to EU law, this means that the particularly pronounced character of juridification in the EU is but one manifestation of law's critical (political) role in reproducing capitalist social relations. Crucially, however, it also means that, from a Marxist perspective, juridification and its depoliticising effects are less about 'depoliticising' as such than about the enactment of a *specific* political settlement designed to further capital accumulation.

Historically, indeed, we can observe that the heightened pace of juridification across Europe coincided *specifically* with the decomposition of the Keynesian settlement. Yet, that settlement itself was not a 'natural' equilibrium point of capitalism but was rather premised on a relative social peace between capital and labour, based on both the threat of communism and the profits extracted through imperial relationships.¹⁷⁶ When, in the 1970s, global capitalism was convulsed by a crisis of profitability, the settlement was wracked by heightened and intensified class struggles.¹⁷⁷ It was in this particular material context that such juridification was sharpened, precisely as a way to fence off capitalism from resistance. This would seem true in the EU case too, where, particularly since the 1980s, internal market law and competition law expanded in their reach, became far more prescriptive and were enforced with increased zeal by both the Court of Justice and the European Commission.¹⁷⁸

B. Marxism and ideological biases

The Euro-crisis brought a second wave of critiques, which built on the scholarship outlined above but extended their analysis beyond discrete engagements with the democratic deficit and dived deeper into the foundations of EU law. Among these, a host of contributions sought to trace the connections between EU law, including its undemocratic and depoliticising character, and *ordo*/neoliberal ideology. Some of them offered general analyses of the ordoliberal and neoliberal influences of EU law and its constitutionalisation of free market principles, particularly the principle of free and undistorted competition and the guarantee of individual economic rights and freedom.¹⁷⁹ Others paid greater emphasis on the EU's response to the Euro-crisis, particularly its punitive and authoritarian outlook. Michael Wilkinson's book on authoritarian liberalism, for example, provides the culmination of a series of reflections on the origins and causes of the EU's authoritarianism, from the inter-war period to the Eurocrisis. Authoritarianism in this context is understood in terms of the displacement of democratic politics as against the liberal view of authoritarianism as the erosion of fundamental rights.¹⁸⁰ Echoing our remarks in the previous section and the 'new constitutionalism' of neo-Gramscians, EU scholars in particular highlighted

¹⁷⁵S Pahuja, 'Technologies of Empire: IMF Conditionality and the Reinscription of the North/South Divide' 13 (2000) *Leiden Journal of International Law* 749.

¹⁷⁶CJ Bickerton, *European Integration: From Nation-States to Member States* (Oxford University Press 2012).

¹⁷⁷W Streeck, *Buying Time: The Delayed Crisis of Democratic Capitalism* (2nd Revised edn, Verso 2017).

¹⁷⁸E Nanopoulos, 'From Class-Based Project to Imperial Formation: European Union Law and the Reconstruction of Europe' in P O'Connell and U Özsü (eds), *Handbook on Marxism and Law* (Edward Elgar 2020) 375–8.

¹⁷⁹See indicatively AJ Menéndez, 'The Existential Crisis of the European Union' 14 (2013) *German Law Journal* 453; Menéndez (n 172).

¹⁸⁰Wilkinson, *Authoritarian Liberalism and the Transformation of Modern Europe* (n 168).

how the deepening of the democratic deficit was precisely designed to ‘push through neoliberal policies that would have encountered tremendous – possibly fatal – resistance had this been attempted at the national’ level.¹⁸¹

In parallel, scholars began to think more systematically, not only about institutional failures, but also about the deeper ideological biases embedded in EU law. Some scholars mapped the ways in which EU law prioritises certain interests or values. In the field of EU public law, scholars highlighted the bias of both internal market law, which favours the ‘more mobile capital and the richer citizens over immobile labour and poorer citizens’¹⁸² and citizenship law, whose welfare benefits remain tied to market participation.¹⁸³ In the field of EU private law, similarly, Marija Bartl noted the EU’s focus on the ideal of a competent consumer making ‘informed choices that reward competition,’¹⁸⁴ tends to exclude people with less education and wealth. Others adopted a more conceptual/theoretical outlook, linking the structural prioritisation of economic actors and market principles to a critique of functionalism. Turkuler Isiksel, for example, pointed to the enduring dominance of the Treaties’ economic *finalité*.¹⁸⁵ Bartl went even further, highlighting how the ‘functionalist legal-institutional design of the EU’ not only reflected but, in fact, constituted a market rationality, structuring the ‘field of possible political action in the EU’.¹⁸⁶ In fact, more recently, the difficulty of breaking through the boundaries of the functionalist discourse was identified as a critical obstacle to the development of EU critical legal theory and methodologies as opposed to discrete substantive criticisms of the substance of EU law.¹⁸⁷

In drawing the link between neoliberalism and EU law, or between the logic of the market and the logic of the EU, this scholarship has made a significant contribution to our understanding of the structures of EU law. However, a Marxist analysis would further deepen these links by going beyond their ideological dimensions and, once again, drawing on its deeper material underpinnings.

