

# **Capitalist expansion, hegemony and the state: Theoretical reflections on the concept of imperialism**

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## **Abstract**

With the adoption of the Lisbon Treaty in 2009, the European Union (EU) has acquired exclusive powers to formulate and negotiate new EU investment treaties. Building on the existing network of more than 1,300 bilateral investment treaties concluded by the member states, this shift of competence is considered a key moment in the building of what has been called a ‘Euroimperialism’ or ‘European bloc imperialism’. This paper brings forth a theoretical discussion on the concept of imperialism as a useful tool to grasp renewed processes of domination in the form of transnational legal rules. It explores the relationship between the dialectically related spheres of geopolitical competition in the international system of states and the capitalist tendencies towards expansion that are inherent to capital accumulation. The paper critically engages with existing accounts on imperialism that seek to theorize this relationship and aims to overcome their limitations by including notions on the role of the capitalist state. Finally, the paper reflects on the concept of imperialism by incorporating discussions on the nature of international law in which these new patterns of domination become apparent.

**Keywords:** capitalist expansion, imperialism, state theory, international law, hegemony

## Introduction

The current era of globalization is undoubtedly marked by the rise of transnational capital flows. Volumes of foreign investment have increased dramatically over the past two decades (UNCTAD 2012). This was accompanied by new transnational legal rules and institutions that seek to promote global economic integration such as Bilateral Investment Treaties (BITs), Free Trade Agreements (FTAs) and other economic partnership agreements with provisions on investment. So-called International Investment Agreements (IIAs) have in recent years been heralded as the most powerful legal instruments to protect foreign investment and further enhance the mobility of transnational capital. The conclusion of IIAs, particularly with developing countries, frequently came with the promise of increased foreign investment by granting an international layer of protection for foreign investors that reaches beyond that of host states (cf. Vandevelde 1992; Dolzer and Stevens 1995; Neymeyer and Spess 2005). Empirical evidence, however, has shown that the conclusion of IIAs hardly generates increased foreign investment flows (see UNCTAD 1998; Hallward-Driemeier 2003; Tobin and Rose-Ackerman 2005; Salacuse and Sullivan 2005; Yackee 2005).

At the same time, the powerful enforcement of such agreements under the investor-state dispute settlement mechanism (ISDS) grants foreign investors the right to file international arbitration claims directly against governments before an international tribunal without first having exhausted local remedies. This unique feature in the context of international law has resulted in an arbitration boom in which developing countries have been frequently on the respondent end of private claims that have resulted in awards of hundreds of millions of dollars and often involved sensitive areas of public regulation. Giving primacy to the protection of assets by foreign investors has been argued to impose powerful legal constraints on governments and in a wider sense, on the scope for democratic choice in the organization of the economy (Schneiderman 2008; Van Harten 2010). This suggests that signatory states are bearing the costs of the strict IIA provisions in terms of diminished regulatory capacity and potential litigation costs, while reaping few, if any, benefits.

IIAs have evolved historically as a government response to investor demands in enforcing their property rights in the developing host countries in which they were investing, particularly in situations where host legal systems were considered 'weak'. These treaties come forth from earlier practices of imperialist rule, extraterritoriality and 'unequal treaties' that – forcefully – provided new market opportunities for capitalist producers in the course of

the 19<sup>th</sup> century (Miles 2010). By 2012, more than 3,000 IIAs have been concluded worldwide (UNCTAD 2012). In absence of any multilateral framework on the protection of foreign investment, European governments have been among the most active in the conclusion of such treaties.<sup>1</sup> These treaties point towards a wider expansive structure of an increasingly integrated world economy.

Subsequently, the emergence of such a global network of legal rules has increasingly been perceived as practices of some sort of (neo-)imperialism, in which a centre seeks to control the wider ‘territories’. Particularly, the shift of exclusive competencies over foreign investment from the member states to the European Union (EU) under the Treaty of Lisbon in 2009 can be understood as the zenith of European attempts to merge trade and investment policies into its Common Commercial Policy (CCP). Investment has thus been subsumed by the broader EU strategy to open up new markets for European corporations through enforcing neoliberal restructuring in developing countries as proposed in the EU’s *Global Europe* strategy of 2006 (cf. Bieler 2013). Building on the more than 1,300 bilateral investment treaties concluded by the EU member states, the European Commission is currently active in elaborating a new EU investment policy to be used in upcoming trade and investment negotiations. The shift of competencies over foreign investment marks in this respect a key moment in the building of what some have called a ‘Euroimperialism’ (Deppe and Bieling 2005) or ‘European bloc imperialism’ (Canterbury 2012).

The purpose of this paper is to provide a theoretically informed understanding of the concept of imperialism and how it can help to grasp the emergence of the global network of IIAs. The term imperialism is closely related to, but distinguishable from, empire and colonialism. Empire comes from the original Latin term *imperium* and referred to the capacity to make laws within a given territory, which evolved into the rule over territories beyond the original homeland as the Roman empire grew. This definition of empire relates to that of colonialism, whereas imperialism is often used to refer to the processes whereby empire is maintained and expanded. Particularly towards the end of the 19<sup>th</sup> century, imperialism came to stand for the effective control of a subordinated society by an imperial society through practices of coercion, political cooperation, social, economic and cultural dependence. As such, imperialism describes the mechanisms by which one country or region comes to dominate another (Kiely 2010: 2-3).

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<sup>1</sup> Germany, United Kingdom, Italy, France, the Netherlands and Belgium/Luxemburg are among the top ten signatory countries; EU member state BITs total over 1,300.

