POLITICAL ECONOMY OF LABOUR LAW IN TURKEY: WORK, EMPLOYMENT AND INTERNATIONAL DIVISION OF LABOUR

A THESIS SUBMITTED TO
THE GRADUATE SCHOOL OF SOCIAL SCIENCES
OF
THE MIDDLE EAST TECHNICAL UNIVERSITY
BY

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IN PARTIAL FULFILMENT OF THE REQUIREMENTS
FOR
THE DEGREE OF DOCTOR OF PHILOSOPHY
IN
THE DEPARTMENT OF PUBLIC ADMINISTRATION AND POLITICAL SCIENCE

DECEMBER 2004

Approval of the Graduate School of Social Sciences

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ABSTRACT

POLITICAL ECONOMY OF LABOUR LAW IN TURKEY: WORK EMPLOYMENT AND INTERNATIONAL DIVISION OF LABOUR

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December 2004, 399 pages

This thesis aims to evaluate the Turkish Labour Law on the basis of a new approach to legal studies that follow the internal tendency of legal science to resolve its own problem, which is that of convincingly defining the point of contact between norm and fact (form and content), materially connecting the juridical organisation of power with the social structuring of power, while avoiding both formalist and positivist deviations. Against this background, the thesis aims to assess the correlation between the recent changes in the international division of labour and the structural forms, on the axis of which the Turkish legal system functions. This endeavour includes an attempt to view law in its location as a component to a general and persistent process of social regulation that secures general patterns of social domination. This study argues that the role of the collective labour law over the stabilisation of wage relations is increasingly deteriorated by the changing nature of the state and of work, including the new institutionality and the increasing influence of business over labour politics. After the 'discovery' of the importance of the universal principle of the freedom of contract in labour law, the regulatory powers of individual labour law have extended to the realm of capital-labour relations having an impact over the social division of labour and have acquired a relative dominance.

Keywords: Labour law, structuralism, regulation approach, international division of labour, sociology of law

ÖZ

TÜRKİYE'DE İŞ HUKUKUNUN SİYASAL İKTİSADI: İŞ ÇALIŞMA VE ULUSLARARASI İŞ BÖLÜMÜ

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Tez Yöneticisi: Yardımcı Doçent Dr. Galip YALMAN

Aralık 2004, 399 Sayfa

Bu tez Türk İş Hukukunu, bir yandan hukuksal biçimci ve pozitivist açılımlardan kaçınırken bir yandan da hukuk bilimine içkin eğilimi takip ederek norm ve hukuki olgu arasındaki kesişme noktasını (biçim ve içerik) kabul edilebilir bir biçimde tanımlamaya, iktidarın hukuki organizasyonu ile toplumsal yapılanmasını somutta birleştirebilmek problemini çözmeye çalışan, yeni bir hukuki yaklaşım üzerinden değerlendirmeyi amaçlamaktadır. Bu çerçevede tez uluslararası iş bölümünde yakın dönemde meydana gelen değişikliklerle, ekseni üzerinde Türk yasal sistemin işlediği yapısal biçimler arasındaki bağlantıyı değerlendirmek amacını güder. Bu girişim hukuk alanını toplumsal hakimiyet kalıplarını güvenceye alan genel toplumsal düzenleme sürecinin bir parçası olarak ele alma girişimini içerir. Çalışma yeni kurumsallaşmayı ve iş çevrelerinin emek politikaları üzerine artan hakimiyetini de kapsamak üzere, işin ve devletin doğasındaki değişiklikler nedeniyle toplu iş hukukunun ücret ilişkilerinin istikrarındaki rolünün gittikçe azaldığını iddia eder. İş hukuku alanında evrensel sözleşme özgürlüğünün 'keşfinden' sonra bireysel iş hukuku alanına giren normların düzenleyici kapasiteleri toplumsal iş bölümü alanına giren sermaye emek ilişkilerinin düzenlenmesini de kapsamaya başlamış ve göreli bir ağırlık kazanmıştır.

Anahtar kelimeler: İş Hukuku, yapısalcılık, düzenleme yaklaşımı, uluslararası iş bölümü, hukuk sosyolojisi

ACKNOWLEDGMENTS

The student wishes to express his deepest gratitude to his supervisor Galip Yalman for his tolerance, encouragements and insight throughout the research. He is also indebted to Prof. Dr. Ayşe Güneş-Ayata and Prof. Dr. Fikret Şenses for their academic advice. He feels thankful to Prof. Dr. Levent Köker for his valuable insight on the matters of the sociology of law and for emotional support. He also would like to thank to Prof. Dr. Nurcan Özkaplan and Prof. Dr. Erkan Akın for their most timely emergence at the crucial stages of the research, and to Fuat Ercan, Prof. Dr. Uğur Eser, Assoc. Prof. Dr. Sabri Çaklı, Assoc. Prof. Dr. Kemal Öke, Murat Özveri and Yıldırım Koç, whose remarks and works encouraged him to deal with the complex issues of political economy.

He is grateful to Barış Çakmur for his inspiration and comradeship along the way and for his valuable contribution at key stages in the writing of this thesis. The care and support of friends, who shared with me frustration, despair and anxiety should also be mentioned. Sevim and Ziya Yücesan, Necat Akyıldız, Onur and Nurdan Yalman, Can and Elif Çakmur, Kemal Barış, Funda and Mehmet Arı, Orhan, Sadet and Bahadır Aydın, Ruziye Cop, Can Sarp and Sarp Özcan, Derya Erel, Ramazan Sarı, Cesim Çelik, Betül Yarar, Can and Volkan Taşkın, Gün and Işık Aydar, Ali and Tuğrul Katoğlu, Balım Özcan, Cem Kubat, Vedat Yılmaz, İhsan Kamalak, Hacer Fidan, Nuran Sepetçi, Deniz Karakaya, Tevfik Toker, they are the best part of all these years.

The student's deepest gratitude goes to Senem Güler Özdemir, Celal Özdemir, Elif Renk Özdemir, Elif Nesrin and Hasan Bilbaşar whose love and support gave him the encouragement to go on at the times of frustration and despair. And to Gamze, for her love, comradeship and dedication which endured during these eventful years. Sometimes together, sometimes apart, we gave together one of the hardest struggles of our lives to write this thesis. Lastly, Ada, who was born at the beginning of the study and who brought the most valuable reason to study on the labour, deserves the gratest of all thanks.

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CHAPTER I

INTRODUCTION

As the internationalised capital dissolves the core values of the golden age of the post-war world, the historical bond is broken between capitalism, welfare state and democracy together with the international division of labour of the Fordist model of production. The same process, albeit in a different manner and with different internal reasons, can be observed in peripheral countries. These transformations find their precise expression in the realm of industrial relations.

The serious changes in the relations producing and reproducing the dominant mode of production on a world scale, that is, in capitalism, which aims at nothing other than profit, and excludes, under the banner of flexibility, the consideration of employees, and their democratic representation; tear down barriers of national labour regulations and; produces ever more with ever less labour; provides the framework of our investigation, which is aiming to understand the nature of the recent changes in the Turkish individual labour law without suggesting that legal forms and their functions are somehow fully determined by some fully autonomous logic inscribed within capitalism.

This study aims to go beyond the limits of the recent debates on the changing nature of the coverage of individual labour law provisions in Turkish jurisprudence. The arguments of the study have been developed in the context of contemporary Marxist political economy. The debate pursued by this study is considered as necessary due to lack of any satisfactory attempts to fulfil the distance posed by juridical formalism, which is a dominant approach in

jurisprudence throughout the world, between the legal texts of labour regulations and the social context in which these regulations find their meanings.

First and foremost, the theoretical means which have been used to evaluate the recent changes in the Turkish individual labour law requires conceptual clarification, for there is an intellectual confusion resulting from both the crisis ridden Marxist theories of Right from the 1980s[1] onwards and the disinterest of jurisprudence and the faculties of law in the Marxist sociology of law, which tries to remove the neat impermeable boundary between sociological and jurisprudential approaches[2]. This confusion seems to be deepened when the commentators' presumptions on the nature of international division of labour, of labour process together with its associated properties, such as 'control', 'deskilling', 'reskilling' etc. and of the state implicitly intervene to their hypotheses on the nature of the recent changes. These conceptualisations are generally taken from their theoretical and conceptual context and have been used with no consistent connection to political economy be it Marxist or not. These are some of the reasons behind the relatively ample space given to the theoretical concerns in this study.

Second, this study aims to evaluate the individual labour law on the basis of a new approach to legal studies that follow the internal tendency of legal science to resolve its own problem, which is that of convincingly defining the point of contact between norm and fact (form and content), materially connecting the juridical organisation of power with the social structuring of power, while avoiding both formalist and positivist deviations. Defining the point of contact between norm and fact requires the researchers to transcend the legal positivism in order to conceptualise law as an important constituent of the conditions of social practices and in order to focus attention on the way in which law is implicated in social

[1] For a detailed discussion of the fall of Marxist theories of Right, see Hardt and Negri (1994:263-308).

[2] For a detailed explanation of the orthodox approaches to law, see Hunt (1993:1-17).

practices while at the same time reminding us that law is itself the product of the play and struggle of social relations.

A key to the question of how law becomes a constituent of the conditions of social practices lies in the concept of 'relation'. Critical realist and Althusserian approaches provide an attractive alternative to legal positivism, for their relationalism involve the ontological claim that a social being exists within social relations and among them legal relations. These approaches insert a series of connections between the phenomena of capitalist accumulation and the juridical phenomena into the context of the relations of production without confining them strictly to this realm. The commodity and wage relations are dominantly economic; however, these relations are imbricated with other kinds of relations, among which are legal ones. Modern thought analyses these different kinds of relations under separate disciplines. However, the disciplinary divisions that separate law from politics and from economics are not an inherent feature of the thought.

The above-mentioned critical realist/relationist approaches have never acquired a dominant position in academy. This is partly because a theory departing from relations would not be in compliance with bourgeois attempts to subsume/subordinate the social within the normative. Yet, this reason is not convincing alone. In addition to this and partly in relation to the first reason, the abstracted statements of Marxism, formulated in a relationist theory, raise issues which are generally excluded or ignored in orthodox jurisprudence, which mainly refers to the application of (somehow enacted) norms to concrete disputes by way of law offices and courtrooms. Relational theory does not seek to refuse the significance of institutionalisation. Rather, institutionalisation is considered as a particular case of social relations in which clusters and patterns of social relations are condensed into the purposefully organised features that characterise institutions. The point, however, is that institutions are not the only form in which

social relations become condensed; there are also social structures[3] that can perhaps be best understood as form determined condensation of social relations, market and state power as being prime examples. The inclusion of structures creating class effect to the theory of law will not be accepted, in this study, as a completely different project [4] that has nothing to add to the jurisprudence. The Marxist analysis of law takes into account the function of social structures within the process of reproduction of societal relations, meaning that law loses its purely technical meaning as a discipline searching ways to implement the –some how enacted- provisions of laws to a certain event that is claimed to be infringing these provisions. On the other hand, inserting law into the complexity of social relations is not an easy task especially when the theory used in the analysis of societal relations that also have a legal dimension is not designed originally to analyse the current situation of capitalist society but to replace it, and has many variants that can produce contradictory propositions on the same social phenomena. In sum, the Marxist project is not a project that occupies the same field or scope as orthodox jurisprudence, yet, it definitely provides us theoretical tools to deal with and to contribute to the analysis of the existing legal system.

In this sense, Marxism provides a starting point for a critical analysis for renovating and making 'critical' as an already existing activity. From the same vein, some heterodox approaches based on critical realism have been influential in western academia and, at least partly in Anglo-American jurisprudence (Hardt and Negri, 1994:304). However, Turkish legal scholarship is not, to a great extent,

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[3] A social structure is considered to be a set of relatively lasting internal relations that confers causal powers and interests on social agents. However, social actors are far from being mere bearers of the social structures, since social structures do not exist independently of the activities they govern or of the perceptions of the social actors about their activities (Bhaskar, 1975; 1994). Lipietz asserted that social structures are nevertheless borne by individuals whose actions as subjects caught in webs of antagonisms, which constantly risk displacing established relations, in particular economic regularities (Lipietz ***quoted in*** Robles, 1994:81).

[4] This form of abstraction has the virtue of showing the interconnectedness of actions and relations occurring in the extended reproduction of capital relation and relating them to the class structure of society. Yet, Marxism achieves these insights at the cost of not being operational in the management of a capitalist society, thus at the cost of ignoring the problem of micro-economic coordination of the division of labour and allocation of resources (Sayer, 1995:215).

involved in these approaches. Thus, this study feeds from my deep sense of dissatisfaction with the existing state of Turkish legal scholarship, which is under the influence of a primitive form of legal positivism resulting in a disinterest in the dynamics behind the enactment of legal codes and with inadequately developed conceptualisations of state, law, society, etc, which have deep implications on the ability of the current situation of Turkish jurisprudence, even in the analyses of the texts of the rules, which are considered to be given and whose relations with society are non questioned, to grasp essential characteristics of the relations that they make comments on.

Another feature of the Turkish legal scholarship is the belief in the possibility of value neutrality that portrays the jurist as a technical expert. Although the same weakness can also be observed in the orthodox jurisprudence of central economies -albeit under the stress of a well-established critical line of thought-, the value neutrality in Turkey, whose jurisprudence is almost totally free from even the knowledge of any critical line of study, is claimed under the conditions of a massive inequality of income distribution, which results in an acute controversy with the position of jurisprudence and the social environment that they have a crucial impact on.

Third, the debate pursued by the dissertation is strictly related to the debate over the nature of capitalism, which, in this thesis, will be considered as a commodity economy given specific features by the wage relation. The Marxist political economy provides a basis for analysing law and wage relation with their reference to the notion of accumulation. Furthermore, efforts to rethink production, law and class can feed best from Marxism, which provides the best basis for developing a framework in which the interrelated issues of social sciences can be considered in relation to one another. To be more precise, I would say that my contention is that it is in the debates that surround Marxism that one finds, in their most developed form, explorations of some of the most pervasive problems of conceptualising human relations that confront the whole field of social and legal theory, and that

would be instrumental in explaining or understanding the subject matter of this study. On the other hand, my account makes no claim to represent a correct interpretation of Marxism, rather, I claim that Marxism has also an analytical aspect, which, without the establishment of the conditions of a socialist society, can be used to analyse the reasons behind the enactment of certain regulations and the possible effects of existing rules.

The conceptualisation of the international division of labour from the perspective of a set of consistent theoretical positions, all of which have connections with contemporary variants of Structuralist Marxism and/or with the epistemological premises of critical realism, serve for the articulation of political economy with law.[5] However, my intention in this thesis is not to outline a complete theory of tendencies at work within the international division of labour. The concept is proved to be functional (in an *a posteriori* sense) in the Marxist analysis of the dynamics behind the changes in the rules regulating industrial relations both in the international realm and in Turkey.

At that point, the Regulation Theory provides us enough space to employ the Marxist Theory in the analysis of concrete social phenomena without rejecting the dialectic dimension[6] of Marxism that finds its precise expression in the unity of Marxist thought. The approach has the capacity to facilitate an integrated form of inquiry that can encompass a realist approach that takes as its organising theme a relational perspective (Hunt, 1993:15-16). Within this framework, this study seeks out the legal component of social relations that makes it possible to break out of the narrow institutional focus of jurisprudence. Yet, the opportunities provided by the epistemology and the political economy of the Regulation Theory are not well

[5] "Accordingly he [Althusser] introduced the concept of 'structural causality' to designate what critical realists would call the hidden inner structure of capitalism as the generative mechanism of its phenomenal forms and surface movement. In his approach to these issues he affirmed Marx's insight that 'all science would be superfluous if the outward appearances and essences of things directly coincided' " (Jessop, 2002a:91). For a detailed investigation on the compatibility of structuralist and critical realist approaches to social science, see Collier (2002) and Jessop (2002a).

[6] Thus, being different from analytical Marxism

developed for the enterprise conducted by this study. To articulate a Marxist line of legal theory to the Regulation Theory is a very new line of study conducted by few scholars.[7] This situation legitimises the relatively detailed examination of the various elements all together constructing the theoretical part of the study.

On the other hand, throughout the 1990's, the rise of the New Right and the demise of state Socialism, academy, both in Turkey and in the West, were concerned with modernity rather than radical political economy[8] despite the current recession, the growing social inequalities, the deepening of North-South distinction at a world scale. The reasons behind this tendency will not be discussed, however, it should be mentioned that the Marxist approach employed in this study, is a synthesis occurring as a result of severe criticisms directed to Marxism throughout the 1980's and the 1990's.

Fourth, this study aims to assess the correlation between the recent changes in the international division of labour and the structural forms, on the axis of which the legal system functions. For this purpose, the study will examine the related aspects of the Turkish economy with reference to international dynamics. Given the particular forms of individual labour law regulations bear the imprint of both the social formations in which they develop and the social formations in which they implemented, a reading of Turkish economy with specific stress on international dynamics, seems to be inescapable.

Last but not least, the study mainly focuses on the attempt of mapping the legal aspect of the changing norms of production under the banner of flexibility in the realm of individual labour law. To do this, the study includes an attempt to view law in its location as a component to a general and persistent process of social regulation that secures general patterns of social domination. The starting point of

[7] See the works of Hunt (1993) and Woodiwiss (1987a, 1987b, 1990).

[8] "(T)hroughout the 1990s, the reception of Marxist and radical political economy has become, to say the least, sceptical." (Sayer, 1995: vii)

the study is specific functions and tendential effects of the dominance of social forms, which are linked to capital as a social relation and which provide space in which social relations become intensified.[9] Keeping in mind that particular structural and institutional forms are always constituted in and through actions of certain agents within the domestic and international sphere, and that they are themselves always tendential (Jessop, 1999; 2002a:34), the relatively stable relations occurring and constrained within the structural forms will be considered as the main axis on which the legal system functions within the overall regulation of societies experiencing the structural crisis of capitalism. This is a novel attempt constituting the main axis of this study.[10]

Against this background, the study aims to conceptualise the form and content of the changes in the individual labour law of Turkey. The literature on the changes in the individual labour law texts exists in two main lines. The first line of the studies exists in the form of 'journalistic' enquiries proceeded by the advocates of bourgeoisie and the representatives of trade unions that had negotiated the same texts before the enactment of the new Labour Act. The second line grounds on the studies of jurists and academics who interpret the new provisions without establishing a coherent connection point with their social context. Both of these two lines develop their arguments with reference to the texts and the growing bulk of obligations mentioned within them. On the other hand, this study focuses on certain aspects of the Turkish State's function of securing the right of capital to control labour power dwelling in its boundaries. Thus, the concrete changes within the texts will be considered with reference to conceptualisations, such as the changes in the notion of subordination, the individual capitalist's increased capacity to control, and corresponding power relations, with the aim of partially

[9] This particular object does not mean that there is nothing else worth saying about social relations theoretically.

[10] While this line of argument may help to establish the distinctiveness of the state and politics, they must be complemented by an understanding of the historical preconditions of the modern state and the complexities of its subsequent articulation and interpenetration with other institutional order and civil society. Otherwise they risk fetishising and naturalising the institutional separation between economic and political, the juridical distinction between public and private, the functional division between domestic and foreign policy, etc (Jessop, 2002a:37).

systematising the connection between recent changes in legislation and the social context in which they function.

Main Arguments of the Study

Given these remarks, the main objective behind this study is to establish a framework in which labour law can be understood in relation with social relations surrounding its provisions, whose images in minds seem to be suspending in the air. In general, the image of law as a towering hierarchical pinnacle whose imposing summit rises into the clouds is not a self-evident truth; yet this is not to imply that this view is merely some ideological mirage. The persistence of this image is itself a major form in which the place of law is socially constituted (Hunt, 1993:1-35).[11] The same is also true for labour law.

To understand labour law in relation with social relations surrounding its provisions, the dynamics of wage relation, including the essential contradiction in the commodity form of labour between its exchange-value and use-value aspects, and the correlation between the function of state and capital accumulation will be considered as a point of departure. Since, law rarely, if ever, functions alone, but in combination or connection with other aspects of the social, including regulatory mechanisms other than law, and -given capital is a social relation- dynamics of accumulation. As being the main device by which the capitalists' right to control labour power is established, labour law has a specific/creative role in the postponement of the essential contradiction in the commodity form of labour between its exchange-value and use-value aspects.

[11] Variants of Structuralist Marxism, hold the view that a focus on some specific element or feature of social life necessarily involves an engagement with all aspects of the social, meaning that the dominant tendency in social sciences, the tendency to a successive differentiation of the field into ever more subcategories will not be hold, for the purpose of maintaining an openness toward a wider conception of social, which will not be considered as the equation of society and nation state, and which will not, from the beginning, implies a commitment to a philosophy of internal relations that promotes the view that each and every type of social relation is a microcosm of the prevailing forms of sociality.

The paradox inherent in wage relation has its footprints on the main/classical divisions of labour legislation, which are the law regulating the rights and duties of the individual worker (individual labour law) and the law for organised action of workers (collective labour law).[12] This division arises from a qualitative difference in the positions of the two main classes vis-à-vis the conditions of production and of exchange relations. The limits of the conditions of the employment of individual labour is directly regulated by individual labour law, yet collective labour law also has an indirect influence by way of its impacts over labour market, in which the terms and conditions of sale of abstract labour has appeared, and over the organisational struggles of the collective worker.

The investigation pursued by the study will be realised on a comparative basis including the analysis of export substituting and newly industrialising countries and of the countries who could not utilise their resources in conformity with the requirements of export substitution: the analysis of the European Labour Law and the study of the Japanese labour law being a prime example of patriarchal labour law. In the historical process of the constitutionalisation[13] of labour power in capitalist development, which roughly corresponds to the era of Fordism as a victorious model of development, the individual labour law, as an institution and/or an intangible apparatus structuring interactions between the individual capitalist (which is a part and fraction of capital in general) and the individual worker at the workplace, had the function of securing the rights of capitalists to control labour power within the technical division of labour and to the extent that labour contract intervenes in labour market. On the other hand, the labour regulations regarding the stabilisation of wage relations in a series of companies within a relatively coherent

[12] For the details of individual labour law and collective labour law distinction see Tunçomağ and Centel, 2003; Çelik, 2003; Işıklı, 2003; Narmanlıoğlu, 2001.

[13] In the narrowest sense, the term 'constitutionalisation' refers to the constitutional acknowledgement of labour rights. However, the term will be used in a wider sense, which includes the legal acknowledgement of abstract labour as a major constituent of society, by which the juridical ordering seeks to intervene in the reality of social relationships by directly controlling and reconfiguring those relationships (cf. Hardt and Negri, 1994:71).

spatial context, that is, the labour regulations having impacts on the social division of labour, owed much to the regulatory effects of collective labour law.

Under the pressure of the second phase of the structural crisis in central economies, not only the functions of the ensemble of socially embedded, socially regularised and strategically selective institutions, but also the way they articulate and regulate different sets of social relations have changed. This study argues that the role of the collective labour law over the stabilisation of wage relations is increasingly deteriorated by the changing nature of the state, of work, including new institutionality, the increasing influence of business over labour politics, and paradigm the of flexibility. After the 'discovery' of the importance of the universal principle of the freedom of contract in labour law, the regulatory powers of individual labour law have extended to the realm of capital-labour relations having an impact over the social division of labour and have acquired a relative dominance. Within this context, this study focuses on individual labour law related aspects of the Turkish State's function of securing the right of capital to control labour power in the labour process and, to the extent that labour contract intervenes, in labour market.

The extension of regulatory powers of the individual labour law to capital-labour relations in the social division of labour are related both to the international competitiveness and to the labour politics pursued, thus, to the international and domestic dynamics of the class formation of the country in question (Picciotto, 1991). The process of the creation of new ways of surplus extraction and of the lowering of the value of those means that replace those that have been consumed is not solely an issue of domestic politics or domestic class struggle. The ways the state secures the right of capital to control labour power have a correlation with the country's place in the international division of labour. The politics of flexibility that makes the local labour marketable for international capital requires high levels of control, thus a weak collective labour law and a law of obligations-like individual labour law.

This study refers to the concept of international division of labour as a key concept[14] in tracking down the recent changes in the mode of regulation and, thus, in socio-technical system of Turkey. Within this context, the study aims to track down the changes in the socially embedded institutions and organisations of Turkey's socio-technical system with regard to its place within the international division of labour in the era/context of the structural crisis of capitalism. Then it discursively examines the text of the recent labour act on the basis of conceptualisations developed throughout the study. Thus, it argues that the expansion of the regulatory powers of the individual labour law to labour related aspects of the social division of labour can be traced in the text of the new labour act.

Entry into the text of the new labour act is the appropriate approach to investigate the issues raised in this study. Given that capitalism is a commodity economy given specific features by the wage relation, the conceptualisations indicating a change in the function of individual labour law within the socio-technical system can best be tested over the main code regulating industrial relations and having a decisive impact on the waves of de-commodification and re-commodification of labour power. Yet, an inquiry on individual labour regulation cannot feed only from a certain code. Thus, to the extent that collective labour law has impacts over the regulation of flexibility, collective labour law, the dominant approaches that Jurisprudence inspired, the case law, administrative decisions, the responses of organised parties in industrial relations, panels that are unveiling the attitudes and opinions of the parties involved, the texts that are displaying the political will of the legislation and various interviews are all included in the investigation pursued by the study.

[14] However, as revealed in our analyses on state, structural forms and competition, it is important to avoid what seems to be a mistake in attributing a determinant role to the market and the international division of labour. In Wallerstein's (1979; 2003) schema it was the world market and the consequent international division of labour that allocated a particular role to each region, from which flowed the relationship of exploitation and the form of state. Regulation approach emphasises that it is not the world system that led to transformations both of the world market and of the form of state (cf. Picciotto, 1991).

Structure of the Study

This study is divided into two parts. Part I presents theoretical attempts to introduce and systematise the main determinants/elements of the relations regulated by labour law and of law as a constitutive element of these relations. This partial systematisation will be used in the evaluation of the recent changes within the realm of individual labour law in Turkey in the last three chapters of Part II. Chapter I is an introduction.

Chapter II elaborates on the issue of law as a part of the mode of regulation. This task has two prior requirements. The first requirement is to establish the main premises of the Regulation Theory including the intermediary conceptualisations developed by the theory, the main premises of the Marxist Theory from the perspective of the Regulation Theory, and structural forms. The issues such as wage relation, the notion of subordination and labour market will be investigated in this part of the study. Given that, despite some valuable contributions of the Regulation Theory to the state theory, Regulationist studies are mainly focusing on the realm of macroeconomics and feeding from the conceptualisations of the contemporary variants of Structuralist Marxism in general, and that the main concern of the dissertation is to evaluate the changes in the realm of individual labour law, the second requirement is to evaluate the contributions of contemporary Structuralist Marxism to the matters of class, state and law.

The central conviction of Chapter III requires an attempt to periodise capitalism and then, to periodise and categorise labour law, being the prime mechanism in the regulation of industrial relations. The study establishes a correlation between the dynamics of accumulation and the transformation of socio-technical systems of the countries constituting the international division of labour. This examination will be followed by an analysis of the normative regulation of industrial relations corresponding to each periodisation. Such an attempt is expected to include historical analysis into the study. This categorisation will further be used in the analysis of the Turkish Labour Law.

Chapter IV is grounded on the investigation of the correlation between the dynamics of accumulation and the state's form with reference to the correlation between the impasse of import substitution and the process of constitutionalisation and de-constitutionalisation of labour. This chapter is consisted of two subsections. The first subsection investigates certain determinants of Turkey's socio-technical system from the end of Second World War to the 1980s. It argues that the Turkish state's function of securing the rights of capital to control have never been achieved at the level at which the ruling classes benefited from the extraordinary absorbation of relative surplus value. When the second expansion of Fordism became an observable social phenomenon, not only the collective capacities of labour to intervene in the national policies, thus the labour's capacity to interfere into the money as a social institution, but also socio-technical system, including the regulations on the organisation of technical division of labour and the regulations on the collective action of labour in the labour market and in the process of production had become a source of impediment over the 'successful' transformation of the existing hegemonic strategies to an export oriented strategy. The second subsection investigates the impacts of the implementation of neo-liberal programmes in Turkey over the state's function of securing the rights of capital to control labour power within the context of the articulation between the conditions of the second expansion of Fordism and the internal contradictions of Turkey. For this purpose, the impasse of import substitution is considered as a point of departure for the assessment of state power, which is limited with the paradoxes of capital relation and/or with the states controversial relation with the accumulation process having international dimensions. It will be alleged that when the capital had acquired the power and found the possibility to deal with 'rigidities' in the legislation, it did not/could not opt to implement an export oriented strategy of accumulation due to emergent structural constraints of the industry.

Chapter V seeks to achieve a functional analysis of individual labour law, thus, of the power relations imbedded in the norms regulating the realm of technical

division of labour and labour contract, on the basis of the partial systematisation and thus, of conceptualisations established throughout the study. To do this, the change in the powers of the parties of industrial relations in the realm of individual labour law, as a step in the process of de-constitutionalisation of labour, will be investigated. Within this context, the correlation between the legal discourses and the discourses of production will initially be analysed. To put it differently, the link between the way the particular positions of the legal subjects in relation to the others are constituted, and the discursive borders of the capacity of control in the technical division of labour and, to the extent the individual labour contract intervenes, in labour market will be analysed. Then, the legal borders of the capitalists' right to control will be analysed. It will be alleged that the new provisions related to the capital's right to control labour power both in the labour process and, to the extent that the labour contract intervenes, in the labour market, are in conformity with the existing discourses of production. The investigation on the legal borders of the capacity of control will be pursued on two grounds. I will first investigate the legal borders of the capacity of control in the technical division of labour. Secondly, the shift in the regulatory scope of the labour contract in the labour market and the subsequent introduction of the new type of labour contracts referring to the changing limits of the regulatory powers of the labour contract will be dealt with. This second task also contains a survey on the legal subjects that are excluded from the protection brought by the protective provisions that brought limits to the labour contracts. The notion of flexibility, which can be evaluated only after the accomplishment of the first two tasks, will be investigated as a third task. To conclude our attempt, which aims at reaching a functional analysis of the individual labour law, thus, to reveal the power relations imbedded in the norms regulating the realm of the technical division of labour and the labour contract, I will deal with the collective labour law to the extent that these norms and institutions have an influence over the notion of flexibility.

CHAPTER II

A THEORETICAL TERRAIN FOR THE POLITICAL ECONOMY OF LABOUR LAW

2.1. Introduction

> The question of should researchers wait for the dust of history to settle and for conflicts to give rise to a new institutional architecture, or can they provide some general results of elements governing this process. In the first alternative, they will be accused of being scholars *post factum* that is, describing rather than theorising. In the second case, their ambition to grasp the laws of history will be denounced as a hopelessly promethean task: once upon a time Leninist Marxism tried and failed. Between these two extremes is research into the processes of overcoming structural crises, which is important because it makes a theoretical development of founding notions and tools of analysis.
>
> (Boyer, 2002b:320)

Research into the processes of understanding the role of the individual labour law in the reproduction of the dynamics of global capitalism in Turkey is not a descriptive attempt in nature, since the research is not waiting for the dust of history to settle. However, the dusty environment makes it very hard to ascertain the main invariants that would be used in the construction of the partial systematisation of the tendencies deriving from the relations constituting a certain system of human relations in certain locations and in a certain time-period. In case we ascertain the main invariants, the complexity of the method of seeking the

development of concepts corresponding to a certain time and space represents further difficulties. This chapter deals with the issue of conceptualisations including the difficulties in making theorisation.

The Regulation theory is attractive due to its emphasis on the complexity of conceptualisations and due to its claim to offer intermediary conceptualisations for the use of the political economy on concrete social facts. Hence, the Regulation Theory offers a fresh synthesis of political economy that builds on Marxism's fundamental propositions while transcending the more egregious abuses of recent Marxist theories (Nadel, 2002:28; Robles, 1994:3). The Theory utilises the Marxist Theory's indisputably superior aspect that states the crisis of capitalism, by way of freeing itself from a dogmatic relationship with orthodox Marxism while developing a research programme that is clearly linked with the Marxist criticism of capitalist society and with the overall Marxist project (Aglietta, 1998). The capacity of the Regulation Theory to open up new opportunities for thinking about the international division of labour, in ways that effectively tackle with the dilemmas of determinism, economism and functionalism, each of which is faced by much of the contemporary Marxist theory, together with its sensitivity to the distinction between structure and regime, makes it a main instrument in the understanding of the relationship between the international division of labour and of law, for the purposes of this study. Yet, the Regulation Theory is not by itself providing the total sum of the conceptualisations required by this study. For instance, it is in lack of an advanced theory of state and of law. State power and law are critical factors here in shaping the dynamic of accumulation as well as being shaped by that dynamic. Moreover, the Regulation Theory's stress on strategic-relational method sometimes becomes unappropriate to the analysis of law that presupposes relatively enduring patterns of conduct that are more compatible with structuralist analysis (Jessop, 1985). Thus, contributions, with the condition of bearing the imprints of parallel epistemological standpoints, of other variants of Structuralist Marxism will also be accepted.

The main purpose behind the analysis and examination of the concepts, conceptualisations and the premises of the Regulation Theory and of the other variants of Structuralist Marxism in this Chapter is to provide the study of law a place in the lived experience of social relations, to provide a base to reject the systematisation of law as a set of rules suspending on air and to develop a capacity to refuse law as an institutional expression. To put it differently, the main purpose behind the search of the theory and conceptualisations is to locate law within the experience of social relations and shed light on the question of what part law plays in social life.

In pursuit of this purpose, the second section of this chapter reveals the theoretical approach of the study in matters related to the process of bringing into disrepute the attempts to partially systematise the society in mind, and evaluates the intermediary conceptualisations of the Regulation Theory, which provides the necessary analytical tools to Marxism in the passage from abstract to concrete. It also evaluates the main premises of the Marxist theory from the perspective of the Regulation Theory. Marxist premises, such as 'wage-labour nexus' and 'labour market as a means of marketing a generic human capacity' will be examined. The structural forms, which are among the most necessary conceptual tools for the theory and for this study will also be analysed in this section.

The last section explores class, state and law by employing Marxist political economy, which is considered to be able to systematise the answers to the questions of what part, if any, does law play in the reproduction of the structural inequalities of class, race and gender, which characterise capitalist societies, and through what mechanisms and processes it does if law participates in the reproduction of capitalist relations. This survey concludes with the consideration of law as a mode of regulation.

2.2. Regulation Theory[15]: Concepts, Conceptualisations and Premises

The Regulation Theory is intended to develop a comprehensive alternative to both the theories of political sciences based on closed systems and of economics, established on equilibrium theories. The National diversity[16] of capital accumulation is itself a result of the openness of the system of world economy. If we consider the notion of world economy as a closed system, which had the capacity of re-producing its foundations in an automatic manner, then a country's given position would be deducted from the principals explaining the mechanism of the system without investigating the inner mechanisms of the country in question. Closed systems fail to express the social nature of relations that they allege to systematise and to analyse the historical dynamics of the processes that they consider. [17]

Here, it should be mentioned that the Regulation Theory emerged in part from Althusserian Marxism (Curry, 2002; Ehrbar, 2002). Yet, its proponents aimed to overcome the latter's vulnerable assumption that structures somehow maintain themselves without effective social agency and without significant transformations (Jessop, 1990a:307; 2002a:7). The Structuralist vein (Boyer, 2002d:13; Lordon, 2002b:130; Saillard, 2002:183) in the theory provides an articulation point in connecting some of the conceptualisations of Structuralist Marxism and its

[15] Regulation here, in the words of Michel Aglietta, one of the founding fathers of the Theory, involves the analysis of the way in which transformations of social relations create new economic and non- economic forms, organised in the structures that reproduce a determining structure, the mode of production (Boyer, 2002d:1). Thus, it is entirely opposite of the purely microeconomic approach of regulation concerned with the optimum type of control for natural monopolies and collective services by public authorities as in the case of the Anglo-Saxon theory of optimum regulation.

[16] "It is here that the recent Marxist debate has major implications. …(F)or it establishes that capitalism is a specific mode of the social organisation of production and has definite historical preconditions and forms of development and that its institutional structure and forms of intervention must be transformed as capitalism changes and develops." (Jessop, 1990a:46)

[17] See Frank and Gills (2003) for a counter argumentation.

variants[18] as in the case of Social Structures of Accumulation Theory[19] (Coban, 2002).

The relatively autonomous spheres of politics and ideology, in line with many other variants of Structuralist Marxism, are theorised by Regulationists as analytical conceptualisations to understand the main dynamics of societal actions that are considered to be shaped mainly by the motive of capital accumulation, which is a motive inherited from derivationalist approaches to Marxism, and its organisational/institutional appearances, which overtly refers to institutionalism, however, this time backed by a critical realist epistemology rather than positivism.

The Regulation Theory has many variants (Jessop, 1990b); this study will erect its systematisations mainly on the Parisian variant of the theory. Theoretical concerns shared by the variants of the Regulation Theory are as follows; the rejection of the general equilibrium theory; the rejection of the universal logic of capital as a means to understand certain aspects of social reality, the implicit critique of orthodox Marxism; the aspiration toward a new synthesis; the preoccupation with accumulation and its crisis; the focus on the role of social procedures and structural forms; the sensitivity to transformations in capitalist development; and the reinterpretation of capitalism's historical evolution since the nineteenth century. Regulationists work with a set of epistemological and ontological presumptions feeding from both Structuralism and critical realism (Jessop, 2002b), and they are positioned at the conceptual opposite of methodological individualism.[20]

[18] The same structuralist vein in the World Systems Theory (Wallerstein, 1979, 1984, 2003), together with 'dependentistas' (Amin, 2003; Baran, 1974; Sweezy, 1992) and in the World System Theory (Frank and Gills, 2003; Ekholm and Friedman, 2003; Wilkinson, 2003; Abu-Lughod, 2003) could have been helpful for the purposes of this study, however the closed system approach employed by these theories Lipietz (1987) limited severely the number of references drawn to these eminent theorists.

[19] The parallel between these two theoretical constructs (social structures of accumulation theory and regulation theory) also relates to basic concepts and their general architecture. The concept of capital labour agreement in the social structures of accumulation theory is counterpart to the wage labour nexus of Regulationist research (Coban, 2002:300).

[20] From this point of view, theories of social science are reducible to theories of individual action. It is, thus not suitable for a genuine research on the nature of social reality since it is not possible to

Therefore, their conception of society is a society whereby hierarchical social relations are the main constitutive elements (Barrow, 1993:65; Robles, 1994:156; Saillard, 2002:183-189; Vidal, 2002:109).

Wage relation and labour process is at the heart of the Parisian Variant. Parisian Variant has introduced to Marxist Theory a significant amount of concepts[21] that proved to be beneficial on the way to abstract to concrete. In other words, it proved to be beneficial in the application of the Theory in concrete cases. The Parisian Variant is backed up by the attempts to provide it with a theory of agency demonstrating how structures are reproduced and transformed in and through class struggles. These attempts are mainly based on articulating critical realism with Parisian Variants Marxism.

This study is not Regulationist in the sense that it is not aiming to formalise the history or any other scenario taken from the Regulationist corpus. However, this study remains 'Regulationist' since it aims to apply a methodological manner of constructing a Regulationist model, which emphasises the ability to incorporate the major insights into Regulation Theory's speciality, by providing them with appropriate formal representation.

2.2.1. Regulation Theory as a Means to Understand Industrial Relations

Criticisms directed to the Marxist theory have a clear impact over the Regulation Theory's Marxism. In this subsection, I will deal with the way the Regulationists replied to the criticisms that are used to de-legitimise Marxist theories investigating the industrial relations. This attempt is inescapable since it will reveal the way the study constructs its methodology. Then, I will evaluate some of the intermediary

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grasp the dynamics of an economic system on the basis of bilateral interactions between individuals divested of all social and political substance.

[21] "There is rather a two way process marked by frequent mishaps, often uncertain in its results, where the objective is the development of concepts and not the verification of a finished theory." (Aglietta, 1987:66)

conceptualisations of the Regulation Theory, which enables the study to analyse its subject matter in the passage from abstract to concrete.

2.2.1.1. Economism, Functionalism, Determinism, Ecological Dominance and the Notion of Discovery

The theories dealing with the international division of labour, especially when they have structuralist inspirations, should tackle with the dilemmas of determinism, economism, and functionalism faced by many of the theories referring to international relations. Yet, rather than dealing with various criticisms on a case by case basis, I will deal with the main dilemmas, which, in turn, created different Marxist responses, thus, schools, to the same question. When needed, the contribution of the Regulation Theory will be mentioned separately. Lastly, it should be mentioned that these items are associated in nature, yet, for the purposes of clarity, I will deal with each in separate subdivisions.

Functionalism

A functional approach is not inherently or *a priori* objectionable. As a device, which serves to understand, it allows the observer to formulate a hypothesis linking social structures and social classes (Baert, 1998). Lipietz (1987:16-18) distinguishes two types of functionalism that are referred in various works of Regulationists, namely *a priori* functionalism and *a posteriori* functionalism.