As regards the neoliberal character of the EU, the phenomenon cannot be reduced to the influence of particular individuals and intellectuals. Whilst such figures were important, we need to inquire into the particular circumstances in which their ideas could translate into concrete practices and institutions. Indeed, as non-EU Marxist legal scholarship has already demonstrated, these ideas need to be understood in the context of the rise of the neoliberal as a specific mode of capitalist accumulation.¹⁸⁸ This is also what explains the contemporary trends towards juridification and depoliticisation. As scholars of the history of neoliberalism have shown, the great theorists of both neoliberalism and ordoliberalism understood that the insulation of the ‘economy’ from popular intervention was not only an ideological preference but a crucial concern to capital accumulation.¹⁸⁹ They also understood the important role that law had to play in that

¹⁸¹Eg, L Jones, ‘The EU Locked in Neoliberalism and Locked Out its People. Brexit is the Alternative’ (*LSE Blog*, 10 June 2016) <<http://blogs.lse.ac.uk/brexit/2016/06/10/the-eu-locked-in-neoliberalism-and-locked-out-its-people-brexit-is-the-alternative/>> accessed 27 June 2025.

¹⁸²F de Witte, ‘Transnational Solidarity and the Mediation of Conflicts of Justice in Europe’ 18 (2012) *European Law Journal* 694, 702.

¹⁸³C O’Brien, ‘I Trade, Therefore I Am: Legal Personhood in the European Union’ 50 (2013) *Common Market Law Review* 1643.

¹⁸⁴Commission staff working document: On Knowledge Enhancing Aspects of Consumer Empowerment, SWD (2012) 235 Final.

¹⁸⁵T Isiksel, *Europe’s Functional Constitution: A Theory of Constitutionalism Beyond the State* (Oxford University Press 2016).

¹⁸⁶Bartl (n 169) 573.

¹⁸⁷PJ Neuvonen, ‘A Way of Critique: What Can EU Law Scholars Learn from Critical Theory?’ 1 (2022) *European Law Open* 60, 67.

¹⁸⁸See H Brabazon (ed), *Neoliberal Legality: Understanding the Role of Law in the Neoliberal Project* (Routledge 2016).

¹⁸⁹N Tzouvala, ‘The Ordo-Liberal Origins of Modern International Investment Law: Constructing Competition on a Global Scale’ in A Rasulov and J Haskell (eds), *New Voices and New Perspectives in International Economic Law* (Springer 2020) 37–54.

context.¹⁹⁰ This is most obvious internationally, with the role of the IMF in demanding privatisation and liberalisation under its mandate of encouraging exchange rate stability.¹⁹¹ Importantly, contrary to EU law critiques, these scholars did not limit themselves to the ‘national’ context but drew on a wider *colonial and imperial* history, where non-European powers had been made to sign treaties in which their overarching obligation was to service European debt before anything else. Such treaties gave legal supervisory powers to European auditors. In this way, then, ‘depoliticisation’ was not merely the product of a technocratic mode of governance and ethos but, more specifically, bound up with projects of capitalist accumulation.

On the deeper symbiosis between the market and the EU, future work could return to Marxist debates about the nature of the EU. Doing so, would both give us a better understanding of, and expand the analysis beyond, the EU’s ‘functionalist’ ethos and how/why it has been embedded in legal arrangements. Particularly important here are those Marxist understandings that rooted the formation of the EU in the challenges of post-war capitalism, namely inter-imperialist rivalry and the management of a possibly unruly working class. These material concerns help explain the ‘biases’ of EU law, insofar as they shaped political–economic responses to these problems. Here, a Marxist understanding of law is essential. Law was the perfect vessel for European integration to entrench these biases, as – *per* Pashukanis – the legal form is deeply amenable to and compatible with capitalist imperatives. Finally, and crucially, the combination of these two factors – the material context and the role of law – has been crucial in *hegemonising* struggle within the EU: EU law has set the grounds in which class struggle occurs, and has consequently helped shape it in ways that help to reproduce those ideological and structural ‘biases’.¹⁹²

C. Marxism, race, and imperialism

More recently, EU lawyers have turned to the question of racialisation and imperialism, which, as we saw, are both central concerns of Marxist critiques. The first became more prevalent in the context of the refugee crisis. Several major human rights organisations have expressed concerns about the discriminatory nature of the EU’s migration laws, policies and practices, including on grounds of race. Critical approaches went further, highlighting how EU law is itself part of the problem and plays a key role in entrenching racial hierarchies. Nadine El-Enany, for example, highlighted how Member States, in their violent bordering practices, could credibly ‘claim that they are adhering to the letter of the law, both international and European’.¹⁹³

The second was part of the broader ‘imperial’ or decolonial turn,¹⁹⁴ which EU lawyers could no longer fully ignore. While there were some early studies of the colonial dimensions of the EU, contrary to some other branches of law, EU law as a field of study remains characterised by the ‘almost complete absence of a reckoning with the legacy of empire and imperialism’.¹⁹⁵ Quite the opposite. When the language of empire has been used at all in official discourse, it has been in direct opposition to Europe’s colonial past. None other than Manuel Barroso, then Head of the

¹⁹⁰Brabazon (n 188).

¹⁹¹Pahuja (n 175).