Realist theories take the global state system as anarchical in which each state seeks to protect its own interests (cf. Waltz 1979). International relations are perceived as constituted through the actions of rational states that operate in a 'zero-sum game'. Such an interpretation puts the state as the central actor, neglecting thereby the social foundations of political power. In contrast, liberal accounts focus on the individual or groups of individuals (cf. Fukuyama 1992). The state is not considered a unitary actor, but as influenced by numerous factors and agents. Rather than stressing the inevitability of conflict, as realists do, liberals search out the conditions for cooperation leading to a 'positive-sum game' in which market relations can generate positive outcomes for all. This approach, likewise to realism, takes individuals as rational actors in pursuit of self-interest to maximize the benefits of economic exchange for society. In doing so, such approaches fail to account for the importance of ideas and discourses and how these are related to structural power balances between social forces that prevail at any particular time.

In order to understand the realities and limitations of imperialism, we have to go beyond such narrow approaches that fail to account for the wider social dynamics that influence interests of states or state-like apparatuses such as the EU. Imperialism cannot be reduced to mere inter-state rivalry nor has it been a progressive force that promoted open markets, free trade and economic growth for everyone around the globe. Instead, imperialism has to be understood as a political or 'hegemonic' project in which the outward expansion is not only the result of the strategic action and interests of key political and societal agents, but also as the result of the structural expansive tendencies of capital accumulation under the capitalist mode of production (see Jessop 1990). Capitalist expansion takes place through the commodification of social relations, in which the capitalist mode of production and its concomitant social relations replaces non-capitalist forms of production (Robinson 2004: 7). While accepting that zero-sum games exist, it is only under capitalism that there has been a massive expansion in the amount of wealth produced because of the emergence of capitalist social relations, and with them, a competitive market (Kiely 2010: 30). However, not everyone profits from this equally as wealth is unequally distributed under the capitalism.

In order to arrive at a comprehensive understanding of political institutions that facilitate the expansion of capital accumulation, the paper discusses a wide range of historical materialist accounts that have sought to elaborate critically on imperialism. These approaches provide for useful concepts to understand the role of international law as a mediator between geopolitical competition and the economic imperative of capitalist expansion inherent to the

accumulation of capital. As a common feature, these accounts highlight the dialectical relationship between state interests and their socio-economic foundations. The question is, thus, how to theoretically conceptualize imperialism as a result of the inter-relatedness of global patterns of capital accumulation, the relationship between capitalist states, and how these features give rise to processes of domination and subordination in the international order (see Kiely 2010: 3). Moreover, how can we make the concept useful in order to grasp the proliferation of IIAs?

The structure of the paper is as follows. The first two sections provide for a critical engagement with the existing literature on imperialism. First, classical Marxist debates on imperialism and their validity to explain current practices of imperialism will be reviewed. Second, recent scholarship on imperialism in the context of the changed nature of contemporary capitalism will be discussed. One major limitation to these theories is the absence of substantive theorizing of the role of the state or state-like apparatuses such as the European Union. The third section seeks to overcome this shortcoming by including notions on the capitalist state from a neo-Gramscian and neo-Poulantzian perspective. The fifth part encompasses critical perspectives on the construction of international law and its eminent role as global enforcement mechanism for capitalism as a mode of production. By doing so, it aims to respond to the demand for a critical theory of international law that provides insights into the societal implications of the legal transformation of global capitalism (Hartmann 2011: 562) as well as to move beyond the ‘incestuous’ circles of critical IPE that too often refrains from venturing into new areas of enquiries (Belfrage and Worth 2012: 132). The concluding section reflects upon the previous discussions and their implications for a renewed conceptualization of imperialism in order to understand the current practices of IIAs.

### **Imperialism as the political manifestation of capitalist expansion**

This section assesses the first theories that attempted to grasp the new geopolitical realities in the era of classical imperialism, from the 1880s to 1945, and sought to link these developments to a new phase of capitalist expansion. These classical theories of imperialism – mostly but not always Marxist – have in common that they emphasize on the inter-imperialist rivalry based on protectionism at home and capital export and territorial expansion abroad. Despite some limitations, these approaches are more convincing than liberal theories that highlight the openness of the world economy through practices of free trade and the spread of

liberal ideologies, frequently denoted as a new stage of modernization or as an early period of globalization (cf. Ferguson 2004).

The early works on imperialism argued that there was a close link between capital export and territorial expansion. As the social-liberal Hobson (1902) contended, capitalist production had led inevitably to a concentration of capital into monopolies. Therefore, investment opportunities and, subsequently, domestic demand started to decline as excessive savings increased. For Hobson (2005: 79), imperialism thus formed a “natural product of the economic pressure of a sudden advance of capitalism which could not find occupation at home and needed foreign markets for goods and for investments”. While the close link between capital export and territorial acquisition was central to most of the following Marxist theories of imperialism, Hobson argued that it was not necessary to open new foreign markets. Rather, domestic markets were considered capable of overcoming the lack of domestic demand through social reform policies that would decrease the need for capital export (Hobson 2005: 88). Imperialism took place because of specific vested interests, but, according to Hobson, these did not represent the ‘national interest’ (Kiely 2010: 57).

In contrast, later Marxist accounts emphasized on the merger of monopoly interests and state policies and saw imperialism as an outcome of the structural expansionary tendencies inherent to capitalism. Hilferding (1910) argued that imperialism was indeed shaped by increasing concentration and centralization of capital, but that this was in turn shaped by the growth of finance capital, constituting a new phase in the development of capitalism. Hilferding (1985: 311-316) argued that intensified competition among domestic firms led to international competition between states to protect the interests of their national finance capitals. Like Hilferding, also Bukharin (1917) saw competitive pressures among industrial and finance capitals eventually merging into ‘state capitalist trusts’ at national level. At international level, such a state-financial capital nexus became increasingly dependent on the support of the state, leading to increased international competition in search for profitable outlets for capital, raw materials and new markets (Bukharin 2003: 127).