Lipietz (1987:4) warns us against the dangers of *a priori* functionalism, which argues that a structure comes into existence because it fulfils a certain function meaning that a collective actor can determine both the rules that govern it and those it lay down. From the same vein, it is erroneous, for Robles (1994:10), to ascribe functions, purposes or needs to social structures if by this is meant that capitalism's or world system's requirements have to be fulfilled. Such a usage of functionalism leaves almost no space for political action (Hunt, 1993:123). It refers to a pre-destined configuration at the international division of labour. A large amount of criticisms directed to the Marxist conceptualisation of international

division of labour refers to this second type of functionalism.[22] [23] When a structure fulfils a function, functionalism in an *a posteriori* manner comes into existence. Here the existence of the structure owes nothing to the function of the structure. It is almost metaphoric. To ascribe a function to a structure does not lead to functionalism (Baert, 1998:38).

Economism

Gramsci offers two concise definitions of economism inherent in Marxism (Robles, 1994:11). The first definition refers to the tendency of applying the elements of liberal discourse to Marxism. In many Marxist approaches, the impact of the dichotomy between economics and politics can be observed. In conformity with liberal understanding, many Marxist approaches have not assessed the viability of a theorisation based on the ontological distinction between economy and politics (Jessop, 2002a:23). Subsequently, the economy is accepted to be the source of political power in many variants of the Classical Marxist theory. Criticisms are directed to that kind of an understanding of the capitalist society. As a result, Marxism is considered to be a simple allegation, which persistently expresses the claim that every fluctuation of politics and ideology can be presented and expounded as an immediate expression of the economy (i.e. base).

The second definition of economism reduces economic development to the course of technical changes in the instruments of work. The development of the productive forces, in this variant, is considered to be capable of determining the economic structure or the base of society, which in turn determines the political and ideological superstructure. Marxism, as the critics see it, alleges that the economy secures its own conditions of existence, that is, that the productive forces transform productive relations until the productive relations become fetters to the development of the productive relations.

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[22] Wallerstein's World Systems theory, for instance, is severely criticised both by non-Marxists and Marxists, due to its dependence on functionalist explanation in a priori sense (Robles, 1994:24). See also Wallerstein (2003) for his responses.

[23] For a detailed evaluation of functionalism see also Swingewood (1998:154-157)

In general, both of the two criticisms have a justifiable position in face of Bernstein or Kautsky's formulation of the capitalist society or of the third International's understanding of base and superstructure. The Stamocap[24] approach can also be considered as an example for economism (Barrow, 1993:40; Yılmaz, 2002:37). Both of the two economisms are, however, not in the agenda of current debates. Contemporary Marxism provided different solutions to these dilemmas (cf. Texier, 1979).

A third kind of economism refers to the conceptualisation of economy as a power capable of containing all the potentialities of reality, encouraging a direct mapping of the concept to concrete capitalist social formations (Robles, 1994:12). Reflectionism that is contained in this kind of economism can be considered as an impediment to the development of a general theory of law in Marxism (cf. Althusser, 2004; Woodiwiss, 1990). This kind of economism should be elaborated since this study generally deals with the imbricatedness of economic and legal relations that finds their expressions in structural forms regulating the economy and law.

Structuralist Marxism attempts to avoid the identification of economy with reality by referring to the realms of ideology, economy and polity (state) as relatively autonomous spheres. A further step would be found in attempts to stress the imbricatedness of the relations constituting these spheres.[25] By doing so, the relations in the form of the game of 'making out'[26], the internal labour market and the internal state are alleged to be composed of the three classical spheres rather

[24] "The laws of motion of capitalism occupy a central place in theories of state monopoly capitalism. These theories take different forms, but share certain assumptions concerning the periodisation of capitalism, and the nature of its latest stage. …(T)he stage of monopoly capitalism is characterised by the increasing tendency of the rate of profit to fall and thus of production to stagnate. " (Jessop, 1990a:33)

[25] See Hirsch (1991), Holloway (1991), Jessop (1990a, 2002b), Picciotto (1991), Woodiwiss (1990) for these attempts.

[26] 'Making out' means trying to shift the terms of the wage bargain to one's advantage by fair means or foul.

than each belonging to a separate sphere. Such a conceptualisation enables us to consider the continual effect of economy over other spheres in every single moment. Thus, while the concepts of the internal labour market and the internal state clearly have ideological dimensions, the relations of the agents making out with work hierarchy would include economic and political dimensions. Put it differently, the three general concepts i.e. ideology, polity and economy, refer to extra-theoretical realities that are imbricated with and interpenetrative of one another (Woodiwiss, 1990). Within this context, economic relations are not considered as self contained and self-reproducing (in line with the explanations mentioned in the subsection of functionalism) and it has been concluded that there is no one way relation between the economy, other institutions and lifeworld, meaning that the economy alone could never be determinant in the last instance. However, dismissing the ultimately determining role of the forces of production and the technical and social relations of production does not exclude their importance within the overall regulation of societal relations. Here the principle of economic determination can be stated in terms of the primacy of production in the overall circuit of capital (Jessop, 2002a:23).[27]

At that point, it should be mentioned that an excessive usage of the logic behind the third form of economism is not only directed to Marxism but to all kinds of theoretical constructions in the realm of political economy. In sum, there is still an existing gap, deriving from the meaning of the term ‘direct’ and leading the opponents of the theorisation to allege that a third kind of economism is inherent in political economy, existing. Yet if the refusal of the abandonment of the attempts that establish connecting points between capitalism and the concepts of state, ideology and economics, leads to economism, this thesis contends that this kind of

[27] Challenging the accusation of the third kind of economism is important since our explanations in this study in turn reveal that the course of capital accumulation is primarily shaped by the organisation of the capitalist economy under the dominance of the value form. Both the term organisation and the notion of accumulation, that are the core concepts of Regulation Theory, refer to the allegation that puts the production at the heart of the circuit of capital, meaning that productive capital’s performance is vital to the overall accumulation process.

economism is both appropriate and necessary since any solution at the expense of this type of economism would overtly lead to abandonment of understanding.[28]

On the other hand, this study argues that, when one accepts Structuralist Marxism's and its variants' solutions -among them the imbricatedness of the political, ideological and economic relations- there is no direct mapping. Then the third kind of economism becomes a valuable device to emphasize the weaknesses of both classical/neoclassical[29] and the ex-orthodox Marxist approaches in the realm of political economy. These approaches can be subsumed as 'the equilibrium theories'.

The application of the concept of general equilibrium results in the disrespect of imperfections, put differently, with the exclusion and the reduction of the diversions that are not compatible with the theory, from the observed economic phenomena. Besides, equilibrium theories lead to a kind of treatment of growth that evacuates history and, in turn, they lead "to a conception of time that renders dynamics a mere variant of statics- in effect, a logical time which is not the expression of any real movement" (Aglietta, 1987:11).

Equilibrium theories are at the same time the theories of closed systems, in which change can only happen as a consequence of the forces introduced by the inner dialectic of the system. Considering the notion of change only as a result of the inner dialectic of an autonomous system creates methodological problems in turn (Aglietta, 1987:12). The first problem is there is no reason to consider the changes as a result of pre-determined actions of the agents. If this is the case, then the

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[28] The objection of the critical writers to the most economist and determinist interpretation of Marxism, which very few Marxists in the Western Academy hold today, lead these philosophers to go to the opposite extreme of absolute contingency (Robles, 1994: 12). Their conclusion is that there are no historical conditions, connections, limits, therefore, no space for theory.

[29] From the perspective of Regulation Theory, the two major and interconnected failings of the dominant economic theory are the dominant economic theory's inability to give the historical account of economic facts and to express the social content of economic relations, thus, to interpret the forces and conflicts at work in the economic process (Aglietta, 1987:9; Boyer, 2002d:13).

continuity would be assured and the concept of reproduction would be simple. On the other hand, some degree of stability is required since it is not possible to imagine the ongoing reproduction of a system that is subject to change all the time. Another problem arises from the fact that reproduction and rupture do not confront one another in sterile opposition (Aglietta, 1987:12). In other words, the way things change are not only determined by the inner dialectic of the forces constituting social phenomena in question. Arguing that all objects are internally related to others to the extent that they have no independent identity and applying such an ontological proposition to all objects means that all explanations are entirely contextual and it becomes hard to see how Marxist or any other theory could be widely applicable[30] (Hunt, 1993:217; Sayer, 1995:27).

Due to the tendency of the overestimation of internal forces, the theories referring to closed systems do not provide intermediary concepts in the way to abstract to concrete, and remain highly abstracted. The Regulationists object to such kind of theory (Jessop, 2002b), which is considered to be destructive especially for Marxist theory, which, unlike liberal approaches to social sciences, has to respond the challenges in order to survive at least in the academic realm. To deal with the above-mentioned tendency, Regulationists have introduced the concept of 'constitutive incompleteness of the capital relation' that makes it possible to take into account both the inner dialectic of the forces within the system and the exogenous interferences to it (Jessop, 1990a: 2002).

A similar critic of closed systems in the field of law can be applied to a series of normativist positions including the orthodox liberal legal theory and other approaches considering law as a technical field. At the most general level, the closed system theory considers law as a result of the synthesis of the controversies of divergent 'non-ideological' and 'non-political' rational/normative arguments of

[30] "By contrast a critical realist epistemology does not assume that all relations are internal but is open to the possibility of there being not only internal but external, or contingent, relations in any situation. The job of abstraction thus becomes –among other things- to establish whether they are internal or external." (Sayer, 1995:27)

privileged participants within the field of law, without considering the social context within these arguments emerged (Hunt, 1993:218). In line with Regulationists, it may be argued that a relationist approach to law rejects the key assumption of classical jurisprudence that there is a clearly delimited, socially disembedded sphere of legal relations with a tendency towards automatic regulation of social relations.

Determinism

Robles (1994:14) establishes three types of determinism used in charge of Marxism. The kind of explanations in which the economic sphere determine social action constitutes the first type. This first type of determinism has been analysed in the subsection on economism. The second type of determinism occurs in cases where the laws governing historical and social processes are held to be similar to those of the laws governing natural phenomena. Consequently, free decisions of individuals could not be considered as the reason of social action. The independent existence of social structures in face of actors and their causal influence over them constitutes the third way of understanding determinism. In this case, human beings are unaware of the real motives behind their actions. This last one is strictly related to the position of the agent within the explanation.

One of the serious attempts aiming to provide the resolution of the dilemma between laws and necessity on the one hand and human agency on the other is made by critical realism. For critical realism, internal social relations are constitutive of social structures, which determine the notion of formal and substantial rationality and the meaning of individual benefit (Bhaskar, 1994:97; Hunt, 1993:242; Robles, 1994:16; Woodiwiss, 1990:110). However, the agents are not predetermined by the social structures (Brown, 2002; Collier, 2002; Creaven, 2002; Curry, 2002; Ehrbar, 2002; Favereau, 2002:315; Villeval, 2002:294). They have a certain sphere of autonomy.

"The starting point is the idea of internal relations, whereby the social agents involved are related in such a way that one is not conceivable apart from the other.

The classic example is the relationship between the capitalist and the worker; the capitalist controls the production process while the worker produces surplus value. The proposition that capital, which grants the capitalist the power he possesses, arises from social labour finds its precise expression in the Marxist concept of surplus value" (Aglietta, 1987:20). Each agent derives certain interests and powers from the relationship. In this sense, the internal relationship generates the agents. It also limits their powers; under capitalism, workers will remain workers as long as they do not possess means of production (Robles, 1994:16).[31]

From the same vein, the subject in law exists in the name of the law, that is, the law gives him his power (Hunt, 1993:8). Better, law grants the right of the power to give itself power. The power that law has realised in the notion of rights returns to law. The power of right is nothing but the power of subjects in law. The subject recognises itself in relation with the other subjects powered by law. Agents can direct/orient their actions only through constraints, common references, procedures and patterns that support collective arrangements of rules, conventions and organisations (Boyer and Saillard, 2002b:36). Without the rights, there would be no power on the side of the bearers of the given social relations since rights are not external to or supplemental to powers deriving from social relations of production, rather they are a part of it (Hunt, 1993:192). Therefore, the allegation that the changes in the law and legal discourses should wait for the changes at the level of the state and economy refers to a kind of reflectionism, which requires that changes in the realm of law should be understood as a reflection of the developments in the economy, in the social division of labour, which is in relation to the international division of labour, and in the social relations of production. Here we can observe an appearance of the third kind of determinism defined above. Given that the bearers of structures are not pre-determined and not constructed before they enter into the social relations of production, changes on the level of state and economy

[31] The idea of internal relations is also an important step in conceptualising the relations between the state and the economy as internal relations. The interaction between law and power is thus not external. Rights are not supporters of powers of the agents that are empowered by commodity relations rather they are among the social conditions of existence of the power gained by commodity relations (Hunt, 1993:195).

do not take place before the changes in the ideological/legal discourse. From this point of view, the constraining and constructing effect of social structures over agents are accepted, yet, the struggles underlying social relations, which produce qualitatively different internal mechanisms and new effects over the powers and relations of the agents, have also be taken into consideration.

Ecological Dominance of Capitalism and the Notion of Discovery

Despite the dominance of capitalist relations within the societal organisation, the total sum of the social relations cannot be subsumed under the commodity form and cannot entirely be subordinated to market forces. While assuming that not all the relations constituting the self-valorisation of capital are internal, how can then one imagine the conditions under which accumulation can become the dominant principle of societal organisation? Some clues to this question have been provided in the previous subsections. I will now take a further step and introduce two more concepts represented by two eminent Regulationists, namely Alain Lipietz and Bob Jessop. Lipietz (1987)'s conceptualisation of the notion of 'chance discovery' proved to be instrumental in assessing the responses of the agents. Jessop (2002a)'s reference to the notion of 'ecological dominance' of relations forming capitalist system helps constructing a bridge between the relations of production and the relations within the living world.

Lipietz (1987) uses the concept of 'chance discovery' in order to describe the everlasting imagination of the history. The term refers to the agent's realisation of its powers in a series of structural constraints. An agent cannot discover anything that is not existing and it can neither be forced to discover the action in question due to the needs of the forces constituting the structure. From the perspective of class struggle, the term 'chance discovery' refers to the openness of class struggle in which structural forms representing power balances are not predestined to behave in certain ways. The term 'chance discovery' not only provides a provisional solution for the theorisation of the immanent contradiction of capitalism at a given time and space, but also presents an impediment over the tendency to believe the realism of the concepts. Consequently, it is fair to say that

agents cannot understand the social reality apart from their theoretical positions. The way that agents take into account the concrete particular is not separable from the concrete in their thoughts. They 'discover' their opportunities within this context.

'Ecological dominance' refers to the structural and/or strategic capacity of a given system in a self-organising ecology of systems to imprint its developmental logic on other systems' operations far more than these systems are able to impose their respective logics on that system. This capacity is always mediated in and through the communicative rationalities of the lifeworld and the operational logics of other systems (Jessop, 2002a:25). For example, the ecological dominance of capitalism over the lawmakers is mediated in part through the managers of different organisations' calculations about the likely impact of their decisions on alterations in the labour markets and on the wage-labour nexus on which their legitimacy depends. It is clear that the way the mediation realised is dependent on the dominance of certain discourses within the given time and space.

2.2.1.2. The Intermediary Conceptualisations

In our way from abstract to concrete, we are continuing to prevent the exclusive use of high-level abstraction, which, without intermediary conceptualisation and without a scientific realist interpretation, may fall into the trap of epistemological essentialism or a priori functionalism. We will now focus on the intermediary conceptualisations of Regulationists.

Regime of Accumulation

The regime of accumulation can be described as such: a degree of correlation between transformations of conditions of production (productivity of labour, degree of mechanisation, and so on) and the transformations of the conditions of consumption (household consumption, investment, government spending, foreign trade) has to be ensured if a systematic and long term production and hence, accumulation, is to be sustained. The above-mentioned type adequacy between transformations of the conditions of production and the transformations of the

conditions of consumption refers to the concept of the regime of accumulation (Aglietta, 1987:68; Lipietz, 1987:14, 31; Beck, 2000:68). That is to say, the concept describes the fairly long-term stabilization of the allocation of social production between consumption and accumulation within a national state. When we consider this definition with the ongoing class struggle and with the tendency of organic composition of capital to rise, any stabilisation requires an increase in the relative surplus value. Productivity, with its effects on the cost of reproducing labour power and on the technical composition of capital, is strictly related to the increase in relative surplus value. Thus, the stability of the "form of social transformation that increases relative surplus-value" provides us some clues in the understanding of the crisis of Fordism.

A regime of accumulation provides the necessary base for the specific accumulation strategies in which the interests of particular capitals and of capital in general are harmonised (Jessop, 1990a:167). An accumulation strategy defines a certain economic 'growth model',[32] with its various extra economic preconditions. Besides, the concept includes a set of consistent strategies to adopt the 'growth model' by unifying the different moments in the circuit of capital under the economic hegemony of one fraction of capital (Vidal, 2002:109). [33] An accumulation strategy cannot be pursued by an omnipotent subject of history, yet, the policy implementers of the given national economy must take into account the dominant form of the circuit of capital[34] (liberal, monopoly, state monopoly, internationalised). In addition to the dominant form of the internationalisation of the capital (commercial, banking, industrial), the positions of the inner fractions of capital in face of world economy, the class structure, and the productive capacity of

[32] Thus a set of methods to keep the levels of productivity against the ongoing thread of the tendency of the profit rate to fall.

[33] As being different than the economic domination, in which one fraction of capital imposes its economic-corporate interests over the others, economic hegemony legitimises the leadership of the given hegemonic fraction by means of the overall acceptance of an accumulation strategy by the majority of the fractions of capital.

[34]Unlike the capital logic approach, Regulationists are far from asserting a single, universal logic of capital.

the given country constitute the other structural constraints for a successful accumulation strategy (Vidal, 2002:114).

Departments

The departments can be defined as divisions within the productive system that is based on the requirements of reproduction and accumulation (Lipietz, 1987:32). Divisions within the productive system (departments) contain two main departments. The first department could also be divided into sub-departments; namely 'production for department 1' and 'production for department 2'. Robles (1994:69), with an implicit reference to Ricardo, mentions that an increase in productivity reduces the value of the means of production for other means of production and of means of consumption (department 2). Department 2 could also be divided into two; 'production for wage earners' and 'production for the ruling classes'.

Relying principally on the demand of means of production within the same department, accumulation can proceed for a certain time of period in department 1, yet, due to the uneven development of the two departments, demand within department 1 will prove insufficient. When a higher organic composition of capital pushes down the profit rate, accumulation in department 1 will cease to improve. Aglietta (1987) mentions that the transformation of the conditions of the existence of wage earners, and therefore, of the norms of consumption of wage earners, provide a way to prevent a crisis.

Depending on whether capital accumulation is a means to expand the scale of production (with constant norms of production) or to further the capitalist reorganisation of labour (the real subordination of labour to capital), a regime of accumulation may be, respectively, primarily extensive or primarily intensive (Aglietta, 1987:71; Lipietz, 1987:33). At the core of an extensive regime is the extraction of the absolute surplus value. The production norms in extensive regimes are relatively stable than that of intensive regimes. An intensive regime increases productivity and extracts relative surplus value under the conditions of a

reorganised labour process, which is called Fordism (as a labour process) (Juillard, 2002:155). In both primarily extensive or primarily intensive modes of accumulation, the pole, which structures the validation of production (centre) may shift from one department to another due to the tendency of departments to develop unevenly. However, it is certain that the point at which new (and naturally alternative) norms of production develop shall always be distant to that actual centre.

Labour Process

The classical labour process was dependent on the division of management and workers in the same production place. This situation has been altered with the rise of Fordism. The activities that constitute the Fordist labour process could roughly be divided into three main segments/levels (Lipietz, 1987:71). These are: 1– conception organising methods and engineering (all of which become autonomous); 2- skilled manufacturing, which requires a fairly skilled labour force; 3-unskilled assembly and execution, which, in theory, requires no skills.

Mode of Regulation

As mentioned above, if the fairly long term stabilization of the allocation of social production between accumulation and consumption (i.e., between department 1 and 2) is to be realised, then a certain regulation in the form of complex social relations organised in the form of constitutions, institutions, organisations, procedures and habits has to be in order so as to coerce or persuade private agents to conform to the given schema of reproduction (Beck, 2000:68; Boyer and Saillard, 2002a:39-41; Jessop, 2002b; Petit, 2002:168; Robles, 1994:72; Villeval, 2002:292). The concept is also related to the 'reproduction of society' or 'social reproduction', concepts both of which serve to emphasize that it is not sufficient to treat society as something that persists in a relatively stable form over long periods of time (Coriat and Dosi, 2002:307; Jessop, 2002a:22).

Crises

Only certain configurations of structural forms are capable of adjusting the individual behaviour and expectations to the requirements of the regime of accumulation (Coriat and Dosi, 2002:307). The realisation of this correspondence is contingent in the struggle of both the opposite classes and within the classes in both the national and international realm.[35] Regulation of capitalism must be interpreted as a "social creation" in this sense (Aglietta, 1987: 19). This theoretical position requires conceiving crises as ruptures in the continuous reproduction of social relations. The dynamic principles of regulation are thus arranged on the basis of the classification of crises.

A latent failure in process of regulation or of accumulation brings about a crisis (Boyer, 2002d:6). If the clearing of this failure could be restored with the existing means of the regulatory mechanisms (thus, in a primarily endogenous manner), without challenging the overall structure, then the crisis here is a minor one. (Boyer and Saillard, 2002:43; Lordon, 2002a:175). The crisis here functions as a sanction to adjust individual behaviour. In cases of minor (endogenous/cyclical) crises, the stability of accumulation is not in danger. Another kind of crisis in Regulation Theory is the triggered crises. The concept refers to the shocks from outside, thus to the shocks which do not originate from the mode of regulation and which react only according to their characteristics. While the Regulation Theory accepts the possibility of rises linked with external shocks, the impacts of these crises alone are considered as limited (Boyer and Saillard, 2002:43).

The compatibility of structural forms and the economic dynamic is no longer guaranteed in case of major (structural) crises meaning that there is no automatic mechanism to ensure the reproduction of the system in case of a structural crisis (Lordon, 2002b:132). In case of structural crises, the nexus of the crisis is the

[35] As mentioned above, the Regulation Theory refuses the overestimation of the role of internal forces in the transformation a dynamic system and uses the notion of rupture in the explanation of the changes in a system due to impossibility of imagining ongoing reproduction of a system that is subject to change all the time without ruptures.

reproduction of the invariant element (namely, wage relation). Structural crises generally have an international dimension meaning that they are shared by many, if not all, national economies. Yet, the Regulationists are not enthusiastic in stressing this dimension of structural crises. This may be a consequence of the privilege of nation state in the theory. Major crises indicate that the mode of regulation is not adequate to the regime of accumulation either because the emergence of a new regime is being held back by outdated forms of regulation or because the potential of the regime of accumulation has been exhausted. The former is considered to be the case of the crisis of the 1930's and the latter is considered to be the case in the last major crisis starting from the early 1970's in the west, by Lipietz (1987:34).

The crises only come to an end when social struggles have crystallised into structural forms capable of guiding a regime of accumulation. The crisis periods, minor or structural, are the intense periods of social creation, thus the outcomes of the crises are always open (Aglietta, 1987:67). The Regulationist way of modelling crises, paves the way for a non-determinist theorisation, which is capable of including a continuing form of instability, namely the structural instability, to its area of investigation (Lordon, 2002a:177). This concept serves as a means for formalising endogenous processes of structural change.

2.2.2. The Main Premises of Marxist Theory from the Perspective of Regulation Theory

In this subsection, the general conceptualisations of Marxist Political Economy that will be employed throughout the study will be discussed. Wage and exchange relations have utmost importance in the Parisian Variant (Nadel, 2002:28). Their connections with the concepts of the norms of consumption and production, surplus value, organic composition of capital, value and profit will be analysed. Given that labour power is a fictitious commodity, it cannot be reproduced solely through the wage form and labour market. The concept of non-value form, which requires us to focus on non-market mechanisms of various kinds, will enter into the study at that point. The changes in the function of the individual labour law are all related to these basic conceptualisations, all of which will be employed in the

conceptualisation of socio-technical system as a part of structural forms regulating the accumulation. The changing nature of surplus value extraction, for instance, has impacts on the way the surplus production is regulated. Changing norms of production has deep implications on the subordination of the worker to the individual capitalist. Non-value form provides us with the necessary means to explain the limits of the surplus extraction and to understand the mutual relation between labour power and value, thus between concrete and abstract labour (Hardt and Negri, 1994; Sayer, 1979:25-30).

This subsection seeks to establish a way to place wage relation in an institutional context in which the regulation of exploitation takes the form of exchange relation realised in market place by way of legal forms discovered for the purpose of commodification of labour power. To do this, first of all wage relation will be investigated. The essential contradiction in the –fictitious- commodity form of labour between its exchange-value and use-value aspects lies in this relation. From the recognition of the social character of the individual labour to the distinction between abstract and living (in terms of Marx, concrete or useful) labour; from ideology to wage relation as a relation of production and of exchange, this essential contradiction has many associated appearances that will be referred to throughout the study. Secondly, we will place wage relation in an institutional matrix in which wage-labour nexus appears. The labour market and the legal forms discovered for the purpose of commodification of labour power find their meaning within this institutional matrix. The labour contract has the character of just a contractual framework, which is to be filled by the notion of control. Labour contract not only regulates the conditions of sale of abstract labour power but also establishes the capitalist's right to control labour power over concrete/living labour power. The notion of control and its relation with the legal concept of the subordination of the worker to the individual capitalist will be evaluated in order to trace the constitutionalisation of the norms of production within the labour law. The last issue that will be considered by this subsection is the attempt to understand the

main divisions of labour legislation with reference to the paradoxical nature of wage relation.

2.2.2.1. Wage Relation

On the one hand, the capitalist society is in need of, labour inputs (of labour power's material and/or symbolic usefulness), and on the other hand, it needs to provide the labour power with a socially determined amount of monetary income (wage- a market mediated monetary value) and social (status) means of subsistence. Thus, the wage is both a cost of production and a source of demand (Jessop, 2002a:21). Wage relation refers to this paradoxical nature of capital labour relation. The reproduction of this relation constitutes the core of the dynamics behind the changes in capitalist society (Aglietta, 1987:16; Hartog and Teulings, 1998:20; Lipietz 1987; Nadel, 2002:33; Offe, 1985). Since the reproduction of wage relation includes the reproduction of the essential contradiction in the commodity form of labour between its exchange-value and use value aspects. The reproduction and transformation of wage relations cannot be detached from capitalist accumulation (Aglietta, 1987:24; Nadel, 2002:33).

These conflicting needs concluding with an allocative problem is postponed continuously in capitalist societies by the adaptation and transformation of the monetary regime and the rules of competition throughout the Fordist era (Boyer, 2002c:73). Today new means to postpone the structural contradictions and strategic dilemmas in capital relation are in the process of construction. The institutional mediations of the contradictory relations of production in the technical and social division of labour provide an important entry point into the general analysis of the individual labour law as a part of the set of norms regulating capital accumulation (Boyer, 2002c:74; Fine, 1986:118; Jessop, 2002a:21; Nadel, 2002:33).

The realisation of workers' labour power obtained from the labour market adds value to the product (that it had shaped). More often than not, wage has to be less than the value added to the product by the total realisation of the workers labour power if capital is to accumulate. The difference between wage and the total value

added to the product gives us the surplus value. Yet, the product has to be sold for the realisation of the value added to the product by the worker. At that point, the essential contradiction in the –fictitious- commodity form of labour between its exchange-value and use-value aspects comes to the fore. Putting it differently, while the product has to be socially validated by being exchanged for an amount of money, the labourer of the product has to reach the necessary means of consumption in order to reproduce its specific use value for the individual capitalist for the next working day (Sayer, 1979:17-24). Validation refers to the recognition of the social character of the individual labour in the exchange process, and the need to access to the necessary means of consumption refers to the limit of surplus value that can be extracted from the labour power (Jessop, 1990a: 151; Nadel, 2002:29-30).

This basic contradiction has proved to be insolvable within the limits of capitalism. However, it can be postponed and/or reproduced in various forms. If the basic contradiction is to be postponed/or re-produced at another level, the means of production and the labour power have to be combined within the framework of new norms of production (Aglietta, 1987). Production and exchange,[36] thus, the norms associated with them, namely the norms of production and the norms of exchange, are thus associated within the process of validation.

Yet, even if the individual capitalist conforms to the production norms within the branch, there is no guarantee that production will be validated at the end of the production cycle since the permanent tendency to transform the conditions of production creates the possibility that at the end of a production cycle the individual capitalist's production will no longer conform to production norms. The

[36] Norms of exchange are based on production and consumption norms since indication of how much of a commodity produced at a certain level of productivity should be exchanged for another is related with the norms of exchange. If the manufacturer of the commodity in question uses more labour than is necessary to produce a commodity under average or normal conditions in market (i.e. if the productivity level that he sustains is lower than the average) the social character of private labour will not be recognised and the commodity will not be purchased by consumers unless the individual capitalist exploits the labour power higher than the enterprises operating on the basis of higher productivity levels.

reason for this is the struggle over surplus value (Murray, 1998; Robles, 1994:69). This situation indicates that each isolated private producer has to find (in an a posteriori manner) the conditions for the reproduction of his activity in the general circulation. Here we observe the social utility characteristic of the division of labour (Aglietta, 1987:42).

The initial value the individual capitalist owns, therefore, is a moment of a process and, provided that he invests and valorises it correctly, it is expected to increase (Lipietz, 1987:31). At the same time, the worker is obliged to spend his wage in conformity with the norms of consumption in order to reconstitute his labour power for the next working day[37] in a given social environment. The value of commodities necessary to reconstitute the labour power for the next working period is socially and historically determined. Thus, the rate of surplus value is also dependent on the consumption norms. In other words, the norms of production and consumption determine the ratio of surplus value to the total value added (that is, rate of surplus value) and the ratio of total value added to capital invested (namely, organic composition of capital) (Lipietz, 1987:31).

Up to the present moment, it has become clear that commodity relation arises from the need to exchange the commodities for the realisation of a surplus value. Yet the concept of surplus value is strictly related to a more general concept, that is, value, which expresses the relations by which particular labour performed in different sites, where productive forces are gathered together, becomes social labour (Aglietta, 1987:37). The concept of value (the general law of equivalence), with its effect of homogenisation over different practices of labour as a human activity, provides for political science, law and economics, a sphere in which objects under scientific investigation becomes commensurable (Aglietta, 1987:38).

By establishing an equivalence in which private labour appears simply as a fraction of the overall labour of society, the exchange transaction realises the uniformity of

[37] Or week or month depending the time of the next cycle

products as commodities (Reuten and Williams, 1989:40). Only by the acceptance of value as a homogenising factor can one imagine the uniform character of private labours (Sayer, 1979:18). The concept of abstract labour is the expression of this uniform character of labour (Reuten and Williams, 1989:41). The homogeneous field of value has provided the lawmakers of Keynesian welfare states with a legitimate notion, on which the general power of labour has been constitutionalised (Hardt and Negri, 1994:75). This uniform character refers to private labour as a fraction of overall social labour, which, in fact, is a living activity[38] constantly recreated by production (Aglietta, 1987:44). Once more, the essential contradiction in the –fictitious- commodity form of labour between its exchange-value and use-value aspects comes to the fore. Exchange value has to presuppose abstract labour by which commodification of labour power becomes possible.

The notion of labour power (in terms of Marx, concrete or living) brings into question the role of non-value form in the reproduction of labour power. The Value Theory of Labour implies that labour power is specific commodity and its value is defined by the value of the commodities, which are consumed in its reproduction. The calculation of non-value form in the analyses leads to an altered acceptance of the value theory of labour. The Parisian Variant considers labour power as a fictitious commodity whose circulation, not the production, in the accumulation process is organised under the dominance of the value-form.

Fictitiousity of the labour power requires the utilization of the ideological sphere in the reproduction of capital relations. The specific contribution expected from the employment of ideological sphere here is that it promises not just a means for understanding the ideological/legal grounds upon which a wage may be demanded/paid, but also a means for explaining why particular wages may be

[38] Yet "…(I)t is as absurd to speak of the value of labour as to speak of the weight of gravity" (Aglietta, 1987:39). "Labour can neither be the property of another nor possess property" (Offe *quoted in* Barrow, 1993:98). Labour represents the space in which the value is created, thus, it is un-measurable in terms of value (Aglietta, 1987:39). It is rather a social form, which presupposes the existence of definite social relations of production. As being a form, which is not less real than its inner content, it is surrounded by basic/surface forms whose inner contents have origins having no direct link with the existing relations of production (Fine, 1986:98).

demanded or paid since particular wages are constructed in the discourses, including the gendering and racialising ones, which define skills, responsibilities, justification of hierarchies, etc (Woodiwiss, 1990:149-150). Moreover, the discourses (of production), together with political and other economic determinations, have bearings on the structure of labour markets, be it internal or not.

Therefore, both the reorganisation of the labour process under the dominance of the value form, and the role of the wage form in shaping the operation of the labour market, industrial relations, collective consumption, and so on, are not strictly determined by an essence in the form of the value of labour power, but connected/related to the heterogeneous realm of living labour by way of discursive articulation which fills the gap between the fictitious commodity and the dominance of value form in the reproduction of labour power (Jessop, 1990a:216). Thus, reproduction of the conditions of capitalist accumulation becomes dependent on success in pursuing an appropriate accumulation strategy and its legal regulation, both of which will be analysed further.

Up to now, it has been established that the wage relation is both a relation of exchange and a relation of production (Aglietta, 1987:46, Jessop, 1990a:153). As a relation of production, wage relation "effects a division of the general space of value by dividing total abstract labour into value of labour-power and surplus value" (Aglietta, 1987:49). As an exchange relation, division of the total income of a given society, to the extent that it is closer to the Fordist model of development, is realised by the wage relation. The representation of abstract labour is fixed on one single commodity that becomes the general equivalent. This general equivalent (money) is the explicit form of the total abstract labour. This, in turn, requires the wage relation expressed in relation to a monetary equivalence, the wage.

The socialisation of labour under capital leads to the organisation of the working class, who assert their rights as free labourers with the aim of changing the division

of the total income of a given society against the rights of capitalists as the private proprietors, whose existence divide the general space of value into value of labour-power and surplus value. A right is set against a right, as Marx put it, and the outcome in law is the result of a struggle of class forces within the borders set by the law of value.

2.2.2.2. Wage-Labour Nexus: Wage, Labour Market and Juridic Forms in an Institutional Context

In classical or neo-classical economics, labour market, despite a few imperfections that prevents the law of supply and demand from being fully applicable, is no different from the other kinds of product market (Boyer and Drache, 1997:3). In Marxist Theory, labour is a special/ fictitious commodity since it alone creates a surplus. The value of labour power is governed by the relentless competition framed by a range of institutions and organisations under the dominance of law of value working at the global scale.

The Regulation Theory inserts that the complementarity of the institutions framing the labour contract and their compatibility with the current mode of regulation creates a nexus[39] in which the cost of labour is determined and determines the given stage of social relations in a given time and space. In its most basic form, the 'Fordist' wage labour nexus is understood as an exchange of social purchasing power for anticipated productivity gains within the founding social matrix, that is, the Fordist model of development (Bertrand, 2002:80; Petit, 2002:168). The changing forms in which the wage relation is re-produced and the reasons why this reproduction is accompanied by ruptures at different points of the social system, thus constitutes the main reason behind the study of the wage labour nexus (Aglietta, 1987:12-13).

[39] According to Robert Boyer's definition the wage labour nexus refers to the type of means of production, the social and technical division of labour, the ways in which workers are attracted and retained by the firm, the direct and indirect determinants of wage income, the workers' way of life (Bertrand, 2002:81).

The concept of wage labour nexus owes much to the acceptance of the imbricatedness of the economic ideological and political relations in the regulation theory due to its inherent epistemological stand. Put differently, the conceptualisation involves not only making structural forms economically endogenous, but also rendering an economic model socially endogenous (Bertrand, 2002:81) without falling into the trap of institutionalism (Basle, 2002:24; Robles, 1994), which, in its most radical variants, presupposes a neo-Ricardian approach denying the Theory of Value (Clarke, 1991a). What's more, this formulation has the benefit of taking into account the exogenous impacts by way of the structural forms that are open to various influences within and outside the value form over decision-making and the formation of expectations (Lordon, 2002a:175).

Such a conceptualisation moves away from pure economics and place wage, productivity and employment determinants in an institutional context that reflects the concrete expressions of class conflicts and structural crises (Boyer, 2002c:74). The same is true for rules governing work, which are introducing so many frictions to adjustment that are otherwise perfect. Both wages and the rules governing work guarantee the viability of labour market. This framework of analysis has a second consequence; if money tends to be governed by the principles of competition with other foreign currencies, the resulting instability also compromises the viability of the wage labour nexus; meaning that a country's place in the actual international division of labour has a certain connection with its set of institutions securing the right of capitalists to control labour power.

Labour Market: As a Means of Marketing a Generic Human Capacity

We have placed wage relation in an institutional matrix. Now, to reveal that the regulation of exploitation takes the form of exchange relation realised in the market place by way of legal forms discovered for the purpose of commodification of labour power we will firstly deal with the mechanisms of exchange relation in the market place. The contradictory character of social relations are always realised in the unity, albeit relative and temporary, of the elements in struggle in the market place and in market regulatory mechanisms (Wood, 1995:33-34). There are two

main fronts in the labour market. From the perspective of the Marxist Theorisation, the primary front, at which the supply coalitions of workers interact and struggle with the capitalists, creates the primary power differential, which is the power differential between the classes, constitutes the essential problematic. The secondary front derives from another power differential, at which the distribution of income, working conditions and employment opportunities within the totality of employees are realised (Offe, 1985).

Labour markets organise production and distribution as an exchange relationship of wages and labour inputs (in which value form is determinant) as in all other markets (Boyer, 2002c:73; Nadel, 2002:28; Teulings and Hartog, 1998:20). The labour market, like other markets, requires 'suppliers and buyers of labour,' which stand opposed to each other, to engage in continuous and complementary strategic adaptations as a result of contestation inherent in capital labour relation. The relationships consisting of strategic rational decisions can be observed both in the demand and supply side. These strategies include both individual and collective decisions, whose notion of formal and substantial rationality are constituted by market relations as a form of social structure (Sayer, 1979:13-17), and presuppose labour as a commodity, whose value can be abstracted from its use (Hardt and Negri, 1994:221).

However, even in the abstracted conceptualisation of labour, the way the labour power reaches the market do not resemble the way the rest of the commodities do (Teulings and Hartog, 1998:20). The expected saleability of the rest of the commodities determines their way of entrance to the market place (Offe, 1985:16). While labour power is continuously dependent on the supply of the means of subsistence, which can only be acquired through its sale, it has, in the labour market, no way of controlling labour power's own volume of supply (Jessop, 2002a:14). Besides, it is not in a position to wait for favourable opportunities due to its weakness over the control of the means of production. Offe (1985:29) notes that in contrast to all other commodities, the supply of labour power tend to rise

when the demand and wages fall since the possibility of not participating in the labour market becomes increasingly impractical for economic reasons. To conclude, it is safe to say that labour power enters into the market place for reasons other than those of other commodities, meaning that human reproduction is not organised capitalistically.[40] These reasons provide us a basis to take into account the role of forms other than value form in the evaluation of the supply of labour power (Sayer, 1979:26).

The relevant roles of the participants' in the labour market require the pre-appropriation of the means of production by the ruling classes before the establishment of labour markets. In order to produce commodities in modern society, the owners of the means of production obtain the right to use and thus control labour power (living/concrete labour) by way of the fictitious commodification of the potentials of labour, and within this context, the appropriation of surplus labour gains its distinctive capitalist mediation in and through market forces. In short, by way of commodification of labour power, exploitation takes the process of exchange, in which the power to control the potentials of labour is exchanged with an amount of money (Jessop, 2002a:15). Within the process of surplus extraction, the formal subordination of commodified labour power to capital is realised by the capitalist's right to control, which is generally exercised within the workplace, which provides the spatial dimension for the relations within the scope of the technical division of labour. Commodification turns both the labour process and the labour market into sites of class struggle, basic economic forms of which are shaped by wage-form, social and technical division of labour and the current organisation of capitalist production (Jessop, 2002a:15).

Legal Forms and Commodification of Labour Power

We have placed wage relation in an institutional matrix and revealed that regulation of exploitation takes the form of exchange relation realised in the market

[40] "Not yet, at least" (Jessop, 2002a:14).

place. Now we will examine the legal means discovered for the purpose of the commodification of labour power. To do this, it should be mentioned that just as value, money and capital are not things but economic expressions of definite productive relations, so too private property, individual labour law and collective labour law are not impersonal abstract entities but juridic expressions of the same relations (Fine, 1986:135). Yet, these expressions do not occur in a direct manner from the relations of production, but rather in an indirect way over the realms of polity and ideology (Jessop, 2002a:13). These reasons insert why the institutional rules of human reproductive activity, including law, and 'non-strategic demographic' and socio-economic processes, including non-value form, are among the most important determinants of labour supply (Boyer, 2002c:73-74). Consequently, it is fair to say that labour markets differ fundamentally according to the criterion of whether, and to what extent, buyers and sellers, which are the bearers of powers penetrated to economic and legal relations, can actually utilize rational market strategies.