¹⁹²For a discussion of law’s hegemonising capacities, see R Knox, ‘Hegemony’ in J D’Aspremont and S Singh (eds), *Concepts for International Law: Contributions to Disciplinary Thought* (Edward Elgar Publishing 2019) 328–60.

¹⁹³N El-Enany, ‘On Pragmatism and Legal Idolatry: Fortress Europe and the Desertion of the Refugee’ 22 (2015) *International Journal on Minority and Group Rights* 7, 14.

¹⁹⁴G K Bhambra, ‘A Decolonial Project for Europe’ 60 (2) (2022) *Journal of Common Market Studies* 229. On how a decolonial approach differs from the ‘decentring’ approach that has marked some ‘critical’ approaches to EU foreign policy among European studies scholars see J Orbie et al, ‘Editorial: Decolonizing rather than Decentring “Europe”’ 28 (2023) *European Foreign Affairs Review* 1.

¹⁹⁵SR Larsen, ‘European Public Law after Empires’ 1 (2022) *European Law Open* 6, 6. For some exceptions see, eg, CA Cosgrove, ‘The Common Market and its Colonial Heritage’ 4 (1969) *Journal of Contemporary History* 73.

European Commission, referred to the EU as the ‘first non-imperial empire’.¹⁹⁶ Scholars, too, have described the EU as a benevolent¹⁹⁷ or cosmopolitan empire that, contrary to previous empires, is based not on ‘national demarcation and conquest, but on overcoming national borders, voluntarism, consensus, transnational interdependence, and the political added value accruing from cooperation’.¹⁹⁸ As such, the EU’s understanding of a post-national peaceful project not only serves to set it apart from the fascism of the European nation-state but also operates as a ‘sacralization of Europe’, an immunisation strategy designed ‘to postpone the task of confronting history’.¹⁹⁹

In that context, two strands of scholarship emerged, mostly stemming from political scientists, sociologists, or historians engaging with aspects of the law, rather than EU lawyers, who still largely proceed ‘as if empire never existed’.²⁰⁰ One has focused on the colonial dimensions of the founding Treaties, which were concluded at a time where key Member States, particularly France, remained colonial powers. For example, France’s colonisation of Algeria was ongoing during the negotiations for the Treaty of Rome, but such questions were left out of key founding documents, such as the Spaak Report.²⁰¹ Similarly, El-Enany highlighted how the UK’s accession to the EEC was a ‘means through which Britain could continue to assert power globally in the face of the defeat of the British empire’,²⁰² with European integration as a substitute for colonialism both economically and politically.

Another strand of scholars looked not only at the colonial legacies of the EU but at the contemporary imperial dimensions of integration. The majority of scholars focused on the so-called ‘external’ dimensions of EU law. Much of the initial discussion of the EU as a new form of ‘empire’ emerged in response to Ian Manners’ (in)famous description of Europe as a ‘normative power’, with the EU offering ‘pleasant and acceptable face of liberal capitalism in contrast to America’s arrogance of hard power’.²⁰³ As against that view, scholars highlighted the imperial or neo-colonial character of the EU’s normative power in such contexts as the EU’s European Neighbourhood Policy, trade, sustainable development,²⁰⁴ or foreign policy.²⁰⁵ Some of them stressed the connection between the EU’s role on the international stage and the old civilising mission, whilst others sought to place it within the broader history of empires seeking to stabilise ‘the periphery, to draw economic advantages from it, to export the imperial order and cultivate elites there’.²⁰⁶ Other scholars extended such findings to the ‘internal’ dimensions of EU law, highlighting either the ‘civilizing’ dimension of the Eastern enlargement or the neo-colonial treatment of the periphery during the sovereign debt crisis.²⁰⁷

¹⁹⁶H Mahony, ‘Barroso says EU is an Empire’ (*EU Observer*, 11 July 2007) <<https://euobserver.com/institutional/24458>> accessed 27 June 2025.

¹⁹⁷J Neyer, *The Justification of Europe a Political Theory of Supranational Integration* (Oxford University Press 2013).

¹⁹⁸Cited by J Zielonka, ‘Europe as a Global Actor: Empire by Example?’ 84 (2008) *International Affairs* (Royal Institute of International Affairs 1944-) 471, 475 discussing; U Beck and PE Grande, *Cosmopolitan Europe* (1st edn, Polity 2007) 53.

¹⁹⁹R Hank, ‘We Europeans: After the Loss of Innocence’ (*Eurozine*, 7 January 2014) <<https://www.eurozine.com/we-europeans/?pdf>> accessed 27 June 2025.

²⁰⁰Larsen (n 195) 24.

²⁰¹At the point of the founding of the European Economic Treaty, France was still in conflict with Algeria’s National Liberation Front (FLN). See B Megan, *The Seventh Member State: Algeria, France, and the European Community* (Harvard University Press 2022); P Hansen and S Jonsson, *Eurafrica: The Untold History of European Integration and Colonialism* (Bloomsbury Academic 2015).

²⁰²N El-Enany, *Bordering Britain: Law, Race and Empire* (1st edn, Manchester University Press 2020) 177.

²⁰³A Callinicos, ‘Perry Anderson on Europe’ 21 (2013) *Historical Materialism* 159, 161.