These similar observations of the particular mechanisms and state-financial capital nexuses that produced expansionary policies were a major influence on Lenin. In his influential pamphlet *Imperialism: The Highest Stage of Capitalism*, which was first published in 1916, Lenin draws on these earlier works on imperialism by focusing on monopoly and finance capital as a new stage in the capitalist mode of production. He saw imperialism as the highest stage of capitalism, which had five essential features: (a) the concentration of

production and capital leading to monopolies; (b) the merging of bank capital with industrial capital leading to finance capital; (c) the export of capital substituting the export of commodities; (d) the formation of international monopolies; and (e) the completion of the territorial division of the world among the greatest capitalist powers (Lenin 1939: 89). Particularly, the third feature of capital export deserves closer attention. In contrast to Hobson, capital export was inevitable as redistribution of income to resolve the problem of underconsumption in the domestic market would require capitalism to behave in a 'non-capitalist' way. As Lenin argues (ibid.: 65-66), the export of capital "greatly affects and accelerates the development of capitalism in those countries to which it is exported". The export of capital, therefore, expands and deepens the further development of capitalism throughout the world, as it becomes a means for stimulating an export of commodities. Lenin connects such developments with the rise of finance capital that facilitates the export of capital. However, this would inevitably lead to increased international conflict among imperialist rivals.

This view contrasts with that of Kautsky (1914), who envisaged a new stage for capitalism to be based on the extension of cartellization into foreign policy, or a phase of what he refers to as *ultra-imperialism*. This would lead to cooperation rather than conflict between the capitalist states, marking a phase of joint exploitation of the world (Kautsky 1914). Kautsky argued that there is "no *economic necessity*" for increasing military rivalry in the age of imperialism as an inevitable result of economic competition, but highlights the possibility of increased cooperation between developed capitalist powers (Kautsky 1914; Kiely 2010: 64). As for Lenin, who accepted this possibility of international cooperation, capitalist competition is self-destructive to such an extent that imperialism will explode before the stage of ultra-imperialism is reached (Kiely 2010: 64). As the outbreak of World War I undermined Kautsky's ultra-imperialism, his views have certainly become more useful in the post-1945 era as will be outlined later.

Finally, Luxemburg's theory of imperialism as presented in *The Accumulation of Capital*, first published in 1913, also departs from the capitalist tendency towards underconsumption but with a slightly different focus. She theorized that capitalism is characterized by expanded reproduction, but that it needs external sources for surplus consumption. Capitalism requires, therefore, non-capitalist social relations to secure this expanded reproduction and, in general, the accumulation of capital. Imperialism entails a foreign expansion into non-capitalist markets in order to realize the surplus-value. However,

there is a major contradiction in this development. Capitalist expansion leads to the transformation of non-capitalist societies into capitalist societies. When all societies have become capitalist, further accumulation of capital will become impossible according to Luxemburg (1951). This claim has become problematic in the light of recent history. As the geographical expansion has been – more or less – completed, capitalist expansion has also deepened as previously non-capitalist human activities are increasingly being brought into the logic of commodification. Nevertheless, her theory of necessary outward expansion in order to stabilize capitalism has inspired several contemporary Marxist scholars, as we will see in the next part.

What these accounts have in common is that they seek to grasp the close relationship between monopoly and finance capital, capital export and colonial expansion. However, these approaches have certain shortcomings as this relationship tends to be overgeneralized (see also Kiely 2006, 2010). The theoretical assumption is that imperialism – including the export of capital to the colonies – is necessary for capital accumulation to continue, which would open up new fields for surplus capital in search of new profits (Kiely 2010: 77). Empirically, this assumption does not hold as there is historically no direct causal relationship between capital export and colonial expansion. Though British foreign investments quadrupled between 1874 and 1913, most of it went into the other advanced capitalist regions and the already existing colonies rather than into the newly acquired territories. Also in terms of trade, inter-imperialist trade was more important than trade with the colonies (Bairoch and Kozul-Wright 1996: 10; Hobsbawm 1989: 66-67). The direction of investment and trade undermines the notion of surplus capital and the expectation that surplus capital would develop the productive forces in the colonies (Kiely 2010: 81).

The theoretical implication is that though inter-imperialist rivalry led to intensified geopolitical conflicts, it does not necessarily have to relate to the functionality of capital export to accumulation. Rather, classical imperialism could be seen as the “natural by-product of an international economy based on the rivalry of several competing industrial economies, intensified by the economic pressures of the 1880s” (Hobsbawm 1989: 66-67). As industrial capitalism is based on a legal framework that enhanced private property rights and contractual relations, applying this political and legal structure to the periphery often ended up in colonial expansion and extension of imperial rule in the context of growing competition from other advanced European powers (Lipson 1985: 15-16). Thus while the economic imperative of profit-seeking surplus capital undeniably contributed to the impetus for



expansionary policies, imperialism has to be understood also as the outcome of the strategic action of competing states and state managers. While these were of course tied to economic interests at the end of the 19<sup>th</sup> century, they do not necessarily have to be so. This would imply that imperialism is not the last or highest stage of capitalism, as Lenin argued, but it constitutes a rather new stage of capitalist expansion and international competition. What is needed, then, is a more systematic understanding of geopolitical structuring of global capitalism in which the state is given a more central role (see Tescke and Lacher 2007: 566). Such a revised approach to imperialism would have to break with inherent functionalism of the above accounts, even when accepting that the state performs certain functions that sustain accumulation (Kiely 2010: 84). This would provide for a more flexible understanding of the relationship between the capitalist imperative of accumulation and deliberate state strategies of expansion. More recent scholarship on imperialism has attempted to deal with such an understanding, which will be discussed in the next section.

