

The value form and the wounds of neoliberalism

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Perhaps no contemporary thinker has contributed as many fundamental insights into the political pathologies and dangers of the neoliberal era as Wendy Brown. In her recent book, *In the Ruins of Neoliberalism*, Brown deepens the Foucauldian understanding of neoliberalism as a political rationality that aims to make competition the universal governing principle of society. In her previous intervention, she explored how the metastasis of neoliberal rationality's figuration of subjectivity as *homo economicus* eviscerates democratic institutions (Brown, 2015). Both building from and amending this work, Brown now draws a close connection between neoliberalism and popular anti-democratic mobilization. Brown observes that Hayek's understanding of society as a spontaneous order that results from human action but cannot be planned by ignorant human will is a theory not just of market coordination but also of moral traditionalism. In place of social justice and democratic self-rule—whose deliberate dimension makes them incompatible with spontaneous order and individual freedom—neoliberalism substitutes the institutional anchors of property rights and “family values.” Expanding the personal sphere by Christianizing the public sphere through the language of religious liberty and defending the nation conceived as a family against nontraditional identity groups and immigrants are developments internal to neoliberal reason.

Brown argues that “neoliberal rationality prepared the ground for the mobilization and legitimacy of ferocious antidemocratic forces in the second decade of the twenty-first century” (Brown, 2019, p. 7). The intellectual architects of neoliberalism dreaded an ignorant populace agitated by authoritarian demagogues. Nevertheless, neoliberal rationality has brought about such an outburst, not as its “intended spawn” but its “Frankensteinian creation” (Brown, 2019, p. 10). The neoliberal program has left people without civil norms and commitments but has not wholly vanquished extra-market society. The painful humiliations of economic abandonment and the dethronement of White patriarchy have elicited a return of the repressed. Left without alternative bases for mobilization, this politics draws from a moral traditionalism that, emptied of real content, arises as vengeful patriarchy and White supremacy.

Behind Brown's reliance on Foucault lies an ambivalent relation to Marxism. Despite an avowal of indebtedness to “neo-Marxist” approaches to neoliberalism as a “new chapter of capitalism,” a reader could be forgiven for thinking upon finishing the book that the cause of our ills is neoliberal reason rather than the social imperative to accumulate (Brown, 2019, p. 21, contrast with Brown, 2015, p. 76). Brown criticizes Marxists far more than she cites them. At one point, she chides Marxist approaches for “tend[ing] to focus on institutions, policies, economic relations, and effects while neglecting the far-reaching effects of neoliberalism as a form of governing political reason and subject

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production" (Brown, 2019, p. 21). The other significant treatment of Marxism in the book tars it with the same brush as neoliberalism; both "fail [] to address political life and power" and "fetishize the independence of 'the economy' from political discourse" (Brown, 2019, p. 85). Brown's distancing herself from Marxist themes and contributions is puzzling given her earlier work, especially the extensive engagement with Marx's *On the Jewish Question* in her unparalleled critique of liberal identity politics (Brown, 1995, pp. 100–120). The analysis of anti-democratic mobilization is clearly related to this prior intervention; both emphasize Nietzschean *ressentiment* as a reactive politics born of the wounds of late capitalism. In this exegesis of Marx's seminal text on the state, she herself drew out a political theory of liberal subject-formation and the fetishistic separation of politics and economics—precisely what she now emphasizes that Marxist analyses lack.

A Marxist approach—specifically value form theory combined with ideas from the Frankfurt School about intersubjective recognition—remains indispensable for understanding the perils faced by democracy today. At the core of this analysis is a theory of fetishism whereby capitalist society, which is essentially composed of social relations mediated by things (commodities and money), appears as divided between a sphere where things interact among themselves and a sphere of social relations unmediated by things. Dynamics of accumulation, working especially through the form of the capitalist state, tend to *drive apart*—in authoritative legal institutions, as well as in politics and everyday life—discourses that define and regulate things and discourses through which people acknowledge and associate with each other. This *fetishizing* separation of institutionalized discourses (and not the "colonizing" penetration of a discursive lifeworld by money and power) is the fundamental developmental pathology of capitalist society (Chari, 2010).

This analytic and diagnostic framework yields two revisions to Brown's nevertheless vital contributions. Brown's explanation hypostasizes the category neoliberal reason, which sits ambivalently between the writings of theorists like Hayek and "actually existing neoliberalism." Although indispensable to depict configurations of thought, desire, and practice irreducible to historical specifics, it cannot bear explanatory weight as a first mover of social causality. Here it is Brown that has too much in common with neoliberalism. Her analysis is rooted in the intentions of Hayek, Friedman, and the ordoliberalists rather than an independent social theory that might help explain the successes and failures of their agenda. A suitably broad Marxist view—one that situates subject-production and political hegemony within a theory of the compulsions of capitalist social reproduction—allows us to approach neoliberal rationality and its development more as *explanandum* than *explanans*.

A return to Marxism also challenges Brown's contention that vengeful politics of resentment is best understood as a late byproduct of the neoliberal assault on society. Brown herself has lauded Stuart Hall's studies of Thatcherism for resisting the stale orthodoxies of "a materialism that refuses the importance of the subject and the subjective, the question of style, the problematic of language" while still acknowledging that "the course of capital shapes the conditions of possibility in politics" (Brown, 1999, p. 24). Yet a central finding of Hall's prescient Marxist analyses from more than 40 years ago was that "authoritarian populism" was with Anglo-American neoliberalism at the very beginning. Hall explained how the triumph of the Thatcherite response to the stagflation crisis depended on translating economic doctrine into a "reactionary common sense" (Hall, 1988, p. 48). Through a "massive displacement of political class struggle," the "unlocated surge of social anxieties" fastened instead on the "permissiveness of social life" (Hall, 1988, pp. 34–35). Anxieties materialized in a relentless succession of moral panics fixated on various folk-devils, above all, the black criminal. Reactionary politics succeeded by "campaign[ing] against the 'extremes' on behalf and in defense of the silent majority" (Hall, 1988, p. 35). Policing the crisis through law-and-order repression of designated enemies earned the discredited state a new groundswell of popular legitimacy and support for withdrawing its commitments to economic security.

This article first derives from the Marxist theory of value an account of how the capitalist state form organizes capital and disorganizes people. Accumulation tends to drive the fetishistic separation of legal discourses that regulate accumulation from legal discourses that constitute solidaristic relations of recognition. The filtration of solidaristic considerations out of regulatory discourses enables reification of social relations of production and rationalizes insulation of regulatory institutions from public responsiveness. Discourses of recognition drained of regulatory content deflect struggles for recognition increasingly toward politics of dominating scapegoats. This legal fetishization tends to

actuate counter-democratic processes in which the waning of the people's control over the economy and individuals' control over their work are mutually reinforcing.

This general sketch of how accumulation and the form of the capitalist state tend to undermine democracy then structures a historically specific analysis of the United States that reintegrates Brown's insights into the neoliberal era's de-democratized state, identity politics, and antidemocratic mobilization. Neoliberalism's regulatory discourses of choice and efficiency have organized capital while de-democratizing political institutions and subjectivating economic actors as precarious entrepreneurs. Muted with respect to economic structures, public discourses have instead fixated on moral rights to identity recognition, feeding into culture wars that have disorganized popular opposition to capital. These processes have culminated in the 21st century populist outburst against democracy, which runs along grooves of displaced anxiety and reactionary authoritarianism internal to neoliberal politics and, as Hall showed, already carved at its ascent.