Legal relations, in the realm of labour law, have two interconnected but analytically separable sources. The first appearance of these relations is law as a general regulatory device composed in the form of acts and relevant documents. The second is the labour contract, which is the legal form enabling the purchase of labour power and the subordination of the worker to the capitalist both in the national and international sphere (Hunt, 1993:28). It was only with the emergence of the labour contract that capitalism's exploitative production relations became possible objects of reference for the legal system (Woodiwiss, 1990:128). With the establishment of a labour contract, something new, a fictitious commodity, which did not previously exist as a commodity (Fine, 1986:114) and which was not consisted of other commodities in the market, enters the market. Only with the emergence of the labour contract as a legal form has the law of market become the law of production. Within this context, the labour contract is the necessary legal means 'discovered' to commodify labour power (Woodiwiss, 1990; 1998). The 'discovery' of this legal form enabled the exploitation of the surplus value to be

realised purely in the form of exchange. The labour contract is a text in which the individual capitalist's right to control the activities of individual labour in the labour process is established. On the other hand and at the same time, it determines the conditions of the sale of abstract labour in the labour market together with the collective action capacities of labour as established in the collective labour law.

Contractual relations are constitutive of the production relations conceived generally as the relations between economic agents. To put it differently, there is not a right free conception of the relations of production since the contract is not itself a relation of production (Hunt, 1993:197-200). The purely capitalist concept of private property, including corporate property, owes its meaning to the appearance of the labour contract. In sum, the social relations of production cannot be identified without reference to property, the contract or other forms of legal relations (Juridic forms) since they are the juridic expressions of the same relations (Fine, 1986:135).

So far, it has been established that the labour contract is not a simple form resembling the other contracts that can be observed in the law of obligations. The distinctive feature of the exchange between the capitalist and the worker lies in the content of the labour contract. The content of the contract differentiates it from the other contracts regulating the exchange between buyers and sellers whose intention is to be a part of a real commodity circulation. As mentioned above, capitalism is not a self-closed system capable of reproducing itself wholly through the value form in a self-expanding logic of commodification. This is linked to the logic of the fictitious nature of labour power as a commodity and to the dependence of accumulation not only on labour but also on various other fictitious commodities and non-commodity forms of social relations (Jessop, 2002a:19). [41]

[41] This incompleteness rules out the possibility of a pure capitalist economy (Jessop, 1990a). The resulting instability explains uneven waves of commodification, de-commodification and re-commodification as being the products of the struggle to extend the exchange value moments of the capital relation (ecological dominance) (Jessop, 2002a:19; Offe, 1985).

The content of the contract (the right of individual capitalist to control labour power) changes with the uneven waves of commodification, de-commodification and re-commodification. Putting it differently, the labour contract has to be in conformity with the codes regulating the labour relations in the society (Offe, 1985:21). Uneven waves of commodification, de-commodification and re-commodification creates different structural differentials between the respective possibilities for the supply and demand parties to employ rational market strategies. Depending on the state practices, which can be Keynesian, neo-liberal or anything else, these different structural power differentials are shaped by the labour contract and relevant legislation having different contexts in different times.

The legal conceptualisation of the capitalist's right to control concrete labour is expressed in the term subordination (Clarke, 1991a:60) that refers to the required degree of control with reference to the production norms of given time and space. Due to the specific nature of the item of labour contract, the seller of labour power does not lose every legal and physical power of disposition of the item sold. The work performed in return for the payment (wage) cannot be fixed at all. There is no comparable measure of clarity (or no determinacy of the concrete output) in the subject matter of the labour contract. Concrete business conditions are not yet fixed or known. One cannot determine the number of body twists in the performance of the duty on the side of the individual worker.[42] In the final analysis, the limits of the individual capitalist's right to order the performance of a certain job and of the individual worker's rights to resist to these orders are determined by the set of conditions that are not solely limited with the borders of the labour process and these conditions time and space dependent (Burawoy, 1979). The conditions of compliance of workers to the orders of management create a sphere of conflict[43],

[42] Moreover, the use value an individual capitalist extracts from labour power, is quantitatively and qualitatively related to the predisposition of the worker, to her compliance to work and so on (Offe, 1985:23).

[43] Beside legal forms, forms of organised surveillance, control, instructions, supervision and ideological accountability can be mentioned in the organization of the work force in accordance with the needs of labour process in question.

which cannot be regulated solely by legal forms. This fact refers to the role of ideology in the regulation of work in general.

Compliance to the orders, whether on the basis of pure coercion or of different proportions of coercion and consent, implicitly requires the dependency/subordination of the seller of the labour power to the owners of the means of production under the conditions of given norms of production (Fine, 1986:115). Control of management over the labour power owes its basis to this 'dependency/subordination' supported by the fragmentation of collective workforce and isolation of the individual worker (Clarke, 1991a:60).[44] Thus, the labour contract has the character of just a contractual framework, which is to be filled by the notion of control as expressed in the legal concept of the subordination of the worker to the individual capitalist. This is the point at which norms of production and the legal concept of subordination come close and signify the different faces of the same phenomena.

2.2.2.3. The Main Divisions of Labour Legislation and the Paradoxical Nature of Wage Relation

The organic composition[45] of capital –in a negative manner- and the rate of surplus value –in a positive manner- determines the rate of profit. The norms of production and consumption determine the ratio of surplus value to capital (rate of profit), which could be considered as the nucleus of the capitalist mode of production (Lipietz, 1987:31). These norms provide the system a social fix [46] that partially compensates for the incompleteness of the pure capital relation and gives it a

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[44] Wage slavery in sense Marx uses the term.

[45] "For any production process, the organic composition of capital is the aggregate expression of the technical composition reduced to abstract labour time" (Aglietta, 1987:53).

[46] "I infer retroductively that reproducing and regularising capitalism involves a 'social fix'. …(T)his helps to secure a relatively durable pattern of structural coherence in the handling of the contradictions and dilemmas inherent in the capital relation. One necessary aspect of this social fix is the imposition of a 'spatio-temporal fix' on these economic and extra-economic elements. It achieves this by establishing spatial and temporal boundaries within which the relative structural coherence is secured and by externalising certain costs of securing this coherence beyond these boundaries." (Jessop, 2002b:3)

specific dynamic through the articulation of its economic and extra economic elements (Jessop, 2002a:6; Castree, 2002). The way the norms of production and consumption combine[47] is dependent on the way by which the essential contradiction in the commodity form of labour between its exchange-value and use-value aspects is institutionalised and thus postponed. Labour law has a specific/creative role in the realisation of the above-mentioned combination (Jessop, 1990a:255) as it is the main device by which the capitalist's right to control labour process and market is secured. The institutional mediations of the contradictory relations of production in the technical and social division of labour provide an important entry point into the general analysis of the individual labour law as a part of the set of norms regulating capital accumulation (Boyer, 2002c:74; Fine, 1986:118; Jessop, 2002a:21; Nadel, 2002:33).

The paradox inherent in wage relation has its footprints on the main/classical divisions of labour legislation, which are the law regulating the rights and duties of the individual worker (individual labour law) and the law for organised action of workers (collective labour law). As a relation of production, the norms regulating wage relation mainly focuses on the use value of labour power, thus, the abstraction of surplus value both in the relative and absolute sense in the labour process. These norms arise from a qualitative difference in the positions of the two main classes vis-à-vis the conditions of production. Both the collective and individual labour law may include provisions regulating the extraction (exploitation) of concrete labour in the realm of production, yet the major regulatory device within the realm of the technical division of labour is the individual labour law.

Bearing in mind the fact that the overall revenue of a nation depends on the conditions of production, this realm is interconnected to the relations of exchange by way of the distributive function of wage relation as a relation of exchange.

[47] Another form of temporality is technical change, which, as Lipietz (1987:32) notes, itself an effect of the accumulation of capital under conditions defined by the present state of the conflict between the main classes, that is to say, between wage earners and capitalists.

What's more, without the circulation, thus exchange, labour do not subordinates to the law of value. To the extent collective labour law focuses on the abstract labour, the institutionalised compromises have certain bearings on the norms of competition and exchange. Put differently, the capital-labour relations are dominantly regulated within the realm of social division of labour, in which individual capitals compete with each other within a national formation, by the collective labour law as the function of socio-technical system, which have been under serious changes since the crisis of monopolistic regulation.[48]

2.2.3. Structural Forms: State, Law and International Division of Labour

The Parisian Variant's major contribution to the understanding of the relation between the state, law and economics is the introduction of the concept of structural form in which various relations becomes imbricated under constitutional order, institutions and organisations. The Regulation Theory is not concerned merely with the narrow economic reproduction, but, with a wide range of social conditions necessary for economic reproduction to occur since the inner dialectic of forces in the sphere of economy does not provide a basis of explanation for the dynamics of social relations (Boyer and Saillard, 2002a:36; Delorme, 2002:115; Reynaud, 2002:87). The existence of social relations is dependent on various discursive and extra-discursive facts[49], which are connected to and imbricated with political, ideological and economical spheres (Nadel, 2002:32). The very substance of economic relations is social. Put differently, they are composed of socially instituted forms (Nadel, 2002:32), which had, to a certain degree, the capacity of

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48 Among other reflections of class struggle inflation has an important role over the wage relation as a relation of exchange. The most general determination of inflation is the instability of the relations of exchange equivalence (Aglietta, 1987:49). Yet the instability of exchange equivalence is under the impact of the transformation of the conditions of production and the characteristic properties of the monetary system. This instability has a determining influence on the wage relation as an exchange relation.

49 Discourses are not independent to the social context in which they emerge (Jessop, 2002b:7). The reciprocal relations among them cannot be explained by linear causality giving one of the realms a priority in the 'explanation'. Asserting imbricatedness of right and power prevents linear causality, which in turn results with deterministic interactions, between the reciprocal actions of the fetishised forms of capitalist relations, namely the state and economy.

determining the meaning of the rational for the individual (Basle, 2002:24; Boyer, 2002d:17). An attempt to provide an answer to the question of how we analyse the social relations of production occurring in a nation state and how we relate them to the international division of labour should place the role of politics, law, and of ideology in economics (Delorme, 2002:116; Theret, 2002:123).

The School's attempt to establish the category of structural forms has a clear resemblance to Marx's critique of the economic forms of civil society and of his analysis of social relations which lie concealed behind and give rise to these forms (Boyer and Saillard, 2002a:37). Marx's thesis was that economic categories could be understood only as the expression of a definite historical organisation of labour (Jessop, 2002a:13). The theoretical hypothesis he defended was that the key to understanding economic categories lay in an exposition of the social relations, according to which men and women organise the labour of society. According to Fine (1986:95), this fact represents that the imagery, which informs capital, is not that of base and superstructure but that of form and content: economics expressing the 'surface forms' (i.e. value, price, money, capital, wage-labour, etc.) of the capitalist society, the 'inner content' of which comprises social relations of production. He started with the analysis of surface forms and linked this analysis to the analysis of the relations of production. This method has given rise to the erroneous impression that the economic expressions of the relations of production are their only expression, as if there is an exclusive association between economics and social relations of production.

Regulationists stress that the development of regular social relations result in the occurrence of basic social forms which are the equivalence of 'surface forms' of economic relations in other realms (i.e. polity, law and ideology). By the same token, the 'inner content' of these surface forms comprise the social relations of production. The mode of cohesion of these basic social forms constitutes a structural form, which represents the principle of the organic unity of all the basic social forms of the given social relation (Robles, 1994:71). Social forms become

condensed in the form of institutions that socialise the heterogeneous behaviour of agents, forging a passage from the world of individual to the man in the community (Coriat and Dosi, 2002:307).[50] Due to the diversity of the social relations altogether consisting of the structural forms, these forms are not the direct representation of the economic facts in the political realm. Economic facts are not the atoms of social reality. Structural forms have various roots and products having legal, ideological, economic or politic influences on the total sum of the relations constituting the society. To put it differently, they have various outcomes having different functions in various spheres.

In the sphere of law, these basic social forms/surface forms include contract, legal regulations on a certain topic, the worker and employer categories in labour law, private property, free will, equal right, and so on, since the self-same relations of production, which gave rise to the surface economic forms of capitalist society, also give rise to its juridic forms (cf. Holloway and Picciotto, 1991:135-147). Labour law has the capacity of regulating industrial relations constituting a part of the relations of production, is among them. Thus, if the representationalist and humanist conceptualisations are to be avoided together with linear causality in the explanation of these relations, the notion of structural form has many virtues including a direct mapping of the place of labour law within the norms regulating social reproduction.[51][52]

State as a Structural Form and Its Relation with Other Structural Forms

The state is the most-excellent structural form of regulation (Aglietta, 1987:22). Although, it is not limited to the ensemble of structural forms (Delorme, 2002:115;

[50] It is important to stress that institutions are not the only form in which social relations become condensed, there also exist social structures that can perhaps be best understood as non-institutionalised condensation of social relations such as the market or the family (Hunt, 1993:8).

[51] Essentially the humanist roots of classical economy accused by Marx of viewing economics as a science which seeks to establish laws for combining production, exchange and consumption relations based on natural/humanistic behaviour patterns (Nadel, 2002:32).

[52] "The regulation approach is still evolving research programme that offers a very interesting and fruitful way to analyse the interconnections between the institutional forms and dynamic regularities of capitalist economies" (Jessop, 2002b:1).

Theret, 2002:123) it is endowed with a limited but real power to transform other institutions (Favereau, 2002; Lordon, 2002b:132). There are three more socially instituted forms of relations, which have their institutional expressions in different forms in various capitalist societies. An examination of these institutional expressions would pave the way to a coherent conceptualisation of state, ideology and economic relations.

These three socially instituted forms of relations, defining a given regime of accumulation and stabilising the class struggle in a given peripheral country for a certain period, are as such (Guttmann, 2002:57): money as a social institution, the socio-technical system covering all aspects of the capital labour relation,[53] and arrangements governing international relations that have dominantly economic aspects (international like structural forms). Their institutional expressions[54] in various capitalist societies can operate only with the simultaneous operation of all the others. Their cohesion, except the arrangements governing international relations that have dominantly economic aspects, depends on the state.

The unifying existence of the state does not always require the state to be the top of the hierarchy of structural forms since this hierarchy is determined by the given mode of regulation [55](Boyer, 2002a; Boyer and Saillard, 2002a:39). The hierarchy among them is neither permanent nor universal (Villeval, 2002:294). Even wage relation is subjected to this rule. The 1990s have witnessed the rise to power the

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53 Structural forms in the realm of industrial relations contain the development of wage relation. The complex social relations constituting wage relation are organised within the socio-technical system. A complete analysis of the mode of cohesion of the basic social forms constituting trade unions and their umbrella organisations requires the analysis of the organic unity of all the relations constituting wage relation.

54 Respectively, the central bank, trade unions and the corporation (including multinationals), and OECD, WTO, IMF, WB etc.

55 "For the Fordism of the post-second World War period, credit money, an original wage labour nexus and an oligopolistic form of competition proved to be more important than transformation of the state in the strict sense. In contrast to this period, in the 1990s the intensification of monetary constraint and the internationalisation of competition appear to precede and shape transformations in the wage labour nexus. " (Boyer and Saillard, 2002a:39)

internationalised financial capital, imposing its logic, on the state[56] together with the wage labour nexus (which is subjected to the flexibility imperative) and with the monetary regime (Boyer, 2002b:331; Jessop, 2002a).

Structural Forms at the National Level: Formal Indicators that Shape the Evolution of Structural Forms

The stability function of the structural form presumes an institutional framework capable of channelling potentially destabilising forces towards a kind of balance (Delorme, 2002:117; Guttmann, 2002:57). This institutional framework reacts as an intermediary between forces, in other words, conflicts between social groups arbitrated by processes of relations that have political, legal, economic and ideological dimensions (Boyer, 2002d: 17). Mutually compatible accumulation regimes and wage norms emerge in such a structural context (Nadel, 2002:32). Yet the institutional framework's action, thus its exercise of its function of stability, requires that the structural form itself had to be subjected to a continuous change. At that point of the study, we will first investigate some of the indicators of change, then establish their connection with the international division of labour.

Boyer (2002b:322) identifies some of the formal indicators within the nation state that shape the evolution of structural forms. The first is the constitutional order, defining the rules making it possible to resolve conflicts between contradictory partial rationalities produced by different structural forms. The way the socio technical system is framed in the 1961 and 1982 Turkish Constitutions bear the imprints of the capital labour relations of their times. Yet the relation of the Constitutions with their epoch is by no ways one sided. The framework provided by the 1961 Constitution enabled the workers, irrespective of their actual powers in the workplace and in the overall population, to demand their rights effectively.

The second factor is the institutions. The concept identifies intangible means that often correspond to the law of structuring interactions between organisations and

[56] By way of influence over the structural need of the states for credits.

other agents whose relations constitute the relations of production. The institutions govern both the political and economic spheres. Their places within the hierarchy of norms vary. While collective bargaining and the labour contract, the main institutions of industrial relations, are both regulated by constitutional provisions and by relevant acts, severance pay is only regulated in the labour act. Not all the institutions have to be acknowledged by legal regulations. On the other hand, acknowledgement by law is not supplementary to the regulatory powers of the institutions. Rather, the discovery of the need to regulate an institution represents a qualitative shift within the course of regular social relations regulated by the existing structural forms. Thus, the relation between the institutions and their legislation makes it necessary to analyse the constitutional and other legal provisions for an inquiry on industrial relations. Norms provide a base to analyse discursively the way labour is constitutionalised within the set of norms regulating industrial relations.

The third factor is the organisations. They express the power structure of the society in question. They are capable of bringing about a set of routines to co-ordinate individual strategies and of controlling opportunistic/rational behaviour within their boundaries. The correlation between the growing influence of business, the proposals of business associations and the emerging new institutions acknowledged by law will be investigated within this frame. Organisations include, among others, trade unions, companies, relevant departments of the state, non-profit based organisations. The fourth factor is the routine behaviours. Routines define a rule of action obtained by frequently converting tacit skills into codified knowledge. The fifth is the behaviours shaped by conventions. Conventions result form the frequently unintentional convergence of a set of expectations and independent behaviour through a series of entirely decentralised interactions with no explicit co-ordination procedure. The habitus is the last. Habitus reflects the consequences of the socialisation process for the formation of representations and individual behaviour.

In many ways, the history of the 1980s and 1990s are written as the resurgence of the market forces or the resistance of nation states to the neo-liberal assault. There are two main explanations regarding the national state's transformation throughout the 1980s and 1990s. The first one emphasises that powers of nation states are eroded in face of globalisation.[57] At the opposite rests the front alleging that globalisation is conducted by nation states[58]. All these approaches consider the fetishised forms of capitalist relations of production, namely the state and the market, as given[59] and refer to empirical data without questioning the explanatory powers of their main conceptualisations (Fleetwood, 2002).

The Regulation Theory conceptualises the state as a social relation, thus, considering the state and market as distinct entities becomes impossible (Villeval, 2002:292-293). The implicit notion of (Gramscian) integral economy[60] in the Regulation Theory is concerned with the social conditions necessary for the reproduction of the capitalist relations of production (Jessop, 1990a:6). What distinguishes Regulationists from Gramscian interpretations is their refusal of the well-known distinction between state and civil society (Delorme, 2002:115).

As mentioned above the structural forms reproduce social conditions necessary for the reproduction of the capitalist relations of production. This linkage provides the Regulationists to refuse the state-society distinction. In that sense, the state is certainly a complex category, in which market economy is a composite, rather than being apart (Delorme, 2002:121). Thus, explanations of dynamics either in terms of the failure of the market or of a failure of the state, as in the case of recent discussions on Turkish polity, lose their meaning. Such a conceptualisation

[57] Kenichi Ohmae is one of the eminent theorists of liberal view. Cox (1987), Gill (1993) and McMicheal (2000) are the Marxists referring to the diminishing powers of nation state.

[58] See Hirst and Thompson (1995) and Wood (1995).

[59] Originality of Marx's critique of political economy as fetishised forms was precisely to demystify, as he put it, 'the transformation of social conditions into things' (Yalman, 1997:83).

[60] "The integral economy can be defined as an economic nucleus plus its mode of social regulation or as the historic bloc formed through the structural coupling of an economic base and the various social forms supportive of and or consistent with it." (Jessop, 1990a:6).

prevents us from considering the nation state as a unified bloc which act on behalf of globalisation or which is subjected to the waves of globalisation.[61]

As we will observe in the analysis of the expansion of Fordism, exogenous factors are a part or a founder of internal forces, and internal factors are interrelated to the 'outside' world. Thus, the question of to what extent the nation state preserved its powers in face of the globalisation process loses its meaning. Due to the fact that they are consisted of social relations, the institutions and apparatuses have no powers of their own. Here, the main problem rests in the question of how we analyse the social relations of production occurring in a nation state and how we relate them to the international division of labour. At that point, the nation state has to be included in the analysis of internationalisation as a relational structure and a realm of struggle (Petit, 2002:172). To put it differently, we should analyse the extended reproduction of capital in a national state, which is a part of the reproduction of capital relations on a global scale, rather than evaluating the everlasting relations between the state and the market forces as distinct entities.[62]

Structural Forms at the International Level: The Evolution of Structural Forms within the International Division of Labour

The social coherence of an institution is not intrinsic to its existence. It is attained only through a process of socialisation mainly through learning. Given that the coherence of institutions toward each other is observed ex post in the regulation theory, the syntax of the institutions in a hierarchical structure and their viabilities are only relevant if they are consonant with the overall institutional architecture of the society (Villeval, 2002:294). On the one hand, neither globalisation or

[61] However, this is not to say that the politics pursued by the state apparatuses are not a part of the process of globalisation.

[62] The recognition of the state's strategic function in the class struggle can be observed in Aglietta's decision to analyse regulation within a national framework. Besides, he acknowledges that "the state forms part of the very existence of the wage relation" (Aglietta, 1987:32). Lipietz's conclusion on the impossibility of an international regime of accumulation also feeds form the same vein (Lipietz, 1987:19,41). The notion of state is also vital in the understanding of the specific infrastructure of a particular social formation, which is influenced from different rhythm and forms of penetration of the capitalist relations of production (Aglietta, 1987:73).

internationalisation nor the internal dynamics of a country, lead to a geographical or historical automatic convergence of institutional architecture. This means that the structural forms specific to Fordism do not occurr directly from the 'needs' of capital in the economic sphere (Billaudot, 2002b:144-149), and the form in which class struggles are realised is not the sole expression of inner class struggles specific to each country (Boyer, 2002a:232).

On the other hand, the place of learning in the process of socialisation makes institutional architectures of Fordist countries comoparable to a certain extent comparable. The forms in which class struggles are realised are dependent on various discursive and extra-discursive facts, having international dimensions. The ideological context of 'learning' enables us to take into account the correlation between the similar 'discoveries' made by the policy makers of various countries at the same time, in theorisation.

Changes in the norms of production and consumption and in the intensification of international competition have a serious impact over the structural forms, and challenge their existence (Aglietta, 1987:189).The structural forms of regulation embody the history of social struggles and the inter-capitalist competition in and between each nation and, thus, they are capable of responding to de-stabilising forces. This potential/capacity for evolution ensures social cohesion. [63] If this is not the case, then a structural crisis occurs. The parties searching for a new balance to overcome the crisis seek for new institutional forms for a new mode of regulation.

The necessity of the new structural forms may be 'discovered' by way of 'lessons' taken from allies or of international requirements for borrowing. The form of a certain institution or organisation can be considered by the ruling classes of a given country as reliable and functional, while the conditions of its existence (the existence of basic relations constituting a social form) were not existent in the

63 This statement is in contradiction with the classical Marxism which stresses the stability of superstructural forms in face of the relations constituting infrastructure and which in turn functionalises revolutions as a means to repair the gap occurred between the two.

economic sphere. Yet, it is vital to mention that, to the extent that form determines function (Jessop, 1990a), once established, forms begin to influence the substance, that is the class struggle. Since these forms not only regulate the existing powers of the parties but also create their powers. The structural forms of the previous period, then enters a period of change. The specific historical conjunctions, in which the structural forms develop and/or change their functions provide the basis of an uneven diffusion of international division of labour into the national mode of regulation, which is now in crisis.

Hence, the social and political struggles cannot be put in their places without taking into account the international dynamics of the process of institutional learning which is a part and parcel of the relations of production on a world scale and which, in many cases, provides the parties of industrial relations, powers, via usage of international discourses of production (as in the case of Turkish bourgeoisie referring to the international legitimacy of flexibility), of knowledge, of international alliances and other ways (such as credits having implicit or explicit conditionalities), which have strong implications on national politics (Boyer and Saillard, 2002a:40). The restructuration/establishment of the central banks (credit system) and trade union confederations in the liberal corporatist model throughout the peripheral world after the Second World War should be evaluated from this perspective.

The 'discoveries' of policy makers having political or ideological products do not have to appear after the 'discoveries' whose expected functions are related to economy. Rather, they are imbricated.[64] The ideological influence owes much to the strategies of the hegemonic state. Yet the capacity of policy makers to discover institutional or organisational forms and/or policies cannot be understood solely by reference to a hegemonic state. In addition to the internal dynamics of the country

64 The international reproduction of the US norms of production cannot be understood only with reference to the direct American investments. The role of US currency in the reproduction of Fordist system was backed with the validity of superiority of US norms of production which was a matter of ideology in the first hand.

in question, the other forms of inter-capitalist competition should be taken into consideration. The role of USA driven international-like structural forms, EU institutions, and ILO in the Turkish legislation should be evaluated in this respect.

The role of the discourse of flexibility as an ideology employed in the formation of the socio-technical system of post-1980 Turkey embeds in a historical conjuncture that corresponds to neo-liberal policies becoming dominant throughout the world. This historical conjuncture orients and constrains class struggles through the medium of the changing functions of structural forms that were shaped in the golden age of Fordism. The form of capitalist control over the conditions of accumulation is dependent on the re-institutionalisation of the class struggle as a complementary to the existing level of international competition in general and to the conditions of debt re-structuring particularly in Turkey.

Preliminary Conclusion

As we have investigated, the stress over the internal class struggles and the efforts to establish the conditions of the stabilisation of a regime of accumulation and a mode of regulation in a given national economy have resulted in the understatement of the effects of the international division of labour on the formation of national states in the Regulation Theory. The refusal of the notion of the international division of labour, which suggests that there is some Great engineer who organises labour in terms of a pre-conceived world plan, concludes with the formation of a direct link between stability and a hegemonic state in the international realm[65] (Boyer and Juillard, 2002:239). It is only when a state exercises hegemony in international relations and acts as a substitute for an international mode of regulation, some degree of stability is achieved (Boyer, 2002d:7; Petit, 2002:168). On the other hand, the intervention of the norms of production and of consumption to a national economy is by no means one sided. The competitiveness of a national economy is founded on its capacity/ability to

[65] "United States is to regulation theory what England was to Marx." (Boyer and Juillard, 2002:238).

transform its domestic relations so as to adapt to international norms imposed by the international division of labour (Vidal, 2002:109). This formulation paves ways to an underdeveloped theory of international regulation. If there is any, international regulation should refer to the translation of the principles of the norms of production and consumption of the hegemonic model of production into norms and institutions which direct the decisions of private agents in a national economy and which determine the rules for state intervention. The principal tools of such kind of an emerging international regulation would be international like structural forms that are functioning mainly in the area of trade and financial networks, multinational firms, and international regulators of monetary system (cf. Hardt and Negri, 2001:320). At that point, it is safe to say that rather than using capitalist national state as the sole regulator of the dynamics of capitalist accumulation in the international sphere, following Jessop (2002a), we may look at the sectoral and regional regulatory actors of regulation without forgetting the role of the national state.

2.3. Contributions from outside of Regulation Theory: Explorations in Class, State and Law

The inquiry on the conceptual set provided by the Regulation Theory has already established the imbricatedness of legal and economic relations constituting the surface forms of the capitalist relations of production. In the sphere of law, these basic social forms/surface forms include contract, legal regulations on a certain topic, worker and employer categories in labour law, private property, free will, equal right, and so on. Put differently, the self-same relations of production, which gave rise to the surface economic forms of capitalist society, at the same time, give rise to its juridic forms.

The mode of cohesion of these basic social forms constitutes a structural form, which represents the principle of the organic unity of all the basic social forms of the given social relation. The relation between the labour contract (and the notion of subordination embedded in it) and the uneven waves of commodification, de-

commodification and re-commodification creating different structural differentials that are open to the disciplinary practices of various state policies, is established by way of a nexus on which the social cost of controlling labour is determined by the given configuration of structural forms (of the mode of cohesion of basic social forms).

In addition, the contradiction between abstract and living labour is considered as one of the various appearances of the basic contradiction between the need for labour inputs and the reproduction of labour power as a generic human activity as explained in the previous subsections of this chapter. The notion of abstract labour has to be presupposed and socially accepted if the labour power is to be commodified and is to be subjected to the relations of exchange (Sayer, 1979:146). Thus, the relation between the labour contract and the uneven waves of commodification de-commodification and re-commodification presupposes the abstract realm of value to be considered as a homogenising factor. The homogeneous field of value has provided the lawmakers of Keynesian welfare states a legitimate notion on which the labour power in general has been constitutionalised (Hardt and Negri, 1994:54-135). At that point, having established the main macro-economic and sociological premises of the study we are ready to develop our arguments further in order to assess the function of individual labour law within the overall socio-technical system, which is a structural form dealing with the overall subordination and reproduction of labour power within the complex sets of structural forms covering the reproduction of capitalist relations of production.

To develop our arguments further, first the reciprocal relations between state and law will be discussed in the following subsections. Thus, the conceptualisation of law and state will take the primary place in the discussion. It will be alleged that both state and law as arenas of struggle, which (whilst they are predominantly structured to the advantage of the embodiments of capital, are not entirely or automatically pre-structured) are deeply imbricated within the very basis of

productive relations, which would have been inoperable without law. Then the role of these concepts in an attempt to understand the capitalist relations of production will be investigated. This investigation will pave the way to conceptualise the law as a function of structural forms constituting the mode of regulation of a given economy. These attempts will enable us to deal with the difficulties of tracking down the changes within the texts of regulations enacted recently.

2.3.1. Law and Radical Theory

Nature of law is sometimes visited in Marxist Theory yet not in a manner that paves the way to a non-reductionist general theory of law in Marxism (Collins, 1982:9). On the other hand, the engagement with Marx left an undeniable imprint on the trajectory of contemporary work on law. First of all, the recognition that law always remains proximate to the state, thus, one dimension of our enquiries always has to engage with the connection between law and power, owes its existence to Marx. While many contemporary approaches have come to avoid positing any instrumental link between law state and power, the root of their preoccupations, such as the recognition that law is an arena of struggle, manifests the imprint of Marx (Hunt, 1993:7, 91). In general, a Marxist theory of law asks and tries to systematise the answer of the question of what part, if any, does law play in the reproduction of the structural inequalities of class, race and gender that characterise capitalist societies? If law participates in the reproduction of capitalist relations through what mechanisms and processes does it realise this effect?[66]

2.3.1.1. Political and Ideological Nature of Law

I will firstly elaborate on the two highly abstracted statements of the Structuralist Approach to law that may provide an answer to the question of how legal relations enter the construction of lived relations. Two of the imperative contributions of Althusser to contemporary legal thought are the denial of the humanistic subject and the analytical separation of the spheres of economy, ideology, and politics from each other. These statements conclude with the insertion of law in general in

[66] I owe the formulation of these two questions to Alain Hunt (1993:249).

the state structure and with the acknowledgement of the ideological [67] nature of law. Insertion of law in the state structure in general stresses the connection between the benefits of bourgeoisie and the function of law. Following this statement comes the inescapably political nature law. Law is political or law is one form of politics. Thus, law and state are closely connected. Besides its imbricatedness with the political realm, the legal concepts are ideological categories as well.

In line with the 'western Marxist' ancestors of the Regulation Theory and central to a theory of law, considering law as a mode of regulation, an ideology[68] that plays more than the epiphenomenal or marginal role attributed to it within orthodox Marxism should be central. Within this respect, law, as a part of dominant ideology, should be considered as imbricated with the relations of production rather than having a relative autonomy in face of base.

The ideological components of production that are subsumed within the title of law have some distinctive properties in face of other social relations. Firstly, due to the fact that law is a partly discursive phenomenon, it has an inherent dependency to consistency. Law is partly discursive because it gives effect to prevailing economic relations, and, therefore, it has extra-discursive roots. Secondly, ideology is not in obligation to serve the interests of dominant classes in every case. It should be mentioned that the allegation that every ideological element has necessary class designation will be rejected in this study. The class dimension of ideology is not an

[67] In the major texts on the sociology of law, whether old or new, the concept of ideology is noticeable by its absence. The ideological analysis of law provides an instructive point of differentiation between Marxist analyses of law and mainstream sociology of law.

[68] An ideology is not a completed, unitary being. Its powers are deriving from its ability to connect and combine (articulate) diverse mental elements (concepts, ideas, etc.) into combinations that influence and structure the perception and cognition of social agents. The power of the discourse of flexibility derives from its ability to connect diverse mental elements such as profitability, the need to surpass rigidity as formulated in the provisions of legal regulations, freedom to arrange working conditions by the workers themselves, workers' participation to the labour process etc. Thus, the re-ordering power of ideologies, on the way the elements of thought are articulated, are particularly salutary in the field of legal analysis since this power directs us to search out the resonances of the social economic and political struggles that reside behind the legal reasoning and judicial utterance.

intrinsic characteristic of words, concepts and discourses. The class dimension arises from the way in which ideological elements are combined and interrelated (Hunt, 1993:121, Poulantzas, 1973:202). The strong correspondence of the ruling ideas of a period with the ideas of the ruling classes enables us to relate the interests of bourgeoisie to that of law, yet the connection of the ruling ideas of a period to that of the ideas of ruling classes are not causal in the sense Hume uses the notion (cf. Fleetwood, 2002). Such a correspondence is generally a result of the function of the bulk of ideologies employed by the dominant classes.

The hegemonic strategies employing ideologies for certain ends are embodied by the legal discourses to the extent that legal discourses are consisted of attitudes, values, etc., which reinforce and legitimise the existing social order (Hunt, 1993:25). And, hegemonic strategies are not embodied by the legal discourses to the extent that the need for consistency in legal discourse or the legal consequences of the counter hegemonic strategies of the working class serve for the ends of the dominated classes.

The two highly abstracted statements of Marxism on law that refer to the political and ideological nature of law find their point of intersection in the provisions of the legal regulations or juridical decrees. The rules of law affirm and form the social relations together with the powers of the legal subjects entering these relations. The complex of legal rules on labour law not only allows but also enables labour power and the right to property to be used as capital. On the other hand, the same complex of legal rules enables labour front in labour market collectively or individually to claim individually some short of rights, all of which lead to the increase of the cost of labour power.

The above-mentioned point of intersection is also the point, at which the compulsion inherent in legal is materialised. Legal sanctions referring to the political context in which law functions as a regulatory of the daily relations of life can only be realised if the majority of the society consider these sanctions as

appropriate. Thus, while accepting the dual nature of law as an embodiment of consent and coercion in specific ways, we must not lose sight of the dull compulsion inherent in legal. This statement has to be remembered particularly in the spheres where law operates relatively un-problematically to give effect to the existing form of social, economic and political relations as in the case of labour law.

Here the objective is to avoid the positing of an autonomous conception of law, which is characteristic of many versions of liberal legal theory, and, at the same time, to eschew a conceptualisation of law referring only to the dependent or determined aspects of law. The latter refers to the interpretations belonging to the orthodox Marxism.

The two highly abstracted statements of Marxism on law raise issues, generally excluded or ignored in orthodox jurisprudence and which mainly refers to the application of norms (somehow enacted) to concrete disputes. This very different character of Marxist theory of law will not be accepted, in this study, as a completely different project that has nothing to add to the orthodox jurisprudence.[69] True, the the Marxist project is not a project that occupies the same field or scope as the orthodox jurisprudence, yet, it definitely provides us theoretical tools to deal with and to contribute to the analysis of the existing legal system. My account makes no claim to represent a correct interpretation of Marxism, rather, I claim that Marxism has also an analytical aspect, which, without the establishment of conditions of a socialist society, can be used to analyse the reasons behind the enactment of certain regulations and the possible effects of existing rules.

Lastly, the political and ideological nature of law, to the extent that these properties are used in the analysis of the reasons behind the enactment of certain regulations,

[69] On the other extreme, a strategy based on the purely analytical properties of Marxism implies that a general critique of capitalism is a sufficient basis for arriving at Marxist politics of law.

should not be considered standing in a direct relation to reality. They are not direct representations of a certain brand of social relations. Rather, they represent dominant tendencies that can be useful to reach intermediate conceptualisations those would be operational in the analysis of the Turkish labour law. In this respect, the tendency to move directly from the functional analysis of law to direct assumptions about the political intentions of classes and legislatures should be impeded. The conclusion that we are searching is a conceptualisation of law as a mode of regulation. For this end, the relation of state and law has to be evaluated.

2.3.2. State and Law

The Doctrine of the Separation of Powers and Abstract Labour

It has been widely accepted that the most important closure produced by liberal theory is the result of its theoretical and ideological adherence to the doctrine of the separation of powers (Fine, 1986). The first outcome of this closure is the radical separation of state and law (Holloway and Picciotto, 1991:146-147). The radical separation of law presupposes a naïve theory of the state as a platonic and/or Hegelian concept standing outside the web of relations constituting the society. This naïve theory of state is in conformity with the references given to the abstract labour as a measure of equivalence by which private labour appears simply as a fraction of the overall labour of society. In this sense, abstract labour realises the uniformity of products as commodities in the exchange process without presupposing the need for politics in the reproduction of labour power and in the labour process**.**

The concept of value (the general law of equivalence), with its effect of homogenisation on different practices of labour as a human activity, provides law a sphere in which the relations of legal subjects becomes commensurable. Only by the acceptance of value as a homogenising factor can one imagine the uniform character of private labours that can be commodified by way of a juridic form; that is, labour contract. The concept of abstract labour is the expression of this uniform character of labour (Reuten and Williams, 1989:41). The homogeneous field of

value has provided the lawmakers of the Keynesian welfare states a legitimate notion, on which the general power of labour has been constitutionalised. From this point of view, one can confirm the ineluctable/inevitable formalisation of right, as a technocratic instrument of capitalist rationalisation and homogenisation as an outcome of ecological dominance of capitalism (Hardt and Negri, 1994:69; Jessop, 2002a:24-25).

Reification

The second outcome of the closure produced by liberal theory is the implicit tendency to reify law, to treat it as a thing, which has an independent and frequently impartial existence within social systems (Holloway and Picciotto, 1991:147). From this perspective, which locates power within the state, the concept of power is invisible within the set of relations constituting legal relations. Thus, it is safe to say that the way the properties of the state are partially systematised determines a theory's ability to articulate capital accumulation at a national scale and an international level and to establish the relevancy of law to that process (Woodiwiss, 1992:11).

The Role of the State in the Reproduction of Phenomenal/Juridic Forms

In conformity with our theoretical stance in which essential relations do not exist independently of their phenomenal forms, but constitute the explanans for them (cf. Arthur, 2002), the state will be treated as empirically open ended, so as to come to terms with the relational and the historical character of social reality (Jessop 2002a). To put it differently, contrary to liberal jurisprudence, law and state will not be considered as the natural forms of human existence. What is more, the nation state will not be considered as a legitimate object of theoretical speculation, since it, unlike production, law and class, is only a concrete entity and thus may only be understood as an instance (moment) of the concrete interactive effects of such structural entities (Woodiwiss, 1990:189; Yalman, 1997:85). The state is a reality as it is consisted of social relations, and yet not ontologically distinct from them. Thus, it is real, just as the other forms of the appearance of the capitalist relations of production, such as market, are real (Yalman, 1997:85).

The dominant ideology, as being the product of many classes and other social groups, categorises the fetishised forms of capitalist relations of production in such a way as to solidify/carry on the hegemony of the bourgeoisie. The analysis of the contradiction between particular and common interests, not as one between civil society and the state, but as one which enters into both civil society and the state, requires a kind of positioning in which the state and the civil society ceases to be distinct entities facing in opposition to each other. A theory of state, is thus, a misnomer since at a certain level of abstraction, it is not possible to refer to the state as an entity with a separable existence (Yalman, 1997:85).