In sum, the classical theories on imperialism offer an account of a particular phase of capitalist development and sought an explanation of the geopolitical rivalries among the advanced powers that produced World War I as a consequence of the economic and territorial competition of the 'state capitalist trusts' that now dominated these states (see Callinicos 2007: 535). However, the focus on the continued importance of the national state in geopolitical rivalry is less useful to account for the increased cooperation between capitalist states after 1945 and the growth of an increasingly integrated global economy. The age of classical imperialism was fundamentally different from the current era of globalization, as the world consisted in the late 19<sup>th</sup> century of a "plurality of rival 'national economies' protecting themselves against each other" (Hobsbawm 1989: 69). The period after 1945 gave rise to a different sort of imperialism, one that exercises capitalist domination without direct territorial acquisition. As such, classical imperialism has laid the groundwork for future capitalist domination and the absorption of non-capitalist domains into the orbit of capital accumulation. As it introduced not only the capitalist mode of production and its concomitant class relations to the periphery, it brought with it also the political, legal and cultural structures of capitalism. This is a significant point for understanding the reality of imperialism and development in the current era of neoliberal globalization.

## **The 'New Imperialism' revisited**

More recently, several Marxist scholars have sought to grasp the complex relationship between the two distinctive, but inter-related, logics of geopolitical competition and the economic imperative of capitalist expansion (cf. Harvey 2003; Wood 2005; Callinicos 2007, 2009). Harvey takes capitalist imperialism as the contradictory fusion of the “politics of state and empire” and the “molecular processes of capital accumulation in space and time”, whereby the former comprises the political project of territorial command invoked by the political, economic and military strategies of particular state actors, and the latter resembles the flows of economic power through “practices of production, trade, commerce, capital flows, money transfers, labour migration, technology transfer, currency speculation, flows of information, cultural impulses and the like” (Harvey 2003: 26-27). In distinguishing these two spheres of imperialism, Harvey separates the ‘territorial’ from the ‘capitalist’ logics of power, but, at the same time, they are intertwined and often contradictory. In other words, both logics are dialectically related to each other rather than a functional outcome of the other, leading Harvey to define capitalist imperialism in terms of the “intersection of these two distinctive but intertwined logics of power” (Harvey 2003: 30).

The question is, then, how the fixed logic of territorial power responds to the dynamic logic of capitalist accumulation (ibid.: 33). This is an important question when dealing with explanations for imperialism and global expansion. Capital accumulation needs certain institutional structures of law and private property, which is provided by the state and its monopoly over the means of violence to secure such an institutional framework by constitutional arrangements. Therefore, capitalist thrive best in a capitalist state where market institutions and rules of contract are legally guaranteed and in which frameworks of regulation are constructed to contain class conflicts and to arbitrate between the claims of different capital fractions (ibid.: 91). Similar to Lenin and Luxemburg, Harvey argues that the impetus for a ‘spatio-temporal fix’ pushes for imperialist expansion, internalizing the ‘outside’ as necessary for continuing capital accumulation. He calls this internalization process ‘accumulation by dispossession’, in which practices of privatization, trade liberalization and market deregulation release a set of assets at very low costs for surplus capital to overcome the problem of overaccumulation (Harvey 2003: 154). In doing so, Harvey offers a convincing explanation for the structural capitalist tendencies of expansion, but it remains unclear how

he conceptualizes the role of the state and geopolitical competition in a non-functionalist manner.

Callinicos (2007; 2009) has developed similar arguments in his conception of capitalist imperialism. As he argues, capitalist imperialism is “the intersection of capitalist and territorial logics of power and economic and geopolitical competition”. It has to be understood as a “transformation in the nature of the competition constitutive of capitalist production relations” (Callinicos 2007: 540). Even though geopolitical competition is prior to capitalism as argued by others (Teschke 2003; Lacher 2006; Lacher and Teschke 2007), Callinicos takes geopolitical competition as being subsumed under the competition between capitals in the age of classical imperialism (ibid.: 541). His approach seeks to avoid economic reductionism and an instrumentalist conception of the state, but, in doing so, runs the risk of reifying national interests that is so characteristic of (neo)realist approaches to state power (ibid.: 540). For Callinicos, any Marxist analysis of international relations has a ‘realist moment’ as it has to “take into account the strategies, calculations and interactions of rival political elites”, though these are placed within the context of the contradictions of capital accumulation and the concomitant class struggles at a particular time in history (ibid.: 542). This call for a ‘realist moment’ has provoked much debate among Marxist scholars (cf. Teschke and Lacher 2007; Morton 2007a; Van der Pijl 2007; Hobson 2007; Davidson 2009; Ashman 2009; Bieler 2012). The separation of the two spheres of logics clearly reflects the base-superstructure approach as presented by Marx (1859) in his *Preface to a Contribution to the Critique of Political Economy*:

In the social production of their existence, men inevitably enter into definite relations, which are independent of their will, namely relations of production appropriate to a given stage in the development of their material forces of production. The totality of these relations of production constitutes the economic structure of society, the real foundation, on which arises a legal and political superstructure and to which correspond definite forms of social consciousness.

From a Leninist perspective, giving ontological autonomy to non-economic factors or geopolitics is to fall into the trap of bourgeois theory. This would imply that capitalist social relations do not wholly underpin states, war or imperialism and that overthrowing capitalism will not necessarily bring a free and equal world (see also Hobson 2007: 583-585). The separation of the two logics resembles neo-Weberian analyses that have produced a non-reductionist theory of international relations and frequently slip into neorealist analysis,

which is problematic because neorealism is in itself fundamentally geopolitically reductionist. Therefore, it is ontologically impossible to integrate a rigid neorealist geopolitical reductionism into a non-reductionist approach (ibid.: 588).