²⁰⁴L Govaert, ‘Neocolonialism in Disguise? The European Commission’s Trade and Sustainable Development Discourse’ 29 (2024) *European Foreign Affairs Review* 331.

²⁰⁵J Zielonka, *Europe as Empire: The Nature of the Enlarged European Union* (Oxford University Press 2006) 174.

²⁰⁶RA Del Sarto, ‘Normative Empire Europe: The European Union, its Borderlands, and the ‘Arab Spring’ 54 (2016) *Journal of Common Market Studies* 215, 215.

²⁰⁷Zielonka (n 205).

In some rarer instances, questions of racism, colonialism and/or imperialism were analysed together. In the field of migration law, El-Enany noted that economic migration and its racialisation was itself the product of the ‘disastrous political and economic colonial legacies left by imperial European countries’.²⁰⁸ In labour law, Diamond Ashiagbor has called on scholars ‘to engage meaningfully with the legacies of colonialism as central elements of social law and labour markets’ as part of a process of decentring Europe.²⁰⁹ A key part of this is an understanding of the role that colonialism, race, and racial capitalism played in ‘the initial construction of markets of the global North’.²¹⁰ El-Enany, meanwhile, brought attention to the racialised biases and imperial legacies of EU citizenship law. Thus, for her, EU citizenship is not only an attribute of market participation, but of whiteness, excluding racialised people.²¹¹

The kind of inquiry pursued by Ashiagbor and El-Enany, extended through further Marxist analysis, could offer a route beyond the limitation that critical approaches to race and imperialism encounter in the EU law context. But too often, analyses of the colonial or imperial dimensions of the EU have often operated in a distinctively liberal or post-modern mode. Imperialism is often treated in purely political or cultural terms, ie, in terms of the exportation of EU political and cultural values in order to serve its interests. Or it is deployed in reference to the means – coercive or not – deployed and the extent to which the EU truly acts ‘in dialogue’ with its ‘partners’. As a result, imperialism is largely viewed as the product of specific political choices, policies, or practices and hence something that can be ‘remedied’.

Crucially, then, as outlined in section 2, what these approaches miss is the fact that imperialism and its attendant processes of racialisation are structural (and hence necessary) features of capitalism which permeate the structures of the EU legal order as a whole, irrespective of the precise (political) or legal means being deployed. The exploitation of Africa, from the 20th century to the present, which was justified by the supposed inferiority of the black ‘race’ and its uncivilised status²¹² has played a key role in ensuring the profitability of European capital. In the modern day, there are also continuing neo-colonial patterns in the form of, for example, ‘green colonialism’, which sees key materials extracted from developing economies as part of the shift to decarbonisation.²¹³ Yet there have been no attempts to link EU imperialism to capital’s tendency to expand beyond its border, to the international division of labour, or to inter-imperial rivalries and competition that we have introduced in section 2.

The same is true of the dynamics that structure the EU’s internal, as opposed to external relations. Insofar as the Marxist tradition conceptualises imperialism as involving the movement of surplus value from less to more developed capitalist powers, we can arguably also observe this dynamic *internally* in the EU. These analyses have obvious implications for law. The fiscal rules that undergird the European project are crafted with advanced capitalist powers – in particular, Germany – in mind. These rules are particularly punitive on the European periphery, whose structural position in the Eurozone leaves them significantly unable to ‘develop’ without significant borrowing. This was vividly highlighted in the context of the Eurocrisis, when the European periphery was juridically mandated to restructure their economies (through privatisation and austerity) in order to restructure their debts. In this context, it is very much worth pointing out that a significant degree of racialisation occurred, with those in the European peripheries being characterised as ‘lazy’ and ‘corrupt’ in order to explain their economic inadequacy. In this way, the same set of patterns and practices of imperialism and racialisation

²⁰⁸El-Enany (n 193) 32.

²⁰⁹D Ashiagbor, ‘Decentring Europe in EU Social Law Scholarship’ 2 (2023) *European Law Open* 479.

²¹⁰D Ashiagbor, ‘Race and Colonialism in the Construction of Labour Markets and Precarity’ 50 (2021) *Industrial Law Journal* 506, 515.

²¹¹El-Enany (n 202) 189.

²¹²See W Rodney, *How Europe Underdeveloped Africa* (Verso 2018).

²¹³H Hamouchene and K Sandwell (eds), *Dismantling Green Colonialism: Energy and Climate Justice in the Arab Region* (Pluto Press 2023).

have occurred *within the EU itself*. As the above discussion makes clear, moreover, such a Marxist analysis goes beyond the legal notion of ‘internal’ and ‘external’. Instead, it conceptualises both the ‘internal’ and ‘external’ dimensions of EU law as reflecting the movement of surplus value and the differentiated aspects of an international division of labour. And it ultimately roots both in the broader extractive but uneven logic of capitalist imperialism.