1 | TWO INTERPENETRATED DIMENSIONS OF CAPITALIST SOCIETY

Marx explained the basic relations of capitalist society in terms of the double character of labor, commodities, and value. As concrete labor, labor engages in the technical process of producing qualitatively heterogeneous objects with use-values that comprise material wealth. As abstract labor, the same laboring activity partakes in the homogenizing social process of producing commodities with value, which is the historically specific form of wealth under capitalism. A capitalist society in which commodities are the universal form of products is characterized by a unique form of social interdependence. Instead of consuming what they themselves produce as use-values, people produce commodities to acquire commodities produced by others. This abstract labor constitutes a system of social mediation in which forms of labor and their products are rendered equivalent and exchangeable (Postone, 1993). In a capitalist society characterized by the universality of the commodity form, the fundamental social relations of production and exchange based on abstract equivalence are not personal, overtly social, or qualitatively particular. These impersonal social mediations combine into an objective, quasi-natural social totality—the market—that is irreducible to the mere sum of direct social relationships. This social totality imposes nonconscious, nonvolitional forms of social necessity characteristic of capitalism.

Value is the objectified form of abstract labor. Marx's theory of value entails a social theory of how under capitalism producers appear to work independently before bringing their products to market but in fact are already emmeshed in social relations with each other through exchange and money. Value is a common denominator abstracted away from concrete differences that is measured by socially necessary labor time. This social definition of value entails a decisive break with Ricardo's labor theory of value, according to which labor imparts the substance of value into commodities, which then inheres in them like a natural quality that can be measured by the magnitude of work exerted in their production (Clarke, 1982, pp. 74-77). For Marx, value is not a thing but a mediation of social relations. It is a property that commodities are assigned only in relation to other commodities through the universal equivalent of money. Value only exists by being validated through exchange. It represents not the amount of work done by laborers to produce a given commodity, but the portion of total social labor credited to that commodity.

Because people gain access to the necessities of life through relations of production and exchange, markets are the primary mode of social ordering. The competitive imperatives they institutionalize regulate self-interested instrumental interactions through aggregate structures of accumulation, which are in part produced by these interactions as their unintended effects. In addition to this objective reproduction, social ordering also depends on intersubjective agreement on cultural norms grounded in mutual recognition. These institutionalized patterns of norms demarcate society's status orders and hierarchies of esteem. Socially integrating solidarity likewise depends on mutual recognition as fellow members of a cooperative community bound by shared norms.

The basic economic relations of capitalism are simultaneously objective and intersubjective. This means that despite being analytically distinguishable modes of ordering, the economic and cultural are not separate spheres

of society. Because value-mediated economic relations are social relations, economic structure and intersubjective experience are *interpenetrated*. As the fundamental category of the compulsory social totality of interconnection and interdependence, abstract value pervades the basic social relations of capitalist society; nevertheless, social relations are always only concretely experienced in and through the modality of culture whose content is not simply reducible to economic determination. *Relations mediated by value are the most fundamental social relations of recognition (and nonrecognition)*. This interpenetration manifests initially in the two-sided form in which money appears. The use of money to purchase labor power as a commodity can establish objectifying relations that employ laborers as value producing instruments. Through the “intermeshing of payment and respect,” money is also the basis for capitalist society’s prime hierarchy of intersubjective esteem (Fraser & Honneth, 2003, p. 141).

The two-sidedness of capitalism’s basic social relations splits social consciousness between concrete-intersubjective and abstract-objectifying modes of apprehending society (Postone, 1993). Along these lines, one can distinguish between the insider view of actors seeking intersubjective acknowledgment and the outsider’s view of society as impersonal structures that coordinate behaviors through their effects (Habermas, 1987, p. 117). The interpenetration of value and recognition means that this perspectival distinction cannot underpin a sociological distinction (i.e., lifeworld/system) between a social sphere integrated discursively through action intentions and a separate social sphere integrated nondiscursively through action consequences. The insider/outsider perspectival distinction manifests instead in a duality between two analytically distinct but overlapping modes of grasping the same society that are both available to social participants. *Both* are based on discourses involved in coordinating and justifying social relations. The fundamental distinction is rather that the acknowledgment of others as ends occurs through the same discourses by which these intersubjective relations are coordinated and justified, whereas the objectification of others as means for self-interested ends depends on coordination and justification by discourses external to these instrumental interactions. A distinction can be drawn between *associative* discourses as concrete social relations and abstract *regulatory* discourses *about* social relations.

Associative discourses constitute intersubjective relations of recognition. They structure interactions conducted from the first- and second-person internal perspectives of participants. Through these discourses, subjects can encounter each other as minded and feeling, and mutually engage their faculties of judgment and emotion. Sympathetic acknowledgment between people entails mutual affirmation of the participants’ human personality and can yield confidence, respect, and esteem. Associative discourses facilitate intentional interactions and provide the basic terms by which agents make moral sense of their social experiences. They are a necessary condition of socializing and reproducing human beings.

Regulatory discourses are conducted from the third-person external perspective of the social observer—a perspective that social participants can take by bracketing sympathetic acknowledgement of the personhood of others. These discourses objectify social relations and apprehend people as things. Their normativity comes not from redeeming micro-principles of interpersonal recognition, but through pragmatic macro-principles—simultaneously normative and epistemic—about how social relations should be organized. The normativity of regulatory discourse does not require the participation of the people it treats as objects of instrumental action. These regulatory norms can justify or criticize activities based on their consequences and aggregate byproducts.

The authoritative regulatory and associative discourses in a liberal society are legal discourses whose shared basic unit is the rights-bearing subject. As the fundamental associative discourse, law “promises all members of society equal respect for their individual autonomy” (Fraser & Honneth, 2003, p. 152). It is through the universal status of being rights-bearing legal subjects that citizens can acknowledge each other as fellow members of the political community. Constitutional rights and structures define and organize the fundamental associative discourses through which political culture’s binding solidarity among legally acknowledged citizens can coalesce. They also legitimate the state by promising institutions that, by equally representing all, allow citizens to recognize its authority as their own.

Like money, legal discourse is a two-dimensional social mediation that also enables objectifying interaction. Exchange requires agents who “recognize each other as owners of private property” (Marx, 1990, p. 178). People becoming rights-bearing legal subjects serves as the legal mirror to products of labor becoming value-bearing

commodities. For social relations between people to “appear as relations between things (commodities),” their legal relations must be able to appear “as relations between the wills of autonomous entities” (Pashukanis, 2003, p. 117). Law effectuates its own cognate movement from concrete to abstract as unique and unequal people are rendered commensurable and equal juridical subjects. Alongside the money form serving as the universal economic equivalent, the legal form serves as the “universal political equivalent” (Balbus, 1977). This facilitates the comprehensive system of legal interaction in which property rights are defined and contractual counterparties, stripped of recognition as concrete people, can objectify each other as means of self-interest. Even when they have validating public justifications, it is possible to acknowledge positive legal norms, including the rights of other legal subjects, only as social facts—that is, as commands and permissions with predictable consequences that structure a calculable environment of action (Habermas, 1996).

Self-interested actors would like to make exceptions of themselves and overcome the barriers of competition. The general interest of capital is thus not simply the sum of the interests of individual capitalists. All interests must be subordinated to market discipline. This necessitates the separation of the state from civil society as an external power that enforces the rule of law and money, which are the “alienated forms through which the rule of the market is imposed” (Clarke, 1988, p. 124). The abstraction of the form by which juridical subjects are recognized enables the state to treat them as objects of regulatory discourse. By rendering individuals commensurate and quantifiable, the state can remain a liberal state while nevertheless regulating rights-bearers in civil society through impersonal aggregative fiscal and monetary categories. The state operationalizes bourgeois economic science—the exemplary regulatory discourse—to uphold economic structures integrated through the effects of action and draws on them to justify the positive legal norms it imposes on actors.

2 | TENDENCY TOWARD STRUCTURAL DOMINATION

Capitalism's underlying contradiction lies in the interaction between abstract labor producing the basic capitalist social mediation of value and concrete labor producing material wealth with use-value (Postone, 1993). Increases in productivity due to technological and organizational innovation generate more material wealth. But alone they do not change the total value created in a period, which is determined by the expenditure of socially necessary labor. Increased productivity instead decreases the value of each commodity because less socially necessary labor time is required for its production. Though increased productivity does not change the value produced per unit of time, it does change the determination of this time unit. Reducing the socially necessary labor time required to produce a commodity increases the society-wide standard of how productive a social labor hour must be.