What these accounts have in common is a lack of theoretical explanation or historical specification of the conditions under which capitalist class relations took shape politically. As argued by Teschke and Lacher (2007: 568), “capitalism cannot be simply understood as an economic structure [but] as a mode of societal organization that involved both a particular organization of production and exploitation and a particular differentiation between the private and the public”. In particular, Wood (2002; 2005) provides a useful understanding of how the two logics appear to have become formally separated. What distinguishes capitalist societies from non-capitalist societies is that in the latter, economic powers of dominant classes rely on ‘extra-economic’ coercion such as political and military power to extract surplus. In a capitalist society, capitalists generally do not need direct control of coercive military or political force to exploit their workers as the appropriation of surplus is granted through the process of capital circulation, which is mediated by the market relations of exchange making the worker ‘free’ to sell his labour-power in exchange for a wage in order to work and live. This has created a formal separation of capitalism’s purely economic modes of production from the political sphere (Wood 2005: 10-11). As for Wood (ibid.: 12), the detachment of economic power from direct coercion implies that the economic hegemony of capital is able to extend beyond the borders of direct political domination affecting the relations between imperial and subordinate states. Hence, the two moments of class exploitation in capitalist societies – the appropriation of surplus labour and the coercive power that enforces it – are divided between private corporations and the public power of the state, which controls the legal authority and military capacity necessary to exert direct coercive force (ibid.: 14).

Though reflecting the arguments of Harvey and Callinicos, Wood draws an intrinsic connection between the two spheres of power by stating that capitalists continue to depend on the coercive functions of the state to secure the social order of private property relations and to maintain the favourable conditions for the accumulation of capital by providing a legal and institutional framework that guarantees stability and predictability in its social arrangements (ibid.: 10-14). Here Wood’s theory differs from Harvey’s who argues that “capitalists do not absolutely require such a framework to function” (Harvey 2003: 90). For Wood, the state remains the crucial point of concentration of capitalist power. Her ‘empire of

capital' relies on the nation-state system as "no transnational organization has come close to assuming the functions of the nation-state in maintaining the system of property and social order" (Wood 2005: 14-20). Hence, while the basic condition of capitalist expansion beyond the limits of political domination is the imposition of economic imperatives, it can only do so if the 'laws' of the capitalist economy are themselves extended, something that needs extra-economic help (ibid.: 20). For Wood, this is the basis of the new imperialism. Where older forms of imperialism depended directly on colonial rule, capitalism has extended beyond the imperial domination by imposing and manipulating the operations of the capitalist market (ibid.: 21). Wood's analysis certainly provides for a sophisticated explanation for imperialist tendencies of the capitalist mode of production. However, as argued by both Harvey (2003: 29) and Callinicos (2007: 539), this approach suffers from a 'soft functionalism' and economic reductionism as state practices are subsumed by the logic of capital accumulation. Yet neither one of them gives a satisfactory alternative as they both suggest a non-reductionist 'realist' approach to geopolitical competition without further theorizing the role of the state and how state interests are generated.<sup>2</sup> Instead, a further conceptualization of the capitalist state could overcome the alleged functionalism to Wood's analysis.

### **The role of the state in capitalist imperialism**

One important challenge to the 'New Imperialists' has been made by adherents to the 'transnational capitalism' thesis, which reflect a more Kautskyite conceptualization of imperialism. Particularly, Robinson (2004; 2007; see also Sklair 2001; Harris 2008) emphasizes on the rise and dynamics of transnational capital as a defining feature of neoliberal globalization. As he argues, the New Imperialists stubbornly persist to the national organization of capitalist economies as if the contemporary age of globalization is still made up of 'domestic capitals' and rivalries among states as in the days of Lenin and Bukharin (Robinson 2007: 7-8). Instead, he contends that new technologies have allowed for the transnationalization of production and finance leading the new global patterns of accumulation as both material and political obstacles to the free movement of capital have decreased dramatically (Robinson 2004: 9). Neoliberal globalization, for Robinson, has to be understood as a transnational class project executed by global elites which aims at, on the one hand, market liberalization and the construction of a new legal and regulatory superstructure

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<sup>2</sup> Even Harvey has admitted that his approach lacks a substantive theory of the state (Harvey 2006: 159).

for the global economy, and, on the other hand, the internal restructuring and global integration of each national economy (ibid.: 78).

This implies that state-centric approaches to imperialism are no longer useful as the states have been transformed and increasingly absorbed into larger transnational institutional structures than incorporates new relations between national states and transnational institutions as well as between diverse classes and social forces (Robinson 2007: 17). This emerging network is called 'transnational state' and comprises transformed and externally integrated national states, together with the supranational economic and political forums, and has not yet acquired a centralized institutional form (Robinson 2004: 100). Similar arguments have been made by Hardt and Negri (2000). Though they do not deny that capitalism needs state structures for an optimal accumulation of capital, they do no longer ascribe these functions to national states. Instead, so they argue, "governments and politics come to be completely integrated into the system of transnational command" (Hardt and Negri 2000: 307). The state forms the political mediation with respect to the global hegemonic powers and are, thus, "the filters of the flow of global circulation and regulators of the articulation of global command" (ibid.: 310).

These conceptualizations of the transnational dimensions of capitalism have provided a welcome addition to the state-centric theories of New Imperialism and seem to be more useful in accounting for the specificities of neoliberal globalization as a qualitatively different stage in capitalism than in the days of Lenin and Bukharin. However, the transnational capitalism thesis downplays the crucial role that certain states have played in deepening global integration. Robinson underestimates the relationship between the state and transnational capitalism as he reduces the state to a mere transmission belt for an increasingly globalized capitalism (Robinson 2004: 141). According to Morton (2007b: 148), this approach neglects the "articulation of capitalism through multi-scalar relations as capitalism works across spatial scales within state forms and through geopolitics". In doing so, the transnational capitalism thesis "removes state forms as a significant spatial scale in the articulation of capitalism, levels out the spatial and territorial logics of capital accumulation, and elides the class struggles extant in specific locations" (ibid.).