D. Marxism and EU’s ‘Feminist’ critiques

With the exception perhaps of the myth of the EU as a peace project that ended inter-European wars, gender is one of the areas in which the image of the EU and EU law as a force for good has been most prevalent in the literature. This trend goes back to the early decades of European integration, from the early recognition of equal remuneration for equal work in the founding European Economic Community Treaty²¹⁴ to the 1975 Directive on equal pay.²¹⁵ As a result, gender equality has been described as ‘one of the key values’²¹⁶ and ‘cornerstones’ of the EU.²¹⁷ This reputation extends to the Court of Justice, which has been praised for its ‘teleological and forward-looking’ interpretations of gender equality.²¹⁸

With this generally positive reception of the EU’s record on gender issues, there has been limited engagement with the question of gender from a *critical* perspective. For example, in Päivi Neuvonen’s survey of critical approaches to EU law, there is no meaningful mention of feminist critique (let alone of Marxist feminist critiques).²¹⁹ As Diamond Ashaigbor argues, in a theme that recurs throughout this essay, the tendency of EU lawyers to focus on a doctrinal approach has meant an under-theorisation of ‘background norms and power asymmetries’, including in questions of race and gender.²²⁰ Ivana Isailović concurs with this view, arguing that ‘overall, a robust holistic analysis of the interplay between the political economy of the EU and gendered relations and hierarchies is missing’.²²¹

Despite this, there have been some notable attempts to engage with Marxist themes in relation to gender in EU law scholarship, particularly in the areas of internal market and anti-discrimination law. Early feminist work challenged, and sought to go beyond, *liberal* feminist understandings of gender and gender equality.²²² In particular, it sought to analyse and reveal the ‘hidden assumptions’ underpinning EU legal categories, which were seen as part of the EU’s ‘liberal edifice’.²²³ For example, Jo Shaw and Tamara Hervey challenged the male-centric nature

²¹⁴Treaty establishing the European Economic Community (EEC Treaty) [1957] OJ 197, Article 119: ‘Each Member State shall in the course of the first stage ensure and subsequently maintain the application of the principle of equal remuneration for equal work as between men and women workers’.

²¹⁵Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women [1975] OJ L45/19.

²¹⁶F Beveridge, ‘Gender, the Acquis and Beyond’ in S Currie and M Dougan (eds), *50 Years of the European Treaties: Looking Back and Thinking Forward*, vol 50 (Hart Publishing 2009) 393.

²¹⁷K Koldinska, ‘Case Law of the European Court of Justice on Sex Discrimination 2006–2011’ 48 (2011) *Common Market Law Review* 1599, 1599.

²¹⁸This comment comes as part of Samantha Currie’s critical perspective on the Court’s decision in *Jessy Saint Prix*, see, ‘Pregnancy-Related Employment Breaks, the Gender Dynamics of Free Movement Law and Curtailed Citizenship: *Jessy Saint Prix*’ 53 (2016) *Common Market Law Review* 543, 553.

²¹⁹Neuvonen (n 165).

²²⁰Ashaigbor (n 209) 479.

²²¹I Isailović, ‘Gender in Political Economy and EU Law’ 15 (2024) *Transnational Legal Theory* 525, 526.

²²²See the work of J Shaw, ‘Importing Gender: The Challenge of Feminism and the Analysis of the EU Legal Order’ 7 (2000) *Journal of European Public Policy* 406; ‘The European Union and Gender Mainstreaming: Constitutionally Embedded or Comprehensively Marginalised?’ 10 (2002) *Feminist Legal Studies* 213; ‘Mainstreaming Equality and Diversity in European Union Law and Policy’ 58 (2005) *Current Legal Problems* 255.

²²³Shaw, ‘Importing Gender: The Challenge of Feminism and the Analysis of the EU Legal Order’ (n 222) 410.

of legal subjecthood underpinning the EU's approach to formal equality, urging a deeper examination of the substantive inequalities faced by women that are embedded in law.²²⁴

This questioning of legal categories in the literature on gender and EU law was part of a broader critique of 'grand theories', including those of modern liberalism, building instead towards a theory which reflected on complex experiences and practices.²²⁵ Shaw's approach, inspired by social constructionist theories, focused on the way that the law and the state act as 'location of processes of identity formation' and how these processes interacted with gender.²²⁶ Following in these footsteps, a number of scholars sought to further unearth the broader ways in which EU law reflected particular views of womanhood. Clare McGlynn, for example, explored the category of, and ideological identification of women with, 'motherhood'.²²⁷ She showed how the Court of Justice, in its case law on pregnancy and maternity, relied on essentialist transhistorical accounts of motherhood that reinforced and perpetuated 'outmoded assumptions about childcare'.²²⁸

Particularly since the 2008 financial crisis, however, scholars turned to the more 'economic' dimensions of gender inequality. Charlotte O'Brien's critique of free movement rights from a class perspective, for example, gestured at the gendered impact of EU law in this field.²²⁹ Echoing critiques of the male perspective embedded in EU law, she noted how the notion of 'economic activity' required for triggering EU law rights had been developed to favour those with stable employment and/or independent means, ie, the white middle-class male. This, of course, disproportionately affects women, who not only tend to occupy more precarious positions but whose work patterns can be affected by, for example, pregnancy.²³⁰