This interaction between productivity (use-value) and socially necessary labor time (value) sets into motion a dialectic of transformation and reconstitution. Each new socially general level of productivity is redetermined by the changed social hour as a new necessary “base level” of productivity. The abstract social necessity represented by value is perpetually reconstituted even as the technologies of production are constantly transformed. Producers must always “keep up with the times.” As increases in productivity decrease the value of each commodity, more commodities must be sold to maintain profits. Competition drives capitalists to overproduce commodities beyond the limits of the market. This yields uneven development of the forces of production, difficulties in profitably using overaccumulated factors of production, and periodic crises of devaluation. The “treadmill effect” also implies a directionally dynamic society propelled to ever-increasing levels of material productivity and wealth. Because the social form of surplus in capitalist society is value rather than material wealth, the treadmill effect compels ceaseless innovation to continue production of surplus value irrespective of increasing material wealth. The long-term tendency is accelerating growth of material wealth in which direct human labor is a smaller relative component of production. The historical arc of capitalism generates a widening divergence between material wealth and value, even as value is perpetually reconstituted as the essential form of capitalist wealth and heart of capitalist society.

Under market imperatives to compete and keep up, capitalists are driven to appropriate as much surplus value as possible. They are pressed to divide and degrade laborers to ensure that workers lack the power to resist their exploitation. As the productivity of labor heightens, the ratio between constant capital and the variable capital paid as wages also tends to increase. Less work is needed to produce the same amount of wealth. When those who control production depend less on any specific laborer pulled from the relative surplus population, they are empowered to develop relations of production with increasing asymmetries of dependency and control. The abstract structural compulsions of the market drive laborers and capitalists to jointly produce relations of concrete subjugation of asymmetrically dependent workers to the arbitrary interference of their employers.

By facilitating the division of labor, markets can be sites of recognition-based “social freedom” found in the “reciprocal experience of seeing ourselves confirmed in the desires and aims of the other, because the other’s existence represents a condition for fulfilling our own desires and aims” (Honneth, 2014, pp. 44–45). Socially free relations of production are binding solidaristic relations of “symmetrical esteem” based on common “values that allow the abilities and traits of the other to appear significant for shared praxis” (Honneth, 1995, p. 129). But structurally compelled production of value forges impersonal connections because “what labor objectifies are social relations” (Postone, 1993, p. 160). People must relate to others instrumentally as means of acquiring commodities. Solidaristic social freedom in relations of production depends on reconciling this instrumentalization with respecting others as ends. Relations of production must be experienced as cooperative pursuits organized by voluntary consent to working conditions and goals. The objective condition of *mutual dependence* can make possible reconciliations of structural compulsion with these intersubjective experiences of voluntary cooperation and reciprocal recognition. Mutual dependence turns on laborers having the power to fend off relations of asymmetric economic dependency and concrete subjugation to arbitrary interference. Only if workers possess an adequate degree of independent control over production are capitalists sufficiently dependent on them for it to be possible for production to be experienced as a social relation of mutual dependence, voluntary cooperation, and reciprocal esteem.

Because the dialectic between the abstract and concrete moments of production drives toward the degradation of worker power and asymmetric dependency, it tends to shift the work experience from voluntary cooperation to coercive command. Accumulation thereby leads toward the disembedding of abstract instrumental social relations of production from intersubjective acknowledgement of others as ends. The structural compulsions of capitalism become *structural domination* when they precipitate capital-labor relations of mutual reification incompatible with solidaristic social freedom. When capitalists can exercise arbitrary power over asymmetrically dependent laborers, *both* capitalists and laborers are structurally dominated by market-compelled relations of anti-solidaristic mutual reification.

3 | LEGAL FETISHIZATION

The capitalist state’s legitimacy depends on cross-cutting imperatives to manage crisis-ridden accumulation on behalf of the general interest of the community of egoists and constitute a community bound by solidarity. The tension between the reification of social relations necessitated by the former and the mutually affirming recognition underlying the latter structure the state’s legal form. Through the “double function” of law, the state first “sets up agents of production distributed in classes as juridico-political subjects” by legally representing them as individualized citizens (Poulantzas, 1973, p. 133). Their equality and liberty are then located in their “relation to abstract and formal laws, which are considered to enunciate this general will inside a ‘legal state.’ The modern capitalist state thus presents itself as embodying the general interest of the whole of society” (Poulantzas, 1973, p. 123). Through law the state first represents the people as an aggregate of isolated individuals and then represents itself as the locus of their “unification.”

By decomposing society into an amalgam of isolated individuals and then making its own legal mediations the basis of both accumulation and solidarity, the state’s legitimacy can be protected despite underlying contradictions by

reconfiguring the legal discourses on which social reproduction depends. The state can be structured to *separate* the operations by which it explicitly regulates the aggregate of individuals as economic objects and facilitates solidaristic relations of reciprocal recognition among them. These can be bifurcated as distinct projects through a “selectiveness” that “filters” the associative dimension out of regulatory law and the regulatory dimension from associative law (Offe, 1974).

Just as the legal form mirrors the commodity form, this bifurcation of authoritative legal discourses entails a *legal fetish* that mirrors the commodity fetish. The commodity fetish makes the abstract and concrete dimensions of the two-dimensional commodity form appear separate from each other (Postone, 1993, pp. 166–171). From the concrete perspective, commodities appear only as material wealth with use-values produced by concrete labor. From the abstract perspective, money looks exclusively like an impersonal and neutral medium of exchange that merely serves to overcome the inconveniences of barter. Labor and money do not register as the social relations that they essentially are. Instead, money appears as a tangible object whose possession confers status, which is earned as the due reward for productive work. Linked to the mystification that labor is not a social relation, the concrete dimension of the legal fetish creates associative legal discourses in which solidaristic relations of reciprocal recognition seem to exist only outside of production and exchange. Linked to the mystification that money is not a social relation, the abstract dimension of the legal fetish creates regulatory legal discourses in which production and exchange appear to be only outside of solidaristic relations of reciprocal recognition.

These fetishes together obscure that things (commodities and money) regulated by law entail social relations and that social relations separately acknowledged by law are mediated by things. Fetishism fosters the false social understanding that there is an economic sphere of society consisting of labor power and money that is external to and separate from a sphere in which people recognize each other as fellow members of the political community. This manifests as the *reification of people* in what appears as the economic sphere and the *personification of things* in what appears as the political sphere. Despite being a mystification, fetishized social understanding is nevertheless also true because social abstractions do transcend the consciousness of social agents, constituting coercive social dynamics behind their backs, and because the bifurcation of authoritative legal discourses does impose real institutional constraints on political possibilities.

The institutional separation of the regulatory and associative legal functions produces public ideologies in which legitimation based on accumulation and solidarity seem like distinct and unrelated tasks. This allows actors working in and through the state to pursue each independently. The legitimacy of legal norms that set isolated individual agents of production in economic competition against each other appears to depend wholly on whether they serve aggregate accumulation. The capitalist state form separately establishes solidarity-based legitimation on the principle of recognizing the equal freedom of all isolated legal-political individuals. By providing this alternative basis for solidarity, the capitalist state form allows for relations of production to be dismissed as a domain of solidarity based on consciousness that production entails social relations. The capitalist state form can thereby enable the exclusion of policies incompatible with overall accumulation without it appearing that the political obligation to constitute a solidaristic political community based on intersubjective recognition has been forsaken. Through legal fetishization the state is protected from the tensions produced by capitalism without addressing their underlying source.

4 | REGULATION'S DOUBLE BREAK WITH RECOGNITION

Heightening structural domination can elicit Polanyian countermovements to reembed abstract relations of production in concrete relations of recognition. Widespread social freedom depends on countermovements—oriented by ideals like industrial democracy and republican free labor—politicizing work as a site of power struggle and successfully instituting regulatory reforms protecting worker control over production. To successfully countervail the concrete economic power of capitalists, which is structurally supported by the abstract compulsions of the market, worker power must be able to draw political support from the state's regulatory structuring of the economy. Whether

and how the state implants the principle of equal respect for individual autonomy into regulatory law determines whether workers—and *which* workers—have sufficient control over production to stave off asymmetric dependency.