Hence, the question is how to deal with the specific spatial and territorial logics within the realm of an increasingly transnational capitalism.<sup>3</sup> Callinicos argues against the

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<sup>3</sup> Some argue that capital itself is not contained by any specific state and suggest that there is no intrinsic relationship between capital and the state, in part because the former preceded the latter (see Teschke 2003;

transnational capitalism thesis by suggesting that the existence of a system of multiple capitalist states, in contrast to a 'transnational state' or 'empire', can be understood in the context of the uneven and combined development of global capitalism (Callinicos 2007: 545; see also Harvey 2003; Smith 2008; Callinicos 2009; Ashman 2009; Davidson 2009; Bieler 2013). The inclusion of the Trotskyite concept of uneven and combined development marks a positive contribution to the analysis on the global manifestations of capitalism. As argued by Kiely (2010: 149), capitalist expansion has led to an "uneven and unequal international division of labour, in which capital concentrates in some locations and marginalizes others, and in the dynamic, uneven and unequal effects of capital accumulation". Though the exact nature of the relationship between uneven and combined development and the capitalist mode of production is contested, it can only be grasped within the realm of the capitalist social relations of production (Bieler 2013: 12; see Rosenberg 2006; Callinicos 2007; Callinicos and Rosenberg 2008). The concept of uneven and combined development is therefore useful in accounting for the different spatial scales of capitalism articulated through historically contingent state structures.

While accepting that states predate capitalism, hence, they have become the central node in the organization of transnational capitalism (Kiely 2010: 150; see also Ashman 2009: 37, 42). Therefore, the capitalist geopolitical logic must be theorized as shaped by class, accumulation, competitive struggles and crises (Pozo-Martin 2007: 556). As capitalist states warrant the reproduction of socio-economic relations as a whole, they operate therefore simultaneously at economic, political and ideological levels. As such, the state is shaped by and looks to domestic and international relations and the work economy, of which the latter itself could be understood as "a competitive, evolving, uneven and combined totality" (Ashman 2009: 42). This would imply a re-insertion of the notion of geopolitical competition in order to assess the new realities of global capitalism without moving back to the state-centric theories on imperialism. This would require a framework that involves the dialectical relationship between the material economic structures, agency and the ideational dimension (see also Hobson 2007).

The Gramscian concept of hegemony appears as a useful contribution to these debates. Gramsci (1971) also reflected on the base-superstructure debate by distinguishing between political society and civil society. By including its political structures in civil society, Gramsci

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Lacher 2006; Teschke and Lacher 2007). Such views, though valuable, lack a conceptualization of the relationship between state form and state function. Accepting that there are two separate spheres of power says little about the role or function of the state (Kiely 2010: 148).

effectively expands the notion of the capitalist state in a narrow sense of an administrative, executive and coercive apparatus of government. Power is therefore depicted not only as an underpinning of coercion, but emphasizes also the importance of consent to reach hegemony. This consensual feature of power determines the prevalence of hegemony, albeit, coercion is always latently present (Cox 1983: 164). In particular, neo-Gramscian analyses of 'transnational historical materialism' (Van der Pijl 1998; Overbeek 2000; Van Apeldoorn 2002, 2004) have perceived state formation and interstate politics as "moments of the transnational dynamics of capital accumulation and class formation" (Overbeek 2000: 169). Similar to Robinson's thesis, it is argued that an emergent transnational capitalist class is bound together with state managers and intellectuals through common identities and interests by material and ideational structures. Such a transnational 'historic bloc' strives for the legal and political reproduction and constitutionalization of policies aimed at an optimal accumulation of capital, or 'disciplinary neoliberalism' (Overbeek 2000; Gill 2008).

In particular, Van der Pijl argues against Callinicos' suggestion that the territorial and capitalist logics are externally related to each other. Instead, as he argues, they are internally related as "emanations of a deep structure constitutive of actors that are then mistaken for autonomous forces. When we speak of the material interconnections between the political and economic spheres, we are clearly speaking about social classes" (Van der Pijl 2007: 620). As he has argued extensively, the global political economy has for more than a century evolved as a specific spatial constellation combining different state-society complexes (see Van der Pijl 1998, 2006).<sup>4</sup> According to Van der Pijl (2007: 619-620),

Capital as mobile wealth competitively exploiting society and nature emerged as an extraterritorial social force in the context of the liberal, Lockean West. It profited historically from the structural free space and entry conditions prevailing in the Atlantic English speaking world, which has pursued global liberalism and created the spaces for capital to expand transnationally.

For Van der Pijl (2007: 626), the Lockean West and its transnational capital form together a "hegemonic structure projecting an imperialistic global governance and organization of production and finance on the planet at large". This process is contradictory and faces many obstacles and opposition. But, importantly, they are not actors as such, but, rather, "fields of

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<sup>4</sup> A 'Lockean Heartland' is comprised of states in the West sharing a liberal constitution and allowing their societies a considerable measure of self-regulation preserved by civil laws; 'Hobbesian Contender' states are to be understood as a succession of relatively strong states organizing their societies from above with varying degrees of central planning and coercion.



action which reveal a certain orientation and sense of direction: but the actually directive social forces, the ruling classes, first of all, are constantly engaged in shaping this orientation and direction” (ibid.). Related to the Gramscian concept of hegemony, this process must be elaborated as an ideational constellation, or a ‘comprehensive concept of control’ (Van der Pijl 2007; see also Overbeek 2004). Hence, while accepting that capitalism has become increasingly transnational, at the same time, geopolitical conflict between the advanced capitalist powers continues to be crucial in grasping contemporary imperialism. Geopolitical competition, thus, arises out of the uneven and combined development of international capitalism (Callinicos 2007), but these tensions exist alongside continued and heightened cooperation and convergence of common interests at a transnational level (Kiely 2010: 158). As the dominant classes of the ‘Lockean Heartland’ attempt to extend their national regulatory frameworks to the transnational level through the construction of supranational institutions, the incorporation of this hegemonic integration can be seen in the context of how dynamics of capital accumulation, institutional development and ideological processes combine to produce a truly transnational society (Overbeek 2000: 178).