This is the point where the great strength of Marx's approach lies. Marx revealed the social content behind the seemingly natural categories of capital and labour (Joseph, 2002). The contribution of relationist- contemporary structuralist approaches to Marxism also lies at this conjuncture (cf. Holloway and Picciotto, 1991:135-147). These approaches stressed further the importance of the form in which the relation between capital and labour is expressed. Such a positioning will provide us the basis for examining specific forms of state and political representation as well as that of state 'interventions'. Hence, it may be possible to view different forms of 'interventions' into the economy as the political and ideological outcomes of the stress between the class positions without falling into the trap of saying 'class struggle is class struggle'. Consequently, it will be possible to understand the changing forms of interventions as outcomes of changes in the border that divides the classes (Jessop, 1990a; Holloway and Picciotto, 1991; Woodiwiss, 1990).

The Location of the State

In classical Marxism,[70] the state is generally reduced to its economic role, which is strictly related to the support of the profit rate, i.e. to the actions that are in support of capitalist class, which is simply considered as an economic force located outside

[70] For a detailed analysis of the conceptualisation of state in Marxist theory see Jessop (1990a:24-47).

the state (Fine, 1986; Jessop, 1990a). Such an approach locates classes out of the state; in the civil society. Classical Marxism, but not the footprints of an implicit state theory in late Marx,[71] considers the relation between the state and classes as an exogenous relation (Fine, 1986:6). From this point of view, the state becomes a subject similar to those of Hegelian conceptualisation, which remains outside the civil society, or becomes an object, which can be used as a tool in the hands of ruling classes. The Regulation Theory, in line with the Structuralist, form determined and strategic relational approaches to the state, alleges that class struggle is not confined to civil society and to the sphere of private property, yet is reproduced within the heart of the state apparatus itself (Jessop, 1990a:30). [72] Thus, the main contradiction is considered not as one between civil society and the state but as one, which enters into both civil society and the state.

The state, which takes different forms depending on spatio-temporal fixes, which are experienced by the society in question, has a vital role in the regulation of the overall reproduction of a given capitalist society[73]. Although capitalist societies are primarily structured by and/or articulated around the capital relation, it is hard to explain this reasonably. “the economic base is neither exclusively economic in its elements nor absolutely autonomous and so cannot operate as the ‘cause without cause’, which determines other social spheres” (Jessop, 1990a:101). The state provides a significant tool in the explanation of the various appearances of the capital relation.

[71] “The apt image which Hal Draper painted of Marx’s development is that of his peeling away the layers of an onion in order to find its heart, only to discover that there is no heart, that the onion consists only of its layers.” (Fine, 1986:87)

[72] If the state action n is not a function of the mode of regulation (in sense Regulation Theory uses the term) realised at the level of productive system, then there is always a place for political action.

[73] “The conditions under which state power is exercised may be more or less favourable to the implantation of capitalist relations of production on the terrain of the commodity economy” (Aglietta, 1987:73)

On the other hand, the relations, whose properties are not reducible to the effects of the capitalist mode of production also finds a place in the theorisation of the state[74] (Jessop, 1990a:101,118; Sayer, 1995:227; Theret, 2002:124). The complexity of the state system is deemed to be such that its functional unity cannot be taken for granted and any coherence that exists among its activities is supposed to be forged in the face of structural tensions deriving largely from the international division of labour and internal political struggles (Jessop, 1990a:149).[75]

The Parisian Variant's basic theme can be traced back to Poulantzas's[76] claim that 'the state is a social relation'[77] (Jessop, 2002a:40). The state, rather than being an instrument of the ruling classes, is a realm, in which tensions and social conflicts that are not expressed in a single co-ordinated strategy by the ruling classes are developed (Nadel, 2002:34). Jessop formulates this as such: "the state power is a complex relation that reflects the changing balance of social forces in a determinate conjuncture" (Jessop: 2002a:40). State power as revealed in the conjunctural effectiveness of state interventions, is a form-determined condensation of the balance of political forces. On the other hand, the state power is also limited with the paradoxes of capital relation and/or with the states controversial relation with accumulation process having international dimensions (cf. Holloway and Picciotto, 1991). Thus, the state is a set of institutions that cannot, *qua* institutional ensemble, exercise power (Jessop, 1990a:61; Nadel, 2002:34).

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74 "State power is capitalist to the extent that it creates, maintains or restores the conditions required for capital accumulation in given circumstances and is non capitalist to the extent that these conditions are not realized." (Jessop, 1990a:117)

75 The fact that Marx saw the state in general as class based did not mean that he ignored the importance of distinguishing one bourgeois state from another; the state in his view expresses a relation between classes and is no just an instrument of the ruling class.

76 Poulantzas's contributions to the theory of the state are widely remained vital, and in many ways, conveyed to the Parisian Variant by Bob Jessop.

77 This stance makes it misleading to consider Marxist theories of the state as 'society-centred' theories as alleged by the statist school, since giving ontological primacy to social relations averts any such dichotomous choices between 'state' or 'society' centred analyses (Yalman, 1997:84).

The complex form of the state as an institutional ensemble shapes and conditions the total political process within the constraints brought by the state's controversial relation with the accumulation process, having both global and domestic dimensions. The political forces do not exist independently of the state; they are shaped in part through its forms of representation and forms of intervention. Thus, the particular form taken by the state is not static: from one period to the next it may become more or less alienated from the people, more or less subject to democratic control, more or less permissive of working-class organisation, etc (Fine, 1986:93).

The diversity of institutionalised compromises, which result from situations of tension and conflict between classes over a long period, requires an analysis of the political relations on the basis of the notion of hegemony (André, 2002:95; Boyer and Saillard, 2002b:49). Hegemony involves the development of a specific hegemonic project, which can resolve the problem of conflicts between particular interests and the general interest (Jessop, 1990a:161, 207).[78] For Parisian Variant, ideology employed in a particular hegemonic process, embeds in a historical conjuncture (social fix) that orients and constrains class struggles through the medium of structural forms (Jessop, 2002a:48; Robles, 1994:87). Then, the distinctive feature of legal systems as a part of ideology employed in the hegemonic strategies is that these systems embody the material interests of the ruling class in a universal form, and thus present law and/or any other discursive formation as a part of ideology employed, as the embodiment of the interests of the community as a whole within a given historical conjuncture (Hunt, 1993:18).[79] [80]

[78] Aglietta's Gramscian attempt to analyse the specificity of the US economic structure in terms of an hegemonic project, that is, the frontier principle, provides us with another base in Parisian Variant to consider the role of ideology in the formation of structural forms that composes the mode of regulation, which, in turn, conditions class struggle. From the same vein, Woodiwiss (1992:87) refers to Japanese Kigyoshugi – enterprisism or belief in the intrinsic virtue of the company.

[79] Marx states that the true state is the body politic as a whole, comprising both the political state and civil society (Fine, 1986:75).

[80] The tensions and social conflicts that are expressed in the post-1980 collective labour law reflect the changing balance of social forces in a determinate conjuncture. The exclusion of workers from the state in post-1980 Turkey and the process of enactment of a bulk of acts, all of which have negative impacts on people on the supply side of the labour market are thus relevant. This bulk of

Structural forms as realms in which institutionalised compromises are materialised, make their 'discoveries' within the complexity of hegemonic processes (Andre, 2002:95; Boyer and Saillard, 2002b:49). They compromise socially embedded socially regularised and strategically selective institutions, organisations, social forces and activities organised around (or at least involved in) making collectively binding decisions for an imagined political community (Jessop, 2002a:40).

The Main Functions of the State on the Reproduction of Capital-Labour Relations

At that point, we are capable of moving away from abstract, often essentialist theorisation towards more detailed accounts of the complex interplay of social struggles revealed in state power as a function of a set of structural forms. While there is not any predetermined and predestined way of using state power, state functions in a capitalist economy, as revealed in the subsection on structural forms, can provide the main structural constraint for the use of it. The main functions of the state on the reproduction of labour power can be described as such: securing the rights and capacities of capital to control labour power in the production process and regulating the terms and conditions of the capital labour relation in the labour market and labour process (Jessop, 2002a:45); securing the general external conditions for capital accumulation; securing the fictitious commodification of labour power and the relevant knowledge for the use of it; managing the fundamental contradiction between the increasingly social nature of productive

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acts were the result of the changing content of the distinctive hierarchy of structural forms that affected the interactions within the institutional architecture as a whole and thereby shaped the overall logic of the lawmaking. The Turkish legal system as a part of ideology employed in the hegemonic strategies seeks to intervene in the reality of social relationships, by directly controlling and reconfiguring those relationships. It does not seek only to adopt them as the inevitable basis of juridical consideration or follow them to guarantee the effectiveness and certainty of their autonomous development. The implications of the strategy of 'deepening' market-based allocation find its distorted expression in the Turkish legal system. The way the general power of labour has been constitutionalised in the texts of acts and the way the rights were formulated/formatted as the technocratic instrument of capitalist rationalisation and homogenisation as an outcome of ecological dominance of capitalism will be investigated. The new individual labour law have many suggestions on the establishment of the categories that makes the structural selectivity of the state visible.

forces and the ongoing private and competitive nature of the social relations of production and the appropriation of surplus labour (Offe, 1985).

The power necessary to pursue these functions may be used, at the same time, by various structural forms in different social formations. Yet the first function seems to be overlapping roughly with the function of socio technical system. Given the centrality of the capital labour relation in the valorisation of capital, the regulation of capitalist control can best be secured and therefore analysed under a separate principle of the articulation of relevant institutions, organisations and other organised forces.

Substantiality of Juridic Forms

So far, it has been stated that the Classical Marxism's allegation that the political and legal forms of class struggles are illusory in face of economically determined function of the state will not be hold by this study. In conformity with the above-mentioned conceptualisation of state, the law will be considered as a specific form of social relation within the bulk of social relations constituting the state in this study. As mentioned in the subsection on determinism, social relations are objective, meaning that bearers' lives are located within sets of relations (of work, politics, domestic and so on) that are gendered, hierarchic, subordinating and most important of all empowering in ways that are set up or predate our individual involvement.[81] Thus in some sense the normative expressions of these relations are external, objective and real (Fine, 1986:146-154).[82] Consequently, law produces a background ideology effect in that provided it is universally applied and fairly administered, it reinforces and helps to maintain the patterns of social relationships that comprise the social formation of which it is a part (Woodiwiss, 1992:12).

[81] In his critique on Hegel Marx asserts that the constitution itself should not be treated apart form its human origins: it is "not the constitution that creates the people but the people that create the constitution." (Fine, 1986:72)

[82] Yet, the reality of these normative expressions such as law and state, are not objective in sense that social structures do not exist independently of the activities they govern or of the perceptions of the social actors about their activities (Bhaskar, 1975).

The fact that Marx focused, in his theoretical writings, on the economic forms of capitalist productive relations and not on their juristic forms should not lead one to suppose that juridic forms are any less substantial than their economic counterparts. Nor can they be discounted as fictions (Fine, 1986:99). In this case, the connections linking ideas of justice, law, rights and so forth to capitalist relation of production are lost from sight, with the result that these ideas, instead of appearing as what they are, are abstracted from their human origins and acquire a life of their own without being subjected to Marxist critique.

Law as a Means of Domination

The general point that the post-Poulantzas state theory gives us with regard to law is a base to make against Classical Marxists, who work with a notion that the law is only or simply an instrument of capitalist domination (Woodiwiss, 1992:11). Yet, the refusal of the instrumentalist approach does not lead to the denial of the role of law as a means of domination, thus of the domination perspective which is founded on a critique of Durkheimian consensus model (Swingewood, 1998:128). Domination, as Hunt (1993:63, 79, 124) mentions, is not synonymous with repression or coercion Nor does it deny the fact that legal systems are accorded to a generalised social acceptance and legitimacy.

Law has a dual character as coercion and as consent. However, the acknowledgement of the dual/contradictory characteristic of law is not enough to understand its function. The role of law in the reproduction of overall relations of production depends upon the regulatory actions of the state (Fine, 1986:141). In the Keynesian welfare state, the specific modes of the maintenance and production of right as norm will therefore be modes of the composition of social dissent and consent regulated continuously by the set of structural forms whose actions cannot be reduced to planned activities of the lawmakers (Hardt and Negri, 1994:93). For this reason, law in democratic or semi-democratic societies is characterised by certain autonomy - a relative autonomy that is to inhere in the particularities of its discourse (Woodiwiss, 1992:11). The involvement of the state takes the fetishism inherent in the appearance of law, having a relative autonomy with its dependence

on consistency, at its highest point, since class relations take the form not of direct coercion but of domination (Fine, 1986:157).

When the domination is reached by way of ideological means (ideological domination), consent becomes the leading reason for the explanation of the obedience of majority to the laws of the order. On the other hand, if the domination is reached by repressive means (repressive domination), then, coercion applied by one class to another appears as the central reason of the state activity. Ideological domination describes those activities and processes whereby the assent to the existing order is produced and mobilised. Ideological domination serves for the acceptance of the role of consensus in the Marxist language that is centred on the reproduction of legal relations. It is the consensus that leads to the effectiveness of law.

Repressive and ideological domination achieved by way of legal means are in no way alternatives, rather they are interdependent (Hunt, 1993:25). While the coercion embedded into the labour legislation is directed against the parties of working relation, its ideological effects that are based on the classical defence of private property are directed to a much wider space including the would-be workers, the discourses of production, the officials, etc. Market mechanism provides a point of intersection for the realisation of both the repressive and ideological domination in one and same device, namely labour law. Domination by way of market mechanism, on the one hand, refers to the lack of self-sufficiency of the sphere of private property and, on the other hand, to the class antagonisms represented in the state machinery, altogether pointing at the civil society's one-sidedness, which was even accepted by classical jurisprudence (Fine, 1986).

The denial of the cleavage between the Gramscian concepts of civil society and political society in the Regulation Theory extend the context of application of domination. The Gramscian concept of hegemony, on the other hand, will be kept due to its potential for the theoretical construction of sociology of law. The role of

ideological domination will further be analysed. What will be stressed at that point is the fact that conceptualisation of law based on repression or coercion without reference to mode of regulation, vastly oversimplifies matters by failing to specify precisely what this so-called instrument in fact is (cf. Collins, 1982).

Law as a Transpositioning Mechanism

In the present text, it will be argued that the law is a particular set of discourses, which is defined by its strain towards consistency and, which has gained the position of being the prime transpositioning mechanism that constitutes the heart of mode of regulation in democratic capitalist societies, in which capitalist production relations were secured by the formally gradual democratisation of the state (Fine, 1986; Hunt, 1993; Jessop, 1990a; Poulantzas, 1973, 1978; Woodiwiss, 1990).[83] This process also encompasses the reification of law, which refers to the conceptualisation of law as a power above and outside the society, and in which the social and political relations of capitalist society are presented as natural and universal (Hunt, 1993:34).

On the other hand, whether the role of law in Turkey has a resemblance to that of democratic capitalist societies needs further attention. It should be repeated here that there is no a priori reason why any given economy should be in a stable accumulation regime (Boyer, 2002a:2). In post-1980 Turkey, despite an unstable formal democracy, working class had a weak representation in state; a situation, which is clearly in contrast with the western type of democracy. However, if law is not a transpositioning mechanism (dominant region) in Turkey, it is still a part of procedures and behaviours, which reproduces fundamental social relations through a conjunction of institutional forms that sustains and steers the existence of Turkish capitalism under the conditions of the general crisis of world capitalism in general and of the crisis of periphery in particular.

[83] This acceptance, however, has many things in common with Weber who refers the role of law over the advance of legal rationality, yet the anti-humanist stance of the general framework of the study radically impedes any reference to Weber's humanism.

Law as a social form that is constituted by the relations, which, at the same time, constitute society as a relative unity capable of reproducing capitalist relations of production, shapes the ways the social conflicts are resolved and re-produced in the Turkish society.[84] True, law generally favours the dominant classes; however, workers too allege their individual and collective rights and they define themselves as organisations under the law. Law is always a potentially present dimension of social relations while at the same time it is itself the product of the interplay and struggle of social relations. To the extent that the struggle embedded in legal regulations are related to the competing projects that would potentially be a mode of regulation for the given society, the focus on discursive struggles makes it possible to understand an important feature of the connection between law and hegemony.

The conceptualisation serving for the understanding of the changing nature of labour legislation and its dynamic, in conformity with the Turkish bourgeoisie's paradoxes and with the conditions of the international division of labour, has implications on the social actors and on their perceptions about their place and activities. There is not any other place for counter hegemonic projects, which are the seedbed for democracy, except the consciousness of the actors in the web of social relations. It is only when the nature of law is specified in this way that it becomes possible to understand both the manner in which law contributes to capitalist domination and, in cases in which law allows the expression of the claims of non-capitalist groups, to the non-capitalist forms of domination.

The above mentioned conceptualisation of state as being the form in which the struggles are appeared, leads us to allege that both state and law as arenas of struggle, (which, whilst they are predominantly structured to the advantage of the embodiments of capital, are not entirely or automatically pre-structured) are deeply

[84] Even in the pre-War Japan that is appeared after the Meiji Rule and the acknowledgement of Constitution, thus in a semi-Rechtsstaat state, the judiciary managed to establish a degree of independence in fact when, in 1891, it resisted government pressure for a more severe penalty than the law allowed in connection with an attempt on the life of the visiting Russian crown prince (Henderson *quoted in* Woodiwiss, 1992:55).

imbricated within the very basis of productive relations, which would have been inoperable without law. This is especially observable in the realm of industrial relations. The question of how legal relations enter into the construction of the relations of production requires to seek a way to understand the imbrication and interpenetration of the ideological and political. Thus, in the next subsection the role of law within the formation of capitalist formation of relations of production will be investigated.

2.3.3. Industrial Relations and Labour Law

In this subsection, I will analyse law in general and labour law in particular from a relationalist /non-reflectionist /structuralist /antihumanist perspective. Central to the position of this sub-section is critical realism, the concept of discourse, and structuralism. Following Fine (1986), Hunt (1993), Jessop (1990), Woodiwiss (1987a; 1987b; 1990) I will attempt to investigate this line of theoretical approach's elaboration on the ideological dimension of production and on the role of labour law in the reproduction of industrial relations. I will argue that the three general concepts of structuralism (the ideological, political and economic spheres) refer to extra-theoretical realities that are imbricated with and interpenetrative of one another.

In search for ideological influences, which are not humanly mediated; but might originate from outside the workplace, and, which would lead to overcome the incommensurability of micro and macro levels, therefore to overcome the subject/structure dilemma, the non-reflectionist approach offers to leave the representationalist theory of language and insists upon the fact that legal texts, like social scientific ones, involve not simply statements of abstract doctrine and a pure discourse but also statements about the extra-legal world, about things that happen in that world (Volosinov, 2001:58-68; Woodiwiss, 1990:30 -35). The extra-discursive roots of legal discourse will be considered with reference to Marx, who wrote that the relationship of rulers and the ruled is determined by the specific economic form in which unpaid surplus labour is pumped out of direct producers (Fine, 1986:157), meaning that our search for the above mentioned extra-discursive

roots of the law will begin from the point of production rather than from the relations of exchange between the owners of the commodities.

The nature of the correspondence between legal rules and the social relations to which they relate is not a simple reflection (Hardt and Negri, 1994:64). The ideological dimension that impedes any reflectional explanation of the above-mentioned relation, refers to the distinction between the appearance or phenomenal form and the real substratum or essence. The real relations that exist find themselves expressed in legal rules in a distorted or truncated form since law gives effect to only the appearance of social relations (Hunt, 1993:27). Thus, keeping in mind that relative autonomy of law in capitalist societies is always relative to a particular social structure, the recent changes in the realm of individual labour law cannot solely be considered as the expression of the needs of the Turkish bourgeoisie. The multifaceted sources of the change have to be evaluated. For example, the role of the provisions on job security, which clearly is not fashionable for the bourgeoisie has to be evaluated. Whether these provisions serve for the purposes of legitimisation of the new labour act or not will be discussed further.

Law cannot be reduced to a single mode of discourse with a single relation to their subjects.[85] Yet, the position of legal discourse in face of other discursive and non-discursive structures are somehow shaped by the fact that when the disciplinary balances achieved by these other structures break down, they are reinforced, mediated or terminated (generally under normal conditions) by invoking the law of the state (Hardt and Negri, 1994:62; Woodiwiss, 1990:116). In this sense, law as a function of structural forms is not just a secondary activity aimed at modifying the effects of a self-sufficient market but is absolutely essential to capitalist production and market relations. Besides, the powers of the parties are not backed up but created by law. Thus, even the disciplinary balances are constructed by powers

[85] On the other hand it is a set of discourses articulated by the state as a social relation. Thus, we are not solely talking of the micro-physics of power in a Foucauldian way.

created in relation to state law. Here, in the form of domination, we observe the way the law transpositions itself over other structures (political nature of law).

2.3.3.1. Autonomy of Law

The position of legal discourse vis-à-vis economy, politics and ideology is not predetermined by intrinsic qualities of law. The conditions appropriate to the securing of capitalist production and exchange may strongly suggest an affinity between economy and the structuration of legalistic forms (Hardt and Negri, 1994:69). Yet, this affinity cannot by itself prove the relevancy of polity to the structuration of legalistic forms. Legal discourse has a relative autonomy by which the creative role of legal becomes effective, in various ways, over economy and other realms. From this vein, the normative form of law may cease altogether to express private property rights, despite the fact that law owes many things to the objectification of these rights. This fact derives from the mutual relations of the subjects of law; which in and of themselves are not private property, things in which no abstract labour is embodied, like reputation can acquire the form of private property through the law; one can be sued or punished for violating rights to them, just as one can alienate them in order to acquire rights to another commodity (Fine; 1986:142).

Law in democratic capitalist societies has an effect because it is a meta-discourse, which has consistency and therefore calculability. The constitutive role of consistency is what gives legal discourse its autonomy (Woodiwiss, 1990). Thus, legal is not a kind of supportive regulation, rather it is a constituent of the powers that may be dominantly economic, ideological and political, meaning that law not only arbitrates between conflicting private interests, but also itself becomes a particular interest which enters into disputes with other particular interests and then arbitrates between itself and these other interests (Fine, 1986:143). [86]

[86] In a modern state, law must not only correspond to the general economic condition and be its expression, but must also be an internally coherent expression which does not owing to inner contradictions to reduce itself to thought. (Engels *quoted in* Hunt, 1993:18)

Consistency, as a result of law's transformation into a private interest, is never a self-subsisting sign in legal or in any other form of discourse. It is always articulated with other signs, which signify substantive rather than methodological principles-for example 'justice', 'right', 'authority', 'liberty' or 'equality'- in their multiple combinations and forms-before it can mean anything (Volosinov, 2001:66; Woodiwiss, 1990:122; 1992:12). These 'other signs' providing substantive principles to the discourse of law, produce at the same time, a centralising force that unifies distinct forms of legal ordering coexisting in the same system (Hunt, 1993:9) since law mainly derives from the politically supported/regulated transactions between private property owners (extra-discursive roots of the discourse of law) and disappears with their termination.[87] The state's monopoly of force and the law's codification of the use of this force both justify a relatively centralised conception of power, which requires the articulation of law as an institution with the other institutions that comprise the state.

I have described the legal discourse as a central discourse having some degree of autonomy with an impact on other discourses. The degree of autonomy and of centrality of law is dependent on the state it exists. While in democratic capitalist central countries the autonomy of legal is high, and consistency has a major implication over the policy makers, in the peripheral economies having democratic-like systems, the degree of autonomy and consistency is relatively low. However, law always has some degree of autonomy and it is dependent, to a certain extent, on the legitimising properties of the notion of consistency in capitalist societies.

2.3.3.2. Rights and Duties: Constraints between the Subjects of Law

The definition of mutual constraints created by legal discourse should be conceptualised sociologically rather than normatively/doctrinally. To put it more

[87] "While a plurality of legal orders exists, it is always subject to strong centralising pressure, but is newer entirely subdued or brought neatly under the dominance of state-law" (Woodiwiss, 1990:122).

concretely, the challenge is to understand how legal finds it's meaning at the level of any dominant and/or hegemonic ideology. The way the particular positions of the legal subjects in relation with the others are constituted by rights and duties that define these positions, have a clear link with the hegemonic project employed in a specific context. Thus, once one has socially located her/his position into a particular legal sub-discourse, which places the subjects it addresses in particular positions relative to one another, she or he is also in a position to identify the extra-legal discourses and extra-discursive structures with which his or her position is most likely to be imbricated and which, therefore, are also most likely to have constrained how it may be read (Woodiwiss, 1990). Consequently, the mutual constraints between his position and the extra-legal (mainly deriving from production) plus extra-discursive structures (the referential content of her or his legal position) has to be defined[88].

A man who has the position of a worker that is obliged to do something defines his position with reference to his place in production (extra-legal context of the concept of worker, the workers position in face of a reserve army), to his place in face of the individual capitalist (contracting party) and to his job (cleaner), all of which are determined by a legal category (worker as defined in the law and in the contract). The interaction of the above-mentioned relations with law can, by no means, be conceptualised via purely reflectionist terms that reduces law to the needs of the powerful party, that is the individual capitalist. While the definition of worker in law may empower the worker in face of capitalist, the vice versa is also possible. However, while the changes in the definition of worker and its obligations are not causal in the sense reflectionist approaches employ causality (Volosinov, 2001:58), they are neither arbitrary. We can observe a correlation between the changes in the international division of labour and changes in the legal

[88] Even in Saussure, who is in lack of an account of extra-linguistic reference, language is not simply a discrete social fact but also the property of what he called 'a community of speakers'. Thus language is subject to structural constraints deriving from the social relations in which it is embedded (Volosinov, 2001; Woodiwiss, 1990:58). Yet due to the arbitrary nature of the signified/signifier combination, the changes in the language cannot be attributed to any single factor such as mode of production.

definition of worker and of her/his obligations without ignoring the historical context in which the specific relations of production is embedded.

Thus, rights and duties are capable of structurally constraining the relations that can or should exist between the subjects, as in the case of employer/employee relation. As expected, these structural constraints are not the only essential constraints between the subjects of law. Employer/employee positions are also defined and structurally constrained by other discursive and non-discursive positions apart from those specific to industrial relations (Jessop, 2002a:8). The cultural background of a worker, as in the case of Toyota, preferring the places in which the work force has no connection with trade unions and has an agricultural past (Yücesan, 1998) may be an example.

The way the particular discourses are realised, depends upon the specific ideological, economic and political positioning of the bearers. The views of the parties in industrial relations are potentially active determinants of their powers shaped in reciprocal relations. The discourses already dominant within a particular workplace may reinforce or restrict particular strategies employed by the workers or by the individual capitalist/s. Factories, the legal professional managerial bodies and trade unions are examples of the concrete sites, wherein one discovers the rules of the formation of the object of the discursive formation that allows and sustains the formal dimension of the discourses of production and they have not much space for the outsider. Thus, the discourses of production are a specific set of structures wherein the formal discourses are dominant, bounded by specific conditions of entry and exist and as such not equally susceptible to interventions originating in other discourses, especially when these are made possible by unrelated discursive formations (Woodiwiss, 1990:44).

2.3.3.3. Labour Contract and the Complexity of Social Relations of Production

In the previous subsections, we have analysed the basic contradiction in the –fictitious- commodity form of labour between its exchange-value and use-value

aspects. It has been mentioned that the capitalist society is, on the one hand, in need of labour inputs, and on the other, of providing labour power a socially determined amount of monetary income and social (status) means of subsistence. On the one hand, when the worker co-operates in a planned way with others, he strips off the fetters of his individuality (Marx, 1976a). On the other hand, within the labour process, this paradox becomes the technical form of the self-valorisation of capital (Hardt and Negri, 1994:77). The changes in the technical and social division of labour require the quality of command to be transformed. “The work of directing, superintending and adjusting becomes one of the functions of capital, from the moment that the labour under capital’s control becomes co-operative.” (Marx, 1976a)

If the capital is to function, the realm in which the discursive formation (that creates the conditions of possibility and existence of any particular set of formal/predetermined behaviour) is determined has to have a correlation with the consciousness of the bearer in the reproduction of the structure. The more important determinants of the discourses of production are the discourses articulated in a series of texts currently beginning with the labour contract, collective agreements, pertinent statutes relating to health, job security and safety, holiday entitlement, factory rules, the academic works providing legitimacy to the claims including certain rights in the realm of industrial relations, and so on. These texts cover the main realms of existence of the discourses of production and give the juridical forms, whose substance are provided by the relations of production, their legal expressions. The labour contract, together with the collective agreement and relevant articles of legal regulations, defines the boundaries of the discourses of production by its inclusion of the powers to control labour power within and out of the factory. It is only in this context the functions of capital can be realised within the socio technical system of a given social formation.

Hiring, firing and the managerial privilege denote the basic and asymmetrical configuration of the employment relation under capitalism. The ‘legality’ of the

power to fire, to subordinate, or to hire are supported by the legal conceptualisations of bourgeois law that reduces social relations to a system of exchanges without considering how the conditions of exchange are reproduced. The formalistic generality that is presented by the bourgeois law appears at all levels, veiling the contradiction between the particular interests of the accumulation of the capitalist and the general interests of the society; capitalist production and society are presented in perfect mediation (Hardt and Negri, 1994:67). The conceptualisations used in the discursive restructuring of society are described by lawmakers, whose success are dependent on the success of capital accumulation, and equality and democracy take the form in which every description refers to exchange relations, including abstract labour as a pure commodity.

Collective agreements, statutes factory rules and articles of apprenticeship in themselves denote the outcomes of conflicts which are to varying degrees external to a particular workplace and which add a connotative dimension to the terms that are fundamental to the labour contract (Burawoy, 1979). Until recently, the above-mentioned group of concepts had been deemed to reduce the asymmetry denoted by the labour contract through the narrowing of employer rights under monopolistic regulation. Currently, it has become clear that everything within the borders of the discourses of production could be used to reinforce a given discourse. Legal means, together with the consciousness of individuals, are just places for struggle and there is nothing inherently/essentially worker friendly. Put differently, we are in a time in which liberal discourse is extending to the realm of individual labour law and other bastions once dominated by the discourses supporting workers' front.

Against this background, the labour contract might provide a basis for analysing the role of ideology and politics from a critical perspective. Given the fact that all the most important relations within capitalist society, whether directly involved in the production of value form or not, are moulded into the form of contractual

relations as a requisite of exchange relations (Hunt, 1993:28). The same legal form has the imprints of imbricatedness of the spheres of capitalist relations of production.

The pervasiveness of the use of contract has been developed into a contractual ideology, which leans heavily on the notions of liberty and equality. Yet the freedom and equality to which it refers is purely formal, that is individuals are regarded as free if there is no legal bar to them entering into a contract, and are therefore deemed to be equal (Hunt, 1993:28). This formalistic conceptualisation paves a way to abstract the case from its social context. The lack of freedom that results from the dependence of workers on the sale of their labour cannot be grasped by the ones using this formalistic conceptualisation of freedom. It is only by spurring on the critique of political economy do we become able to theorise the contradictory -rather than illusory- character of the freedom, equality and independence manifested in the liberal state (Fine, 1986:93). The increasing subordination of workers as a result of the change in the conceptualisation of the concept of subordination, thus, becomes invisible and incalculable from a liberal/neo-liberal point of view (Hardt and Negri, 1994:70).

Contractual Ideology

The conceptualisation of the social relations implicit in the theory of liberal legalism and in the other sources of bourgeois legal discourse (that is those making for material inequality) presumes the separation of economics from politics (the implicit presumption of the cleavage between state and civil society). The normative components of a capitalist social structure can only be deemed to be free from intervention from the requirements of political and economic interests by way of the establishment of a discourse of law based on a combination of legal positivism[89] and a rationalist law theory[90].

[89] The legal formalism constituting the core of legal positivism refers to the idea that the study of law must be limited to that of its own formal arrangements, regardless of its relation to the external world (Fine, 1986:140).

Such a combination asserts that law is separate from other varieties of social control. The separation of law from the other varieties of social control requires law to be a set of rules that define the proper sphere of their own application. The autonomy of law based on these presumptions necessarily requires provisions of enacted codes to be considered as the prime source of norms, thus requiring the other normative types to be regarded as partial or subjective. The institutional source of laws then has to be separated from execution, which refers to politics and economics. Under these conditions, jurisprudence becomes a source of determinant and predictable results of law that is separated form economic and political spheres. The connection established between the powers of a democratic parliament/law maker and liberty rigidly depends on the formal conceptualisation of the concept of liberty and of justice.[91] [92]

The rigidity of this reasoning, which at the same time depends upon a high level of abstraction and on a closed systematisation, is the source of its weakness. Such a conceptualisation of law depends on the notion of consistency. The inevitability of consistency leaves some room for the allegation anti-capitalist demands of the

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[90] The idea of rational law is premised on free will in both form and content. To put it differently rational law, [most clearly in Hegel's formulation] is premised on the freedom to posit law without natural constraint and on the freedom of private property under law (Fine, 1986:57). The problem with classical jurisprudence that develop rationalist law theory is that it abolished traditional natural law theory in its traditional form, only to resurrect it in a modern form. While it recognised that the distribution of property, the content of law and the policies of the state are all products of human activity, it appeared that private property, law and the state themselves were natural forms of human existence (Fine, 1986:22).

[91] The continued privileging of liberty in conventional jurisprudence has always meant that the equality it recommended and established could never be material equality. Yet, this is not to deny the role of the concept of equality in the construction of legal discourse in democratic capitalist societies. Due to the role of consistency in the application of law it is also very important. Nevertheless, the contradictory existence of equality with liberty under the liberal democratic discourse lead jurisprudential reasoning in capitalist state to be more sophisticated.

[92] The two principles of justice, which is acted by the liberal individuals meeting in a imaginary social contractarian congress is that of a- each person should have the maximum degree of political liberty compatible with like liberty for all (the traditional liberal position) and b- inequalities of power, wealth, income and other resources should not exist except in so far as they work to the absolute benefit of the worst-off (Dworkin, 1978).

workers. [93] Albeit in a structure that is composed of rules designed in the institutions in which capital has a superior level of representation.

Throughout the chapter, contrary to the arguments of liberal theory, it has been discussed that law is not separate from the other varieties of social control that enable the capitalist relations of production prevail. On the other hand, I have argued that not all the varieties of social control serve for this purpose. The liberal discourses of production have a certain impact on the persistence of capitalism. They are not exogenous to the capitalist relations of production. They are an essential part of it since they consider private property and law as a natural form of human existence (Fine, 1986:22).[94]

Discourses of Production and Judiciary

When one considers the jurisprudential dimension of labour law in capitalist societies, a very similar differentiation of positions may be observed between those who privilege liberty (first position/liberal discourse), those who qualify for it with some conception of equality (second position/social democratic discourse) and those who struggle to replace/change it with material equality (third position/socialist discourse). Those who qualify for labour law with some conception of equality (the second position) recognise the unequal and inherently contestatory nature of industrial relations.

The second position has dominated the national legislations until recently (Hard and Negri, 1994:66). There can be various stances within the second position. One can see the legislation as a means to secure the required balance or can see the labour law as an aid, which regulates the power of management and of the organised labour. From the perspective of the second position, the nature of labour

[93] Unger (1976:176), a Weberian, posits that the persistence of inequality provides the context within which law exists. Since the dilemma of unjustified power is an inevitable outcome of a natural order.

[94] This imbricatedness is not limited to the texts of regulations and to the parliament that enacts them. The application of laws have also determined by the ideological nature of capitalist relations of production

contract is completely different from the propositions of the first position. Woodiwiss (1990:94), notes that the equality the law assumes to be present in a contract is not among the characteristics of the labour contract from the perspective of the second position. [95]

The power that an individual worker possesses is a part of the living capacity of an organic/juridic subject. On the other side, the individual employer represents an accumulation of material and human resources, socially speaking the enterprise itself, in this sense, is a collective power. If a group of workers negotiate with an employer, this is thus a negotiation between collective entities, both of which are, or may at least be, bearers of power. But the relation between an employer, who is representing a part of total capital, and a single/isolated worker is a relation between a bearer of power and a man who is in lack of power because of not being a part of a social group. This is an act of submission. Yet this subordination/submission is concealed by the creation of the legal mind known as the labour contract (Kahn-Freund *quoted in* Woodiwiss, 1990:94).

Throughout the Fordist era, the authority of the second position just described above within capitalist social formations should come as no surprise since such a notion has been adopted, transformed and instrumentalised in a juridical system of capitalism directed toward social accumulation. The paradigm of the second position was acceptable within capitalism since the premises of the paradigm was founded on the notion of abstract labour meaning that labour as a factor of production was exposed as abstract labour at the social level. Subsequently, the entire series of the relationships of subordination that are implicit in the process of exchange were somehow mystified. While the permanence of a substantially capitalist structure of power is redefined as democratic and egalitarian, labour's exclusivity as a social value emphasized instead the abstract character of labour

[95] "By virtue of the labour contract the employer has a legal right to the employee's service, a right which he can enforce in a court of law by means of an action for damages in the event of breach, and by virtue of that contract the employee obtains a legally enforceable right to his wages or salary. Breach of contract by either side thus leads to the application of civil sanctions." (Kahn-Freund *quoted in* Woodiwiss, 1990:94)

and founded the conceptions of democracy and egalitarianism on this abstract labour (Hardt and Negri, 1994:65). Consequently, this paradigm builds up the bourgeois hegemony in central economies by paving the way for ideological domination of the masses of the Fordist model of growth. However, the second position was to lose its grounds with the rise of neo-liberal approaches to law after the second phase of the crisis in the form of the process of de-constitutionalisation of labour.

On the other hand, the first position (those who privilege liberty) had always found remarkable defenders both in the international doctrine and in various national legal doctrines (Fine, 1986:22). The legal premises of the first position is rooted on the classical jurisprudence, which was flowered between the seventeenth and nineteenth centuries, and which fed from the works of Hobbes, Rousseau, Smith, and Hegel (Fine, 1986:3). The attempt by modern right-wing thought to appropriate this tradition for itself in most respects represents a travesty[96] of what classical jurisprudence actually stood for and represents what we call the first position.

The proponents of the first position begin with the assumption that the individual labour contract is the core of labour law and then argue in the classical liberal manner that, since, like all other contracts, it is premised on the general circuit of commodities, the parties to it are equal (Gray, 1995:21). The overt reference to the contractual ideology enables the defenders of the first position to take purely formal conceptualisations of freedom and equality as given, and thus paves the way to consider individuals as free as if there were no structural constraints influencing their behaviour (Hunt, 1993:28; Lowry, 1993:215-217).

[96] "Classical jurisprudence did not, however, take an uncritical attitude towards private property. Its theorists were aware of its 'dark side' –the tensions and contradictions with which it was associated. The sphere of private property- which classical theorists referred to as 'civil society- was a sphere of egoism and self-interest, where people pursue their own aims regardless of the welfare of others and use others simply as a means to their own private welfare. All the theorists of classical jurisprudence were critical of this situation. In different ways, they pointed to the lack of self-sufficiency of civil society; left to itself it would destroy itself through its own rapacity, ending up in a war of all against all or in the despotic rule of the wealthy and powerful." (Fine, 1986:12)

In cases where the unwilling recognition of the social aspect of law requires placing some conception of equality in the ocean of liberty, liberal approaches refer to a highly abstracted view of society composed of rational individuals seeking their self-interest.[97] Therefore, liberty requires inequality to exist in the first place as its rational consequence (Woodiwiss, 1990:84). Within Rawls position, inequalities caused by gender or racial discrimination may be shown to reduce the total power, wealth, etc of the society as a whole and, therefore, these inequalities require positive rectification, yet, inequalities caused by ownership and non-ownership of the means of production are very unlikely to reduce the absolute power, wealth, etc of society as a whole due to the fact that the capitalism's sine qua non is the continuous accumulation which is unlikely to benefit the worst-off. (Woodiwiss, 1990:85). Thus, like all liberal approaches, the Rawls position cannot escape from being an apology for the status quo. The position of Rawls and the most of the other liberal approaches presumes that the un-justifiability of the existing rank order ceases to be relevant once the rule of law has been established and the opposing monarchical principle of authority qualified (Woodiwiss, 1990:86).

The first position is important since the recent developments throughout the world shows that their point of view is becoming the new orthodoxy. The defenders of the first position are consequently suspicious of the statutory interventions having the legal philosophy of the second position.[98] They consider the labour legislation as an attempt to undermine freedom of contract and/or to unbalance the relationship between supposedly equal parties. From this perspective, the recent changes would be considered as a partial restoration of the balance, which had become too favourable to labour[99] and which had negative effects on the overall prosperity of the society.

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[97] See Liebhafsky (1993) for an attempt for this kind of theorisation.

[98] See Goldberg (1993), Liebhafsky (1993), Lowry (1993), Samuels (1993a; 1993b) for an account of suspects asserted by the liberals.

[99] British employment act of Thatcher government is defended exactly on these grounds (Woodiwiss, 1990:93).

On the other hand, from the perspective of the second position, the main objective of the labour law has always been to provide the weak party a countervailing force to counteract the inequality of bargaining power, which is inherent in the employment relationship. If law ceases to be a countervailing force in this sense, it, as a regulatory relationship, loses its grounds at all. Most of what we call protective legislation - legislation on the employment of women, children and young persons - on safety in mines, factories and offices, on payment of wages in cash, on guarantee payments, on race or sex discrimination, on unfair dismissal, and indeed most labour legislation altogether must be seen in this context; law as a countervailing force.