But the likelihood, scale, and endurance of reforms politicizing production as a site of intersubjective recognition are all limited by the discursive bifurcation institutionalized by the capitalist state form. Because social reproduction depends on capitalist social relations, regulatory support of aggregate accumulation appears hegemonically as the general interest of all individuals. Regulatory discourses oriented toward accumulation must apprehend the abstract categories of money and property as quasi-natural objects and cannot wholly acknowledge them as the social relations that they also are. The legitimating imprimatur of freedom from controversial value judgments that is the special mark of positive social science and legal reasoning is obtained precisely by naturalizing these institutionally sustained abstractions and equating objective knowledge with the general interest in accumulation. The regulatory rationality institutionalized by the form of capitalist state itself limits and resists countermovements that would remake relations of production because they are indeed social relations. The capitalist state's own legitimacy ultimately depends on not relinquishing the class relation and the social compulsion to abstract labor obfuscated by the naturalization of capitalist social relations.

The abstract compulsions rationalized by hegemonic sciences of regulation and imposed by law can potentially be embedded in relations of acknowledged reciprocal confirmation and esteem. But unburdened by the institutionalized legal fetish of an independent imperative to garner recognition-based legitimation in its economic regulation, the state is licensed to reify the objects of regulation to whatever extent deemed necessary to support accumulation. The contradictory accumulation process—and the class relations it entails—exerts an ongoing pressure on the state to implement regulatory sciences that are inimical to broad legal support across society's relations of production for the power of laborers to resist asymmetrical dependence on their employers.

Because capitalist social reproduction depends on accumulation, the maintenance of surplus value producing wage labor is a necessary goal of hegemonic rationality. Diminishing value relative to wealth generally heightens pressure to extract surplus value to reproduce capitalist society. Whatever value labor does appropriate cuts increasingly against accumulation. Control over production that allows labor to appropriate more of the surplus value it produces tends to be a growing threat to profitability. Regulatory laws maintaining accumulation become increasingly difficult to reconcile with protection of laborers' freedom from arbitrary power. This drives the filtration of associative considerations out of regulatory law and the hegemonic selection of formalist laws of free contract among abstractly equal juridical subjects over and against laws protecting labor from asymmetric dependence and subjugation to arbitrary power. The capitalist state is pushed toward withholding legal frameworks that might protect laborers from producing their own asymmetric dependence and subjugation to arbitrary interference. Even if the abstract compulsion to work can be compatible with some laborers' concrete solidaristic social freedom, capitalism's interlinked dynamics of diminishing value and the fetishization of regulatory law tend to undermine the economic power of workers, strip production of reciprocal recognition, and bring about the anti-solitaristic structural domination of both capitalists and laborers.

By facilitating a mutual withdrawal of state regulation of accumulation and associative discourses constitutive of solidarity, legal fetishization also tends toward insulating the legal regimes generating structural domination from politics. Authorized by the aggregate, third-person perspective of the knowing observer, regulatory institutions appear to have neutrality above the partisan power struggles of political participants. The democratic legitimacy of majoritarian elections is counterpoised by an independent mode of ostensibly democratic legitimation through "identification with social generality" (Rosanvallon, 2011, p. 4). In capitalist society, this rational-legal mode of legitimation makes the hegemonic ideology of accumulation and selective, unequal receptivity to capitalist class interests appear beyond reasonable political controversy. Public responsiveness appears not only unnecessary but as illegitimate interference. The partisan subjectivity of political will appears to interfere with the objectivity of technical competence and routinized process. This warrants the capitalist state interposing itself between the people and regulation. Hegemonic rationality empowers institutions insulated from electoral politics and public opinion. The legal machinery of regulation is withdrawn from public contestation and control.

Capitalist regulation thereby carries out a double break with relations of reciprocal recognition. In addition to the regulatory output of applied law inhibiting relations of acknowledged mutual confirmation and esteem in production, the lawmaking inputs to regulation are insulated from discourses constitutive of political solidarity through which citizens recognize each other as fellow members of a public. The constitution of a public depends on participation in the common affairs of the political community and on establishing solidarity in civic relations based on shared values. Popular sovereignty requires that the discourses through which the public constitutes itself include discussions of the laws that regulate private social relations. The more unrelated the public's self-constitution is to private regulation, the less the people cannot recognize themselves in the de-democratized and alien laws governing their economic lives.

The political–legal counterpart to structural economic domination is also in the first instance exerted abstractly. It is not direct domination by an arbitrary state. Rather, it is an authoritative narrowing of the space of reasons admissible to determine political–legal relations—a “noumenal power” that “influence[s], use[s], determine[s], occup[ies], or even seal[s] off the space of reasons for others” (Forst, 2015, p. 116). Hegemonic rationality built upon the legal form equates legitimate regulation with supporting accumulation. The discursive foreclosure of alternative justifications officially entrenches regulatory objectification. This imposes “one-sided hegemonic justifications” tantamount to a legal–rational form of “noumenal domination” that circumscribes the possibilities for public constitution of relations of recognition through law (Forst, 2013).

Just as law's form and fetish are homologous to the commodity's form and fetish, so too does the noumenal domination of legal regulation correspond to the structural domination generated by the market economy. Structural domination ultimately traces back to the alienation of laborers from the accumulation of commodities that they themselves have produced. Under capitalist hegemony, rational–legal legitimacy based on a supra-partisan general interest is equated with continuing aggregate accumulation. Institutional insulation of this general interest from popular responsiveness separates regulatory law from public self-constitution. De-democratization results from the alienation of citizens from the regulatory laws that their own representatives legislate and government enforces. Akin to laborers (jointly with capitalists) producing their own structural domination by capital, citizens are ultimately the source of their own noumenal domination by de-democratized regulatory institutions. Through objectifying self-affirmation of production warped by property, abstract labor creates alien social-economic relations. Through objectifying self-legislation mediated by representation and filtered by hegemonic rationality, the demos creates alien political–legal regulatory institutions. While living laborers and capitalists are dominated by “dead labor” in the form of capital, citizens living under capitalism are dominated by what might be called “dead legislation” in the form of hegemonically determined regulatory law enforced by the de-democratized capitalist state.

5 | FETISHIZED STRUGGLES FOR RECOGNITION AND COUNTER-DEMOCRATIC PROCESSES

At the heart of socially caused suffering is the “experience of a withdrawal of social recognition—of degradation and disrespect” (Fraser & Honneth, 2003, p. 132). Violated normative expectations of respect perceived as social injuries to integrity, honor, or dignity are the motivational basis of social conflict. Many experiences of disrespect, humiliation, and status anxiety mobilizing social struggles for recognition are ultimately rooted in the imperatives of accumulation to compete, exploit, dominate, and reify. By making society appear divided between separate spheres of objects and subjects and by driving the separation of discourses of regulation and recognition, fetishization interpellates subjects to struggle for intersubjective recognition in ways that do not address the underlying objective sources of their experienced disrespect. As both a mystifying veil and real expression of the social mediations of money and law, fetishization entails both falsification of social understandings and true delimitation of political possibilities. Fetishistic interpellation helps reproduce capitulation to the rules of the established order by leading people to divisive struggles for concrete status and solidarity that divert and disorganize opposition to abstract structures of capital accumulation itself. Subjects interpellated by fetishization may pursue struggles for recognition based on (a) the *inversion*

of the objective's structural primacy over the intersubjective, which can rationalize status inequality and/or (b) the *personification* of objective forces as agential subjects held responsible for status destabilization.