Though providing a convincing theory of transnational capitalism and class formation, the transnational historical materialism approach seems to remain within the same fallacy of ‘soft functionalism’. It tends to over-emphasize the processes linked to the transnationalization of production and the erosion of national differences between states, which become, then, functional to the interests of transnational capital (Bruff 2010: 615). What is needed is a substantive theory on the spatial dimensions of state transformation in order to identify changing forms of political power and domination (Wissen and Brand 2011: 2). We have to take into account the uneven and distinctive national trajectories of capitalism under the conditioning of ‘the international’ (Morton 2007b: 170; see also Bruff 2010: 616). Indeed, the national state has lost its role as an autonomous international actor and is instead embedded in a network of regulations across different spatial levels, resulting in a complex spatio-institutional configuration (Wissen and Brand 2011: 2). As social forces and processes of social reproduction have been transnationalized, political institutions and state apparatuses have been transformed over the past three decades. This means that a certain ‘internalization’ of external conditions into the national state has been taking place. Though the ‘international’ has become an increasingly conditioning feature of global capitalism, it does not mean that the state disappears or becomes increasingly stripped of its capacity to implement socio-economic policies (ibid.: 6). Instead, the state has to be ascribed with a

certain degree of autonomy that mediates between the two different logics of territoriality and (transnational) capitalism.

As argued before, the separation of two logics of power – the economic and the political – has been a crucial condition for the coming about and continuous reproduction of the capitalist mode of production. This has led to a ‘relative autonomy’ of the political, and, thus, of the state. However, these spheres are dialectically related to each other as they both are an integral part of the capitalist relations of production. The state itself is therefore capitalist since it is an integral part of the capitalist relations of production, but does not function as the immediate instrument of the dominant classes (Hirsch and Kannankulam 2011: 15). The state as such is not an actor nor is it created as an organization for a particular rational purpose. Rather, it must be interpreted as the ‘material condensation of societal relations between different social forces’ (see Poulantzas 1978) and takes the shape of a heterogeneous network of agencies, which are partly in conflict with each other (Hirsch and Kannankulam 2011: 16; see also Brand, Görg and Wissen 2010: 158; Jessop 2008: 37). Political struggles of the past are inscribed in the state, materializing it as an institutional ensemble of underlying power relations between social groups. State power can thus be understood “as a power relation that is mediated in and through this institutional ensemble” (Jessop 2002: 6). Jessop assigns ‘operational autonomy’ to the state by arguing that states enjoy a certain ‘strategic selectivity’, which means that the structures and operations of the state are “more open to some types of political strategy than others” (Jessop 1990: 260). The certain degree of independence that the state enjoys enables this strategic selectivity and has to be understood as the ability of state managers to pursue particular interests and strategies. This can explain why political outcomes sometimes contradict the needs of dominant societal groups. Jessop calls this approach ‘strategic-relational’ because state power “reflects the prevailing balance of forces as this is institutionally mediated through the state apparatuses with its structurally inscribed selectivity” (Jessop 2002: 40).

The strength of this approach is that it does not ignore the structured inequalities that influence state behaviour, but also incorporates the particular contingencies that influence a specific decision or policy carried out by state managers (see also Kiely 2010: 153). It leaves room for the inclusion of the role of discourses and ideas, albeit, situated within the context of the generality of capitalist social relations (Bieler and Morton 2008). Particular actions undertaken by the state are, thus, not perceived from a purely geopolitical or capitalist logic, but are to be seen within the context of the “relations between different social forces, the

nature of economic and geopolitical crises, and popular perceptions of such crises” (Kiely 2010: 153). Hence, as also argued by Hirsch and Kannankulam (2011: 23), geopolitical competition is shaped not only by economic developments and interests, but also by strategies pursued by political actors which can be traced back to particular bases of reproduction and legitimacy. This implies that specific decisions made by state managers do not necessarily always coincide with the interests of capital and that agency is constantly required to secure hegemony. Imperialism must be understood, then, as the material condensation of the dialectical interplay between the economic imperative of capitalist expansion and state action with its structurally inscribed strategic selectivity.

### **The legal turn and imperialism**

The strategic-relational approach as presented above provides thus a useful framework to the difficult question on how to link state behaviour and state interests to the structural capitalist tendencies of continuous expansion. The remaining question is then how to use this link to understand the particular legal relationship that states agree to engage in when concluding International Investment Agreements (IIAs). A critical theory of international law would contribute to a further refinement of the nature of international relations from a strategic-relational perspective. Gill’s notion of *new constitutionalism* offers a theoretical conceptualization of the international regulation of capitalism, which is related to a new global mode of ‘disciplinary neoliberalism’. Gill takes this mode as a political project that aims to enhance the further transnationalization of capital by using strengthened enforcement mechanisms embodied in international institutions and regulations. Through the constitution-like characteristics of such mechanisms, economic policy-making becomes insulated from popular influences and democratic accountability (Gill 1995, 2008). However, this perspective downplays the importance of the social conditions necessary for the transnationalization of capital and competition by holding on to a rather instrumental understanding of law as just another political tool at the disposal of the transnational elites (Hartmann 2011: 565).