However, both of the first and second positions share the view that capital resources cannot be utilised by anybody without exercising a command power over labour in general. The uniform character of value accepted within the notion of abstract labour provided both of the two approaches with a legitimate base to consider labour as a commodity which can be reproduced and sold by way of market mechanism. While the second position was seeking a way to remedy the structural inequality within the exchange process, it nevertheless failed to recognise labour as a living activity whose reproduction and use cannot be regulated by laws of the market. Both of the standing points state the impossibility of replacing a relation of coordination based on equality in the place of the relation of subordination. Thus, they replace the power of right to command and the duty of obedience into the heart of employment relationship. The permanent disinterest in the fictitious nature of labour power required the utilisation of the bourgeois ideologies to accompany the second position. All workers could demand with regard to industrial relations was personal autonomy. In this respect no matter how radical the form that the second position (pluralism in labour jurisprudence) may take, it remains as a sort of liberalism. Both of the two approaches were designed to reproduce the conditions of the capitalist relations of production in a given moment and space.

The third position (those who struggle to replace/change law with material equality), has always been remained unrealised in the capitalist world as expected. From the same vein, the socialist way of Taylorism (Chavance, 2002; Lipietz, 1987) had impeded an expected resurgence in the innovative critique of labour jurisprudence in former Socialist Bloc/real socialism. The critical approaches generally confine themselves to indicating inequalities, which are a consequence of political class conflict and/or ideological domination (Woodiwiss, 1990).[100] The specific discourse of labour law and its creative role in the construction of legal subjects and their rights have always been ignored due to the inherent tendency in this variant to consider Marxism as a simple negation of liberalism (Fine, 1986:1).[101]

Labour Contract and Capitalist Ownership

The three elements of ownership, namely 'possession', which means the narrow economic ability to determine the use or operation, as such, of the production process, 'control', which means the ability or power to determine the actual deployment of the means of production, including labour power, in the production process, and finally 'title', which refers to the basis upon which claims to any surplus may be made, made possible the sorts of calculations, which govern the circulations of legal titles, the socialisation of debt, the exchange of guarantees and the constitutional position of shareholders (Jones, 1982:77), can only acquire the ability of self-valorisation (can only be capitalist) under the conditions of wage relation.

The right to possession recognises that what primarily concerns the capitalist is not the legal right to buy and sell the means of production, rather it is concerned with the legal right to organise and operate the production process without any

[100] In this vein, see Livshitz and Nikitinsky (1977) criticising capitalist law while at the same time defending Soviet Labour Law.

[101] In securing the independence of Marxism from liberalism, this sort of left Marxism tends to subordinate Marxism to other anti-liberal doctrines akin to anti-authoritarianism, nihilism or to the bureaucratic statism now associated with Stalin's name.

significant, legally supported challenge or restraint from employees. The right to title proved to be extremely important by allowing the capitalist to extract the surplus-value legally both in the relevant nation state and at the world scale. The right to title is also proved to be useful in the expansion of Fordism, which will be referred to further on. The right to control is relevant to labour law. Utilisation of labour power in the production process requires workers' subordination under a legal category known as labour contract. Therefore, only with the articulation of property with the powers embedded in the labour contract, had the legal recognition of distinctively capitalist modes of ownership become possible. So it is clear that there is an axiomatic dependence of labour contract on the property rights.

On the other hand, the legal and the economic relations may vary independently of one another. Yet, this does not necessarily mean that their relation to the capitalist relations of production will not lead to corresponding changes in both of these realms. On the contrary, in all cases, effective possession involves a capacity to control the functioning of the means of production in the process of production to exclude others (the class of non-possessors) from their use.[102] The capacity to control further requires powers to adjust the labour process to the requirements of competition. The legal definition of this capacity to control involves a definite form of the organisation of the production process in which labour power is purchased under definite contractual conditions from the worker.

Antagonistic Relations Imbedded in the Labour Contract

It has been established above that the power a bearer obtains derives from the structural position it occupies. Given that the reciprocal structural positions of the subjects of the capital labour relation is the source of the inequality, it is the labour contract itself that is unequal rather than any distribution of rights within it. The

[102] "Economics and jurisprudence are not reducible to each other but are bound together as the twin forms assumed by capitalist relations of production. Just as Marx's critique of political economy was aimed not at replacing one economic theory by another but rather at a social critique of economics in general, and looked forward to the dissolution of the economic sphere in its entirety, this too was the aim of his critique of jurisprudence." (Fine, 1986:6)

powers obtained by the mutual relations of the employer and employee can only be exercised on the condition that no further issue is made of the labour contract, such as the right of control over labour power. The antagonistic class relations of the capitalist society should be invoked as a constitutive element of the context of the labour contract.

Leftist critics generally constrain themselves to a set of production relations which are in fact specific to a particular model of development. Rather than evaluating the reciprocal powers of the parties in industrial relations, they focus on the bulk of obligations expressed by the legal provisions. The comments on the changes in the individual labour law in Turkey demonstrate the above-mentioned weakness. Critics have focused their attention on the working hours without questioning the 'real' change, that is, the change in the notion of subordination. Moreover, the criticisms proved to be inadequate to grasp the non-universal/ 'time and space dependent' characteristics of industrial relations. In fact, labour contract and law is an ideological construct articulated with particular economic relations. This is why the criticism should initially target the changes in the reciprocal powers of the parties. [103]

2.3.3.4. Conceptualising the Form and Content of Class: From a Structuralist Definition of Class to the Imbricatedness of Human Relations

From a Structuralist point of view, classes cannot be directly observed as groups of struggling individuals. They are rather things in their own right, ensembles of economic, political and ideological structural positions, which are held together by the forces produced by capital's appropriation of surplus labour (Resch, 1998:84-85). Only with the condition of demonstrating the relations of people as an outcome of the effects of the pertinent ensemble of structures can the behaviours of individuals be taken as an indirect evidence of the existence of classes, which are non-human structural entities that have determinative effects on individuals

[103] Moreover, these relations need not be a single coherent unity. When a part of this economic relations change this change find its expression, yet, in a non-representationalist particular way, in labour law.

(Wright, 1989:271-274).[104] Classes have their effects regardless of the consciousness of the subjects that embody them, or of the positions of the agents in the political economic and ideological spheres (Poulantzas, 1978; Woodiwiss, 1990, 1992). These subjects are the personifications, representatives or bearers of certain social relations or the occupants of certain structural positions, locations or else. Furthermore, the concrete existence of any ideologies related to the positions of classes only suggests the possible existence of class entities, yet by no means verifies them. Moreover, although classes may only have effects on one another and in the wider social formation through the actions of particular human and non human subjects, there is no reason to either expect that such subjects should be coherent, consistent or even conscious class subjects, or think that the fate of a particular class depends upon the existence of such subjects (Woodiwiss, 1990:154; 1992:13). Yet, as Woodiwiss (1990:158) notes, Structuralist re-reading failed further to define the way the entities are personified. This situation leads to structuralist non-humanism being too readily compromised into a conception of classes as groups of people, whereas they are not.

The above-mentioned properties of a Structuralist class analysis can be combined in various ways regarding the authors taste and positioning. Critical realist epistemology provides necessary tools for a definition of class beyond groups located at the level of the division of labour. As mentioned before, subjects are capable not only of reproducing their structural positions but also of disrupting them.[105] On the other hand, the effectivity of individual or collective actors and of their undeniable struggles are constrained/structurally determined by structural forces. From the perspective of the Regulationists, the actions of the subjects and the constraints over their capacity to provide/'discover' solutions to problems they face are materialised in structural forms.

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104 This positioning is totally in contrast with the empiricist and humanist conceptualisation of classes, which regards the classes as composed of and indeed constructed by directly observable, struggling individuals.

105 The Foucauldian mutual irreducibility of psychological and non-humanist sociological discourses are not only social facts but also conditions of our having any knowledge whatsoever of the realities to which they refer (Hunt, 1993:13).

Woodiwiss (1990; 1992) proposes to articulate the imbricatedness of political, ideological and economic aspects of human relations in a specific way, which deals with the over-extension of the labour theory of value that is mentioned above, to the Structuralist way of conceptualising class. Woodiwiss (1990) refuses the ultimate connection of classes with the economic realm. To do this, he elaborates on the axiom that the specification of the mode of surplus appropriation specific to the capitalist mode of production instantly and fully defines the positions of the classes of capitalist and proletarian agents. I consider such an investigation necessary since such a positioning would complete our attempt of understanding the role of the labour contract and thus, of the bulk of regulations in the realm of labour law, within the relations structuring the capitalist system.

The definition that is taken from *Capital Volume II,* by Balibar, provides the necessary grounds for articulating the notion of the imbricatedness of human relations to structuralist the conceptualisation of class. “Whatever the social form of production, labourers and means of production always remain factors of it. But in state of separation from each other either of these factors can be such only potentially. For production to go on at all they must combine. The specific manner in which this combination is accomplished [by the capitalist] distinguishes the different epochs of the structure of society one from another” (Marx, 1976b:565).

The above-mentioned definition provides a base to add the agent (the capitalist) to the notion of appropriating surplus labour. His way of combining factors of production matters. Now it is clear that, economically, the capitalist class comprises a set of positions defined by the capitalist relations of possession, in the sense that these positions include the capacity to set them in motion. Then the picture, drawn so far, is not a contribution since this is what Classical Marxism already contains. Yet, even in this form, the definition provides the necessary basis to place a concept of classes as distinguishable ensembles of more than economic positions whose forms are nevertheless still related to the same essence (capitalist relations of production). Since the actions of the capitalist and worker, whose

relations may, at the same time, reproduce more than one structure, are now included into the definition.

If, for production to go on, labourers and means of production must be combined by the capitalist, then, politically, the capitalist class comprises the set of positions defined by the relations of 'discipline against resistance' in which the same class inheres the power to control the process of production so as to ensure that a surplus is produced. Here the usual Marxist stress on the specification of the mode of surplus appropriation in the definition of the notion of class is exchanged with the place of factors in production, in conformity with a structuralist approach. However, the specific manner in which the labourers and the means of production is combined and/or the individual capitalist's power to control the process of production so as to ensure that a surplus is produced, invites the refusal of the ultimate connection of classes with the economic realm.

Moreover, the combination of labourers and the means of production requires, ideologically, the capitalist class to invoke the legal rights required for the maintenance of the order. Under the above-mentioned conditions of combination, the working class may be defined as a set of positions in which no possession of means of production, no significant power to challenge the production of a surplus, and no significant basis upon which to challenge either of these disadvantageous positions becomes possible (Woodiwiss, 1990:176) without challenging the system. The last two refers to the functions of individual and collective labour rights established within the socio-technical system. Thus, the reciprocal constraints that make the monopolies of the possession of the means of production, dictatorship in the production process and a legal right of title to capitalist's possessions should be established/maintained if the processes that constitute the capitalist class as an entity, which is irreducible to human beings, is to exist (Woodiwiss, 1990:177).[106]

[106] Surplus value cannot exist unless there also exists an entity that can ensure that such a difference is produced at the level of the unit of capital at that of capital in general. For such and entity to exist, it must comprise an ensemble of economic, political and ideological positions, which can qua

The above-mentioned establishment of the conditions of a capitalist society makes it easy to grasp that class entities are formed in the workplace. Although they partly belong to the workplace, classes are not the beings that inhabit only that institutional setting in the form of work place (Burawoy, 1979). Their inherent dependence upon the structures that define the wider social formation necessarily means that they must possess a capacity to produce effects beyond the work place. We can now understand the first and second positions in jurisprudence when they share the view that capital resources cannot be utilised by any body without exercising a command power over human beings.[107]

2.3.3.5. International Division of Labour, Socio-Technical System, and Classes

Given that the particular economic, political and ideological structures, upon which classes osmotically depend, varies with the ongoing relatively autonomous developmental dynamics of these structures, the intrinsic structural tensions and the nature of continuing, reciprocally structuring effects of the two main classes upon one other and upon the boundary between them will vary from one social formation to another social formation. On the other hand, to the extent that the capitalist relations of production are capable of concentrating and centralising the possession of the means of production internationally, the structuration of classes becomes international. If, for production to go on, labourers and the means of production must be combined with a capitalist dwelling at another nation state or at other nation states (and/or dwelling at the middle of nowhere) "the specific manner

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ensemble, produce such a difference between necessary and surplus labour, and enforce its own way of preservation of it (Woodiwiss, 1990:176).

107 The above-mentioned understanding of class denies the possibility of struggle between classes as being two distinct embodiments conceptualised with reference to the metaphor of two struggling armies. There is no ontological entity pursuing interests of any human subjects organised in the form of groups, alleging certain rights for the title over the surplus value (Carchedi, 1989:106-107). Rather, because of their nature as antagonistic components of a 'single structure', which is not referring to the notion of society yet to the group of relatively persistent relations necessary for the existence of productive activity (Jessop, 2002a:4) both at national and international levels, classes restructure and de-structure one another and therefore restructure and de-structure the groupings of subjects that embody them (Woodiwiss, 1990:179).

in which this combination is accomplished" provides us with a base to account for the role of international division of labour over classes in general and over the matters legally conditioning the reciprocal positioning of classes in particular. This process will certainly have an impact on the structural forms, among them the socio-technical system, regulating a national economy.

Precisely because the law is an active element capable of defining the shared border between the classes, it is influenced by and involved in the class struggle. The law and the legal system shape partly the context within which the class struggle takes place, and it is itself an arena in which that struggle occurs. Yet, this realm is not a neutral realm, like other properties of the state, such as military. It is necessarily a part of the process, through which the ruling class seeks to preserve its domination since, above all, the socio-technical system by itself, provides us with the political frame in which the state's function of securing the rights and capacities of capital to control labour power in the production process, and regulating the terms and the conditions of the capital labour relation in the labour market and labour process is realised. The form taken by the class struggle has its boundaries broadly defined by the existing law whether it is imported or created within the national economy. Furthermore, not only does law play an important part in defining the parameters of the class struggle, but it also plays an important part in many important stages in the class struggle taking place around demands for legislative reforms (Hunt, 1993:32). [108]

Ideological and political conditions may alter the forms taken by the dictatorship over production and make it possible for some developing countries to use the factors of production they have in abundance, namely the labour force, in such a

[108] Marx himself gave considerable attention to the appearance of class struggle around demand for legislative reforms/or counter reforms. The chapter on the Working-day in *Capital, Volume I* clearly defines the interrelation of class forces in a struggle or legislative control of working hours (Hunt, 1993:32). In this section of *Capital*, the relationship between the state and the capitalist class, as the representation of the interests of capital in general, is analysed. The divisions between the various sections of the capitalist class are accounted. The way in which the development of the productive forces and the organisation of production expressed in the struggle of various fractions finds their expression in legislation, is systematised.

way that they increase their international competitiveness, albeit in an exhaustive manner. Ideological conditions, such as additional requirements for the employment of women, may add a plurality of legal requirements that result in the more effective use of possession rights of the individual capitalist over the production process. Nationalism and religious movements, as in the case of the foundation of Hak-İş, a religious trade union, in post-1980 Turkey, may serve for the fragmentation and de-leftisation of labour market.

2.4. Conclusion: Law as a Mode of Regulation

So far, I have tried to establish the main components of a theory capable of dealing with the problems of mapping the legal aspect of the changing norms of production under the banner of flexibility in the realm of the individual labour law. The macro economic components of such an attempt are taken from variants of Structuralist Marxism in general and from the Regulation Theory in particular. In addition, it has been established that a relationist/structuralist perspective has a considerable potential for the study of law.

The survey on the institutional context of wage, productivity and employment determinants revealed the fictitious character of labour as a commodity and established that the elements in struggle in the market place cannot be understood from the highly abstracted premises of the liberal theory considering labour as a real commodity. Our attempts to place work relation in a context, in which exploitation takes the form of exchange relation realised in the market place by way of juridic forms and in which law appears as a function of structural forms regulating the social relations for the purpose of postponing the basic contradiction in the fictitious- commodity form of labour between its exchange-value and use-value aspects, included the analysis of wage-labour nexus, the commodification of labour power and the role of contract and other juridic forms within this process, the notion of the subordination of the worker to the individual capitalist as a necessary ingredient of the labour contract, and the way the ideology fills the gap between the fictitious commodity and the dominance of value form.

Only by way of employing Marxist political economy were we able to mention the correlation between the juridic forms regulating the industrial relations and the capitalist relations of production. The double nature of wage relation as a relation of exchange and a relation of production helped us to categorise labour law on the basis of Marxist political economy. The inclusion of the norms of production and of consumption into the theorisation hindered us from grounding this division on transhistorical categories of high-level abstractions. These norms provided the theorisation the ability to account the role of spatial and temporal boundaries (spatio-temporal fixes) over the function of labour law and paved the way for a correct understanding of the creative interaction between the two realms (Castree, 2002; Harvey, 1988).

Given that this study aims to track down the changes in the realm of the individual labour law with reference to the changes in the structural forms, the conceptualisation of socio-technical system as a part of a wider system constituting mode of regulation, which is a part of world configuration rather than world system, was of importance for the purposes of the study and proved to be highly beneficial in our analysis on the impact of the international division of labour over individual labour legislation. Structural forms are of importance in the passage from abstract to concrete. The central themes of the Regulation Theory, such as accumulation regimes, modes of growth, modes of regulation, etc, only become understandable, without falling into the trap of institutionalism, with the establishment of the institutional context in which concrete human relations occur. In addition, our analysis of the relations between state and other structural forms, of the exploration of the way the structural forms evolve and space and regulation, of the problem of articulating national and international levels, and of the possibility of an international regulation and of international like structural forms will have further impacts on our analysis over the international division of labour pursued in the following Chapters.

The purpose of the study (which is to consider the function of law as the reproduction of society, thus, to attribute law a privileged place in the mode of regulation, to suggest that law itself is subjected to reproduction, and to refuse legal positivism) became possible at that point and the appearance of law as an institution or a system of norms altered radically and turned to a social process. The investigation into crises made it possible to stress the creative role of law as a process in times of crises.

Exploration in law and class included the exploration of the political and ideological nature of law and paved the way for the re-imagination of the national state in response to recent changes in the realm of labour law. The same exploration also revealed the material bases for the survival and co-existence of market forces and structural forms capable of exercising imperatively coordinated strategies for a given national economy, by way of treating state as an empirically open-ended set of relations, which take different forms depending on spatio-temporal fixes, and in which tensions and social conflicts that are not expressed in a single coordinated strategy by the ruling classes are developed. Within this context we are able to insert the legal system as a part of ideology employed in the hegemonic strategies and to allege that legal system embodies the material interests of the ruling class in a universal form as the embodiment of the interests of the community as a whole within a given historical conjuncture. This is why the tensions and social conflicts that are expressed in the post-1980 labour law are considered to be monitoring the changing balance of social forces in a determinate conjuncture.

In the subsection on capitalist relations of production and law, it is argued that law, in the form of domination, occupies a central position in the reproduction of societal relations. This domination is essential for the existence of the capitalist relations of production and expressed in the technical division of labour in the power of the capitalist to control the labour process. The changes in the technical and social division of labour require the quality of command, which the notion of

control includes, to be transformed. “The work of directing, superintending and adjusting becomes one of the functions of capital, from the moment that the labour under capital’s control becomes co-operative.” (Marx, 1976a:484)

The connection of the realm, in which the discursive formation that creates the conditions of possibility and existence of any particular set of formal/predetermined behaviour, with the consciousness of the bearers is established by way of the discourses of production. The discourses articulated in a series of texts currently beginning with the labour contract, collective agreements, pertinent statutes relating to health, job security and safety, holiday entitlement, factory rules, the academic works providing legitimacy to the claims including certain rights in the realm of industrial relations, and so on, constitute the discourses of production that provide the base on which individual the capitalist’s right to control is eradicated. The labour contract, together with the collective agreement and the relevant articles of legal regulations, defines the boundaries of the discourses of production by its inclusion of the powers to control labour power within and out of the factory. These texts cover the main realms of the existence of the discourses of production and give the juridical forms, whose substance is provided by the relations of production, their legal expressions. It is only in this context that the functions of capital can be realised within the socio technical system of a given social formation. Then the role of labour contract in the definition of the boundaries of the discourses of production is stressed. The investigation into the role of labour contract revealed that there is no discourse that is structurally inclined to protect the labour rights; everything within the borders of the discourses of production could be used to reinforce or weaken the rights of the parties in industrial relations.

Having established the role of the discourses of production, the juridical practices of the different positions within the three main discourses of production[109] were

[109] Those who privilege liberty, those who qualify it with some conception of equality and those who struggle to replace/change it with material equality.

evaluated. The liberal legalist discourse of law based on a combination of a rationalist (natural) law theory and legal positivism is considered to be a means for the re-structuration of the positions of the parties of the industrial relations under the neo-liberal attack. On the other hand, social democratic discourse with its stress on the constitutionalisation of abstract labour is considered to be another variant of the capitalist discourses of production mystifying the entire series of the relationships of subordination that are implicit in the process of exchange.

In the sub-section on class and law, the imbricatedness of human relations having various dimensions at the same time is further elaborated. The three elements of ownership, namely 'possession', 'control', and finally 'title' are connected to wage relation. The conceptualisation of the notion of subordination as a derivative of right to control is further developed. This concept will be the axle of our investigation into the individual labour law as being an ideological construct articulated with particular economic relations. Moreover, after establishing the necessity of ideological, legal and political means for the power to control, our investigations into class invited the refusal of the ultimate connection of classes with economic realm. The Structuralist analysis of class helped further to conceptualise law as an active element capable of defining the shared border between the classes. It is argued that law and legal system partly shapes the context within which the class struggle takes place, and law is itself an arena in which that struggle occurs.

Law as a Mode of Regulation[110]

As it is mentioned by Hunt (1993:325), the term regulation could be understood as facilitating and making certain forms of social relations possible while discouraging and putting others at a disadvantage. The above-mentioned approach enables us to include both positive (making) and negative (refraining) dimensions of power.[111] The theory developed by the various branches of Structuralist

[110] I owe the idea of using law as a mode of regulation to Alain Hunt (1993).

[111] Regulation approach paves the way for the deployment of a conceptual model of regulatory objects, agents, etc. designed to break out of the pervasive grip of the model of rules that reduce the

Marxism, which has been combined and cited in this study, provides the study of law a place in the lived experience of social relations and thus ensures a base to reject the systematisation of law as a set of rules suspending on air. Another virtue of approaching law as a mode of regulation rests in this approach's capacity to refuse law as an institutional expression.[112]

All the contradictions of law emerge most sharply in its function as a mode of regulation. It seems to engender community and common humanity, but, at the same time, it produces mutual isolation and antagonism. It is predicated on (formal) equality yet establishes the sharpest differentiation between the judges and the judged, the police and the policed. It presupposes universal freedom but justifies universal coercion in the name of freedom (Fine, 1986:145). In short, law produces a permanent contradiction between the idealised and fetishised juridic form of the individual as property owner in petty commodity production (Fine, 1986) and the natural form of the individual as a labourer/producer and social being with real individual needs (Hunt, 1993).

In the Regulation Theory, the principles of action for structural forms whose basic forms/surface forms are constituted by economic, juridic and other kinds of relation categories, are law, compromises and the value system on which routines are based (Villeval, 2002:294). This approach abolishes the hierarchic relationship between institutions being the source of law and society as being mere applier of law in the instrumentalist approaches, which inevitably derive their theoretical stand points from legal formalism. The central role of law, as mentioned above, requires the influences of value system and compromises realised over the forms provided by law. Law provides a variety of norms sometimes included within the relations constituting a structural form and sometimes remain passive and do not

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notion of law to one of its primary characteristics, namely, to a system of rules and that ignores the relational aspect of the law.

[112] Institutionalist perspectives focus on national assemblies, courts and professions without considering the sociality of these institutions and, thus, without considering the role of law in the establishment of the institutions (Castree, 2002:189; Fine, 1986:147).

give rise to any kind of institutional regulation.[113] Industrial relations have a continuing effect, thus an active legal dimension (positive dimension of power) in which the legal aspect of work relation plays an important part.

Put differently, the legal dimension of work relation does not become significant only when a dispute or some other problem arises, rather it is always in agenda due to the inherent characteristic of the relation that reproduces at the same time the structural positions and the powers of the parties in industrial relations. Various social structures constituting the class effect are shaped by the rules, which are by themselves partially shaped by these structures. Thus, law, in the realm of industrial relations, is consisted of continuing set of practices that contributes to the reproduction and transformation of social relations. It serves to normalise and stabilise the dynamic of struggle, conflict and competition (Hunt, 1993:256). Within this context, law has the capacity to re-reproduce or de-reproduce the existing economic relations.

The question of whether the legal relations having a continuing effect in realms other than industrial relations always give rise to structural forms will not be investigated. The point is the structural forms in the realm of industrial relations contributes to the mode of regulation and, in cases where a stable mode of regulation does not exist, contributes to the reproduction of industrial relations under the conditions of crisis within the existing situation of the socio-technical system.

Hunt (1993) states that there are no natural or ready-made social objects for the regulatory devices among them trade unions. Objects are always the outcome of some active process that 'discover' a solution to an existing problem within the

[113] Confusion arises when properties belonging to law as state law are attributed to law as such, since the form of appearance is identical in each case. With the emergence of the state, law persists as one of the forms taken by the state but not as its only form; the state also takes the forms of a bureaucracy, an army, an assembly, etc., and presuppositions, now becomes only one of the forms assumed by state power. The solution rests in the acceptance of law preceding that of the state but requires for its full development the establishment of the state (Fine, 1986:147).

borders of a common imaginary. The way the problem is posed and the answer is conceptualised refers to the ideological nature of ‘discovering’ the object. The recent ‘discovery’ of the lack of flexibility in industrial relations is such an example. It follows that if objects of regulation can be created, then they can similarly be dismantled and abandoned as in the case of the abandonment of the provisions protecting the worker at the workplace. The selection and de-selection of the objects of regulation can often constitute primary sites of political contestation and the action of ‘discovery’ is not free of extra-discursive roots. It follows that, the ‘discovery’ of the need for flexibilisation of industrial relations is to be evaluated with reference to the political and ideological contestation along with the contestation in the economic realm.

The constitutive role of legal relations in the process of regulation can also be traced in the designation, identification or creation of regulatory agents and in their principle of actions. Regulatory agents, who are empowered with rights, and who have the functions ranging from the collection and recording of information on child abuse to the defence of workers’ rights, are not ready-made social entities also. The recent rise of non-governmental organisations, the change in the powers of trade unions, whose rights and powers are determined not only by the post-1980 collective labour law but also by their capacity to interfere in workplace relations can be examples for the constitutive role of legal relations over the regulatory agents.

Another feature of the role of law in the regulatory practices is the production of legal regulatory knowledge. This feature is strictly connected with the role of ideology within the formulation of law since the collection of legal knowledge plays a central role in the ‘discoveries’ as being the subject matter of regulatory practices. The question of to regulate or not is asked under the legal constraints provided by the regulations. The public opinion on the necessity and desirability of flexibility was not pre-given to it. Rather it is created under the banner of the need for international competitiveness, which would in turn benefit the overall

participants of societal relations and under the re-vitalisation of law of obligations in the realm of individual labour law.

The source of the regulatory knowledge is not clear. While it can have a life of its own, it can have a certain resource such as the government and employer organisations or as in the case of the introduction of post-War institutional and organisational forms, among them Türk-İş and central bank, a certain country, that is the USA. The regulatory knowledge may derive from the interventions of international-like structural forms as in the case of policy proposals from IMF and World Bank. Yet, whatever the source of the regulatory knowledge is, it is clear that the dispersal of this knowledge over the society and its influence over the public opinion is strictly connected with the power to distribute/circulate the regulatory knowledge.

The importance of all these points for the understanding of the social significance of (individual) labour law, with reference to the socio-technical system, are that they change the nature of the questions one asks. The direct questions about the effects of labour law on the size, internal organisation and morale of a supposed working-class army (the traditional Marxist questions) lose their importance in face of the questions about the effect of labour law on the strength of the forces that bind and separate the two classes economically, politically and ideologically, and of the questions which explore the ease or difficulty of capital's appropriation of surplus labour. The task of elucidating the structural constraints and powers of individual and collective subjects in the sets of relations, amidst which they live, requires two substantive historical questions to be asked. These are: why and under what circumstances did law enter industrial relations at particular points in time and how was it that particular legal interventions had the outcomes they did.

The first question may be answered by reference to the changing political ideological and economic conditions. The key to the understanding of these broad areas lies in the examination of the dominant model of production (Fordism) and in

the conceptualisation of the international division of labour, both of which will be analysed in the next chapter. The second question may be answered by reference to the specific legal incidents themselves and the historical context in which they occur. Chapter IV and V are related to this question.

CHAPTER III

CAPITAL ACCUMULATION, THE INTERNATIONAL DIVISION OF LABOUR AND LABOUR LAW

3.1. Introduction

This chapter aims to evaluate the changes in the concrete historical processes with reference to the abstract and medium range concepts analysed in the previous chapter to investigate the question of why and under what circumstances law entered industrial relations at particular points in time. Hence, the central conviction of this chapter requires an attempt to periodise capitalism and then, to periodise and categorise labour law as being the prime mechanism in the regulation of industrial relations. Based on the examination of the concepts, the conceptualisations and the premises of the Regulation Theory and of the other contemporary variants of Structuralist Marxism, the main contours of the history of capitalism refer to the relatively stable (non-crisis) periods and spaces, in which the organisation of the production process and the evolution of workers' consumption can be partially systematised with reference to certain characteristics of the historical forms of the capitalist relations of production in a given space and time, and to the times of structural crises by which the conditions of the next step may be prepared.

Turkey is one of the 'developing' countries which, all together with the rest of the world, is experiencing the results of the crisis of capital accumulation in the central

world. Given that, the post-crisis national configurations of institutional forms are often, to a great extent, established in mutual recognition of similar discursive problems and give rise to 'discoveries' of forms having similar functions (Aglietta, 1998:57-61; Boyer, 2002a:234), an analysis of Fordism's main features can help to classify labour regulations on solid foundations in the current stage of the international division of labour.

In our way from abstract to concrete, the investigation into the dynamics of accumulation will be pursued together with an investigation in the international division of labour. We will establish a correlation between the dynamics of accumulation and the transformation of socio-technical systems of the countries constituting the international division of labour. Such an attempt is expected to include historical analysis into the study. This examination will be fallowed by an analysis of the normative regulation of industrial relations corresponding to each periodisation. When the temporal and spatial plane on which the control is realised changes due to the inclusion of a new concrete labour dwelled in other countries into the labour process, the attempts to control labour power becomes fragmented due to the inclusion of other states into the process of securing the rights of capital in labour markets and labour processes. This process (that is, the process of the interaction between the processes) has its impacts not only on the dynamics of the socio-technical system of the central world but also on the dynamics of the socio-technical systems of the rest of the world, thus on the plane on which social division of labour emerges. For that reason, the structural constraints that frame and enable the labour politics of peripheral countries will be investigated in order to analyse and to categorise the labour law regulations of the peripheral countries. This categorisation will further be used in the analysis of the Turkish Labour Law.

Against this background, the second section of this chapter examines the essential terms of the study, namely Fordism and the International Division of Labour. Thirdly, the period 'Before Fordism' and the corresponding international division of labour will be analysed with reference to the conditions of existence and the

transformations of the frame in which the states' function of securing the rights and capacities of capital to control labour power in the overall reproduction of capitalist relations of production. The subsection ends with the examination of the main characteristics of the labour law in this stage. The same schema will be pursued in the fourth subsection: Fordism and the corresponding international division of labour will be analysed. The subsection ends with the examination of the main characteristics of the labour law in this stage.

In the fifth section, the structural crisis of capitalism and the labour politics of peripheral states will be analysed. The structural constraints of peripheral states will be considered in detail. The way the state's function of securing the right of capital to control labour power is realised in the early import substitution strategies and in the current international division of labour will be explored. The 'discoveries' of the peripheral states in face of the demands of labour and the discoveries of the peripheral states as a way of articulation into the international division of labour will be analysed. In the course of this section, I will demonstrate that two ways of articulation with the international division of labour can be found: the development strategies pursued by NICs and by non-NICs. In the peripheral capitalism specific to NICs, in which the ruling classes are capable of controlling labour force under the conditions of extraordinary absorption of relative surplus value, not only the collective capacities of labour to intervene the national policies but also the regulations on the re-organisation of technical division of labour and the regulations on the collective action of labour in the labour market, has remained under restrictive practices of the state. In the peripheral capitalism specific to non-NICs, given that the regulatory devices of socio-technical system had become a source of rights for working masses to resist against the demands of ruling classes, the re-regulation of collective labour law as a device, regulating the collective capacities of working class to interfere with national policies, has become the primary concern and the individual labour law becomes a point for reference only after the 're-regulation' of collective labour law. The possible

reasons of this track shift will be discussed in order to shed light to the examination of Turkish case.

3.2. A Short Survey on Fordism and the International Division of Labour

Fordism

The main hermeneutical axis of periodisation of labour relations in this study is Fordism and its crisis. The concept provides a valuable heuristic device for tracking down the changes within the juridical forms and law. Therefore, the various meanings of the term should be analysed for the purposes of clarity. Fordism has various meanings, among which a system of work organisation that pushes still further the division of labour into separate tasks, comes first (Boyer, 2002a:232). Thus, the first meaning of Fordism refers to a system of work organisation depending on the mechanisation of production processes and on a complete separation between conception and production. This work organisation becomes possible only when employees obtain an institutionalised share of productivity gains (Boyer, 2002a:232). Fordism has acquired a new meaning only after structural positions of the capitalists have become capable of demanding institutionalised share of productivity gains and, at that point, it became a social technology (Juillard, 2002:155). Here we see the second meaning of the term: Fordism is a macro economic structure, which implies that gains in productivity resulting from the new industrial paradigm will provide a basis for an intensified accumulation via a balanced growth of all departments of production (Billaudot, 2002b:148; Lipietz, 1987:2). The combination of these two characteristics defines the Fordist wage-labour nexus. Yet this combination alone is not enough to call a model of development as Fordist. It must be linked with compatible structural forms, whether it occurs under oligopolistic competition or in a monetary regime based on credit. Thus, the third meaning refers to a mode of regulation specific to intensive accumulation.[114] In this sense Fordism implied a long-term

114 "Demand, on the Fordist model, was thus pulled by salaries set in the domestic market of each advanced capitalist country taken separately. External constraints were limited by the coincidence

contractualisation of the wage relationship, with rigid controls over unemployment, and a monitored increase in salaries indexed to prices and general productivity (Boyer, 2002a:232; Lipietz, 1987:2). Fourthly, Fordism can be considered as a model of development. From this perspective Fordism is a general organising principle of labour (or the principle of articulation of industrial paradigms[115]) (Aglietta, 1987:117; Lipietz, 1987:2). Consistent with this definition, Fordism can be defined as the articulation of process of production and a mode of consumption in a given time and space (Aglietta, 1987:117). Yet, the conditions of the transformation of the labour process and of the existence of the wage-earning class are not brought into harmony by any social/economic rationality; the driving force behind the harmony is rather the 'chance discoveries' stimulated by class struggles (Aglietta, 1987; Lipietz, 1987). [116] The elements of the above-mentioned articulation can be outlined by analysing respectively, the main features of the capital accumulation in the Fordist model of development and the structural forms regulating the accumulation.

The International Division of Labour

Although their conclusions over the merits of imperialism differ, the fathers of Political Economy, taking their insights from Scottish enlightenment (Swingewood, 1998:33-36), were the ones that first conceptualised the international division of labour of extensive accumulation. Even the liberal theorists of political economy in the nineteenth century regarded their work as political economy and they did not ignore power nor try to abstract economic processes from social organisations to the same extent as their neoclassical successors (Sayer, 1995:ix).

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of growth in different countries, by the limited importance of the growth of international trade relative to the growth of domestic markets and by the hegemony of the United States economy." (Lipietz, 1987:2)

[115] An industrial paradigm is a (primarily) micro-economic model (which shapes the general organising principle of labour) governing the technical and social division of labour (Jessop, 2002b; Lipietz, 1987:2). Mass production is one of the industrial paradigms.

[116] As mentioned above this class struggle is not limited to the realm of economy. Rather it includes ideological and political spheres.

It is Marx, who refers to the separation of professions at both the national and international levels of economy (*social division of labour*) besides the manufacturing division of labour (*technical division of* labour [117]) (Sayer and Walker, 1992). Although the concept of the division of labour underlies some of the central themes of Marx's work,[118] such as the class division of society, human alienation, and the vision of a classless society, which is a society without a division of labour,[119] Marx never tried to answer the questions of how the conditions of best trade can be achieved or how underdevelopment develops. He departs from the critical analysis of capitalist relations of production. The above-mentioned technical/social distinction has proved to be extremely fruitful for the radical analyses of the capitalist mode of production. In particular, the contrast between the *ex-post* anarchic market regulation of the social division of labour and the planned and despotically controlled nature of the technical division elucidate capitalism's extraordinary and perhaps contradictory combination of the spheres of anarchy and rational organisation, a combination, which structures both the international division of labour and the class struggles at national level (Sayer, 1995:44).

It is the nineteenth century theories of imperialism that had broadened the problematic of the international division of labour (Brewer, 1989). It is safe to say that an international division of labour deriving from the production of manufactured goods, which were exchanged for primary commodities produced by the underdeveloped countries had begun to emerge in the nineteenth century.

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[117] "The division within a capitalist firm, called by Marx the detail or manufacturing division and now commonly known as the technical division of labour, is planned and controlled by the owner." (Sayer, 1995:44)

[118] The concept of international division of labour has also numerous references, if not to the expression itself, in Marx's works. *The German Ideology*, *The Communist Manifesto* and Marx's discussion of the impact of the discovery of the New World on primitive accumulation; the consequences of colonialism in India; and the role of foreign trade as a countertendency to falling profit rates; are the most important ones among others.

[119] Marxism assumes a socialist or communist economy, which could reach an even higher level of development and could overcome the division of labour in the classless society (Sayer, 1995:2).

Despite their differences, most of the Marxists of the era accepted the main premises of this type of understanding of the international division of labour (Brenner, 1977).

Lipietz (1987) states that the centre-periphery relations in the classical theories of imperialism reflect a process rather than relations between processes. A simple comparison of the position of externally-forced and non-interconnected nature of industrial organisation in the periphery with the internally connected process of production (that is referring to the connection of departments), in the central capitalism provides a basis for the understanding of centre-periphery relations in these theories. A market or a factory in the outside world of the core of extensive accumulation was directly related to the circuits of the extended reproduction of 'the capital in the centre'. This means the transfer of value from periphery to centre was in no sense useful to explain the dynamics of growth in centre (Lipietz, 1987:53). It was certainly profitable to plunder the Third World and to over-exploit its workers; however, the discovery of new machines intensifying work, for instance, was even more profitable. That is to say, the Third World of extensive accumulation functioned (in an *ex-post* sense) as a regulator of central accumulation in that it facilitated realisation.

Such an understanding of centre-periphery relations in the epoch of extensive accumulation prevents Parisian Variant to replicate the classical theories of imperialism in the explanation of contemporary capitalism. Yet, many Marxist explanations had followed the schema provided by the classical theorists. Latin American dependency theorists[120] linked the Marxist notion of international division of labour, explaining the period of extensive accumulation, to the concept of structure to explain the ongoing situation of the underdevelopment in Latin

[120] When applied to Latin American Economies, Regulationist approaches can be defined in terms of a critique of dependencey theories and the structuralism of ECLA (Aboites *et al*., 2002:280). The same would be relevant for Turkey due to the inheritance of 1970s that still has impacts over leftist, liberal or rightist understanding of international division of labour. This fact is clear when one analyses the comments of the advocates of workers' front, which are referring to conceptualisation of imperialism inherited from YÖN movement, in various cases including comments on the changes in the realm of individual labour law.

America. The ontological premises of the dependency theory did not take into the consideration the dynamics of production and the changing nature of centre-periphery relations as relations between processes, as between processes of social struggle and between regimes of accumulation.

The consideration of the dynamics of production and the changing nature of centre-periphery relations as relations, between processes, enabled the Regulationists to articulate the notion of accumulation into the conceptualisation of the international division of labour. Within this context, the concept of the international division of labour refers to the unequal allocation of labour and its products between various countries (Lipietz, 1987:25) as part of the process of accumulation on the world scale. Moreover, the critical realist epistemology and the way this approach divides the concrete in mind and the real concrete enabled the Regulationists to argue that labour is not intentionally allocated in accordance with the iron law of proportionality, with the same principles and the same optimal level of organisation that prevail within a capitalist firm organisation, which refers to the division of a labour process into its parts, each of which is carried out by a separate worker under the final authority of the individual capitalist (Offe, 1985:12; Robles, 1994). The International division of labour leads to a certain order but that order is mediated by the effects of arbitrary and unregulated competition that finds its expression in warfare, exploitation, and relations of domination. Against this background it is safe to say that the relations constituting the international division of labour provides a sphere in which massive economic and financial groups manoeuvre their way across the world by fragmenting labour process in their branch across pools of labour characterised by different types of wage relations (Kiely, 1998:82).