- (a) As abstract rights-bearing juridical subjects, individuals can be formally free and equal, but capitalist relations of exploitative labor and competition nevertheless generate domination and inequality. The basic justification for this hiatus derives from fetishized social consciousness. *Fetishistic inversion* falsely understands the intersubjective dimension of society as independent from and structurally primary to the objective dimension. It supposes that wealth distribution under capitalism can in principle be governed by socially determined standards of fairness and deserts, ultimately rooted in recognizing individual merit earned through work, talent, and accomplishments.

Fetishistic inversion is a real expression of capitalism allocating wealth according to hierarchies of social status. But it is a mystifying veil that inverts the structural primacy of value over recognition. Rather than capitalist production being solely a technical process and distribution being amenable to organization according to socially determined hierarchies of individual merit, the inequalities rooted in exploitative social relations of production require the social production and maintenance of legitimating group-based status hierarchies. Although accumulation homogenizes the products of labor power as commodities bearing abstractly equivalent value, it also politically and ideologically differentiates the intersubjective status orders through which workers experience society. Differentiating axes of status (i.e., type of worker; educational attainment; racial and sexual differences; family membership) substitute as metonymies of merit. Group-based status differentiations bridge between the unrealizable ideal of individual deserts and the realities of inequality. They provide justifications for exploitative work, poverty, and dependence by associating them with subordinated status groups.

Struggles for recognition distorted by fetishistic inversion seek to redress disrespect interpenetrated with accumulation by realigning distribution and status. These struggles are often based on the true belief that specific groups can successfully attain real material benefits, improved relative standing, or solidaristic protection from economic insecurity—and may reflect accurate judgments about limited conjunctural possibilities. But class politics conducted as politics of intersubjective status and solidarity is confused insofar as it affirms capitalism as a potentially fair system of distribution according to merit.

- (b) Revolutionizing relations of production disturbs social relations, generating pervasive uncertainty and agitation. The economic conditions and status configurations on which respect depends are constantly at risk of destabilization. Discourses that succumb to *fetishistic personification* explain destabilization by identifying specific social subjects as responsible.

One mode of fetishistic personification abandons reference to economic categories altogether, displacing explanation for destabilization entirely into the cultural register of personal immorality. Because the status orders that legitimate inequality also offer privileged groups relative protection from social destabilization, acknowledging that they can be destabilized by capitalism risks exposing them as ideological alibis and endangering from within the security they offer. The anxious instead often find refuge by doubling down on commitments to the fixity of human nature and timeless moral rules. Experiences of insecurity about status and solidarity are explained by attributing their causes to discrete groups' disrespect for morality (as Stuart Hall described). Superlative deflection away from the capitalist churn of social abstractions is found in preoccupation with fixed gender roles rooted in the "nature" of physical bodies as the basis of social order—operationalized, especially, by policing sexuality norms and the trope of protecting innocent children from society's immoralities.

Alternatively, fetishistic personification can retain a relation to economic categories but offer a "concretistic understanding" of these abstractions in "political agentive terms" (Postone, 2006, p. 96). The economic abstractions whose movements govern individual lives really are independent social forces. But they only assert themselves through social

individuals who are compelled to act as their bearers. This fetishistic personification perceives only the bearers of abstract categories like capital and labor power, who are identified with discrete status groups (paradigmatically, Jews as the personification of finance capital; Postone, 1980). Destabilization driven by the objective logics of impersonal categories is blamed on the personal immorality, corruption, or nature of these subjects.

Fetishistic personifications rightly attest to destabilizing social forces undermining the autonomous capacity of individuals and groups to secure status and solidarity for themselves, but wrongly attribute what is rooted in the impersonal movement of value to the personal agency of concrete groups. Antagonisms of class and competition are displaced into enmities across status cleavages against scapegoats identified as destabilizing threats. Self-esteem, community, and a sense of stability are sought through marginalizing, excluding, hurting, or dominating scapegoats. Fears and anxieties can be anesthetized by such endeavors, but not overcome because the objective causes remain untouched.

The fetishization of struggles for recognition tends to undermine democratic processes and liberties. Individual autonomy and popular sovereignty are “co-original” freedoms—intermediated by the processes of public discussion and the rule of law, they are interdependent and potentially mutually reinforcing (Habermas, 1996). Political self-determination depends on the people’s control over the economy, which is exercised by public opinion attending to fundamental principles of regulation and democratic will exercised to ensure that law realizes these regulatory principles. Only through this regulatory responsiveness to the democratic public is it possible for citizens to protect their solidaristic social freedom by using law to embed production generally in relations of acknowledged cooperation and reciprocal dependence. Reciprocally, experiencing production as a cooperative endeavor among subjects free from arbitrary power can empower citizens to participate as equals in the public exchange of opinion and, by teaching them to appreciate their mutual dependencies, foster inclusive civic solidarity that motivates political participation committed to the public good. Only through egalitarian, inclusive, and solidaristic participation can citizens oversee regulation such that the public can recognize themselves in regulatory law and realize political freedom.

Fetishized struggles for recognition are generally directed away from regulatory politics aiming to ensure that relations of production are generally embedded in relations of acknowledged cooperation and reciprocal dependence among subjects protected from arbitrary power. This releases the state to be responsive to capital and filters out associative considerations from legal regulation. Left insufficiently checked by popular political forces, the regulatory state tends to make structural domination in production more severe and widespread, resist or pare back restraints on capitalism’s socially destabilizing dynamics, and withdraw itself from democratic responsiveness. Heightening structural domination worsens experiences of disrespect and anxieties about destabilized status and solidarity. This tends to make deserts-based social justifications less satisfying. In conjunction with de-democratization stultifying political imagination that might link struggle to regulatory reform, the result is that social understandings based on fetishistic personification become increasingly persuasive. Political struggle is steered increasingly toward attacking scapegoats as the specious solution to experiences of disrespect, status anxiety, and anomie.

By organizing capital and disorganizing people to meet its legitimation imperatives, the capitalist state’s bifurcated form of law tends to route the political process away from integrating regulatory and associative discourses through the virtuous mutual reinforcement of private and public freedoms. Instead, fetishism leads toward their mutual discursive and institutional estrangement, facilitating vicious processes of escalating unfreedoms. One-dimensional regulatory institutions responsive to capital make structural domination and de-democratization mutually reinforcing. In tandem, discourses of recognition purged of regulatory considerations divert increasingly toward struggles for political domination. As they do not confront the underlying structural causes of humiliation, the satisfaction of struggles for status and solidarity through domination cannot dissipate their underlying motivations. Instead, as impersonal domination through economic regulation heightens, the politics of seeking recognition through direct domination tends to escalate in kind.

6 | NEOLIBERALISM AND THE REGULATORY ORGANIZATION OF CAPITAL

These final three sections examine how, by organizing capital and disorganizing people, the fetishistic separation of regulatory and associative discourses has undermined democracy in recent decades. The account is based on the United States, but with suitable emendations could apply elsewhere. With the mid-20th century countermovement against markets and the renewal of capitalism as an embedded accumulation regime, the terms of the state's legal fetish shifted away from classical liberalism's distinction between public and private based on the naturalization of purportedly pre-political and self-regulating markets. Even in this era, the liberal state was bifurcated. The economy was managed by routinized administrative oversight of class relations and by the regulation of employment and inflation as depoliticized objects of macroeconomic science. As liberal political culture centered increasingly on acknowledging individual rights, it set aside the republican tradition in which the concentration and distribution of economic power had been foremost civic concerns.

Although the Keynesian state linked labor empowerment and social welfare to a patriarchal and racially exclusionary model of the breadwinner family wage, it was nevertheless the apogee of political efforts to reconcile widespread social freedom with accumulation. Tension between "the popular demand for rising incomes and employment, which could only be satisfied by the growth of production, and the capitalist need to subordinate production to profit" became irreconcilable once the postwar boom gave way to global overaccumulation (Clarke, 1988, p. 12). Attempts to uphold domestic production through debt-based public stimulation of investment led to inflation that undermined both working class aspirations and profitability. Class compromise institutionalized within the Keynesian state spilled out into class struggle over the form of the state. Capital won a resounding victory: the state was subordinated to global accumulation and working-class aspirations were confined. Accumulation was revived by renewed labor exploitation, deregulation, privatization, financialization and globalization as temporal and spatial fixes to overaccumulation.