Therefore, a more structuralist account of the legal relationship between different states is needed. Recent critical legal scholarship has departed from the works of the early 20<sup>th</sup> century Soviet jurist Evgeny Pashukanis (1978) (cf. Chimni 2004; Mieville 2005; Koskenniemi 2006; Marks 2008; Hartmann 2011). In his *General Theory of Law and Marxism* of 1929, Pashukanis focuses on the fetishization of social relations. He takes Marx’s distinction

between use value and exchange value as point of vantage, which reduces all commodities to a common expression that makes them exchangeable. As such, all products become something that they are not, namely equal. The use and form of money enables the generalization of the relational formation of value as it constitutes an equivalent through which all commodities can express their exchange value and, thus, relate to each other. But this transformation obscures the social reality behind the order of things (see Harvey 2010: 39). Pashukanis extends this transformation to the commodity of labour-power, which is pursued in the market by the capitalist and sold by its owner, the labourer. Instead of appropriation by force, the exchange takes place through the relationship of recognition, that is, they recognize each other reciprocally as proprietors. Hence, this juridical moment transforms the exchangers into something they are not, namely equal. For Pashukanis, the role of law is equivalent to the role of money in the process of exchange, implying the idea of society as a contract society in which individuals recognize each other as equals and enter on a voluntary basis into exchange relations with each other (Hartmann 2011: 566). As exchange value obscures the true (use) value of a commodity, law makes the underlying ties of mutual dependence and exploitation invisible. So law has become a form expressing class relations perceiving the market relations of exchange as equal, which are, in fact, not.

Such an understanding of law has been used for a critique of international law as a 'neutral' instrument detached from politics and mediating international conflicting interests. In the aftermath of the decolonialization process, the newly independent states entered into the international community as equals under the notion of 'sovereignty'. This has been interpreted as a new period of imperialism, as their newly acquired status of equality into which they enter into relations with other states obscures the underlying patterns of existing relations and exploitation (cf. Anghie 2004; Mievilte 2005). The imagined reciprocity has become a major mode of regulating international relations that disguises existing hierarchies and exploitation between North and South (Hartmann 2011: 566). However, international law does not possess the capacity to its global enforcement as it lacks the monopoly of coercion to the extent of individual states. The application of international law depends, thus, on the effectiveness of that monopoly, which makes it easier for strong states than for weak states to interpret and evade international legislation (Hirsch and Kannankulam 2011: 28). After all, as Marx (1990) argued, 'between two equals, force decides'.

The aspect of homogenizing legal subjects into equals is of particular relevance when assessing the particularities of international investment treaties and their enforcement

mechanisms. While states enter into an equal relationship when concluding IIAs, with reciprocally and mutually binding provisions, the actual power relations and patterns of extraction and accumulation between these states become obscured. The imperialist nature of these treaties is reflected by the uneven relationship in which particular socioeconomic power constellations seek to construct hegemony through ideational domination, backed by the coercive powers of the state, to impose a capitalist legal framework that intends to secure and facilitate a stable accumulation of capital. This uneven relationship becomes inscribed in the 'spatio-temporal' features of such legal treaties, meaning that they do not only ensure the geographical expansion of the capitalist legal framework, but also condition and secure claims to future extraction and appropriation of surplus-value. The evolution of international law is therefore intrinsically connected to the development of transnational capitalism, which is crucial in grasping the realities and contradictions of contemporary IIAs.

## **In conclusion**

This paper has sought to develop a renewed understanding of the theoretical concept of imperialism as a useful analytical tool for grasping the specific nature of IIAs. As outlined in the previous sections, the classical accounts on imperialism, based on the inter-imperialist rivalries between different 'national' blocs of capital, remain problematic in the current era of transnational capitalism and class formation that has given rise to greater cooperation between the advanced capitalist states. This poses a fundamental challenge to the study of imperialism as a theoretical concept if we come to accept that the world is not comprised of rival national capitals anymore. If imperialism means the relentless pressure for outward expansion of capitalism and its facilitation by concomitant political, military, legal and cultural mechanisms, then this is a structural imperative inherent to capitalism itself (Robinson 2007: 23). Since virtually every corner of the planet has been subsumed under capitalist social relations, the period of extensive enlargement of capitalism has marked the end of the imperialist era. Rather, we have to look at how capitalist expansion and deepening materializes and theorize the political processes and institutions through which such expansion takes place and the class relations and spatial dynamics that are involved. The concept of imperialism must contain, therefore, always the notion of the state as capitalist expansion cannot take place without the institutional and legal framework that secures its reproduction.

Contemporary theories of New Imperialism have sought to conceptualize the apparent formal separation of the territorial or political logic from the economic and capitalist logic of power. However, as argued in this paper, such attempts remain within the fallacy of a 'realist' understanding of geopolitical competition between states without further theorizing its dialectical relationship with the structural economic underpinnings of capital accumulation. In order to understand the relationship between different states in the context of transnational capitalism, we have to move beyond the state-centric view and emphasize on the specific societal power constellations that form the social foundations of state power. The focus on social classes creates more space for the inclusion of the agential and ideational dimensions of imperialism. A renewed understanding of imperialism must, hence, move beyond the rather mechanical analyses of social and economic relations by rejecting the rigid base/superstructure determinism in which the economic base is given ontological autonomy. Society has to be considered as made up of various interacting social structures in which the condition for economic reproduction have to be socially secured (Joseph 2007: 185). And though the state seems most suited to perform this central regulatory function, there is no direct causal link between forms of state regulation and the needs of capital. By focusing on its strategic-relational character, the state is considered a complex and heterogeneous ensemble of different institutions, apparatuses and social relations that have different political dynamics. The state is a site or a field of action for the construction of political projects in which social, political and ideological structures are an integral part of the process of reproducing the mode of production.

This gives rise to the question whether the concept of imperialism is actually more useful than the concept of hegemony. Hegemony has an objective basis in material conditions, but it operates through space and time. It is structured by the space it inhabits as it operates under a given set of material conditions. But the deeper structural function of hegemony plays a fundamental role in securing the reproduction of society. This relates to the Gramscian understanding of hegemony as command over space and time. The complex and open nature of society means that the imposition of order and the creation and control of space and time are, in fact, required impositions (see Joseph 2007: 162-182). The construction of international law, and IIAs in particular, has to be understood as part of the imposition of order and control of space and time through multiple struggles. The geopolitical logic can sometimes be more apparent than the economic logic, or the ideational more than the

material, but both remain within the realm of the deeper structural function of hegemony in securing the reproduction of society.

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