The existence of world capitalism does logically presuppose some regularity in the allocation of labour; however, this regularity is not designed by an omnipotent power. The centre position might be occupied by one country in a given time and space of the capitalist world history; however, there is no reason why there should

not be several centres. Therefore, the actual international division of labour is a chance discovery, which is figured via the actual struggles of nations[121] in order to control one another, and of one or another class alliance's continuous efforts to achieve or surrender national autonomy (Lipietz, 1987:26).

3.3. Before Fordism

3.3.1. Extensive Regime of Accumulation and Competitive Mode of Regulation

The dominant regime of accumulation has two principal appearances throughout the history of world capitalism (Vidal, 2002:110). The period from the first industrial revolution to the Great Depression is characterised by extensive regime of accumulation, whereby only a small portion of workers' consumption was met by capitalist production. The extensive regime of accumulation was mainly centred upon the extended reproduction of means of production and was associated with a competitive mode of regulation (Billaudot, 2002a:140). Throughout the extensive regime of accumulation, industrial relations were regulated mainly by way of labour contract which was based on the idea that labour is a pure commodity. Subsequently, the main logic behind the labour relations was the first position that was defined in the previous chapter.

Until the beginning of the intensive accumulation as a dominant mode of accumulation, the dominant mode of regulation (the competitive mode of regulation) was characterised by the a posteriori adjustment of the output of the various branches to price movements (Billaudot, 2002a:140). Wages were adjusted to price movements (Juillard, 2002:154). Thus, the dominance of the law of obligations, which refers to the saleability of labour as if it is an ordinary commodity, in realm of labour law was in conformity with the conditions of the use of labour power in general for the national industries. Within the competitive mode of regulation, the individual capitals at the local or international scale were

[121] 'Nation' in sense Adam Smith uses the term.

unable to forecast their collective growth. As a result, the possibility of over-production had always been an important risk (Lipietz, 1987:34). The question of markets was thus extremely significant.

The predetermined market adjustment mechanisms of the competitive mode of regulation were incapable of evolving new structural forms that could cope with the emerging norms of production (Billaudot, 2002a:140). In other words, the existing rules, procedures and habits that work as a complementary to reproduction of the capitalist relations of production, did not include a level of consumption by working classes that could absorb the increase in the production. The mechanisms of wage formation specific to competitive mode of regulation were proved to be inadequate (Juillard, 2002:154-55). Besides, the ruling class's consumption was not adequate to absorb the increase in the overall production. Consequently, the productivity rises were not confronted by an increase in consumption, and the wave of intensive accumulation halted (Juillard, 2002:157) by outdated forms of regulation (Lipietz, 1987:34).

3.3.2. The International Division of Labour in the Era of Extensive Regime of Accumulation: The Emergence of the First International Division of Labour

The norms of production in the era of extensive accumulation were provided by the British imperial power. Given that manufacturing, and more importantly heavy industry, appeared initially in England, the greater part of the manufacturing production came to be concentrated in those countries, which could adopt the same industrial paradigm, with more or less protection (Lipietz, 1987:9). The development of the capitalist wage system led to the emergence of relatively complex forms of co-operation in manufacturing, which in turn provided capitalism with an enormous power over other modes of production initially in terms of productivity and then of political power. These changes went hand in hand with the changes in the juridical forms. Modern labour contract became the possible object of reference for the legal system (Woodiwiss, 1990:128). Due to the lack of the monopolistic regulation of wages, extensive accumulation was not

accompanied by a parallel expansion of social demand. The demand had to be created in the outside world, given the absence of sufficient internal demand. Yet, the expansion of extensive accumulation owes much to the exploitation of national work force and trade than war for colonies at the first stages of the development of capitalism. The intensified competition for raw materials and colonies promoted the rise of transnational monopolies backed up by the state. The outside world was in lack of ability to create and produce manufactured goods in the same productivity with the centre of capitalism. From this perspective, the outside world was more homogenous than the peripheral capitalism of today (Yeldan, 2001:16). This international environment provided the basis for the first definition of the concept of the international division of labour, which was expressed as the South producing cheap raw materials and the North producing manufactures.

Given that the economies of scale protected older industrial centres against newer locations under such conditions, this configuration of the international division of labour became relatively stable during the first division of labour. Novel industrial zones would only be appeared under the protection of a 'natural' monopoly (distance) or of an artificial one ('infant industry' protection) (Lipietz, 1987:9). Due to the same fact, the first international division of labour was, also, an inter-sectoral division. The imagination of the competitive advantage that still have impacts on the discursive formations are developed within this period.

Under such conditions, one can quite understand why the theoreticians of imperialism took little theoretical interest in the concrete analysis of peripheral social relations. The Smithian perception that certain goods become objects of international trade, since their production tends to be concentrated in those places in which the conditions of production are most appropriate, was fairly compatible with the social reality. The international division of this era can be considered as a process in which the circuits of the expanded reproduction of capital originated in centre using the outside world as a sphere of realisation even in the case of direct

investments. This was the 'first international division of labour' and it prevailed up to the 1960s.

3.3.3. Labour Law in Competitive Mode of Regulation

The spirit of the competitive mode of regulation is best represented in rights state (*Rechtsstaat*). Law had the function of guaranteeing the rights deriving from the ownership. The classical jurisprudence had been used to legitimise the societal inequalities by way of sanctifying the rationality of bourgeois categories of juridical forms. As expected, the first position in the legal discourse was dominant. The free expression and coordination of individual capitalist energies were considered to have utmost importance while the workers were excluded from social peace. This was the reason behind the denial of labour as a part of society even in its abstract conceptualisation as a pure commodity.

The socio-technical system of the era mainly depended on the means of coercion whose application was pursued generally by armed forces. The concept of law as a formal and abstract norm (and the consequent subordination of the administration and jurisdiction of the law to the liberal principles) was the means by which the state could guarantee the social life of economic individuals by way of abstracting social life as if it had entirely completed its own process of self regulation, assuring its certainty and continuity. Within this context, the principle of the separation of powers is used as a means by which the coordination of bourgeois interests is developed in an autonomous way, at a social level, against the interference of the state for the benefits of the subordinated masses. Thus, the function of the state in securing the rights and capacities of capital to control labour power in the production process and regulating the terms and conditions of the capital labour relation in the labour market is achieved by repressive strategies. The labour contract was both regulating the relations within the technical division of labour and -with reference to labour costs and conditions of competition- the relations between individual capitalists. This was a logical consequence of the guarantorist sprit of economic individuality and the conditions of the self-regulation of the

process (Fine, 1986; Hardt and Negri, 1994, 2001; Hunt, 1993; Jessop, 2002a; Woodiwiss, 1990, 1992, 1998).

3.4. Fordism

"When the accumulation of capital finds its content no longer simply in a transformation of the reproduction of labour process, but above all in a transformation of the reproduction of labour power, a new stage in capitalist development has arrived." (Aglietta, 1987:80). The so-called monopolistic mode of regulation that allowed a new regime of accumulation, that is, intensive accumulation, flourished from the class struggles (Billaudot, 2002a:140; Juillard, 2002:155; Lipietz, 1987:33) and became a social technology (Juillard, 2002:155). The term Fordist represented both the dominant model and the leading sector even though not all the economic activity in the centre and periphery were Fordist. Similarly, the logic behind the forms of capitalist development in the periphery had become increasingly Fordist in sense that it was forced upon other peripheral industries not only as an economic logic but also as a new model of development (Lipietz, 1987:93). [122]

Fordism can be defined as the principle of an articulation of process of production and mode of consumption in a given time and space (Aglietta, 1987:117). Yet, the conditions of the transformation of the labour process and of existence of the wage-earning class are not brought into harmony by any social/economic rationality; the driving force behind the harmony is rather the 'chance discoveries' stimulated by class struggles (Aglietta, 1987; Lipietz, 1987). The elements of the above-mentioned articulation can be outlined by analysing respectively, the main features of the capital accumulation in the Fordist model of development and the structural forms regulating the accumulation.

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[122] The elements of Fordism consider given the process of adjusting production and demand occurring in a single country; meaning that the lack of competitiveness is not expected to obstruct the synchronisation of production and consumption norms within a national territory.

3.4.1. The Intensive Regime of Accumulation and the Monopolistic Mode of Regulation

The main features of the capital accumulation in Fordism could be modelled with reference to the norms of production and consumption. From the perspective of production, a simultaneous rise in productivity and technical composition in Department 1 and Department 2 is observed in the golden age, that is the period between the end of the Second World War and the end of the 1960s (Lipietz, 1987:36). Each department provided the other with its markets as they combine to lower the value and diversify the commodities of mass consumption (Aglietta, 1987:108). Due to its effects on the cost of reproducing labour power in general, rise in the productivity hindered the negative effects of the tendency of the organic composition over profitability (Juillard, 2002:154; Sönmez, 1998:147). The economising effects of productivity on the labour costs of the capitalists were effective in the rise of profits[123] and this situation had become a barrier on the industrialisation of the third world until the end of the 1960s.

Wage earners' consumption and productivity in Department 2 rise at the same time (Juillard, 2002:154; Lipietz, 1987:36). This second condition resulted in the stabilization of wage relations and the extension of wage-earning to most activities. Besides, it provided the workers' organisations a base to bargain collectively the wage increases. The fulfilment of the second condition in turn; limited the increase in the rate of exploitation (which would otherwise reduce the effect of the falling rate of profit); inhibited the tendency towards a crisis of over production and introverted the possibility of under-consumption (Lipietz, 1987:37). Lastly, these features enabled the lawmakers of the Fordist era to acknowledge the abstract

[123] Robles (1994:69) and Aglietta (1987:102), with an implicit reference to Ricardo, mention that an increase in productivity reduces the value of means of production for other means of production and of means of consumption. In other words, the transformation of conditions of production, whose origin is the creation of new means of production, and the decrease in value of those means of production that replace those that have been consumed provides a certain a link between productivity and accumulation (i.e. and relative surplus value). As a result, the ratio of the value transferred from the obsolescence of means of production in department 1 to the commodity, changed in a manner that effects the profitability positively. The change in the technical composition of capital thus reduced the value of constant capital and thus eventually prevented a rise in the organic composition of capital (Aglietta, 1987:102; Lipietz, 1987:36).

labour as a founding principle of an imagined social contract (Hardt and Negri, 1994:55).

Structural Forms in the Monopolistic Mode of Regulation

Money as a social institution, the socio-technical system covering all aspects of the capital labour relation, and arrangements governing international relations that have dominantly economic aspects (international like structural forms) are the structural forms by which monopolistic mode of regulation is realised. Given that the study focuses on labour issues, an analysis on the socio-technical system in Fordism is inevitable. Thus, the institutional and organisational factors of the socio-technical system will be analysed in detail. Given the fact that all of the structural forms mentioned above can only operate with the simultaneous operation of all the others and their cohesion can only be assured in a national state, the investigation on the socio-technical system will thus take into account, when necessary, the state intervention throughout the golden age of Fordism.[124]

Socio-technical System Covering All Aspects of Capital-Labour Relations

The socio-technical system provides us the frame in which the states function of securing the rights and capacities of capital to control labour power in the production process and regulating the terms and conditions of the capital labour relation in the labour market and labour process is realised. The socio-technical system covering all aspects of the capital labour relation are shaped by six factors: the constitutional order, the institutions corresponding to intangible means structuring interactions between organisations, the organisations, routine behaviours, conventions and habitus. The first three of these factors will be evaluated with reference to the main dynamics of the Fordist model of development. The other three, routine behaviours, conventions and the habitus will

[124] On the other hand, an analysis focusing solely on socio-technical system cannot allege to be using economy politics as a method of investigation. Socio-technical system acquires meaning in its relation with money as a social institution. Thus, to the extent that the interaction of the two systems is related from the perspective of labour, a survey on the money as a social institution is necessary. Yet, this investigation will not be pursued under a separate heading but in the analysis of the phases of crisis.

not be evaluated due to the difficulties of partial systematisation based on these themes. The first factor is the constitutional order, defining the rules making it possible to resolve conflicts between contradictory partial rationalities produced by different structural forms. The institutions corresponding to intangible means structuring interactions between organisations provide second set of factors in the formation of the socio-technical system. The third factor is the organisations. This conceptual set corresponds, in Fordism, respectively to the welfare state and its appearances in the periphery; collective bargaining; and trade unions, employee organisations and corporations.

The wage relation is a complex relation. In contrast to the commodity relations, the diverse forms in which it presents itself are qualitatively different and dynamic (Reynaud, 2002:90). Yet, the form that the wage relation takes under the Fordist model of development requires the incorporation of basic juridical forms, which refer to contract, factory rules, administrative decrees, subordination, collective bargaining, right to organise in a specific manner and as a function of structural forms. The mode of the cohesion of these basic social forms constitutes a structural form/socio-technical system, which represents the principle of the organic unity of all the basic social forms of wage relation (Aglietta, 1987:189; Boyer, 2002c:73; Robles, 1994:71).

The mode of the cohesion of basic social forms in wage relation leads to the appearance of a socio-technical system, as a structural form. Given that the socio-technical system provides us the frame, wage-labour nexus can be defined as the axis on which wages and reproduction of labour power at a given space becomes compatible. All the wage formulas and the regulations of industrial relations must take into account specific control problems characterising each major period of the history of class struggle (Coriat, 2002:247).[125]

[125] Given the influence of non-value forms in the reproduction of labour, no closed systems theory both in the realm of economics and of law can be erected on wages or on contractual aspect of labour.

There is a correspondence between institutional evolution and its principles for action (law) and radical changes in wage formation. Thus, at the level of constitutional order in Fordist regulation, we are faced with the constitutional celebration of abstract labour and the subsequent proletarian interests, and then the constitutional re-figuration of a clearly bourgeois ordering in the affirmation of formal freedom and equality and in the hegemony of the productive interests of capital (Hardt and Negri, 1994:58), as a component of socio-technical system. This was because the antagonism between collective capitalist and collectively organised labour could no longer be absorbed within the political mediation of the principles of classical jurisprudence and of bourgeoisie as a direct relation of coercion. Then, in order to envelop and directly control the working class at social level, thus to reduce it to abstract labour, capital had to organise as a factor of production whose allocation is made by way of labour markets (Hardt and Negri, 1994:62). The way the organisation of this factor of production was a matter strictly related to social division of labour. Since in a social fix in which the peripheral countries were in lack of achieving the productivity of labour in the centre, the cost of labour to the individual capitalist had to be regulated in such a way that the costs of labour to each individual capitalist would be the same. Therefore, at the Fordist moment of the history, collective bargaining, the institution of the socio-technical system of Fordism ensuring the reproduction of the industrial relations, functioned as a place of the settlement of specific control problems at the level of the social-division of labour.

Collective Bargaining: the Intangible Apparatus Structuring Interactions between Organisations

> As a new stage of capitalism bound by the quest for relative surplus value to the predominance of a regime of intensive accumulation, Fordism unifies the different partial forms of existence of the wage relation and constitutes a structural form involving a major legal codification; *collective bargaining*.
>
> (Aglietta, 1987:189).

Collective bargaining is generally established in the constitutions of Fordist states or in the states of periphery after the Second World War (Hardt and Negri,

2001:300). These institutions have applications over political, ideological and economic spheres. The state, as a set of structural forms in the golden age, legislated the legal framework for collective bargaining, set working conditions, fixed the minimum wage, established social security programmes, supplied credit to the economy and implemented policies to reduce the effects of collective bargaining over the business cycle. The dependence of institutions on constitutions makes it necessary for the analysis of constitutional provisions for an inquiry in industrial relations. This task will be completed in part II by reference to the Turkish Constitutions of 1961 and 1982.

The central dilemma of the theoretical approaches focusing on industrial relations rests in the problematic of movement from the individual to the collective (micro-macro problematic)[126] (Reynaud, 2002:88). Related to this problematic the way in which intermediary collective agents (organisations) as social mediators constitutive of enduring and progressively institutionalised social relations are understood gains importance (Favereau, 2002). Institutions of socio-technical system ensure a bridge from the micro to the macro and vice versa since they operate at an intermediate level between actors and the economic system viewed from a more general level.

From the perspective of capital, the regulation regarding the stabilisation of wage relations in different countries of the centre (mainly, OECD Countries) usually involved binding collective agreements applying to all employers within a given branch or region and, therefore, preventing competition for low wages and periodic increases in the purchasing power due to minimum wages established by the state (Boyer, 2002a:234; Lipietz, 1987:37). The social insurance system that is financed by the compulsory contributions of both the employers and the employees

[126] Two levels of analysis should be distinguished: The micro level refers to a particular form of work organisation, company style ad the rules in wage determination of a certain company. The macro level refers to the rules acting in labour relations such as wage determination in a given branch or economy. While, the macro level analysis has the methodology of retrospective analysis, the micro level analysis uses inductive way of rule composing.

guaranteed all wage earners a permanent income, thus, guaranteed a predictable domestic market.

From the perspective of labour, collective bargaining provided the workers the power to demand stable wages that were periodically adjusted and, to a certain extent, job security and politically organised unemployment insurance scheme, which in turn provided the suppliers of labour power the ability to strategically wait, instead of directly and immediately accepting each demand, that is, every wage offered in the labour market (Offe, 1985:18). In return, they recognised the management's right to intensified control over the labour process. The production norms, which had been beginning to emerge until the 1920's, became stabilised and widely accepted.

As a result, collective bargaining ceased to deal with the issues of skill, methods of work organisation, new production methods, and the control of society and/or production. Such a conclusion was inevitable[127] given the the Taylorist element in the Fordist model of production required the complete obedience of workers to the conditions of work designed in relation with the production norms, in return for a rigidity in the work contract and relatively high wages (Aglietta, 1987:117). Hence, labour leaders accepted Fordist principles of work organisation in terms of intensive rationalisation, alienation and lack of control over the work, which was the price to be paid for prosperity.

The Paradigm of Inflexibility

Given the wages were periodically adjusted and increased, the conditions of the existence of wage earners, therefore, of the norms of the consumption of wage earners transformed. Thus, "the procedure of collective bargaining guaranteed the inflexibility of the nominal wage that is needed for the regular development of the

[127] From the perspective of capital, Fordism provides the capitalist class overall management of the production of wage labour by the close articulation of relations of production with the commodity relations in which the wage earners purchase their means of consumption (Aglietta, 1987:117).

mode of consumption, while the system of social security is designed to maintain workers deprived of their jobs in their position as consumers" (Aglietta, 1987:383). Depending on the new perspectives provided by the increased production for wage earners, production and accumulation in Department 2 increased enormously. To put it differently, the positive changes in the workers consumption norm functioned as a source of demand and made it possible to extend the new methods of extracting surplus value to Department 2.

Both in primarily extensive or primarily intensive modes of accumulation, the pole, which structures the validation of production (centre) may shift from one department to another. Under the conditions of extensive accumulation, the driving force in transforming productive forces originated in Department 1. Relying principally on the demand of the means of production from within the same department, accumulation could proceed only for a certain time period in Department 1. Given that the uneven development of the two departments is capable of destabilising the cohesion of the whole system, the driving force in transforming productive forces in the Fordist model of development has originated in Department 2 to secure the harmony.

As a result of the developments in Department 2, the workers ceased to depend on non-capitalist sectors of the economy to satisfy their needs. The tendency to destroy the traditional modes of consumption and to create a mode of consumption specific to Fordist model had overcome the counter tendencies, which, largely, belonged to the previous mode of regulation. To sum up, the monopolistic mode of regulation provided a new way of achieving correspondence between the two departments, whose central feature was the continuous adaptation of mass consumption to productivity gains.

Organisations: Trade Unions, Companies and Corporations

The functioning of the collective bargaining resulted in significant changes over the organisational forms belonging to the socio-technical system. The significant changes in the realm of collective bargaining law and of the other norms related to

wage relations were accompanied by major changes in the overall organisational norms and thus in the power structure of society in question (Boyer, 2002a; Lipietz, 1987). Organisations included in the analysis of the socio-technical system specific to monopolistic regulation are trade unions, employee organisations and companies.

Trade unions and the confederations consisted of them have provided a set of organisational agencies by which collective bargaining had become possible. Throughout the last century, unions, as the historical form of worker representation and as the basic means for the collective construction of the social identity of waged earners, have developed a variety of social functions. The function of trade unions have changed in time from representing the aspirations and claims of a relatively homogeneous social group to contributing to the systems social regulation by transforming individual interests into collective ones and the collective ones into suitable proposals for collective bargaining (Catalano, 1999:28). [128]

Individual capitalists organise their labour processes and operations under certain juridical forms, which confer on them their right to title, control and possess as distinct legal subjects. In the Fordist model of development, the competitive mode of regulation took the form of monopolistic regulation, with large firms that were, now, able to plan the evolution of the workers' consumption norm within the framework provided by the new mode of regulation (Billaudot, 2002a:140; Lipietz, 1987:35). Companies had various juridical forms related to the size and to the operations of the individual capital represented by them.

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128 All the way through the golden age of capitalism, workers were relatively homogeneous. They reproduced their daily practices on similar rules and values. They contributed to the self-perception of working class as a distinct and fundamental category and represented a common worldview distinct from others. The social construction of worker identity and autonomy with reference to their occupational involvement in the productive system and contribution to worker integration into the capitalist social system are among the most important functions of trade unionism in the Fordist model of production (Catalano, 1999:28).

Under the conditions[129] provided by state intervention specific to the Fordist model of development, the objective of each capital was not simply to make sure of a dominant position in a particular economic line, but to control the means and rhythm of diversification itself (Aglietta, 1987:309). Consequently, the ability of companies (corporations) to represent the individual capital is weakened since the complex relations occurring in a company (as a social relation) are directed to a single purpose, that is, the self-valorisation of the investments on a certain subject.

Companies needed to be articulated in such a way that ensures the slippage of capital in the form of money capital to more promising realms. Articulation occurs due the requirements of self-valorisation under the present stage of the conditions of the reproduction of capital at national and international scale. Thus, the way the investments realised under the social form of company articulated is time and space, dependent or dependent on relations of competition specific to a given model of development in which the investment strategies are formed. The relations of competition specific to this mode of regulation are those of absorption, merger and association of firms losing in competition. Strategic investments are greater than before in importance due to their role in the overall control of the society.

The outcome of competition in the application of strategic struggles between giant groups has always been the emergence of a new branch or group of branches in which norms of production and exchange are established. Simultaneously, by interconnecting their investments in the different areas of economy, a few giant corporations consolidated their positions and stabilised the conditions of competition. Stratified oligopoly is the result of that kind of regulation (Boyer, 2002a:7). Aglietta (1987:309) mentions that this form is the characteristic of the regime of intensive accumulation. In stage of maturity of intensive accumulation,

[129] The state took a more active part in the management of economic relations thus, adjusted monetary creation to the economy's financing needs; intervened in wage negotiations; encouraged the formation of major industrial and financial groups; guaranteed the banking system; and wielded budgetary and fiscal policies to smoothen the business cycle with the aim of achieving correspondence between the two departments, whose central feature was the continuous adaptation of mass consumption to productivity gains (Robles, 1994:73).

the stratified oligopoly extends to all categories of commodities included in the social norm of consumption of the wage earning class (Aglietta, 1987:309). The social norm of consumption expressed in the concept of mass consumption, is thus interconnected with monopolistic regulation in the strictest sense.

3.4.2. International Division of Labour in the Era of Intensive Regime of Accumulation: The Emergence of Second International Division of Labour

There are two stages in the expansion of Fordism, which in turn resulted in different structures of trade and markets indicating a difference in the hierarchy of international division of labour. The first expansion occurred just after the Second World War. The central economies of capitalist centre are re-organised to adopt the new model of development. The second stage, that is internationalisation, starts with the second phase of the structural crisis. The second international division of labour came into question with the second stage of the expansion of Fordism as a system of work organisation depending on the mechanisation of production processes and on a complete separation between conception and production. This issue will be discussed further in the subsection on the crisis of Fordism.

When national forms of regulation enable and force a state to benefit and adopt the production and consumption norms of a dominant state, the logic of adherence prevails and operates in a way that structural forms resembling those of the source country becomes apparent in the adopting country. The impact of national class struggle here occurs within the forms, which are expected to be suitable in the adaptation of the norms of consumption and production of the dominant state.

In the first stage, the internationalisation of the conditions of reproduction of capital is realised with aids and with the international institutions mainly conducted by the hegemonic state. Within this framework, the national economies of the centre articulated with the first stage of expansion of Fordism in various ways. “[USA] forced its model of development on the rest of the world, first, culturally and then financially with the Marshall and MacArthur Plans, and finally

institutionally with the Bretton Woods agreements and the establishment of the GATT the IMF and the OECD" (Lipietz, 1987:40). The peripheral countries, due to the productivity gap between periphery and the centre, remained tied to the first international division of labour is discussed in the previous subsection.

The production and consumption norms of US are universalised. Programmes of welfare state, establishment of banking system with a central bank at the top, institutionalised collective bargaining as a means for wage rigidity making the planning of the future investments possible, the acknowledgement of labour rights in Constitutions, have become adopted universally (Aglietta, 2000; Hart and Negri, 1994; Jessop, 2002a). US had provided the rest of the advanced capitalist world the norms of production and consumption to gather with American values. Its currency became the international currency. The overall result was to accelerate trade and interdependency among advanced capitalist countries.

The diffusion of the Fordism as a model of development between the years of 1945 and 1970 created markets for mass consumption in the countries where new norms of production were introduced. Unlike the period of extensive accumulation,[130] international trade concentrated among central countries (Vidal, 2002:110). The non-capitalist world of the extensive regime of accumulation, which was functioned as a source of cheap raw materials and as a source of outlet for the manufactured goods and capital investments of the centre, had lost its importance due to the declining importance of ex-colonial markets in the realisation of the overall value of central economies.

3.4.3. Labour Law in the Monopolistic Mode of Regulation

So far, the developments in the norms of production and consumption are investigated together with the socio-technical system of the monopolistic mode of regulation covering all aspects of the capital-labour relation. The same

[130] The basis of traditional form of regulation under competitive capitalism was the foreign markets. These markets lost much of their importance under monopolistic regulation of intensive accumulation.

investigation embraces the necessary elements of the process of constitutionalisation of labour from the perspective of political economy employed by this study. We have seen the emergence of the requisites of constitutionalisation of abstract labour in the changing norms of consumption that is linked to the change in the relative positions of Departments 1 and 2. The analysis of the system revealed the importance of labour law as a function of socio-technical system over technical and social division of labour. With regard to the technical division of labour, labour law has the function of determining the powers of the parties in a workplace, and regarding social division of labour, to the extent that labour is constitutionalised in a given country, labour law has the function of determining the cost of labour to capital in general in a given national formation. Yet this function of law is structurally constrained by value form.

Within this framework, the way the state secured the rights and a capacity of capital to control labour power in and out of the production process has changed. The state took active measures and involved directly the regulation of the terms and conditions of capital-labour relation both in the labour market and in the labour process. When labour is constitutionalised, we are presented with a new image of the relationship between society and the state. The new state or in Jessop's words (1994b; 2002a), the Keynesian Welfare National State, was not a sole guarantor and it did not assume only a formal ordering. Neither did it negatively register social reality, but rather put social reality into question and actually embraced it with the discursive realm that it had created. Fundamental rights lost their capacity to bestow power to single interests but acquired a new juridical meaning in which social interests defined by the state are represented.

Law as a means of active state creation and intervention is restructured and configured as a plan of the construction of social order. With the acceptance of abstract labour in the constitution, law appeared as a moderator of the contrasting interests, while, in reality the state and its law were discursively creating a realm in which the overall securitisation of the capacities of capital to control labour power

under new conditions were being realised. The changes necessary for this new functions to be realised transformed the classical principle of separation of powers to the division of power in structural forms and, the division of public from private, if ever existed, reached a further reduction.

Labour law, as we know it, is a product of this period within which the second position in the discourse of law and production become dominant. The discursively created realm provided the lawmakers a point of departure for the recognition of conflict and its inevitability in industrial society. This recognition and the subsequent constitutionalisation, to the extent that capital accomplished its command over labour power, had defined the borders of the struggle. Unions ceased to challenge the legitimacy of the right of ownership but helped to enhance the power to control labour process in exchange for social rights and acceptance (Hardt and Negri, 1994:96; Strath, 1996:61). In countries in which productivity levels were increasing with regard to the rest of the world, the collective labour contracts seemed to be serving for the same process.

At that point it should be mentioned that in countries in which the process of accumulation have the characteristics of peripheral states and thus the balance between the Departments 1 and 2 was absent, but in which the law and regulations resembled the central countries –the countries experiencing the early import substitution- the recognition of the conflict, and the subsequent constitutionalisation of labour did not define the borders of class struggle and did not expand the command of capital over labour power due to the lack of productivity necessary for the constitutionalisation of abstract labour.

Corresponding to the complex process of the extension of the power of capital to control over the entire army of workers and the socialisation and integration of labour power within capital, the Fordist era witnessed the constitutional regulation of labour. This process resulted in the re-composition of the particular experience of working class resistance in the general capitalist project of the social

management of accumulation by way of the devices of socio-technical system. Within this context, the bilateral normative process of lawmaking became a continuous process of production by way of organisations and institutions continuously reproducing the relations regulated by the labour law. The bulk of the norms regulating industrial relations acquired a social dimension in which the distinction between public and private dropped out. This was also demonstrated by the fact that those schools of law, who insisted on or remained-tied to a private (law of obligations) conception of the labour contract, recognised the mixed nature of labour law and accepted social constraints on the right of ownership (Hardt and Negri, 1994).

The texts of labour contracts had become subjected to interventions of Keynesian Welfare State's legislations in the realm of labour law as an indicator of the paradigm of rigidity in industrial relations. Not only the labour costs as a factor of competition between the firms that were not subjected to 'developing' countries' competitive pressures due to the productivity gap explored before, but also the relations within the workplace were regulated by way of individual and collective labour law within the limits of socio-technical system.

The cross-country studies carried out on central economies indicates that within the time period of 1950-70, the issues that were regulated, if any, by a private contract between the individual capitalist and the individual worker, such as the number of holidays, procedures for contract termination, procedures for promotion grievance procedures, pension plans and retirement schemes, the majority of working conditions, training facilities; reimbursement of training costs; unemployment compensation; health and disability programs, maternity leave, and child care facilities had become subjected on obligatory legal regulations bringing a minimum standard on these issues (Strath, 1996:24, 61). [131]

[131] For a detailed investigation including the golden age labour contracts see Addison and Siebert, 1993; Flanagan, 1993; Flanagan *et al*., 1993; Freynsinnet, 1993; Hartog and Theeuwes, 1993; Hartog *et al.*, 1993; Jimeno and Toharia, 1993; Karlhofer and Ladurner, 1993; Korver, 1993; Mitchell and Scherer, 1993; Paque, 1993; Sasajima, 1993; Treu *et al*., 1993; Strath, 1996; Williams, 1993.

3.5. After Fordism

The fairly long term stabilization of the allocation of social production between consumption and accumulation had become subjected to interruptions by the end of the 1960's. Quite distinct from the great depression, where the real issue was the all round establishment of the regime of intensive accumulation, this time the limits of the transformation of the conditions of existence of the wage-earning class was in question. This questioning included the legitimacy of welfare provisions associated with bureaucratism, the professionalized and bureaucratised forms of help and support to labour, and the juridification of social relations especially the ones in the realm of industrial relations. And, despite some clues indicating the emergence of a new form of state, the problem remains unsolved up till now (Aglietta, 1987, 2000, 2002; Boyer, 2000, 2002a; Grahl and Teague, 2000; Hardt and Negri, 2001; Lipietz, 2002).

3.5.1. Structural Forms After Fordism

Politically the Keynesian welfare national state, which gave its general state form to post-War compromise, proved vulnerable, among others, to growing political resistance to taxation and stagflation. When we look retrospectively, the existing regulation in the form of regulatory mechanisms, such as institutional rules, organisations, procedures and habits had proved to be inadequate in the restoration of the failure in the stabilisation of the allocation of social production between departments.[132] Under the conditions of the structural crisis of the Fordist model of development, the operation of the structural forms of the monopolistic regulation invited social costs in the form of inflation, wastefulness and intensification of worker exploitation.[133] [134] As a result, the production and consumption norms have

[132] Mass consumption as an element of continuity with Fordism survives as a main dynamic of accumulation yet in a fragmented manner, meaning that it is not possible to calculate its direction as in the case of the previous regime depending on inner markets and the purchasing power of workers.

[133] Worker exploitation, by the mid-1960's had reached a serious level, which in turn effected workers' health; increased worker alienation; stiffened resistance to Fordist production methods, thus endangered the management's right to intensified control over the labour process which is at the heart of monopolistic regulation.

become fragmented all over the world, meaning that the production and demand circuit has changed fundamentally. Within this context market-based strategies led to the development of the flexible specialisation and of re-organisation of the institutional and organisational forms controlling reproduction and use of labour power for the internationalised branches. The alleged need for new forms of flexibility in the organisation of the labour process and labour market has had major implications for the functions and organisation of the welfare state (Jessop, 2002a:87, 92).

3.5.1.1. Changing Nature of Work

The changing functions and organisation of the structural forms, among which there is the socio-technical system, had major implications on both the individual and collective labour law. The erosion in the regulatory powers of protective labour law as a result of de-constitutionalisation of labour power first in the discourses of production and then in the regulations on the industrial relations have a correlation with the changing nature of work that explains the fragmented nature of the working class. Within this context, the rights of the parties in wage relation have been re-defined, meaning that the powers of the parties in work relation have changed fundamentally.

When we look at the nature of work at the point of production, we observe that as capitalism has been restructuring in response to the crisis of the Fordist model of development, the labour process has come under challenge. The crucial question on the agenda was what was replacing the Fordist labour process if it was being replaced. The Taylorist/Fordist labour process has reached its limits in the increase in the rate of surplus value. The ways in which the technical and social division of labour are constructed, and workers, managers, machines and materials are divided

[134] " Yet it is the explosion of the social costs of the mode of consumption that the explosion of the social costs of the mode of consumption that has very largely come to dominate the irrepressible increase in public expenditure and which is at the core of the crisis of Fordism" (Aglietta, 1987:241)

and combined at work in Japan[135] have largely defined the form of labour process in contemporary capitalism. Under different labels, "lean management", "total quality management", "post-fordist" or "neo-fordist"[136], the new face of the factory highlights changes in relation to the organization of labour process and gives significant emphasis to the emergence of a multi-skilled, trained, educated and co-operative workforce (e.g. Adler, 1993; MacDuffie, 1995; Kenney and Florida, 1991, 1993; Kaplinsky, 1994) .

When we look at the nature of work from a general perspective, we observe that the crisis periods have the characteristics of increasing personal dependency on the commands of the employer rather than on the formal rules regulating workplace relations. Personal dependencies on the individual capitalists are growing in face of the ambiguities in the nature of flexible re-conceptualisation of work and of the growing army of the unemployed.[137] The notion of work says little about workers' interests, about their view of the world, their life style, their skill. In the majority of the cases, skill in workers' life has been isolated and banalized in order to reinforce worker control and discipline (Catalano, 1999:32). Typical tasks are in the process of erosion and re-definition. Unstable jobs and a typical work have appeared as the new regularity in which extended working hours and low growth in productivity and wages are commonly observable facts throughout the world (Boyer and Juillard, 2002:242). The notion of work today is increasingly getting more and more abstracted (Bertrand, 2002:85-86).

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[135] Japan has been described as the quintessential 'post-Fordist' society (Kenney and Florida in Tomaney, 1994: 164).

[136] The changing nature of the capitalist labour process is termed Neo-Fordist by some writers because it does not represent a departure form the Fordist/Taylorist model. For others, it is celebrated as a major rupture and labelled Post-Fordist. Neither Neo-Fordism nor Post-Fordism can capture the new reality as they generally disregard the fact that the nature of change involves new developments, but is also the culmination of past events.

[137] The work forms of the workers belonging to work subcultures are mixed with those of 'service provision', which makes the producer and work relation subjected to consumer satisfaction rather than the product quality and quantity (Petit, 2002:172). The technical production function of work force, then, becomes more uncertain and peripheralised in face of the new skill required by the service offering nature of work (Catalano, 1999:33). The change in output from 'product' to 'service provider' is not the only source of reduction in the importance of work.

In addition, the over expansion of the service sector, which has proved to be unsuitable with the tripartite corporatism of Fordism in central economies, and problems of peripheral Fordism had resulted with significant changes in the capacity of labour to produce counter strategies to capital both in labour markets and in national politics (du Tertre, 2002:206-213; Mjorset, 2002:258). The work force itself had become more differentiated and thus workers' interest and demands seemed less amenable to a collectivist approach. The impact of global social and employment influence on identity, recognition and membership in a social group are reduced by subcultures of work (Catalano, 1999:32; Waterman, 2001:219). The disaggregation of the working class has become a visible phenomenon (Theret, 2002:127).

New Institutionality and Insecurity

A new institutionality in which tasks are carried out without contract stability, without accumulation of occupational experience over time, without involvement in collective bargaining[138], without a previously defined job, without a defined working day or definite contract, and without a specific workload becomes dominant in the daily consumption of labour power (Munck, 2002).

Trends, which have become visible in the world society, do not involve a change only in the content and nature of the work. Equally remarkable is the new similarity in how paid work itself is shaping up in the first and third world (Beck, 2000:1). Despite the ongoing disparity in the world wide location of different levels of the Fordist labour process, there is a remarkable similarity in the spread of temporary and insecure employment, discontinuity and loose informality both in Western societies[139] that have hitherto been the bastions of full employment and in the third world (Beck, 2000:1,76-78). There is a nomadic multi-activity covering

[138] Homework, telework, etc.

[139] "Trends in Germany may stand here for those in other western societies. In the 1960s only a tenth of employees belonged to this precarious group; by the 1970s the figure had risen to a quarter, and in the late 1990s it is a third. If change continues at this speed -and there is much to suggest that it will- in another ten years only a half of employees will hold a full-time job for a long period of their lives, and the other half will, so to speak, work a la bresilienne." (Beck, 2000:2)

all the world's workers except the workers who constitute the core workforce of industrial plants and service sector.

It is this new institutionalisation of work and this spread of insecurity throughout the world that separates the work force from a kind of identity and autonomy that is capable of building new strategies for class struggle (Beck, 2000:1; Offe, 1985). The supply side in labour market has lost its capacity to protect itself against the danger of other suppliers outbidding their offer and to pursue strategies for this end (Offe, 1985:30). As a result, the identity with work as a life experience changes radically and so do the bases on which unions might contribute to in the building of new social and occupational identities that may provide a new form of collective bargaining. "The working class as we know it is rooted in a spatial and cultural fix which no longer exists" (Munck, 1999:11).

The Paradigm of Flexibility: Wages, Social Security, Employment Laws and Labour-Time Model

The new political approach is no longer depends on the stimulation of effective demand and social compromise (Munck, 1999:5). The equilibrium price for wages are accepted to be determined by a mysterious auctioneer, who is smart enough to find the equilibrium price before trading takes place[140] (Teulings and Hartog, 1998:20). It had become widely accepted that profits were low because workers were too strong, thus, the rules of the game were too 'inflexible'.

Policy makers voted for a de-standardised, fragmented, plural 'underemployment system' characterised by highly flexible, time-intensive and spatially decentralised forms of deregulated paid labour (Beck, 2000:77). The denial of the social compromise had deep impacts on the rules governing wage rises and social security, on employment laws, and on the occurrence of insecure jobs (Strath,

[140] Yet, perfect markets are not a perfect gift of nature, they have to be organised (Sayer, 1995). The metaphorical auctioneer needs a counterpart in the real world. The equilibrium prices, with all their beautiful properties, do not fall from skies (Aglietta, 1987:330). "And, clearly, the auction model did not have enough appeal, except for slaves, and for orphans in the seventeenth-century Dutch Republic." (Teulings and Hartog, 1998:20)

1996).[141] A restricted view of market as defined in neo-liberal theorisations, has become dominant in the realm of industrial relations. Under such conditions, the so called deregulation meant flexibility, at least in the realm of the dominant discourse of production, that is, neo-liberalism.

In pursuit of flexible industrial relations, there are many forms and procedures. The regulation of the employment is strikingly illustrated by the models of flexibility that matches with the requisites of company order-books and of recruitment. There is a wide variety of labour-time models. External numerical flexibility, in which employers decide how many employees they want at any given time, is one of them (Beck, 2000:78). A second form is the externalisation of work force via various forms of sub-contracting or putting out of work. Internal numerical flexibility, which means that working hours and shifts, etc. decided according to employers' needs, is the third form. A fourth form is functional flexibility. Here job assignment and rotation is determined according to the employers' needs. Lastly, wage flexibility, in which wages adjusted according to performance and productivity, could be mentioned. Besides, these forms are combined in order to create a more flexible industrial relations environment (Munck, 1999:6). Moreover, flexibility can further be divided into two by reference to the role of the work force in labour process. Skill flexible workforce is generally located in industrial countries. They are in pursuit of level 1 and 2 activities of the Fordist labour process. Time flexible ones are generally located in peripheral countries. They are not expected to contribute to the planning and innovation procedures even at work plant level but expected to increase absolute surplus extraction.