Neoliberalism provided the language of capital's victory. The social contract broken by stagflation was rewritten; the state would promise choice rather than security. The dogma of choice offered a formal moment of recognition serving as the toehold and alibi for a one-dimensional regulatory rationality of competition and efficiency. This has organized capital around a common normativity of social order and human subjectivity while making incongruent associative values appear irrational or unimaginable. Despite diversity among its adherents, neoliberalism is a coherent body of thought and policy committed to an ongoing political project of constructing a competitive ordering of society and acculturating conduct to accord with economic rationality (Mirowski, 2009, pp. 433–440). While classical liberalism falsely understood markets as naturally self-organizing, neoliberalism concedes that they are artificial. They must be proactively maintained, especially through a strong state, which itself is also to be rationalized by market logic. Law has played a necessary and decisive role in encoding and implementing the neoliberal program (Britton-Purdy et al., 2020). It has contributed to marketizing social relations, reshaped relations of production and exchange from within, and provided justifications for these expansions and reorganizations.

The neoliberal de-democratization extensively analyzed by Brown herself has been facilitated by the withdrawal of capital-organizing regulatory discourses from associative considerations (Brown, 2015). The lodestar of efficiency had already infiltrated regulatory discourse during the Great Society as a market-based delimitation concomitant to the state's expanding remit into health, safety, and the environment (Berman, 2022). Thereafter the law and economics movement restructured public decision-making to accord with cost/benefit analysis and incentivization of rational deciders. Efficiency is presented as impartial because it grows the overall pie by maximizing the scope for individual free choice—precisely by bypassing collective action around contested values. Measured not just by willingness but ability to pay, efficiency turns "is" into "ought" when it launders existing wealth into social scientific knowledge (Sunstein, 2018, pp. 42–50). Holding markets as the only reliable information processors and sites of knowledge production provides an epistemology for hegemonically equating the interests of capital with the general interest of society.

This rationality excludes democratic responsiveness as a condition of regulatory legitimacy. It is implemented through a constitutionalism of independent courts, administrative agencies, and international organizations that serve as institutions of de-democratization. Rather than a political constitutionalism oriented toward harnessing democracy and responsive government through structures like the separation of powers, it is an economic constitutionalism that withdraws decision-making from responsive institutions and imposes external limitations on the political process. The uptake of efficiency has been conjoined with a shifted balance of power from a legislature increasingly gridlocked by asymmetric polarization toward the politically insulated judiciary and executive; private law fields like antitrust have been remade at the initiative of Chicago School federal judges (Britton-Purdy et al., 2020) and administrative action has been rationalized through centralized oversight by the Office of Information and Regulatory Affairs (OIRA; Sunstein, 2018, pp. 3–21). The judicial designation of campaign expenditures, including those of corporations, as protected political speech erodes demarcations between the political and economic spheres.

Elite legal actors have reworked fundamental regulatory discourses to undermine state capacity to implement policies resistant to capitalist class interests. Under the pretext of safeguarding the people's monopoly on lawmaking, judges suspicious of social and economic planning deploy textualism to "thwart" the legislature and "hobble" its regulatory efforts by refusing to "apply its handiwork to an unforeseen situation that is encompassed by the statute's aim but is not a good fit with its text" (Posner, 2012, p. 18). If statutory text would plainly entail broad delegations of authority, the same judges set textualism aside and instead resist unwelcome federal regulation by pivoting to "clear statement rules" of statutory construction that demand specific textual delegations to overcome quasi-constitutional presumptions like federalism and nondelegation of authority on "major questions" (Eskridge & Frickey, 1992; Heinzerling, 2017). Courts defend property not just through substantive rulings that overwhelmingly favor corporate interests (Epstein & Gulati, 2022), but also through procedural reforms like acquiescence to private arbitration clauses, heightened pleading requirements, raised thresholds to standing, and barriers to class actions, all of which narrow the doorways of public tribunals open to citizens seeking to challenge private power as plaintiffs.

International law facilitates global financial flows that discipline domestic policy and encases the rules of the market in transnational institutions that are neither responsive nor accountable to any domestic public (Slobodian, 2018). The central bank takes on its own quasi-constitutional function as guardian of currency stability. This ostensibly extra-political mandate to protect the rights of property owners and convey reliable information by preserving the worth of money is operationalized as warrants to ward off creditor-harming inflation, neglect or actively undermine employment rates, and guarantee a morally hazardous public backstop to safeguard assets and maintain liquidity when risky private investments go wrong *en masse*.

This regulatory organization of capital has generally heightened structural domination. Relinquishing democratic law mediating between the roles of rights-bearing individuals and sovereign citizens, neoliberal legitimation is satisfied with coding the entrepreneurial freedom of human capital and an ersatz democracy of sovereign consumers transmitting their will through prices. This legal circuit between entrepreneurialism and consumption—where consumption is an investment in the entrepreneurial self—is to be completed precisely by short-circuiting public participation in making and interpreting regulatory law. In this financialized facsimile of democracy, the egalitarian, qualitative social trust that would otherwise underlie civic solidarity is increasingly converted into hierarchical, quantitative relations of debtor and creditor.

Individuals are enjoined to relate to their lives not as citizens participating in public life but as entrepreneurs managing businesses. Motivated by the peril of competitive failure and professional and educational hierarchies of esteem to relate to themselves as bundles of human capital, neoliberal subjects continually engage in self-investment through education, training, and branding. As competitive ordering has been spread wider across society, subjectivation as human capital has penetrated deeper into personality. This has been achieved, above all, by making access to higher education dependent on assuming the enduring governmentality of student debt (Lazzarato, 2015, pp. 61–71)—a policy choice first implemented explicitly to cease disruptive anti-racist and anti-capitalist college protests (MacLean, 2017, pp. 102–107). Human capital appears to break the constituents of valorization into skills and the revenue stream they draw. This economic self-conception occludes the distinction between labor power sold as a commodity and the

person who sells it (Dardot & Laval, 2019, pp. 69–70). The more people are subjectivized as enterprising human capital rather than as people who work, the more inconceivable to them becomes their alienation from themselves, their labor, and others. The discursive filtration this effectuates subverts even awareness of possibly forging cooperative relations of recognition in production, leaving meritocratic status as the only intelligible goal of struggle.

Increasing reliance for profits on the fictitious capital of finance representing claims over future value not yet produced, the flexibilization of labor markets, wage deflation, and private indebtedness have increased the ratio between total wealth and the value appropriated by labor. Despite this rendering value an increasingly anachronistic form of wealth, it remains the basic mediation of capitalist society (Postone, 2017). Figuration of subjectivity as human capital rather than labor simultaneously concedes and justifies this anachronism. The fungibility of essentially quantitative capital erodes social recognition of the dignity and worth of each qualitatively unique individual. Individuals who fail economically—and many necessarily do amid competition with little shelter—are costs justifiably incurred for the benefits of accumulation. That many are left precarious and relegated to low-paying service work is a mandatory feature of neoliberalism. Unrestricted freedom to compete is incompatible with assuring the economic protection from arbitrary power necessary for work relations of social freedom.

7 | NEOLIBERALISM AND THE ASSOCIATIVE DISORGANIZATION OF IDENTITY

The mid-20th century's revolutionary expansion of regulatory government discredited natural property rights as the foremost basis for respecting liberty and protecting it from the state. This New Deal order nevertheless remained capitalist. Economic domination conducted across legitimating status hierarchies of race and gender especially belied its new ideal of equal democratic inclusion. In 1977, the Combahee River Collective would set forth an intersectional “identity politics” that understood that it was “difficult to separate race from class from sex oppression” and that liberation required solidarity across identities in confrontation with capitalism (Combahee River Collective Statement, 2017). Altogether extinguishing the recognition-based dimension of society had never been a possibility in the Keynesian or neoliberal eras because social integration and public legitimacy depend on it. It was rather a matter of displacing associative discourses to protect accumulation and the capitalist state from such challenges.