More recently, the work of scholars such as Isailović has developed a more systemic critique of EU law rooted in the political economy of gender. Isailović's early work argued that the EU's promotion of work-life balance rests on a particular neoliberal type of feminism that fails to address the more systemic assumptions of the gendered division of labour.²³¹ The result, she argues, is that this neoliberal feminism both fetishises wage labour and furthers commodification, whilst entrenching 'the cultural assumption that women are the primary caregivers'.²³² More recently, she outlined some of the key tenets of 'materialist' feminism and sought to apply them to the field of EU anti-discrimination law. Going beyond critiques of formal equality, she highlights how the 'test developed in these cases by the Court imposes a gender-neutral understanding of equality and welfare states, which may challenge ingrained stereotypes on a discursive level and contribute to destabilising the male breadwinner/ female housewife model'²³³ but which nonetheless legitimised 'neoliberal logics, precariousness and exploitation, along gendered lines'. Importantly, her analysis also highlights, although it does not develop, three important aspects of Marxist feminist theorising that would need to be incorporated into our understanding of EU law:

²²⁴T Hervey and J Shaw, 'Women, Work and Care: Women's Dual Role and Double Burden in Ec Sex Equality Law' 8 (1998) *Journal of European Social Policy* 43.

²²⁵Here, Jo Shaw cites the work of Nicola Lacey as inspiration, see N Lacey, *Unspeakable Subjects: Feminist Essays in Legal and Social Theory* (1st edn, Bloomsbury Publishing (UK) 1998).

²²⁶Shaw, 'Importing Gender: The Challenge of Feminism and the Analysis of the EU Legal Order' (n 222) 419.

²²⁷C McGlynn, 'Ideologies of Motherhood in European Community Sex Equality Law' 6 (2000) *European Law Journal* 29.

²²⁸*Ibid.*, 40.

²²⁹C O'Brien, *Unity in Adversity: EU Citizenship, Social Justice and the Cautionary Tale of the UK/Charlotte O'Brien* (Hart Publishing 2017); C O'Brien, 'I Trade, Therefore I Am: Legal Personhood in the European Union' 50 (2013) *Common Market Law Review*; C O'Brien, 'Civis Capitalist Sum: Class as the New Guiding Principle of EU Free Movement Rights' 53 (2016) *Common Market Law Review* 937; C O'Brien, 'Between the Devil and the Deep Blue Sea: Vulnerable EU Citizens Cast Adrift in the UK Post-Brexit' 58 (2021) *Common Market Law Review*.

²³⁰O'Brien, 'I Trade, Therefore I Am' (n 229) 1646.

²³¹I Isailović, 'Gender Equality as Investment: EU Work-Life Balance Measures and the Neo-Liberal Shift' 46 (2021) *Yale Journal of International Law* 277.

²³²Notably, by the fact that the EU directive contains 14 weeks maternity leave and 10-day paternity leave. This 'is likely to leave the current unequal distribution of caretaking responsibilities unchallenged' *Ibid.*, 320.

²³³Isailović (n 221) 540.

(1) the role of unpaid labour under capitalism, which allocates social reproduction to the household and free-rides on the unpaid labour of reproductive subjects; (2) the connections between gender oppression and imperialism, particularly global labour patterns and value relationships between the core and periphery – for example, under neoliberalism, she notes, a feminised proletariat has migrated from the peripheries to ‘ensure the social reproduction of the global north’²³⁴; and (3) the connections between race, gender and other markers of identity.

A Marxist approach to gender would build on but extend those more ‘materialist’ readings. First, in addressing economic issues, this literature tends to locate the problem in how ‘the economy’ is constructed. To take O’Brien again, she notes that the new ‘civis capitalist sum’ not only rests on a ‘depersonalized free movement, emphasizing the economic rather than the political’ but that, more problematically, it rests on an anachronistic, patriarchal economic model, ‘vested in ideas about productivity’.²³⁵ By contrast, a Marxist critique would show how the very notion of the ‘economy’ as an independent sphere of social life is not only a myth but precisely connected to the patriarchal nature of capitalism and the sexual division of labour.

Second, while these accounts of gender highlight the economic dimensions of gender inequalities and hierarchies, they still tend to view ‘gender’ (and ‘race’) as cultural constructs and/or identities, the materiality of which lies primarily in their effects, ie, in how they impact gendered and racialised subjects. A Marxist theory of gender (or race), by contrast, would see gender itself as a social relation rooted in the capitalist division of labour.

Thirdly, partly as a result, a Marxist analysis of EU law would go beyond the inter-sectional model of discrimination, which remains the dominant approach even within more ‘materialist’ analyses. Although intersectional analyses provide valuable empirical insights into the dynamics of EU law, their theoretical foundation rests on the premise that categories such as gender and race represent ‘identities’ that intersect to create specific forms of inequalities and hierarchies. A Marxist approach, by contrast, takes such categories as particular modes of abstraction, all rooted in the totality of capitalist social relations. This allows us to take each of these ‘categories’ seriously, as more than simple identities that individual people inhabit, and to root them in the broader capitalist society totality as particular ‘moments’ in the ways capitalists secure surplus extraction and the reproduction of its own conditions of existence. It would also allow a more systematic inquiry into the connection between gender and race on the one hand and imperialism as a structural feature of capital accumulation on the other hand.