3.5.1.2. Labour Market Strategies

Given that currently there is no obvious mode of regulation like Fordism and that there are lots of heated debates over the relative superiority of competing national regional and urban models of production and consumption, some contestant

[141] The governments of the United Kingdom and the United States, and together with some OECD countries started to adopt policies of 'liberal flexibility' (Boyer, 2002a:234; Lipietz, 1987:4). There was criticism of the Euro-sclerosis attributed to the rigidity of wage relations in Europe.

national models on flexibility will be investigated. These models include attempts to secure the rights and capacities of capital to control labour power in the production process and to regulate the terms and conditions of capital labour relation both in the labour market and labour process.

With the emergence of the second phase of the crisis labour market strategies that had been pursued up till that stage altered sharply (Amable, 2002:164-167). Japan and German-Europe[142] preferred to develop an alternative industrial relations strategy (info-industrial strategy) based on the encouragement of *'responsible autonomy'* on the part of the workers (negotiated involvement), thus, on a semi-flexible (thus not post-Fordist) form of work organisation that, in turn, led to a relative rise in these countries' national levels of productivity[143] (Bertrand, 2002:82-83; Hardt and Negri, 2001:299; Lipietz, 1987:3, 11). Throughout the 1980s, these countries seek to positively influence the market situation of specific, often very finely differentiated occupation and sectoral segments of the entire work-force (Juillard, 2002:157). The investment on the new kind of skill reveals a new logic of work organisation and professionalisation (Catalano, 1999:33). While the models of crisis resolution based on the mobilisation of human resources proved to be more fruitful in the well-advanced crisis of productivity throughout the 1980s (Lipietz, 1987:4), Anglo-American model proved to be relatively successful in the 1990s and in the first years of the 2000s (Jessop, 2002a:102).

It is clear that the two modes of industrial relations, occurring within the period of crisis of Fordism, have different internal logics (Juillard, 2002:157). On the one hand, the extension of poverty and the number of wage-earners living below the poverty line in the USA, and on the other, mass unemployment and the re-

[142] In the past, it was generally believed that long-term attachment was unique to Japan under the lifetime employment system, yet later on it is recognised that the prevalence of long-term employment was also applicable to USA and EU (Ohashi and Tachibanaki, 1998:2).

[143] Due to the fact that the pricing and allocation of labour is governed by a set of national administrative rules and procedures in internal labour markets, there are some prominent differences between Japan and the West in the way in which internal labour markets work (Ohashi and Tachibanaki, 1998:2).

emergence of poverty and social exclusion in Europe sufficiently indicates that changes in labour processes of these economies are not based on a superior form of productivity capable of changing the crisis of Fordism, which proved to be in crisis due to its inability to provide adequate conditions for the long-term stabilisation of the allocation of social production between consumption and accumulation (Hardt and Negri, 2001:299; Munck, 1999:5). Both of these two policies are dedicated to resolve the supply-side (productivity) crisis of Fordism. As mentioned above they are both in lack of the necessary means that are capable of providing new conditions for the long-term stabilisation (Reynaud, 2002:91). Mainstream answer attacked the rigidity of the employment contract; German-Europe and Japan preferred to challenge another element of the classical Fordist labour process, namely Taylorism as a form of direct control by the management over the activities of the workforce. At that point, it should be mentioned that liberal flexibility and negotiated involvement can be combined in various ways; thus, they are not alternative policies in the real sense of the term (Jessop, 2002a:102; Munck, 1999:4). [144]

The asymmetrical strategic capacity of supply and demand at labour market, under the conditions of the second phase of the crisis, resulted in the deepened exploitation of labour power in all the variants of strategies on the demand side (Boyer, 2002c:78). Even the highly privileged employees, who, because of the type of demand they are faced with and their own strategic chances, are expected to find themselves in a favourable market situation in which they can protect their privileges, found themselves in an unfavourable market conditions due to their diminishing suitability for alternative jobs with other buyers (Offe, 1985:35). The new chaotic era has meant, for employers, a new approach to industrial relations based mainly on different proportions of flexibility according to their strategic

[144] Indeed, what we observe in advanced countries is the combination of these policies in different portions (Boyer, 2002c:78; Lipietz, 1987:6). While USA and Britain are favouring flexibility and ignoring negotiated involvement (Boyer and Juillard, 2002:239-246), certain countries such as France, introducing negotiation at an individual level (Coriat, 2002:247), Japan practising negotiated involvement at the (large) company level (Inoue and Yamada, 2002; Woodiwiss, 1992:58), Germany doing so at the sectoral level (Woodiwiss, 1992:15) and Sweden closest to the Kalmarist axis (Mjoset, 2002:255).

choices (Munck, 1999:6; Woodiwiss, 1992:58). Within this context, investing on the labour dwelled in the 'developing' world acquires a new meaning as an extension of labour market strategies. Whatever the labour process paradigm preferred by a country is, these responses to the supply side crisis of Fordism indicated that those countries, which stick to the classic Fordist wage relation (rigidity plus Taylorism) would gradually be outclassed (Juillard, 2002:157).

Currently, there is no set of partial conceptualisations sufficient to consider the new epoch as a new regime of accumulation with a confronting international division of labour (Bertrand, 2002:85). There are problems in trying to recast contemporary changes as either a shift away from Fordism at all or development of neo-Fordism (Cumbers, 1996:38-39). Besides, neither the spatio-temporal nor the contractual de-standardisation of paid work applies uniformly or simultaneously to the majority of the branches of the employment system (Bertrand, 2002:85; Waterman, 2001:208). However, it can already be said that flexibilisation will not be income-neutral (Beck, 2000:80).

Yet, all the new forms of work organisations have some common aspects with regard to employment relations. Contrary to the Fordist period in which employment relations tended to be uniform, today these relations tend to diversify into forms adapted to too many different situations. The employment relation is gradually spreading over a large continuous spectrum, extending from wage contracts to trade and subcontractor relations. The method of evaluating the results (managing) of labour outputs on labour contracts tends to be quite similar to a trade contract in which results become determining rather than the participation of the worker to the labour process (Bertrand, 2002:85). As a result of this change, workers find themselves extremely constrained in the short term, and suspicious about their future in the long term.

3.5.1.3. Institutions and Organisations of Socio-technical System

Mainly after the second phase of the crisis, the alterations in the wage relation and the enhanced power of capital to control labour power lead to changes in the

institutions and organisations of the socio-technical system of Fordist era. Collective bargaining has lost its importance in all variants of labour market strategies, as a means to strengthen the collective worker's hand in face of collective capital. In pursuit of an enhanced flexibility, the institution tended to be decentralised from the national to sectoral and regional or even company and workplace levels (Jessop, 2002a:101). This situation is in correlation with the new conceptualisation of wage as a source of cost rather than source of demand.

At the level of organisations, union representation had ceased to imply an opposition reinforcing identity and to provide membership to a group discriminated against by the existing power relations (Bertrand, 2002:86; Catalano, 1999:30). Throughout the golden age, the relative homogeneity consisted of occupational knowledge, worldview, values, preserved by groups of workers belonging to the same trade, had become subjected to a new rationality, namely instrumental rationality. Wage bargaining and job security played a crucial role as being the incentives behind the organisation of workers. Labour is considered as a mere factor of production that excludes the analysis of the conditions of production itself, by the trade unions; a situation that is clearly in conformity with the dominant discourses of production in golden age and with the second position in judiciary (Hardt and Negri, 1994:106). This kind of rationality impeded the representation of class when the conditions commenced to change (Munck, 1999:9). When faced with the crisis, they saw that their powers deriving from the representation of the class were eroded. The wage labour has lost the capacity of providing the focal point, and moral value, of life activity (Offe, 1985) since even in its consciousness, it was a factor of production. This process has become more noteworthy with the transformation of the labour process and company organisation in the mid 1970s, 1980s and so on.

With the emergence of the first phase of the crisis in the 1970s and in face of emerging changes covering all the areas of life, the problem of legitimacy faced by collective representation lead political scientists to question the essentialist concept

of representation, which considers trade unions as autonomous worker identity forms (Boyer and Juillard, 2002:241; Catalano, 1999:28). It is concluded that the trade unions capacity results not only from their class origin. It comes from their capacity to express, to communicate and represent a collective identity and social integration project for a group of workers. When the movement from collective representation to instrumental rationality articulated with the crisis, the trade union, which had become an agent of regulation for the social system through the golden age, transformed to a separate political actor defending its members' life-standards. Representation is getting more and more to be an instrument of mediation for obtaining equivalents and getting to be limited with the borders of factory or workplace. Patterns of industrial relations designed to deal with collective problems and solutions lost their importance (Waterman, 2001:210). Trade unions as social institutions expressing collective social representation of the working class ceased to exist.

The above-mentioned weakness, which is the disregarding of the concrete/living labour in societal organisation and which is a requisite of existence of capitalist relations of production, impeded the capacity of workers' front to produce counter strategies. Emerging transformations, including more and more flexible contracts, new labour legislations and the appearance of a new court law had not been responded to by the workers' front adequately. Trade union movement tried, on the basis of abstract conceptualisation of labour, to mitigate the effects of economic liberalisation, yet they could not prevent a serious decline in union membership throughout the central industries (Munck, 1999:5). From the same vein, in some cases, the unions marginalized themselves by fighting the battle with capital on an old terrain that had already shifted (Munck, 1999:6; Waterman, 2001:210). Subsequently, trade unions slipped into the role of a small pressure group (Beck, 2000:80). The extension of neo-liberal discourse to the discourses of production has further reinforced the reduction in trade unions' capacity of representation and fragmented further the workers' capacity to organise under the changing nature of work. The risk of neo-corporatism deriving from the antagonism between workers

in permanent 'well protected jobs'[145] and the rest of work force appeared. In sectors where there is strong international competition, a usual aspect of 'developing' world's production, wage earners are forced to make concessions, concluding with enormous fall in their incomes and intensification in their work. However, those concessions did not give rise to an international consciousness. Wages are settled on in a fragmented labour market, which has become gradually more and more competitive, and the wage bargaining as a source of inflexibility has lost its meaning. Workers have lost their powers accepted by the law and managerial rules of the conduct of work force both in the realm of collective labour law and of individual labour law.

Consequently, the consideration of internationalisation over labour markets suggests an unfortunate conclusion; the primary front on which the supply coalitions of workers' struggle is not that of the primary power differential. The recourse to acquiring or defending corporatist status advantages in the internationalised labour markets takes the form of a slippage of the power differential between supply and demand in the labour market to the supply side itself. To put it differently, the main axis of the struggle slipped to the front of the secondary power differential, at which the competition between the workers is primary.

3.5.2. International Division of Labour in the Era of the Crisis of Monopolistic Mode of Regulation

As we have mentioned earlier there are two stages in the expansion of Fordism. The first expansion is investigated in the previous subsection on Fordism. The second stage, that is internationalisation, starts with the structural crisis of Fordism. The second international division of labour came in to the question with the second stage of expansion of Fordism as a system of work organisation depending on the mechanisation of production processes and on a complete separation between conception and production. The second expansion of Fordism will be investigated

[145] Winning losers in sense Offe (1985) uses the term.

under three headings: 1970 to 1980, 1980 and after, and The Labour Politics of Peripheral States.

3.5.2.1. 1970-1980: The Emergence of the First Generation NICs

The social democratic/Keynesian crisis management in the first phase of the crisis in the centre led to the stability in the purchasing power of the wages. The immediate profitability fall was compensated by producing a nominal rise in profits. The general increase in both prices and wages caused a greater share of profits to plough into amortisation. The Keynesian crisis management created an inflationary climate, in which investment became unprofitable. The articulation of the general crisis of Fordism with the internationalisation of production is connected to the ruptures occurring in the process of change in the conditions of the reproduction of capital in general. The forces introduced by inner dialectic of the system required the external/exogenous interferences, as in the case of the contributions of peripheral countries' ruling classes to the establishment of internationalised branches, in the implementation of new methods offered as a solution to the growing crisis of Fordism. Another source of external interference is the international institutions (international like structural forms), whose contributions became observable after the second phase of the crisis.

When the centre lost the ability of reducing the wage costs by increasing the productivity, the wage differentials had come to be important. Given that accumulation and concentration have always been carried out under the conditions of class struggle, increased exploitation of the workers of the centre, who were backed up with a strong organisational tradition, had become impossible for the capitalists of the centre. These conditions led capitalist firms of the centre to search ways for the restoration of productivity, for lower payments to the workers and for reducing the cost of constant capital, which in turn directly reflects to the organic composition of capital (Lipietz, 1987:70). [146]

146 Relocating the unskilled tasks firstly within the unequally developed parts of the same national economy then within the international space by considering variables such as, the density of industrial network, proximity to major markets and so on, led the entrepreneur firms to rise

Given that the three segments of the Fordist labour process do not have to be all in the same space in order to function, the possibility of distributing and then articulating the products of these three levels provided new strategies to the firms (Lipietz, 1987:71). Besides, the capital, after a twenty five years of undisturbed accumulation under the conditions provided by the state monopoly capitalism, was able to use political and technical advantages to organise such a distribution of labour process (Petit, 2002:173). In the 1970s, bloody Taylorisation and the changes in international finance had presented the new means, which was not possible at the beginning of the 1960s, to finance the growth. Besides, the direct investment organised by the multinational companies, the liquid assets of banks depending on the surplus accumulated by the OPEC countries had provided the first generation of NICs an adequate basis for borrowing (Kiely, 1998:64). The US policy of issuing dollars was also influential in the rise of borrowing facilities by increasing the amount of money available in the world market. In the 1970's, an international debt economy emerged.

The unexpected rise of NICs owes the re-articulation of some basic contradictions to the social formations of centre, which are rooted in class struggle and competition as the driving forces behind capital accumulation. Productivity increased the peripheral countries in which the ruling classes were determined to co-operate with the internationalising capital and were capable of controlling the labour dwelling in their country, productivity increased (Hardt and Negri, 2001).[147] Their industrial structure were established by the crisis ridden investments of the centre aiming to re-sell their products to centre, whose inner markets were open to

productivity by way of investing to the 'developing' world. Consequently, relocation of Level 3 plant to peripheral countries, with the condition of providing plenty of controllable cheap labour, became rational investment policy (Lipietz, 1987:70).

[147] The co-operation of the given peripheral country's ruling classes and the mechanisms of international finance were the source of political and ideological interference in face of the competition fuelled by the stagnating productivity. The conditions of these countries, such as cheaper wage zones and regulations making it possible to increase the levels of surplus value extraction in both relative and absolute sense, provided capitalist firms to increase productivity.

exports from the peripheral countries. [148] The markets of the central countries made it possible for the first generation NICs to keep their unit wage costs al low levels without facing any interruption in the process of accumulation due to lack of domestic demand.

The changes in the international division of labour became visible. The rapid industrialisation of some middle-income category countries became a visible phenomena. As a result, the increase in the exports of manufactures from NICs to developed world has become clear. The spatial scope for expanded reproduction of capital is thus, expanded (Hardt and Negri, 2001). The new form of international division of labour owes the Fordist labour process its mechanisms, which made it possible to relocate different activities of the same production circle in different zones. Sectoral divisions of national economies remained but their weight in the overall production process is decreased. A new technological paradigm, which is partially transferable from one country to another, appeared. Another characteristic of the era was the increase in the proportion of the global population dependent upon the sale of its labour power on the market to achieve the necessary means of living (Munck, 1999:7). The spatial dimension of wage relation expanded.

3.5.2.2. The 1980s and After: The Second Phase of the Crisis

After a few months from the beginning of the monetarist shock, the general recession led to fall in demand for raw materials. In central economies, the second shock was managed in such a way as to produce a tightening in effective world demand (Munck, 1995). Monetarist policies transformed the rise in the oil prices into a lasting world recession, which would not be existed if the Keynesian policies of the 1970's were in application. The decrease of demand in the internal markets of central countries reflected directly on to the countries producing for these markets. The growth in periphery was depending on the international loans, which

[148] Yet, in face of the need for extraordinary profit rates, internationalisation was only a temporary solution and when all productive systems had resorted to it, its effectiveness over productivity diminished (Robles, 1994:52; Sayer, 1995). The temporarily increased productivity had no corresponding markets serving to counterbalance the increase in production (Robles, 1994:53; Şahin, 2000:170).

could only be re-paid by the realisation of the productive circuit in the markets of central countries. Both markets and dollar pools composed of OPEC surpluses were dried up at the same time. Dollar rose sharply with the rise in interest rates (cf. Piore and Sabel, 1984: 181-189). Xenodollars were becoming scarce and expensive.

Nations depending on the imports of Level 1 and Level 2 products of the Fordist labour process faced a heavy debt burden as they experienced insufficiency of resources necessary for the import of capital goods (Kiely, 1998:65). Besides, under such conditions, state protection of domestic industry led to inefficiency and corruption. This agenda was in sharp contrast to the outward looking, export-oriented policies of the NICs. Disaster was barely staved off through rescue operations, organised by the World Bank and the IMF. The credits used in those operations were mainly short-term credits since Xenodollars were in shortage (Lipietz, 1987). These operations, in turn, multiplied the existing debts of the peripheral countries (Kiely, 1998:64). Yet some of the NICs, due to their connection with central economies of relevant continental bloc, survived.[149] The process commenced in the 1970s and expressed by the term 'second international division of labour' changed things in peripheral world in an irrevocable manner (Hardt and Negri, 2001). The industrialisation of third world had become a phenomenon, which to a certain extent, become a force capable of -even- resisting to the politics of monetarist phase of the crisis and the subsequent changes in the world economy. Despite the weakness of the second generation, new generations of NICs became visible in 1980s and 1990s. Since the developing world was no more a part of a single process but had become capable of emerging as an individual but dependent process.

[149] Although it too suffered from recession deriving from monetarist shock, South Korea continually managed to meet its interest repayments without the devastation that was witnessed in much of Africa, Latin America, and the Indian sub-continent (Kiely, 1998:64). Singapore is another example to the survivors (Yun, 1997:84).

This situation enabled the advocates of the neo-liberal development economics to argue that the NICs were no exceptions to the rule of a North-South divide, yet they in fact constituted a model for the rest of the developing world to follow (Kiely, 1998:64). Referring to the success of some East Asian States, neo-liberals argued that there were three basic policies to follow for a successful development[150]. These principles are; limited government intervention to the economy; a low level of price distortion in the economy and an outward oriented strategy of export promotion (Kiely, 1998:65). These were the principles forming the basis for structural adjustment programmes in the developing world in the 1980s and 90s.

Changing Schema of Trade Flows

Beside its influences on the industrialisation of the peripheral world, the internationalisation also acted as a powerful catalyst for the de-structuring of the nature of international trade, which had been mainly among the advanced industrialised countries (Sönmez, 1998:242). The intra-industrial (even intra-agricultural) nature of the second international of labour meant that it was not only the peripheral world which was increasing its exports (Level 3 exports to the north) but also the central world by finding buyers for its Level 1 and Level 2 products in the peripheral world (Lipietz, 1987:95).[151] In turn, the increasing share of the South in the international trade in industrial goods has to be distinguished from the old battle for markets. Contrary to the extensive accumulation, there seems to be no outside world for the capitalism of intensive accumulation (Hardt and Negri, 2001).

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[150] This work often refers to NICs when in fact development has differed greatly between countries (Singapore for instance has relied heavily on foreign capital, as opposed to South Korea). Yet, although the role of the state has varied, in no case does the policies of these states conform to the neo-liberal approach. This includes Hong Kong, which supposedly conforms most closely to the neo-liberal model, yet in fact had used the industrial capital developed in China before 1949. Moreover, the state has actively subsidised housing and food.

[151] The density of north to north trade, which had been out weighting the trade between north to south and south to south, reduced (Vidal, 2002:110-112). In 2001 the 2/3 of total world trade was in between north to north countries. Yet, the remaining five trillion dollars corresponding to 1/3 of world trade capacity was an enormous rise when compared to the golden age. Not only the route of trade but also the subject of the trade also changed. ¾ of the world trade was composed of manufactured goods in 2001 (Yeldan, 2001:17).

The dynamics of production and the relations between the branches of national industries, here, change the nature of centre periphery relations to relations between processes rather than the compliance of a process located in the central country in question.

The Distribution of the Surplus Acquired From Exploitation

Throughout the second expansion of Fordism, the national segments of industries are absorbed into an emerging transnational economic space, in which transnational branches emerged. On the other hand, internationalised production has failed to absorb nation because transnational cartelisation of industries prevented the articulation of the nation within an international productive system (Robles, 1994:56). Within this context, internationalisation ultimately weakened the articulation of the laws of profit since the formation of an average profit rate assumed that capital would move across industries within a nation. There is no place for the formation of an average profit rate in the international arena.

Under such conditions, the transnational companies had the chance to change the conditions of labour exploitation regardless of social need. As a result, it has become possible for multinationals to increase the profit rate within an industry by moving from one nation to another. The net outcomes of the process were as such: the central core of working class had come under a serious attack. This attack not only resulted in a massive unemployment in the related sectors but the number of jobs that were not covered by collective agreements increased massively. The labour market had become segmented more than ever. The search for new sources of productivity within the labour process itself had become widespread. With the final aim of increasing the surplus value, the post-war US criteria of the Fordist labour process were discredited. On the other hand, the workers of ‘developing’ countries have become subjected to excessive exploitation since the surplus extracted has to be divided between the international exploiters and the domestic ones who have been titled to have the remainders of the surplus.

International like Structural Forms and the 'Developing' World Configuration after Monetarism

After the subsequent changes, first in the Keynesian management of economics and then in the monetarist recession period, in which a world-wide stagnation was experienced, a configuration that was oriented mainly to the American market has emerged. Competition is now heavily dependent on a search for technological rents based on continuous innovation, *de facto* monopolies in advanced technologies or intellectual property rights and economies of scope [152] and networks (rather than economies of scale typical of Fordism). In short, the enterprises in the central world are less concerned with competing through economies of scale in the production of standardised goods and services using dedicated production systems than competing through economies of scope, network economies and knowledge-intensive processes and products based on increasing flexibility in all stages of production and distribution as long as this is compatible with continuing valorisation (Jessop, 2002a:101).

This configuration is linked to the peripheral world, in the realm of economy, via the continuous process of competition, and, in the realm of politics, via the implementation of neo-liberal policies by policymakers of these countries who have the full 'assistance' of international like structural forms. Given that human relations constituting certain structures are imbricated with one and other, 'assistance' is connected to the competitiveness of certain centres and the competitiveness of certain centres is linked to the enhancement of the individual capitalists' rights to control labour power. Within this context, the worldwide strategies of the advanced world to stabilise the current position of the international division of labour have many sources of development. Among them are the institutions like Trilateral Commission, GATT, WTO[153] (after 1995). However, the

[152] Economies of scope derive from the diversity of products that can be produced from a given technical and social organisation of production rather than from the diminishing unit cost of long production runs of standardised commodities that generate the economies of scale typical of mass production (Jessop, 2002b:98).

[153] The founding agreement of WTO indicates that the institution is founded for auditing the commerce in behalf of transnational companies (Chossudovsky, 1999:39).

direct implementation of these policies over the 'developing' world owes much to IMF and World Bank (Chossudovsky, 1999:16; Kiely, 1998).

Yet, this linkage should not be considered as something that is imposed to the victimised countries of periphery, which would be resistant to these implementations if the necessities of international debting did not force them (Piore and Sabel, 1984:180-181, 187-189). The minimum conditions that determine reciprocal positioning of the classes change when the process of internationalisation begins in a given peripheral country. This process results in changing forms of interest representation both in the given national economy and in the centralised world (Poulantzas, 1976). Thus, rather than referring to the erroneous dichotomy of victimised countries and imperialists, we prefer to stress the changing function of the state in 'developing' countries in the securitisation of domestic and internationalised capitalists' right to control labour power. This fact stresses the importance of the 'discoveries' (political action) as well as their institutional and organisational context, which is articulated by way of the socio-technical system and by way of other structural forms to the extent that they are included in securing the rights of capital to control labour.

After the monetarist shock, private regulation by the multinational banks led to a catastrophe, which demonstrated that it was impossible to manage credit money in a completely fragmented system (Kiely, 1998:68-69; Öniş, 1998:77). It proved that a single organisational form (Banks) cannot at the same time create credit money on the basis of private risks and ensure that all those risks are consistent. Especially after the Mexico crisis in 1982, a definitive limit on the magnitude of new loans, which could be extended from private sources, was considered to be vital (Öniş, 1998:77). Yet, this was not a simplistic return to the pivotal role of IMF as in the 1960s[154]. In the new epoch, IMF was not backed up by official sources, but by a

[154] In 1960s, official sources, namely governments of industrial economies and IMF, constituted the principal sources of finance for 'developing' countries. This trend was revised, however, with the phenomenal growth of commercial bank lending associated with the Eurodollar market, with 1973 marking the turning point (Öniş, 1998:78). Throughout the 1970s, in conformity with rising amount of Xenodollars, commercial bank loans remained the principal source of international finance.

mix of private and a relatively small amount of official sources, as a controller of conditions attached to the credits.

Under these conditions, the need for the re-regulation of the mechanisms ensuring the returns of the interests and main debt emerged (Chossudovsky, 1999:16). Both of the two sides of the borrowing relation were going to be regulated. On the one hand, the dis-organised or unregulated structure of international credit providers had to be put into an order. On the other hand, the debtors were to face new conditions for borrowing. The set of these conditions aiming to pursue neo-liberal politics world-wide have been called as 'structural adjustment'. The peripheral economies' structural need, deriving from the interconnectedness of the Fordist labour process, for credit, provided the international like structural forms to demand the establishment of certain conditions listed under the banner of structural adjustment.

The 'discovery' of structural adjustment as applied with the emergence of monetarist strategies has been destructive[155] for the implementers of export-oriented strategy of development that was benefited from the international environment of the first ten years of the second expansion of Fordism. In many examples, the mechanisms of international credit economy and international finance, together with their representatives in the relevant country's bourgeoisie, applied strategies resulting in an 'export without accumulation' situation after the 1980s. Moreover, some of the peripheral countries have been exporting and de-accumulating (Chossudovsky, 1999; Kiely, 1998).

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155 The task of ensuring repayment in 'developing world' required short-term adjustment, which means, firstly, cutting public spending (i.e. wages and domestic credit so as to hold back the volume of growth and therefore imports), thus, creating the conditions of monetary constraint, then, imposing a real devaluation to discourage imports and encourage exports (Lipietz, 1987:176). The second pre-condition of devaluation depends upon the price elasticity of foreign trade. 'Substitutions' must outweigh 'complementarities' if real devaluation is to have any positive effect (Lipietz, 1987:178). Yet such a configuration is generally impossible in many sectors of the economies depending the revenue of the cheap labour. Restricting imports (i.e. reducing accumulation) has the impact of reducing the domestic output in peripheral countries. This shows that devaluation has different effects over central and peripheral countries.

On the other hand, the strategy of import substitution, under strict conditions for borrowing and rising amounts of interest rates, increased the debt burdens of peripheral countries enormously after the 1980s (Kiely, 1998:64; Piore and Sabel, 1984:103-104, 187-189). Excessive growth of domestic credit as a result of the socialisation of the debt burden of developing country's bourgeoisie by way of monetary devices, has become a common strategy in import substituters, in which the production patterns are relatively more inflexible than export substituters. The destabilising element originating from the international division of labour interacted with policies implemented in the domestic sphere. Looking inward, import dependent 'developing' countries suffered much more than those of export-oriented first generation NICs in 1980s (Öniş, 1998:81).

Under these conditions control over international-like structural forms not only aimed to decrease the risks of over crediting but also aimed to manage the destination of capital flows and to pre-validate the investment of world labour. The IMF supported reforms has deep impacts on the regulation of the industrial relations in many peripheral countries (Chossudovsky, 1999:17). Within this context, current policies of Bretton Woods institutions proposed a uniform strategy of making the market the only legitimate institution to conduct structural change. The neo-liberal hegemonic strategy, which was based on the idea that changes in the economic structure should be sustained with corresponding liberal transformations in the public and private spheres, inserted the principle of governance to the obligations of 'developing' countries indirectly (Chossudovsky, 1999:40), while, at the same time, conceptualising labour power as a pure commodity, whose allocation would be made by pure market mechanisms. On the other hand, the emerging mode of regulation in central economies presupposed the direct involvement of state on the matters related to education and job creation (Boyer, 2002a:4; Jessop, 2002a).

3.5.2.3. The Labour Politics of the Peripheral States

Structural Constraints over the Peripheral States' Labour Politics

This subsection aims to investigate the limits of pursuing 'rational' labour policies in the majority of the sets of relations who are not endowed with the powers of central economies.

Vertical Modes of Coordination

In developing countries, the second international division of labour could be observed in the form of a series of factories in which mainly the unskilled assembly and execution of certain manufactures (cars or consumer durables) are realised. The changing nature of the capitalist relations of production enabled firms to expand the production process, sometimes by waiving from the title,[156] as in the case of subcontractors, producing as a part of the same production process without transferring the risks of production to the central site of production. On the other hand, the central site for production kept in hand the powers deriving from the economic ability to determine the use or operation of the production process and from the ability to determine the actual deployment of the means of production in the production process. Besides, joint ventures provided the necessary legal means for transnational capital to represent their interests directly in national states in cases in which property rights were not providing enough space in their interference in the national policies.

Given that title has lost its importance in the organisation of the production process (not in capitalist extraction of surplus) and that joint ventures provided the transnational capital the means of representation in national economies, the circuits of extended reproduction of capital that has divorced itself from many of its spatial limitations and have become capable of including the contribution of peripheral labour in its valorisation without facing national states' intervention to this process.

[156] The term 'title', refers to the basis upon which claims to any surplus may be made, made possible the sorts of calculations, which govern the circulations of legal titles, the socialisation of debt, the exchange of guarantees and the constitutional position of shareholders (Jones, 1982:77).

In turn, emerging wage labour, subcontractors and suppliers formed another set of interconnected relations (and this is why the second expansion is not related to the comparative advantage between factor endowments proper to each sector). As a result, subcontracting and joint ventures became dominant modes of action and organisational forms of the trade between the peripheral countries and the centre.

With transnational integration, operations that were formerly subject to the modes of coordination depending on the market place based on horizontal relations in a single economic space have become a part of production processes in which vertical relations were dominant. The central site of these production processes have been determined mainly by the activities of transnational corporations supported by the hegemonic state and international like structural forms. Consequently, the generalisation of the intentional and planned activities of these massive financial groups over the conditions of the sale and use of labour-power, which differs throughout the globe, consolidated a new mode of investing on world labour.

Rising Amount of Debts, Credit System and Informal Economy

In general, to buy machinery on credit if you can use it, and to sell the product is a reasonable way to accumulate capital both for the individual capitalist and for the emergent economies. Credit here means the pre-validation of values in process, which, as expected, will complete the full cycle of valorisation and realisation (Lipietz, 1987:151). However, in the second phase of the crisis of Fordism, the rates of interests and the ratio of debt servicing to exports, in the periphery, rose at all[157] (Chossudovsky, 1999:16; Kiely, 1998:65). An increased amount of new loans has been used to pay interest on old debts and to renew the principal (roll over).

In case of the emergent economies, the overall assessment of the usage of the overall credits given to industry could be done by looking at their burden of interest since this is a sign that the society in question has not used its credit to

[157] Two trillion dollars at 1994 (Chossudovsky, 1999:15).

invest in production that can be validated on the world market (Lipietz, 1987:147). A country under a massive burden of debt interests indicates that it either has consumed the credit in non-productive ways or has invested in labour, which will not be validated on the world market. Bourgeoisies of the countries, which are not capable of articulating with the second international division of labour in a successful way, generally prefer to use the first choice (Hart and Negri, 2001:344).[158]

Despite the importance of borrowing strategies for a productive economy, the role of the credit system is of importance due to its importance for the overall political choices. From the beginning of the second phase of the crisis, a significant majority of the private debts, including the debts of commercial banks and big companies dwelling in the third world, have transformed to public debts. The credits demanded by the 'developing' countries have been given with the condition of settlement of these private debts (Chossudovsky, 1999: 24).

This strategy resulted in the strengthening of the position of the fractions of the ruling classes opting for internationalisation. Tax burdens of the companies lessened with the cost of rising public debts. The rising transferability of the company profits with the emergence of shore banking techniques intensified the results of the ongoing crisis. The 'new financial markets' located in periphery provides giant financial creditors, the necessary facilities including legal means, to draw back easily in case a debtor country could not comply with the requirements of structural adjustment (Chossudovsky, 1999:21) or in case the fractions of ruling

[158] There are many different types of debt in the 'Developing' World as a result of the great variety of concrete models of development. Depending on the level of control over working classes and geographical factors, debts can be used to force domestic industry into a recession and the middle classes into a credit-based consumer society or to advance the industry. The ratio of debt servicing to exports might bring out the difference between peripheral Fordist countries. A structural flow of imports by buying luxury goods or the means to produce them (Brazil) should be distinguished from a policy devoted much of the money it borrowed to developing its export capacity (South Korea) (Juillard, 2002:158; Öniş, 1998:436). However, the criteria of the ratio of debt servicing to exports does provide only a highly abstracted tool of conceptualisation. Since even polarisation of incomes, which in turn generally brings out a structural flow of imports by buying luxury goods could be used in favour of the given country as in the case of India.

classes not opting for internationalisation become dominant in domestic politics. Thus, it is safe to say that these unregistered speculative activities, together with structural adjustment programmes and informalisation of financial markets as a result of these programmes, are providing powers for the international finance (that is capable of undermining the formal economies of periphery), to determine the conditions of investing on peripheral labour (Yeldan, 2001:22).

Capacity of Internal Markets –Internal Demand

The problem of internal market remains effective in peripheral countries since, while wage-earning has becoming widespread, the need to compete both with the centre and other peripheral countries stagnates wages themselves, if not decreases (Lipietz, 1987:147). Besides, the growth in population gets more and more fragmented wages, and leads overall consumption to fall. Given that unplanned urbanisation and the destruction of subsistence agriculture are in process, these countries have problems of feeding the population (Munck, 1995). The rise in agricultural exports in the centre and the destruction of subsistence agriculture go hand in hand and the peripheral countries, in which many things are devoted to export sector, are now under the unexpected burden of importing foodstuff (Waterman, 1999).

Labour Process

The productivity of the centre is not something which could be implemented easily. Wage differentials between centre and periphery compensate for the costs of that attempt to a certain extent. However, the extra surplus value deriving from wage differentials would not compensate for everything as in the case of productivity gaps created by new technologies. The new complexity of time-space in informational capitalism and the new technologies of production based on the operation of skilled workers create new gaps on the levels of productivity between the central and peripheral economies (Jessop, 2002a:112). Moreover, these conditions could cause the process of the expansion of capital to move in the reverse direction (Lipietz, 1987:147). Low capital intensity technologies located in periphery are always subjected to the competition of other peripheral low intensity

technologies (and this last item is not something which occurs as a coincidence – the credits provided by the centre allocates world labour in a way to result in competing low intensity technologies, which subsequently decrease the prices and, therefore, the costs to the centre – and to the competition of highly automated technologies, which are of necessity located in the advanced world. [159]

The New State Form: The Inability to Transform to Schumpeterian Workfare State

The peripheral economies' economic nucleus, plus the mode of social regulation in the form of historical bloc (which is formed through the structural coupling of an economic base effected by international competitiveness and superstructural activities specific to those states, which are under the influence of the changing face of class representation), formed a kind of state that is subjected to new constraints that are mainly in contradiction with the monetary control power of the state and the other structural forms established in the golden age. Under the massive transformations brought by the structural constrains shaping the second international division of labour, structural forms intervening in the reproduction of peripheral capitalism are re-organised in areas of fiscal policy (price and credit controls), of external policy (trade promotion, protection, exchange controls), of sectoral policies (support for industry), of planning for national economic cohesion (planning now aims to align national production conditions with international norms), and most relevant of all: of labour policy.

These transformations are in correlation with the changing dynamics of accumulation as expressed in the conceptualisation of competitiveness. The relatively closed national economies of the early import substitution era were less concerned with international competitiveness. The Keynesian-like approaches of the era implied that the full employment of national resources (including labour) would help efficiency and productivity by reducing unit costs of production, facilitate economies of scale and reduce the costs of maintaining underemployed

159 This later situation is clear in textile, where mass production is becoming more profitable in the centre (Lipietz, 1987:147).

labour power. With the gradual and global transformation to Schumpeterian account suggesting that competitiveness depends on developing the individual and collective capacities to engage in the permanent innovation in sourcing, technologies, products, organisation or marketing, the development of national capacities extended beyond the narrow economy to include a wide range of extra-economic factors (Jessop, 2002a:121,138).

However, the state practices of the second international division of labour in peripheral countries included the 'discoveries' referring to the weakening of the primitive forms of institutionalised negotiation, social security (Teulings and Hartog, 1998:24). On the other hand, (repressive) state intervention in the reproduction of labour power remained vital. Many of the social groups containing the labour force of a given national economy have been excluded form the contract coverage. Late capitalism has become centrally characterised by a concerted bid atthe de-regulation of labour markets in peripheral economies. The state carrying out the neo-liberal revolution has become a strong, interventionist state bent on 'keeping labour in its place' (Munck, 1999:5).

Under such conditions, the peripheral states' capacity to create Schumpeterian type of dynamic efficiency in allocating resources to promote innovations, which will alter the speed and direction of economic growth and will enable the economy to compete more effectively, becomes strikingly weaker than those of central economies in which the ideological domination of workforce has been more effective than repressive domination. The contradictions of peripheral economies resulted in the repressive domination of labour force impeding the re-organisation of the structural forms intervening in the reproduction of peripheral capitalism to develop a kind of competitiveness depending on developing the individual and collective capacities to engage in permanent innovation in sourcing, technologies, products, organisation or marketing (cf. Jessop, 2002a; Waterman, 2001).

Classes and 'Development'

At that juncture, it is safe to say that, after the transformations in production processes, in the nature of the modes of coordination, and in the representation of the transnational capital backed up with the capital flight sanction in national economies, the relations constituting the international division of labour have become more and more interconnected, meaning that the well-known separation between domestic and international relations have become distorted. Yet the interconnected nature of the social relations in the international realm do not help to understand the relative 'success' of some peripheral countries in face of others.

The question of under which conditions the co-operation of the ruling classes of the given peripheral country proves to be more successful than other ruling classes, which might not refuse the benefits of a successful articulation of international division of labour, remains to be solved. To ask more concretely, why could Turkish ruling classes not be articulated with the current international division of labour in a 'successful' way while their Asian counterparts were far more 'successful'? From the perspective of our Regulation-driven Marxism, the answer lies at the notion of control. The capacity of a given state to accomplish its function of securing the rights and capacities of capital to control labour power in the production process and of regulating the terms and conditions of the capital labour relation in the labour market and labour process, seems to be determinant in the international capital for the purposes of investing on the labour provided by the people of 'developing' states (Jessop, 2002a:43). The recent changes in the Turkish individual labour law will also be traced with reference to the very same notion.

Lipietz (1987:72) establishes certain conditions capable of determining the place of a given peripheral country within the international division of labour. Ruling classes have to control the free labour as if they can offer it as an instrument of bargaining in international relations with different countries and financial groups. Such a control requires a kind of labour force that is Taylorised; to put it

differently, labour force that is not merely recently driven of the land but industrially disciplined by social mobilisation and stabilisation (Lipietz, 1987:72).

Then we may ask, at a high level of abstraction, what kind of a class structure creates the above-mentioned type of disciplined workforce? First of all, if the ruling classes of a given country are to 'discover' the merits of offering their national workforce, the regime in which they define their structurally constrained positions must be politically autonomous from traditional forms of foreign domination. [160] Otherwise, they would have nothing to offer. Put differently, they would not be eligible as a party capable of entering the relations of exchange. Secondly, if they are interested in industrial investments as a precondition of investing on labour, then they must also be in a position capable of dealing with ruling classes connected with earlier regimes of accumulation.

The development of an export-oriented industry that is controlled by the ruling classes connected with earlier regimes of accumulation might be conflicting with those of industrialists who have opted for import-substitution. However, the stress over the organisational nature of adaptation implies that an economy depending mainly on exporting primary goods may articulate with other regimes of accumulation within a given political regime. Thus, such a contradiction is not unsolvable. Nevertheless, if the industrial bourgeoisie is to be influential, any solution should require an industrial success including a balance between the growth of an industrial waged labour and increase in wage levels, the requisite degree of competitiveness, priorities in allocation of capital resources and so on. Thirdly, such a regime must be autonomous from popular masses. If the fractions of the ruling classes decide to use the masses in their strategies for power, the outcome would be the insertion of some of the demands of the masses into the

160 The Third International had provided a schematic framework for a class analysis for independence struggles of the Third World: comprador bourgeoisie v. national bourgeoisie (Lipietz, 1987:51). This distinction has importance due to its later usage, mainly, in dependence theory. Later on Poulantzas's introduction of the concept of internal bourgeoisie provided the Regulation theory a basis to refuse such a schematisation.

political outcomes. This situation would reduce the system's ability to control the labour power.