Long before this intersectional identity politics was proposed, constitutional law had already established the terms central to the defensive project against it. Once the New Deal brought down the classical bulwarks defending property, the fetishized bifurcation between the regulatory and associative constitutional registers was soon renewed in inverted form. Instead of judicial capitulation with respect to race and incursion on behalf of property, the new constitutional regime was refounded on an equally stark disjunction between strict scrutiny vis-à-vis race and deference to economic regulation. *Brown v. Board of Education* catalyzed Massive Resistance in the South, shocking Northern audiences. This helped bring about sufficient public acquiescence to the civil rights movement for the landmark legislation of the 1960s. As the era's apogee of associative and regulatory legal integration, the Civil Rights Act (held constitutional under the Commerce Clause) was implemented as a proscription on workplace practices with racially disparate effects. The movement had its greatest successes in gaining formal civil rights against Southern segregationists, but foundered when it moved North and demanded substantive social rights that would have required more thoroughgoing redistribution. The constitutional ban on racial discrimination as a *summum malum* instead found lasting significance as the template for the broader rights revolution in which the crux of constitutional respect was relocated from property to formally equal civic status and privacy.

The moralistic legacy of *Brown* and the rights revolution helped keep constitutional law from becoming a basis for fundamental economic reform. Fervent retrospective support for their imagined history of civil rights convinced liberals to abandon their forebearers' vehement suspicion of judicial review. They came to equate the Constitution with the decisions of the Supreme Court and constitutional law with individual rights demarcating moral limits on the state. Liberals thereby abdicated previously asserted affirmative constitutional duties of the legislature such as protecting the republic from structures of domination rooted in economic power (Fishkin & Forbath, 2022).

Constitutional reform was canalized exclusively into litigating individual rights just as the high tide of liberalism crested and receded. The constitutionalism of moral principles underwrote a regime of all-or-nothing “rights absolutism” (Greene, 2021) in which the very vehemence of associative constitutional discourses rationalized their separation from regulation of socioeconomic structures. Absolutism offered a basis for the newly conservative Supreme Court of the 1970s to cabin how litigation extended constitutional principles of universal inclusion and equal respect to marginalized identities. To confront harms emanating from structures of hierarchy and domination, courts would have had to declare positive rights. Reluctant judges could argue that an absolutist positive rights regime entailed undemocratic rule by judiciary with courts mandating comprehensive social transformation. By developing mediating compromises among competing rights, courts could have reconciled positive rights with concerns about proper deference to legislatures. Instead, the moralistic understanding of rights fed into absolutism and allowed the Supreme Court to limit constitutionalism to securing negative rights against the state.

Playing its part in the neoliberal turn against programmatic public action, the Court acknowledged formalist versions of freedom and equality while resisting state intervention to dismantle hierarchical social structures and institutions explicitly on behalf of marginalized groups. The principle of colorblind equality of process in antidiscrimination law impedes policymaking in pursuit of equality of results to counter social patterns of racial stratification (Crenshaw, 1988). Diversity was ruled the only admissible rationale for affirmative action. Intermediate scrutiny for sex discrimination allows classifications based on “real” differences, even those constituted by unequal social power (MacKinnon, 1989, pp. 215–234). The status quo of sex-based social inequality not directly traceable to state action lies beneath the reach of the Constitution. The sexual liberation movement was funneled into a reform program of rights to private sexual conduct and same-sex marriage that has been readily accommodated by the bourgeois status quo.

The rights revolution has always been ambivalent. It has signified both a transformative recognition of intersubjectivity and the consummation of liberalism’s isolating regulation. The state has better redeemed its previously blatantly false promise to acknowledge everyone’s legal cognizable personhood and entitlement to respect. But by building liberty and equality atop the enduring divisions and domination of civil society, it has only provided the alienated “political emancipation” that Marx contrasted with the full reconciliation of “human emancipation.” The keystone of the rights revolution is the juridical double function. When the state constitutes relations of intersubjective recognition through moral entitlements it reunifies juridical individuals previously isolated by the bourgeois legal form. The individual’s deontological right to moral respect lies in a fundamentally separate legal sphere from the utilitarian regulation of society as an efficient aggregate. Individuation filters out from associative jurisprudence concerns with embedding the objective, commodity-mediated structures of the economy in relations of reciprocal recognition.

Unlike 18th century liberalism’s abstract version of political emancipation of the state from civil society depicted by Marx, the jurisprudence of the neoliberal era no longer keeps concrete differences from being publicly acknowledged. Officially promulgated legal norms generate, refine, and delimit constitutional and political culture. Law produces political subjectivity and orients mobilization, conflict, and debate. As Wendy Brown so trenchantly argued, the political expression of the rights revolution’s ambivalence has been that the formal admission of marginalized groups into the abstract political community has given rise to insistent politicization of concrete identities and group differences. Identity politicized in this way is produced according to a normalizing grammar. “[I]nsofar as it posits a sovereign and unified ‘I’ that is disenfranchised by an exclusive ‘we,’” this political emancipation channels politics into protest against exclusions from liberalism that continually “reiterates the terms of liberal discourse” and reinstalls its ideal of justice (Brown, 1995, pp. 64–65). This identity discourse presumes a neutral state impartially guaranteeing individualized rights to recognition won through political and legal struggles over how to give content to the legal form.

Because this “identity politics require a standard internal to existing society against which to pitch their claims,” its cultivation by law helps hide capitalism from critique and keep value invisible as a social relation (Brown, 1995, p. 61). It was not coincidental that the decline of class politics was contemporaneous with the rise of the new social movements. The renaturalization of capitalism left status classifications like race, sex, and gender as the only available discursive categories for interpreting how socially caused suffering violated expectations of respect. Through fetishistic inversion, harms rooted in the structural compulsions of capitalism became intelligible only through identity-based

markers of social difference. Rights talk splintered the discourses of race, gender, and sex while the obscuring of capitalism as a social totality preempted understanding of a common source of harm. This disassociation has inhibited unifying solidaristic organization across identity categories pressed for by the likes of Combahee River Collective (Haider, 2018). Identity politics neglectful of harm-generating structural powers are fundamentally dissonant and remain invested in perpetuating the suffering that constitute them (Brown, 1995, pp. 66–76). Instead of striving for self-overcoming through active politics of emancipatory transformation, reactive politics of victimhood implore the state to redouble protections of the very legal rights it has developed to filter discourses and disorganize opposition to capital. The suffering of victims is assuaged but not dissipated through *ressentiment* as vengeance is exacted upon scapegoats by inflicting pain upon them.

Political mobilization by marginalized groups and the state's limited acknowledgment of them through moralistic discourses of rights elicited a reaction in kind from those feeling victimized by contemporaneous threats to their status. The anti-discrimination regime of minorities protected by courts increasingly clashed with the majoritarian institutions of industrial democracy, driving a widening wedge between the White working class and civil rights (Schiller, 2015). The Keynesian state defaulted on the obligations of its social contract just as accelerating cultural change, especially the destabilization of sexual and racial status hierarchies, indicated to the burgeoning conservative movement a moral crisis. The cultural frame swept up anxieties about the centrifugal pressures of economic deterioration and the centralization of political and economic power, interpreted as dangers to local community, faith, and family. Fetishistic understandings led conservatives to grasp socially destabilizing inflation as essentially a moral crisis; public and private overspending had resulted from dissolution of the virtues of Protestant frugality and delayed gratification. This was attributed to a breakdown of family values (Cooper, 2017). The welfare state had not only undermined incentives to disciplined work but, by subsidizing female independence, challenged the normative template of the White patriarchal breadwinner family. The scapegoats for inflation were morally transgressive feminists, Black "welfare queens," and the secular state that had made a relativistic break with timeless religious truth. The religious right's family values movement consolidated foremost as an insurgency against the federal courts—initially in response to denials based on the Civil Rights Act of tax exemptions for segregated religious schools and later against abortion rights as the superlative symbol of the assault on the family by Godless statism.