Last but not least, from a Marxist perspective, gender and other forms of oppression are neither a problem of discrimination, nor a ‘cooptation of feminist ideals’²³⁶ by the EU or the Member States that could be remedied. Nor is it merely the result of particular forms of ‘neoliberal feminism’. Instead, oppression is baked into the logic of capital accumulation and can only be remedied through deeper systemic change.

E. General limitations to critical approaches in EU law

The gradual development of critical approaches to EU law is certainly to be welcomed, if only for the space they are creating for the project of critique more broadly. At a general level, these approaches have helped to dislodge the myth that the EU is an entirely rules-based or technocratic order by foregrounding its deeply political framework.²³⁷ They have challenged the EU’s self-image as a peace project and a benevolent ‘external’ actor’, a narrative to which much of legal scholarship continues to contribute. They have highlighted the limitations of purely positivist

²³⁴*Ibid.*, 532.

²³⁵O’Brien, ‘Civis Capitalist Sum’ (n 229) 972.

²³⁶Shaw, ‘The European Union and Gender Mainstreaming: Constitutionally Embedded or Comprehensively Marginalised?’ (n 222) 221.

²³⁷On the links between liberal legalism and de-politicisation, see R Knox, ‘Against Law-Sterity’ 6 (2018) *Salvage* 49–68; M Loughlin, *The Idea of Public Law* (Oxford University Press 2004).

doctrinal analyses of EU law and the associated methodological nationalism on which these accounts are implicitly based. However, beyond their marginality, building on the above criticisms, we can identify several broader issues with this ‘critical turn’.

First, there has been very little engagement with the *social forces* which exist within Europe. There is certainly a focus on policy-makers, governments, and states, but, as noted above, these figures cannot act *autonomously*. In the context of a capitalist society, state managers are necessarily dependent upon capital accumulation for the state to function. This means that class, and class struggle, are of direct relevance to *any* of these decisions.²³⁸ Yet in much EU law scholarship, this is simply backgrounded as talk of the economy more generally, and certainly the language of class *relations* is usually absent. On the rare occasions when class analysis is mentioned, moreover, it is presented as a fixed identity rather than as a social relation.

Second, the handful of analyses that purported to engage with questions of political economy have tended to consist largely in contextual analyses of the EU. These may have highlighted some of the socio-economic or geopolitical factors that shaped the emergence and development of EU law, but they fall short of a critique of EU law based on the *critique of political economy*. Thus, despite calls for EU lawyers to ‘realize the importance of the “c-word” – not the constitution, but capitalism’ (or indeed racial capitalism) and include it in analyses of EU constitutional law,²³⁹ this has remained rather marginal, or superficial. When capitalism *does* appear in such analyses, it is taken as a more general synonym for ‘the economy’ or possibly ‘markets’, without understanding that capitalism is a social totality governed by particular laws of motion.

Third, critical analyses remain shaped by liberal legalistic distinctions such as the distinction between the internal and external aspects of EU law, or between the EU’s political, economic and social functions. Whilst this is particularly pronounced in critical substantive analysis of EU law, it also tends to reappear in more recent efforts to develop new methodological tools, such as ideology critique or the critique of alienation. As a result, these attempts to link the various dimensions of EU law together are still approached as separate autonomous spheres of action. This stands in stark contrast with the Marxist approach to capitalism as a social totality articulated via and mediated by different social forms. Such an approach would seek to combine an analysis of Europe’s ‘internal’ market regime with its ‘external’ relationship to those outside of its borders into a broader analysis of capitalist social totality. With El-Enany, we can only understand the ‘borderless’ interior of the EU in conversation with the ‘erection of the greatest of all frontiers at the outer borders of the Union’.²⁴⁰

Fourth, whilst many have critiqued the content of EU law, there has been no investigation of EU law as a specifically historical social form that grew out of the legal form but with its own characteristics.²⁴¹ Legal critique applies to the function or the effects of law but not to its form. Even in recent studies of the close relationship between law and commodification,²⁴² there is no sense that the legal form and the commodity form are internally connected.²⁴³ Nor, more generally, is there a sense of how EU law is ‘structurally’ and hence irremediably linked to its capitalist imperial foundations. Similar observations could be made as regards the relationship between the legal form on the one hand, and categories such as ‘race’ or ‘gender’. The assumption

²³⁸F Block, ‘The Ruling Class Does Not Rule: Notes on the Marxist Theory of the State’ in *The Political Economy: Readings in the Politics and Economics of American Public Policy* (Routledge 1984) 32–46.

²³⁹J Komárek, *European Constitutional Imaginaries: Between Ideology and Utopia* (Oxford University Press 2023) 11.

²⁴⁰El-Enany (n 193) 33.

²⁴¹C Miéville, *Between Equal Rights: A Marxist Theory of International Law* (Pluto Press 2006); R Fletcher, ‘Legal Form, Commodities and Reproduction: Reading Pashukanis’ in *Feminist Encounters with Legal Philosophy* (Routledge 2013) 138–57; B Bhandar, ‘Disassembling Legal Form: Ownership and the Racial Body’ in *New Critical Legal Thinking* (Birkbeck Law Press 2012) 112–7; Knox, ‘International Law, Race, and Capitalism’ (n 89).