Locked in culture war thereafter, combatants tend to understand debate over the Constitution, and politics itself, to be about moral entitlements. Catalyzed by the all-or-nothing stakes of rights absolutism, polarization undermines democratic compromise and ordinary legislative production. Shared acquiescence to judicial supremacy makes the supreme prize controlling courts, which have freedom to maneuver and authority as arbiters of morality-cum-law. In this constitutional culture, the immorality of opponents appears as the fundamental obstacle to realizing a good society. The more the public is concentrated on resentful battles over racial, gender, and religious status as nonnegotiable moral absolutes and looks to the courts for redemption, the freer the rest of the state is to be responsive to capital. Despite savage antipathies between "progressive neoliberals" and conservatives aiming to supplant the welfare state with the family, both adversaries remain devoted neoliberals who have jointly disclaimed political struggle to generalize social freedom (Fraser, 2019).

8 | FROM NEOLIBERAL FETISHISM TO AUTHORITARIAN POPULISM

This Marxist account of identity politics and the culture wars also elucidates the recent upsurge of populism, at least in the United States. The 2008 financial crisis brought crashing down the mountains of overaccumulated debt that had postponed any countermovement against the neoliberal status quo for decades. The effects of long-term trends of heightening structural domination, fraying social relations, and an increasingly unresponsive state were laid bare. Despite precipitating a crisis of legitimacy long in the making, the structural roots of the decay of social freedom have remained largely disguised. The increasingly one-dimensional neoliberal society of accumulation has been complemented by an increasingly one-dimensional politics of identity recognition. At work in this is a contradictory

political logic deriving from the homologous economic contradiction that, despite growing material wealth, the pursuit of value through social development drives down the value that it is supposed to produce. Increasing fixation on moral demands that identities be acknowledged as compensation for the de-democratization of economic regulation ultimately undermines the legitimacy it was supposed to uphold. Counterpart to the escalating anachronism of value as a form of wealth is the escalating insufficiency of identity recognition as the compensatory associative basis of legitimation. Yet as value remains the basic social mediation, so too does identity as a moral entitlement tend to remain the basic idiom of public discourse. The result is that crises of accumulation have generated crises of legitimation that have tended to be expressed in terms of identity and morality.

Popular mobilization has been refracted by fetishism into populism. Populism denotes anti-pluralistic representations of the people as a moral unity in which only some people are part of the real people, and the boundaries of inclusion are constituted through conflictual frontiers with designated outsiders. Moral demarcation of who is excluded from the people is readily adjoined to moral explanation of what afflicts the people. Attributing suffering to immoral culprits presupposes an agency-based social ontology that is incongruous with identifying impersonal structures as the roots of social causality. Even when populism takes a leftist form by carving a frontier between the people and “the oligarchy,” it still issues from a fetishized misunderstanding of society that personifies impersonal structures of capital and law (Mouffe, 2018). Coalescing as personal enmity between groups, left populism is also an effect of capitalist disorganization that, at best, strikes at the underlying sources of domination only indirectly. The constitutive moralism of populism instead predisposes it to the right because “traditional and uncorrected common sense is a massively conservative force, penetrated thoroughly... by religious notions of good and evil, by fixed conceptions of the unchanging and unchangeable character of human nature, and by ideas of retributive justice.” (Hall, 1988, p. 142). Revolutionizing relations of production upend staid norms, customs, and opinions. But rightwing populist discourses that “systematically displace political issues into conventional moral absolutes” (Hall, 1988, p. 143) attribute these dislocations to moral degeneracy and permissiveness.

Brown is right to interpret rightwing anti-democratic mobilization as family values conservatism radicalized by neoliberal political economy. But this radicalization should be understood as the result of fetishism refracting discourses of recognition into divisive culture wars over identity and the displacement of social anxiety into scapegoating villains. Social destabilization plus fetishism push conservatives through the family-values-to-populism pipeline. The imaginary of rightwing American populism today is littered with fetishistic personifications that deflect would-be structural critiques into unconstructive resentments and moral panics. The pressure of intensifying global competition registers as increasingly nationalistic and jingoistic geopolitical rivalry with China. The de-democratization on behalf of capital effectuated by regulatory legal discourse rooted in the form of the state appears as a treasonous “deep state” conspiracy by agents who could simply choose to act differently. The reorganization of society according to steepening hierarchies of human capital is interpreted as a game rigged by corrupt, self-righteous elites scornful of everyday people and their values. The antipathy bred by this exclusion is channeled not just against gateways to human capital like universities but also against expert knowledge and science, which are taken as condescending associates of this discredited culture of education. The widespread commercial embrace of liberal diversity motifs because they are effective marketing for rational profit-seekers is perceived rather as corporate hijack by the artificial distortions of “wokism.” Surplus labor is personified by immigrants and marginalized minorities; fears bubble up over insecure borders, criminal “invasions,” Black Lives Matter, and critical race theory. Anxieties about destabilizing status hierarchies are displaced into solicitude for the natural purity of children: female sexuality is policed in the name of the innocent unborn and the increasing prominence of gay and transgender identities provokes hysterias over “grooming.”

Insofar as the rift between regulatory and associative discourses has inhibited coalitional solidarity against common impersonal sources of oppression and reinforced identity-based disorganization, the deteriorating social relations of work have instead propelled asymmetric political polarization rightward and invited a shift in the balance of hegemony from acknowledging people with different values as subjects of respect to governing them as objects of coercion. The inherent authoritarianism of rightwing populism materializes as the will to deploy state power to exclude, repress, or persecute categories of people that do not conform with the sanctioned representation of the

people. It is a reactionary mode of identity politics aiming to retrieve imaginary cultural homogeneity, traditional morality, and political unity by forceful revanchism against the rights by which differences of identity have been acknowledged and the pluralistic political process secured. The relation of this authoritarian populism to the state bears the contradictory marks of neoliberal fetishism. A society of pervasive anxiety is abetted by the state's overwhelming complicity with capital, but is instead attributed to corrupt public authority distorting free society by bestowing favoritism upon identity categories designated as immoral outsiders. Popular cries for morality uttered in the idiom of anti-statist freedom "from below" instigate demands for an authoritarian state to impose repressive order "from above" (Hall, 1988, p. 137). Expressions of liberal positions on issues like race and gender are chilled, throttled, or censored in schools and on social media in the name of free speech itself. Voter suppression—especially targeting groups deemed lacking in the proper civic virtues—is justified as necessary to safeguard the integrity of the democratic process.

The value form and the compulsory dynamics of accumulation—rather than Brown's neoliberal reason—have driven the empowerment, escalations, and contradictions of neoliberalism. Politics reverberating from reification and over-accumulation has been deflected away from challenging capitalist structures by the state's discursive fetishization and popular disorganization. Heightening anxieties have instead amplified identity politics of moral enmity. A return to Marxism belies Brown's depiction of anti-democratic mobilization as only a latter-day deformation of family values. As one of the effects of the capitalist state form's displacement of anxiety, moral traditionalism emerged as a reactionary politics of victimhood constituted through resentment and ready to underwrite repression. As Hall saw from the start, authoritarian populism is no accidental byproduct. It has always been intrinsic to the neoliberal era of capital accumulation.

ACKNOWLEDGMENTS

I am thankful to Andrew Brandel, Alex Gourevitch, Daragh Grant, Sarah Johnson, Rebecca Ploof, Tracey Rosen, Nica Siegel, Don Tontiplaphol, and two anonymous reviewers.

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How to cite this article: Lebow, D. (2024). The value form and the wounds of neoliberalism. *Constellations*, 31, 462–480. <https://doi.org/10.1111/1467-8675.12706>

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