²⁴²T Fia and IJ Murray, ‘Commodification and EU Law: A Genealogy’ 2 (2023) *European Law Open* 372.

²⁴³For a recent attempt to apply Pashukanis’ commodity-form theory of law to the European Union, see A Woodhouse, ‘Commodity-Form Theory of Law, the Climate Crisis, and the European Union’ 15 (2024) *Transnational Legal Theory* 616.

is that, all too often, although socially constructed, these categories are forms of ‘identities’ that the law helps to ‘constitute’, rather than social forms to which the law gives specific expression.

Finally, as a result, critical scholarship has ultimately tended to adopt a distinctively reformist position. For example, scholars such as Scharpf, Bartl, and Richard Bellamy have proposed reforms to the EU internal market that seek a modified form of capitalism. For Bartl, the answer lies in the democratisation of the internal market by allowing EU citizens to set the conditions in which free movement and competition operate and thus decide on the ‘kind of internal market’ they prefer.²⁴⁴ Scharpf argued for the creation of a welfare state at the European level to mitigate the worst inequalities created by the capitalist system, seemingly seeking to recreate institutions of post-war social democracy at the European level.²⁴⁵ Finally, Bellamy argued that the EU needs to allow more room for Member States to develop ‘different varieties of capitalism’.²⁴⁶ On some occasions, scholars have even veered towards the redemptive turn. Gurminder K. Bhambra’s discussion of the EU migration policy, for example, concludes with a plea for Europe to become ‘the Europe of humanism, the champions of human rights, democracy and freedom’.²⁴⁷ A Marxist approach, by contrast, presupposes a break with capitalism and imperialism and, hence, with EU law as a social form.

5. Conclusion

This article makes a two-fold contribution. First, it synthesised key insights from Marxist theory and demonstrated their relevance to EU legal analysis. Second, it identified the striking absence of Marxist approaches in the existing literature and demonstrated the potential of extending existing critical approaches to EU law through Marxist insights. This article thus offers a re-framing of EU law, understanding it in structural terms within the capitalist social totality, and in so doing, sets the foundation for the future development of Marxist approaches to EU law.

Section 2 outlined some essential takeaways from Marxist theory as a basis for studying the EU. This section stressed the significance of understanding law, including EU law, not on its own terms but rather as an aspect of the totality of capitalist social relations. Critical to that project, we stressed, is an examination of the structural connection between (EU) law, the state, and capital accumulation. Also critical, given the global character of capitalism, will be analyses that unveil the linkages between EU law, inter-imperialist rivalries, and the racist legacies of colonialism.

Section 3 explored the specific insights that Marxists have brought to bear on the study of the EU. At different historical junctures, Marxists have reflected on the role of the EU in capitalist social totality. Whilst yielding several key insights about the nature of European integration, this section concluded that legal aspects have generally been underplayed in existing Marxist approaches to the study of the EU.

Section 4 explored the extent to which critical approaches have emerged in the context of EU law. While Marxist approaches have generally been absent, this section explored some critical accounts of the EU with a focus on those foregrounding the EU’s (un)democratic structures, ideological biases, and relationship to colonialism. This section explored each of these existing themes and illustrated how a Marxist approach could advance our understanding of these areas by linking them to the social totality of capitalism.

Overall, this article has outlined apparent gaps for both the Marxist study of the EU and its need to pay greater attention to the legal aspects of the EU. It has also pointed to a gap in EU law

²⁴⁴El-Enany (n 161) 33.

²⁴⁵Scharpf (n 170).

²⁴⁶R Bellamy, *A Republican Europe of States: Cosmopolitanism, Intergovernmentalism and Democracy in the EU* (Cambridge University Press 2019) 211.

²⁴⁷GK Bhambra, ‘The Current Crisis of Europe: Refugees, Colonialism, and the Limits of Cosmopolitanism’ 23 (2017) *European Law Journal* 395, 405.

studies, which, in contrast to their international law counterparts, have neglected the insights of Marxist approaches. On this latter point, Marxism is a radical challenge to the default precepts of EU law scholarship. As against ‘internal’ perspectives, Marxists understand the law as situated within the contested relationships of global capitalism – embodying their ideological and class dimensions whilst set against the broader logic of capitalism.

It is now 75 years since the Schuman Declaration, a key moment in the establishment of European integration.²⁴⁸ In those 75 years, the institutions of European integration have undergone several shifts contributing to and influenced by developments in global capitalism. The prognosis for the future is a fast-changing world, with a shifting geopolitical balance away from the unipolar power of the United States of America and a climate crisis that will continue to challenge the fundamental precepts of capitalist social relations. It is far from clear that the ‘Europe’ that the Schumann declaration sought to build is, at present, fit for the challenges of the next 75 years. Transformation and shocks are inevitable, and Marxism ought to be recognised as an essential part of today’s ‘creative efforts’ necessary to strive for a better world.²⁴⁹

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²⁴⁸Schuman Declaration of May 9, 1950, reprinted in Bulletin of the European Communities 13 (1980).

²⁴⁹*Ibid*: ‘World peace cannot be safeguarded without the making of creative efforts proportionate to the dangers which threaten it’.