The regimes of accumulation in NICs are mainly characterised by export-substitution, which implies a decision to break with the primary-export model and to develop exports of manufactures produced at level three of the tripartite Fordist division of labour (labour intensive activities) (Hardt and Negri, 2001:343). However, it would be an exaggeration to say that all emergent national industries involve dominantly an export substitution strategy based on the production of Level 3 goods of the Fordist labour process. One combination might contain a new version of import substitution, while another might create a different combination that might lead to promotion and integration of earlier forms of export substitution in the primary exports (Lipietz, 1987:73).[161]

These facts reveal that, whatever the model of development is, the third condition, autonomy from popular masses, has the priority in the explanations on the 'success' of a given country's articulation with the international division of labour. Yet, the control over the labour power is not by itself, enough. This condition has to be articulated with the conditions of the second international division of labour together with the geographical constraints in the explanation of peripheral industrialisation. Early import substitution policies reveal the appropriateness of this explanation. Moreover, examination of the early import substitution policies have deep implications on alternative explanations to the Dependency Theory, thus, on the Turkish Left, and provide suitable grounds for a comprehensive understanding of the relation between the international division of labour and capital accumulation in the peripheral world. Lastly, the second condition of

[161] In many NICs traditional exports have in many cases actively developed. Agribusiness model, which provides basis for a fully developed capitalist industrialisation of agriculture, has importance in the capitalist development in countries like Brazil and Thailand (Lipietz, 1987:90). Import substitution is proved to be equally important. It implies basic industries producing for local markets, be they Fordist or not. Construction industry, public works programmes that are mainly initiated by urbanisation, energy sector and cement production are the examples for the implementation of such politics.

having a disciplined workforce requires a prior import substitution process in many cases.

On the Failure of Early Import Substitution Policies

Between 1930 and 1970, some of the countries of the peripheral world, among which there is Turkey also, have made relatively unsuccessful attempts for industrialisation. The labour processes of those countries were based on a kind of unproductive Taylorism (Lipietz, 1987:140). Import substitution was the dominant regime of accumulation and the main hegemonic strategy. Industrial relations, which were mainly between the state and the wage labour, included corporatism as the dominant form of representation. The Latin American Development strategies provide a series of well-known examples (Richards, 1997:30). Singapore in the 1930s (Yun, 1997:81), and South Korea in the 1950s (Kiely, 1998:66) can also be added to the list. These strategies, in conformity with the theories of Economic Commission for Latin America (ECLA), [162] include the construction, by way of import substitution, of a modern industrial sector, often under the aegis of a populist state (Boratav, 2003:110; Richards, 1997:30-31).

On the other hand, these peripheral economies, at the beginning of the golden age, was unable to demand a place in the world market for manufacturers due to the productivity gap between the economies of centre and periphery (Şahin, 2000:123, 258). In addition, cheap labour power dwelling in peripheral economies was not providing these economies with a reason for the expansion of the Fordist production methods, for the rising productivity in central economies impeded such a incentive. Besides, while the terms of the international trade were worsening for the primary exports, it was nearly impossible to finance the purchase of machinery to initiate the production of Level 3 products of the Fordist labour process. To put it differently, in the absence of the crisis of profitability, thus, of the motives for

[162] Non-Marxist and anti-imperialist ECLA, following Keynes, rejected the notion of equilibrium and a single economic logic in the issues of development. The school rejected Ricardian allegation that stresses the mutual benefits of the countries entering in mutual trade relations (Şahin, 2000:43, 123).

the individual capitals located in the central world to relocate their activities, the attempts of peripheral countries aiming to finance the industrialisation were obstructed by the extremely high investment costs, which could not be backed up solely by the import of certain raw materials. The inadequacies of the early attempts can be considered in terms of the socio-technical system, of money as a social institution and of arrangements governing international relations (international like structural forms).

The necessary means for employment of centrally conducted mark-up rates and of credit money, which was vital for the finance of industrialisation, did not exist before the Second World War. In some cases, the lack of these devices made markets restricted to the ruling and middle classes created by the export economy due to the lack of working class consumption. In every case, peripheral markets were sociologically stratified and resistant to the consumption of standardized articles. Besides, due to the uncompetitive nature of peripheral productivity in manufacture, the internal market of the given country was also restricted to the foreign manufactured goods (Lipietz, 1987:61). This last item provided the internationalisation one of the reasons, which can be summarised as gaining a foothold in countries protected by high tariff barriers, to implement third level activities to the periphery in the 1970s.

In terms of labour process, the missing point was the absence of a workforce that was deprived of the means of subsidence and the absence of a working class culture. The ‘developing’ world was in lack of necessary social relations matching with industrialisation. Put differently, the workforce of the early import substitution countries were in lack of the necessary preconditions of implementing the Fordist model of development with a competitive level of productivity (Lipietz, 1987:61). The most important of these conditions were discipline (Hardt and Negri, 2001:200) and, thus, the ability of domestic capital to control labour power at a requisite level. Agricultural work forces of these countries were not suitable for attempts towards industrialisation. They also provided a base for the

implementation of populist politics as a result of the conflict between the industrial bourgeoisie and the rural ruling classes in many cases. In this sense, importing the expensive means of production was not enough for the development of the conditions of the reproduction of capitalist relations. The construction of the corresponding social relations needed wage relation to be the dominant relation.

Transformation within the Limits of Structural Constraints

Within this context, the gradual introduction of structural forms specific to Fordism was realised by the arrangements governing international relations, aid programmes, and international exchange relations in the golden age. This situation led the expansion of ecological dominance of capitalism in peripheral economies, produced an impact over national production and consumption norms, and created a weak industrial labour force.

The implementation of socio-technical system specific to Fordism in the 'developing' world has resulted in significant changes in the realm of industrial relations (Hardt and Negri, 2001:200). The unequal diffusion of the institutions of the Fordist model of development gave rise to an unequal industrialisation in the same national economy. The amalgamation of the accumulation in some sectors in which production in national economy is more appropriate than importing, with the structural forms implemented to import substitution was giving rise to a weak regulation resembling to those of western countries (Aboites *et al.*; 2002:280-285).[163] Peripheral world partly moved away from competitive regulation to monopolistic regulation. However, these attempts were far from being successful in international competition. One condition was lacking; the structural crisis of capitalism.

The unsuccessful experiments of early import substitution policies could be considered as an attempt to industrialise by using Fordist technology and its model

[163] In 1950's, Chile witnessed a precocious political institutionalisation of the wage-labour nexus; throughout the same period Cardenist Mexico had applied monopolistic regulation in wage formation (Aboites *et al.*, 2002:280-285).

of consumption without adopting both its social labour process and its mass consumption norms. Besides, the timing of these attempts was unfavourable, given that the productivity was increasing in the west. However, at the beginning of the 1970s, the peripheral climate had become appropriate for the second expansion of Fordism. The countries, which proved to have a stricter control over their labour power and, which were closer to the centre, began to attract crisis driven capitals of the centre.

So far, it has been established that, despite the fact that the dependent nature of the centre periphery relations did have something to do with the failure of sub-Fordism, there were more internal reasons deriving from the dynamics of capital accumulation than dependency. Internal social structure was consolidated by the absence of an agrarian reform in many cases and of capitalist relations of production in agriculture, which in turn impeded mobilisation of work force in the absence of external interferences (Lipietz, 1987:63). Besides, the survival of a very unequal distribution of income in the primary export sector and the failure to expand manufacturing sector or to incorporate mass consumption into the regime of accumulation deprived these economies of a recovery based on internal markets. Under these conditions such countries' attempts fall into the trap of imitating the well-organised model of the Fordist model of development in an era in which productivity was increasing in the centre. Yet, the failure of the early import substitution policies did not mean that import substitution was abandoned at all. It only meant that state intervention had to be performed under new conditions, which are mainly determined by the expansion of Fordist wage relations under new conditions.

Two Ways of Articulation with World Economy : Non-NICs and NICs

At the beginning of the 1970s, the 'developing' countries pursuing early import substitution policies were beginning to face a new set of conditions in which their ability to secure the capital's right to control labour power was becoming determinant in their way of articulation with the world economy. The international environment had become appropriate for transnationals to invest in peripheral

labour. In peripheral economies, in which the ruling classes were capable of controlling labour force under the conditions of extraordinary absorbation of relative surplus value (as required by un-stability of arbitrary and unregulated characteristic of competition at international realm) an industrial 'development' became visible. However, these countries were a minority in face of the peripheral economies, in which the ruling classes were not capable of controlling labour force under the conditions of extraordinary absorption of relative surplus value or in which ruling classes did not opt for export orientation strategy for other historical reasons.

The Non-NIC Side of the 'Developing' World

A given peripheral country's ability to implement structural forms of Fordism to the extent that these structural forms provided working masses with rights to resist the capital's right to control labour process and to regulate the terms and conditions of capital labour relation in the labour market and labour process, became an impediment for the passage from early import substitution to Taylorism or to peripheral Fordism. Within this context, in some countries the regulatory devices of socio-technical system had become a source of rights for working masses to resist against the demands of ruling classes. However, it should be mentioned here that the changing content of capital's right to control labour process in peripheral world, which has been established by new conditions of international investment, was not an expression of a class power like the power of an army in the battlefield. Rather, it was fragmented and was limited to the mobilisation of the most relevant resources for the relevant investments. Thus, it is not an iron law for the development. Subsequently, it is safe to say that in peripheral economies, in which the requisite levels of exploitation necessary for international competitiveness of the given economies had not become realised, the domestic stability that have been partly established by Fordist-like structural forms have gone under threat after the second expansion of Fordism as a system of work organisation depending on the mechanisation of production processes and on a complete separation between conception and production. This threat has gradually increased with the successful integration of some peripheral economies to international division of labour.

International credits, in the 1970s, were in abundance. This situation did not only enable NICs to find necessary resources for their industrialisation but also provided the non-NIC side of the 'developing' world with easy/unproductive resources for the maintenance of import substitution policies depending on a populist political strategy. However, the requisites of international competitiveness demanded from 'unsuccessful' periphery to come in accordance with the emerging norms of production and created a source of stress throughout these peripheral economies.

NICs: Primitive Taylorisation and Peripheral Fordism

On the other hand, the successful ones, NICs, were in a process of recovery depending mainly on export substitution. The international conditions of this export led recovery have been investigated above. The two of the possible logics involved by the export substitution strategy are considered to be particularly important by the Regulationists; the primitive Taylorisation and peripheral Fordism. At that point, I will deal shortly with Primitive Taylorisation and Peripheral Fordism with the aim of recounting what Turkey had not done or what was lacking in Turkey for a successful articulation with the second international division of labour.

The articulation of willingness and capacity of the ruling classes to implement a strategy of industrialisation based on cheap labour power and an export-led growth articulated with the crisis in the centre and resulted with primitive Taylorisation in some peripheral countries. The transfer of specific and limited segments of branch circuits to states with high rates of exploitation in terms of wages, of length of the working day and of labour intensity constitute the main characteristics of Primitive Taylorisation [164](Lipietz, 1987:75). The free trade zones of Taiwan and South

164 Besides the massive level of exploitation, two more characteristics of the Primitive Taylorisation are as follows; a-the fragmented and repetitive nature of the jobs are not linked by any automatic machine system and b- no attempt is made to reproduce the labour force on any regular basis (Lipietz, 1987). The equipment is light and requires only one operator such as the sewing machines use in the textile. Unlike import substitution, export substitution costs local capital almost nothing in terms of capital goods.

Korea in the late 1960's and the early 1970's, Singapore and Hong Kong were the first cases.

Organic composition of capital is fairly high in primitive Taylorism. This, in turn, gives rise to high levels of surplus value extraction that exhausts the worker. Primitive accumulation relied upon the revenue of gentry, piracy, warship etc, in central world. The accumulation in primitive Taylorisation relies upon the sources created by the dead labour of central Fordism which were exchanged in turn for the lives (lively labour, labour power) of firstly the young women and then the children of the countries and regions in question (Fröbel *et al*., 1982:80-82).

Due to the unfeasibility of the stabilisation of primitive accumulation specific to bloody Taylorism, the ruling classes of such countries needed to create a hegemonic bloc and to establish a reasonably cohesive regime of accumulation. An earlier import-substitution policy; a peripheral form of merchant capitalism; promotion of exports of raw materials; or primitive Taylorism are the possibilities that might end with the development Peripheral Fordism. The refusal of populist politics, existence of autonomous local capital, the presence of a sizeable middle class and the occurrence of skilled working class constituted the characteristics of this model of accumulation (Lipietz, 1987:78). Organic composition of capital is not as high as in bloody Taylorism. On the other hand, these models of development do not exclude each other; they may co-exist in same economic realm, in different branches.

The markets of the peripheral Fordist countries' in question represented a specific combination of consumption. The local middle classes and workers in the Fordist sectors, which find a limited access to consumer durables had a certain purchasing power. The growth in social demand for consumer durables has, therefore, become, to a certain extent, predictable, yet not for the national industry but, rather for the firms controlling the branch circuits in question. The growth in the home market for manufactured goods played a real part in the national regime of accumulation.

However, the growth in social demand has not institutionally regulated or adjusted to productivity gains in local Fordist branches at the national level (Munck, 1995).

In both primitive Taylorism and peripheral Fordism, local capitalists often integrated with internationally operating firms as subcontractors or worst, suppliers. Being a subcontractor or a supplier of a transnational corporation generally meant to waive the claims to a substantial proportion of the extra surplus value, which was exploited under exceptional conditions of exploitation. Capital accumulation was, thus, to be achieved not by local resources but by international credits, which gave rise to important amounts of value transfer both to international finance capital and local ruling classes over the working population, in the form of investment re-payments. Most of the loans were in xenodollars or petrodollars and they were pledged against (Lipietz, 1987:106); a- future income from traditional exports; b- the promise of work which in turn depended upon the profitable launch of new production processes in the NICs and upon the existence of markets for their future output; and c- the recycling of borrowed capital to buy capital goods form the centre.

Common Properties of Non-NICs and NICs: Hegemonic Crisis

Lipietz (1987:79) notes that peripheral Fordism is a true Fordism in that it involves both mechanisation and a combination of intensive accumulation and a growing market for consumer durables. However, it remains peripheral in that, these NICs had newer adopted the Fordist labour process, which has both Taylorist work organisation and the rigidity paradigm in the same shoes, in true sense. Rather, they demanded the obedience of workers to managers in sense the Taylorist work organisation requires and rejected any kind of rigidity and of satisfaction by wages, which indicates impossibility of a kind of social compromise (Yücesan, 1997). This is also true for the non-NIC ‘developing’ countries.

The above-mentioned situation can be illuminated when the labour policies of peripheral states are investigated. Whether Taylorist or Peripheral Fordist strategies are dominant, the peripheral states have not been capable of effectively adjusting

the overall power imbalance between the supply and demand sides of labour market as in the case of liberal corporatism in golden age. If this adjustment was made, such power balancing intervention would create a condition of 'material freedom of contract' that results with equilibrium wages that are too high for it to be rational to hire employees in 'developing' world. The consequent levelling of the power advantage of the demand side of the labour market would transform in to de-industrialisation of the peripheral world. Thus, one of the permanent elements of the state labour policy of the peripheral world has always been reluctance to level the extreme inequalities of the power relations both in labour market and in labour process (cf. Lipietz, 1987; Waterman, 2001). To put it differently, peripheral state's function of securing the rights and capacities of capital to control labour power in the production process and regulating the terms and conditions of the capital labour relation has always included repressive domination as a result of the dynamics of peripheral relations of production and, thus, of relations as expressed in the theory of value (cf. Munck, 2002).

It should be recognised that precisely when solution is sought and effectively realised by the peripheral state, problems result in a way that are tolerable neither from the point of view of the favoured classes and of their class alliances such as small shopkeepers, nor from the point of view of the transnationals own interests. State policy (as well as the existing weak trade unions' policy) is thus faced with a problem of 'optimisation', in which the power differential prevailing in the labour market of the given peripheral economy can neither be left unregulated nor reorganised in a way that would cause the labour market itself, along with its corresponding power differential, to disappear.

The main difficulty lies with the political administration of NICs is that, under the conditions of huge income inequalities, it is really difficult to represent the interests of those groups who benefit from peripheral Fordism as the interests of the people of these countries (Munck, 1995). The task of sustaining very high rates of exploitation in the export sectors, which might have a combination of labour

processes changing from import substitution and/or bloody Taylorism to Peripheral Fordism and to Agri-business on the one hand, and the task of satisfying the demands of urban middle classes and trade unionism on the other, require an articulation of authoritarian (especially in the management of industrial relations) and democratic forms of government at the same time.

On the one hand, the countries that could not change their pattern of import substitution in conformity with the changing norms of production and that tried to cope with the new requirements by way of barrowing, which did not result with productive re-investments to labour, throughout 1970s, had confronted problems, which could not be solved by the formulas revealed in structural adjustment programmes of international structural forms, in 1980s and after. The rise of neo-liberal discourses of production resulted with the formally free labour markets, de-regulation, firstly in collective labour law, and thus, with the emergence of market forces as the chief mode of coordination. On the other hand, the procedural rationality that is dictated by market has, to a great extent, ceased to be supplemented by other modes of coordination, which introduced more substantive objectives, elements of interpersonal or inter-organisational deliberation, orientation to collective goals and *ex ante* concertation, specific to import substitution. The institutions and patterns to institutionalise substantive criteria for evaluating and correcting market outcomes, political and bureaucratic procedures for guiding the operation of market forces and addressing market failure have been collapsed.

When mode of regulation specific to import substitution becomes impracticable, it usually requires the measures of repressive domination to break the old balance or existing chaos and to stop the very negative consequences of working-class demands on the competitiveness of overall economy (Lipietz, 1987:73). The reorganisation of the inner (relations within the ruling class) and external relations (relations with the other classes) of the ruling classes in response to a political and ideological crisis that cannot be resolved through normal democratic means, is the

main function of this dictatorship/military rule. The increased use of physical repression with the aim of reorganising external relations does not necessarily refer to an open war against proletariat. With the condition of legislating flexible rules regulating the use of labour power, market can also provide the necessary tools of repression. In this case, flexibility do not necessarily involve the re-regulation of the relations within the realm of technical division of labour but the collective capacities of labour force to intervene national policies.

3.5.3. Labour Law after Fordism [165]

The inquiry on the subsequent changes in the political and economic realms, on the labour market strategies of the governments of central economies and on the institutions and organisations of socio-technical systems provided the study a base to examine some general properties of labour law in the continuing structural crisis of capitalism. The same inquiry embraces the necessary elements of the process of de-constitutionalisation of labour from the perspective of political economy employed by this study. The emergence of the requisites of de-constitutionalisation of labour can be traced in the changing norms of consumption that is linked to the change in re-conceptualisation of wage as an international cost of production rather than as a source of domestic demand. The political conditions for the dominance of this discourse are provided by the shift realised by monetarism.

The analysis of the changes related to the crisis of Fordism revealed the changes in the frame in which the states' function of securing the rights and capacities of capital to control labour power has changed. This situation is connected to the fact that capital is always born and developed on the basis of exploitation, transforming

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165 The observations revealed in this subsection mainly benefit from the works of Addison and Siebert, 1993; Beck, 2000; Boyer, 1994; Burg and Jessop, 1994; Burawoy, 1979, 1989; Catalano, 1999; de Cruz, 1995; Elam and Böjerson, 1994; Fine, 1986; Flanagan, 1993; Flanagan *et al*., 1993; Freynsinnet, 1993; Hardt and Negri, 1994, 2001; Hartog and Theeuwes, 1993; Hartog *et al*., 1993; Hyman, 1994; Hirsch, 1994; Hübner, 1994; Jacobi, 1994; Jessop, 1994a, 1994b, 1995; Jimeno and Toharia, 1993; Johnson and Lundvall, 1994; Jürgens, 1994; Karlhofer and Ladurner, 1993; Korver, 1993; Kosonen, 1994; Mitchell and Scherer, 1993; Munck, 1999; Nielsen, 1994a; Paque, 1993; Petit, 2002; Sasajima, 1993; Strath, 1996; Waterman, 2001; Williams, 1993; Woodiwiss, 1990, 1992.

the concreteness of that social relationship into the abstraction of its own configuration. The unity of capital is abstract since it is born and established as a configuration of abstract labour at a social level (Hardt and Negri, 1994:104). When the terms and conditions of the concrete capital labour relation in the labour market and labour process change, capital's way of abstraction of this relationship into its own configuration change. From this point of view, the process of legal de-constitutionalisation of labour has to respond on a material plane to the changes in the reproduction of capitalism under the conditions of crisis.

Labour law can be defined historically as a continual attempt to reveal and control precisely the negation that inheres in concrete/living labour. When the spatial plane on which the control is realised changes due to the inclusion of new concrete labour dwelled in other countries into the labour process, the attempts to control labour power becomes fragmented due to the inclusion of other states in to the process of securing the rights of capital in labour markets and labour processes.

The question on the agenda of jurists of the central economies is posed by the fragmentation of their workforce into core and unskilled workers in both service sector and in industry. The category of labour proved to be inefficient to regulate a highly fragmented labour market and a diversified labour process. [166] Labour regulations of central economies are thus turned into multi-layered texts by which the workforce can be controlled under different categories by way of reference to their labour contracts. With regard to technical division of labour in these countries, despite the ongoing attempts to regulate the workplace relations on the basis of labour contract and of law of obligations, obligatory provisions of laws continue to regulate the capital labour relations. However, Anglo-American tradition has proved to be more 'successful' in the shift to law of obligations thus, in abolishing the protective obligatory provisions of labour law texts. On the other

166 The protocol on social policy annexed to the Maastricht Treaty in Article 1 stresses this point by stating that "to this end the Community and Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Community economy"

hand, it seems that the central economies have become ‘successful’ or the recent changes have resulted with the deterioration of the role of collective labour law as a device regulating the cost of labour to capital in central economies.

Contrary to the guarantor state of extensive accumulation, however, central governments have taken active measures and involved directly and continuously to the regulation of the terms and conditions of capital labour relation both in the labour market and in the labour process. Thus, the term de-constitutionalisation seems to be relevant, for central economies, only for collective labour law. The state in central world continues to put social reality into question but no completed discursive realm that can embrace the social reality is on the agenda. Fundamental rights have not acquired a new juridical meaning in which social interests defined by the state are represented. Given that there is not a single and widely accepted plan for of the construction of social order, law have not re-acquired its appearance as a moderator of the contrasting interests and the division of power in structural forms appears to be ambiguous.

While on the one hand the liberal discourses of production and the first position have become dominant in the re-definition of social reality, the socio-technical system of central economies refers in many cases to individual labour law that was created in the golden age. [167] Yet, while the protective provisions remain, the realm of application of individual labour law is not free of changes. When the recognition of conflict and its inevitability in industrial society have been evaporated from consideration of jurisprudence not only the collective labour law but also individual labour law has affected from this discursive shift.[168] For instance in EU

[167] For instance, the Nice Summit in 2000 creates individual rights within the European Union many of which are related to the individual labourer’s rights.

[168] EU Labour law includes binding Community acts, which are closely linked to the fundamental freedoms and a set of policies aiming to achieve the full free movement of labour including social rights at community level. Yet these legal means serving to EU labour policies are by no means aiming to create a social democratic regulation, which was abandoned by the commencement of monetarist policies in early 1980s. The provisions on social policy laid down in various EU directives, in the related case law, and in the bulk of Fundamental Rights created in various agreements at community level, do not aim to create a social democratic/Keynesian tripartite system

labour law, the residues of the obligatory provisions, to day, could only be found in the realm of provisions concerning information and health protection of individual workers. [169] Many of the directives on labour issues bring out large frames enabling the national legislators to regulate the industrial relations with flexibile friendly codes. In many cases, the obligations of individual capitalists remain limited with providing information.[170] The bulk of norms referring to individual labour law, under these conditions, implicitly or explicitly, aim to eliminate the distortion of competition.

In conformity with this situation, the labour law provisions contained in the bulk of norms regulating labour law in central economies do not aim to protect the rights and interests of employees as an objective in itself.[171] The individual worker is now a juridical subject who has no connection with collective labour. For instance, the labour law referred to in the Maastricht Treaty[172] has signs of neo-liberal

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in which labour is represented as a function of a fundamental class. Both the British type of labour politics favouring flexibility including de-standardised, fragmented, plural regulations characterised by highly flexible, time-intensive and spatially decentralised forms of deregulated paid labour, and negotiated involvement of Swedish and German models find a base of application in these bulk of labour legislation. The aim of resolving the supply-side (productivity) crisis of Fordism comes first.

169 Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

170 Directive 91/533/EEC lays down the employer's obligations to inform employees of the conditions applicable to contracts or employment relationship.

171 The labour regulations of EU could be evaluated from this perspective. For example, the problem of social dumping mainly refers to the differences related to the costs of pay, to social burdens on capital or to flexible design of working hours. The policy of approximation of the national labour regulations aims to facilitate cross-border and multinational operations by creating similar employment conditions throughout the EU and to balance the interests of employers and employees with the conceptual set provided by neo-liberalism. Put differently the EU labour policy promotes a kind of regulation that destabilises sector-based arrangements in favour of internationalised/continentalised branches. It is clear that codification of labour issues, as being the major part of issues on Capital relations, cannot be considered as a local issue and cannot be left to the National states if the EU project is to continue. Deregulation of national control over markets will supposedly support the trajectory of capitalism while capitalism, on its part, is expected to facilitate the European integration process through its expansionary and de-territorializing tendency (Brenner 1999: 42). This line of thought is already established in the founding documents of EU.

172 Maastricht Treaty as signed on 7 February 1992, had brought significant novelties on labour issues. Until Maastricht, except the regulations on workers health and job safety, the regulations on labour issues had to be passed by unanimity. The treaty changed this situation and enabled relevant

understanding (the first position in labour law jurisprudence) in which individual employment contracts have the primary place within the sources of labour law. Subsequently, the borders of the class struggle that was drawn by the Fordist state have become ambiguous together with the borders of the working class as the possessor of concrete labour.

Another factor of change related to the above-mentioned discursive shift is the emergence of the paradigm of flexibility. The protective obligatory provisions are now obliged to take into consideration the measures of flexible specialisation that were investigated under the heading of labour-time models.[173] The emergence of de-standardised, fragmented, plural employment system has restricted the realm of the application of individual labour law provisions to the periods in which work is performed in the strictest sense and to the places that work is performed. This transformation is followed by the re-conceptualisation working time, which refers to certain hours in a day rather than a certain part of the life of the worker, and workplace together with new obligations and new –personalised- dependencies to the individual capitalists.

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regulations enacted with qualified majority. The protocol on social policy that is annexed to the Treaty, states in Article 1 that "EU and the Member States shall have as their objectives the promotion of employment, … dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion", meaning that the treaty has further implications on the formation of a labour law at EU level including European collective labour agreements and individual labour law.

[173] The most important piece of EU legislation on the matters on flexibility by way of individual contracts and individual labour legislation is The Council Directive 93/104/EC, of 23 November 1993, concerning certain aspects of the organisation of working time (The directive is amended by the Directive 2000/34/EC of 22 June 2000 of the European Parliament and of the Council). The scope of the directive is extensive, including nearly every branch. Although it is declared by the text of the Directive 93/104/EC that the objective of the regulation is to adopt minimum requirements covering certain aspects of the organisation of working time connected with workers' health and safety, the main objective of the document can safely be stated as the regulation of working times and the duration of work in conformity with neo-liberal premises. Since Article 3 of the directive states that the minimum daily rest period of 11 consecutive hours per period of 24 hours; meaning that a working day can include 13 working hours. The directive enables to regulate the duration of night work for night workers up till 8 hours in a night (Article 8). Resting hours of the workers are also subjected to the mutual agreements of the 'parties'.

3.6. Conclusions

So far, we have investigated the conditions of existence and the transformations of the frame in which the state's function of securing the rights and capacities of capital to control labour power in the overall reproduction of capitalist relations of production is realised. Given that there is a correspondence between institutional and organisational developments, and its principles for action (law) and radical changes in wage formation, the same investigation is considered to be capable of illuminating the dynamics behind these rules. Individual labour law and collective labour law are considered to be the main legal devices in the regulation of industrial relations as being the most important realm on which the capacities and rights of capital to control labour power is determined.

The periodisation employed in this chapter of the study owes its existence to the dynamics of accumulation in both the central and peripheral states. The amalgamation of the two resulted in the emergence of the second international division of labour in which NICs and non-NICs were emerged. It has been alleged that the dynamics of accumulation at the international sphere can partly be tracked down with reference to the changing functions of international like structural forms. Only after periodising the connection between capital accumulation and the international division of labour and after investigating the correlation between the two and the general characteristics of labour law did the theoretical background became adequate for framing labour politics of peripheral states.

The periodisation of the connection between capital accumulation and the international division of labour benefited from the notion of structural form that is developed by the Regulation Theory. The investigation established that, in the central economies, throughout the period the regulation regarding the stabilisation of wage relations in a series of companies that are forming a branch involved binding regulations, which included collective agreements and obligatory provisions for labour contracts and which applied to all employers within a given branch or region with the aim of preventing competition for low wages and

enabling periodic increases in the purchasing power, in a social environment in which social peace depended on high level of productivity and, thus, on continuous accumulation. With regard to peripheral economies, to the extent that the structural forms resembling that of monopolistic mode of regulation established, labour acquired rights that were in conformity with the populist politics of early import substitution.

Under the pressure of monetarism and of the process of stagnation, the changing functions of classical structural forms are elaborated in the subsection on “After Fordism”. The investigations revealed that collective bargaining’s role over the stabilisation of wage relations is increasingly deteriorated by the changing nature of work, including new institutionality, by increasing the influence of business over labour politics, by the labour market strategies of the governments of central economies and by flexible specialisation. The analysis of the responses to the supply side crisis of Fordism indicated that those countries, which stick to the classic Fordist wage relation (rigidity plus Taylorism) and to its classical mode of regulation, would be gradually outclassed. However, the structural constraints over the national cases are not forcing them for a single solution, at least for now. A country may choose to leave wage rigidity characteristics of Fordism, or to leave the Taylorist element or apply an amalgamation of these politics. In all cases, it has become apparent that the role of collective bargaining over the stabilisation of wage relation is significantly weakened. On the other hand, protective provisions of individual labour law whose origins remain in the law created/produced in a monopolistic mode of regulation remained effective; however, in a different context and with a new discursive frame, which is established on the denial of conflict and its inevitability in industrial society and on a single juridical subject having no connection with collective worker. Another feature of the new individual labour law is the insertion of the paradigm of flexibility into its temporal and spatial realm of application.

The structural constraints of peripheral states are considered in detail. The way the state's function of securing the right of capital to control labour power is realised in the early import substitution policies and in the current international division of labour is explored. Thus, in addition to the structural constraints, the political determinants of the class structure with reference to the notion of control are considered. The peripheral world's inherent tendency to hegemonic crisis arsing from all the variants of investing on labour is established within this context.

The answer to the historical question of why and under what circumstances law entered industrial relations at particular points in time can now be answered with reference to the changing functions of socio-technical system as a result of the crisis of Fordism and to the dynamics of the international division of labour. It has been mentioned that when the conditions of the second expansion of Fordism articulated with the internal contradictions of a given peripheral country neo-liberal programmes have found a base to be implemented.

Yet this implementation has roughly two variants, which in some cases may be observed in the same economic space divided by internationalised branches and which resulted in the dualistic application of the labour law at different branches in the same country. In peripheral economies, in which the ruling classes were capable of controlling labour force under the conditions of extraordinary absorption of relative surplus value, not only the collective capacities of labour to intervene in the national policies, thus the labour's capacity to interfere into the money as a social institution, but also the socio-technical system, including the regulations on the re-organisation of technical division of labour and the regulations on the collective action of labour in the labour market, has remained under restrictive practices of the state. Neo-liberal practices have been implemented in the realm of money as a social institution with the exclusion of democratic practices including labour's intervention. Within this context, the peripheral capitalism specific to NICs have always included remarkably *ex ante* modes of coordination besides market-based allocation of resources.

Another group of peripheral countries, in which the regulatory devices of socio-technical system had become a source of rights for working masses to resist against the demands of ruling classes, industrial investment in labour has been weakened and unproductive activities pursued by the finance sector constituted the main portion of economic activities. Logically, the main concern for the countries in the second variant seems to be the re-regulation of collective labour law as a device regulating the collective capacities of working class to interfere in national policies. The neo-liberal revolution in these countries did not include the structuration of industrial organisation to charm international investments. Given that labour process remains to a large extent, untouched, individual labour law becomes a point for reference only after the 're-regulation' of collective labour law. Analytically, there are two possible reasons for this. The first reason may derive from the stress created by unproductive investments over the division of the total income of the nation. In this case, the industry in search for extra incomes may demand the remaining share of labour within the gross national income. Yet, given that the division of total value produced in an economic realm is not an activity based on static forces, the changes in the process of production and distribution, including the changes in the right of capital to control labour power, may give rise to an environment in which the international conditions of investment to labour may occur. The other reason may derive directly from the need to charm international investments. Yet, in this case, the most important condition of peripheral industrialisation, that is autonomy from popular masses, has to be achieved prior to this aim. The process of internationalisation together with internationalised branches may provide a certain fraction of ruling classes the economic base of this autonomy by way of increasing exports, the ideological components of this strategy may be created by way of mobilising religious and national movements. On the other hand, the above mentioned two reasons may be in the same shoes supporting each other, or each may provide the other the reasons for legitimisation as a basis of the strategies pursued by ruling classes.

CHAPTER IV

TURKEY'S ARTICULATION WITH THE INTERNATIONAL DIVISION OF LABOUR: FROM THE 1950S TO PRESENT

4.1. Introduction

A series of argumentations established in Part I aimed to state that structural forms reduce the diversity of the relations that are carried through by agents via channelling and grouping, thereby predetermining the behaviour of agents at a certain, yet influential, level. The articulation of interests in the Fordist era and in the first phase of the crisis is realised by an institutionalised pattern of policy formation in which large interest organisations[174] cooperate with each other. The mode of regulation specific to central capitalist economies had a profound impact over periphery in the age of early import substitution under the conditions of the peripheral process of production, whose material and social character referred to an entirely different and diversified context that would be influential in the rapid industrialisation of some peripheral countries in the period of the second expansion

[174] However, the actors of the institutionalised pattern of policy formation should not be conceptualised as ontologically distinct bodies. Considering the state as a social relation and the accounting of patterns of concentration between state and interest groups invalidates a perception where the state is a neutral body, which exogenously watches over the 'general' or 'public' interest. Contrary to liberal approaches considering state as a distinct actor intervening negatively to the market, the Turkish State's interventions will be considered as a form-determined condensation of the balance of political forces.

of Fordism. Both the Fordist model of growth and its crisis had certain implications on the set of regulating agencies specific to peripheral countries.

This Chapter investigates the dynamics behind the enactment of the recent labour act concerning the realm of individual labour law, by way of reference to the correlation between the dynamics of accumulation and the state's form, in which the state's function of securing the rights of capital to control labour power in both the labour process and labour market realised. As revealed in Chapter II, the correlation between the capitalist relations of production and the surface forms, including economy, ideology, politics and law as a part of state power, cannot be traced on the basis of linear causality. Thus, the investigation will take into account the imbricatedness of relations constituting these realms. Within this context, the process of constitutionalisation and de-constitutionalisation of labour with reference to the changes in the function of state to secure the individual capitalists' right to control labour power, and the impasse of import substitution will become a point of departure for the assessment of state power that is limited with the paradoxes of capital relation and/or with the states controversial relation with accumulation process having international dimensions.

To do this, this chapter deals with and characterises the significant political and institutional changes, whose incentives cannot be understood solely by referring to the needs of the domestic economy. Put differently, this Chapter focuses on the incentives behind the changes in the main determinants of the socio-technical system. Within this context, the transitions experienced by the set of structural forms having certain impacts on labour policies and labour law will be investigated with reference to the phases of the crisis of Fordism. Neither the strategy of import substitution nor the processes of constitutionalisation and de-constitutionalisation of labour owed their reason of existence not only to the outcomes of class struggle in the domestic realm but also to the ideological and political effects of central capitalism, which provided the necessary forms in which the class struggle was shaped. The complexity of the issue makes it very difficult to establish a general

theory of the politics of regime transition; it is, however, possible to view the hegemonic strategies' correlation with the trends in the international division of labour. For this end, historical evaluation will be founded onto two grounds: From the 1950s to the 1980s and from the 1980s to present.

4.2. From the 1950s to the 1980s

4.2.1. Influences of the International Division of Labour: Europe, ILO and Bretton Woods Institutions

The introduction of the golden age formulation of the state in peripheral countries owes much to exogenous factors than internal reasons (Lipietz, 1987). At the beginning of the 1950's, the structural forms in the 'developing' world came into existence by transformation of the functions of an existing body or by the establishment of a new institution, as the result of various forms of transaction with the central economies. The state aids, credit conditions[175], the demands of reformists as an outcome of class struggle or for any other reason, proposals of international bodies, the influence of political formations in the neighbourhood, international exchange relations would be influential in the foundation of these structural forms, in which the domestic class struggle would be realised. Within this context, the effects of a certain structural form could be considered by the ruling classes of a given country as a reliable and functional mechanism, while the conditions of its existence did not exist in the economic sphere of the national economy.

The structural forms specific to Fordism were introduced to Turkey sometimes by way of the actions of elected governments, as in the case of the changes in the Central Bank and sometimes by way of military intervention, as in the case of the constitutionalisation of labour in the 1961 Constitution. Both in the early import

[175] For instance, if a developing country was in lack of a kind of bank regulating the credit demands of various banks in the domestic economy, it would be refused by the creditors on the basis of this deficiency.

substitution strategies of Latin American States and in Turkey, the application of development strategies and the democratisation programmes, some of which were supported by the World Bank or OECD, required the most influential categories of golden age institutions, namely bargaining units, collective contracts, union organisation principles and employer organisations, to be founded. This situation led to the enhancement of the ecological dominance of capitalist relations of production and had an impact over national production and consumption norms within the structural constraints deriving mainly from dynamics of production.

The hegemonic power of the golden age Fordism, namely, USA, was in search of implementing US values inherent in the expansion of its production norms, to peripheral world in general and to the countries at the front line of cold war, in particular (Yıldızoğlu, 2003). The way these values influence the domestic policy-making is a complex issue that cannot be subject to a single reason. Firstly, the European Continent's re-construction in conformity with US production norms and the institutions in which new social relations characteristic to Fordism were represented (Woodiwiss, 1992) had been influential in the re-shaping of Turkish institutions. Secondly, ILO was setting the universal rules, which would influence the way the structural forms are shaped, for an international labour law. Thirdly, the politics of Bretton Woods institutions together with foreign exchange crisis and the subsequent debt rescheduling were amongst the most important reasons for periphery. Last but not least, the theme of modernisation has always been a significant issue in the formation of hegemonic projects throughout the periphery, at least up till the rise of political Islam in the 1970s. Reformists have always 'discovered' solutions to the existing problems of their countries by taking the social institutions and regulations of the central economies into consideration. I will now evaluate each source of influence in turn.

The European influence

A source of influence/extension of the structural forms post-War Fordism was the European influence. The discussion on the role of the decisions of Turkish policymakers aiming to finalise the conflict between adjustment and

industrialisation by becoming integrated with the economies of Western Europe in Turkey's integration with European economy is out of the scope of this section. European unification was perceived as an international agreement. The import substitution inspired the idea of inconveniency of the customs union was out of dispute. Yet, it is clear that the Association Agreement and the subsequent Additional Protocol[176] with the EEC were the outcomes of post-War Europe's importance for Turkey.

European continental bloc was not only representing a source of power that would help Turkey to resolve the conflict between adjustment and industrialisation (Yalman, 1997:166) but also representing the ultimate goal of modernity, which has been the main basis of all republican hegemonic strategies and which includes possibilities for the new mode of integration with world economy. The European institutions, thus, were providing a model not only for the administrative bodies that would be instrumental in structural adjustment, but also for the entire set of social relations organised in various ways. While the individual countries of Europe were providing labour a model, ruling classes preferred the Anglo-American way of industrial relations. Under these conditions, the forms of the socio-technical system of Europe provided a format for the institutionalisation and organisation of the Turkish industrial relations.

[176] In July 1959, shortly after the creation of the European Economic Community in 1958, Turkey made its first application to join. The EEC's response to Turkey's application in 1959 was to suggest the establishment of an association until Turkey's circumstances permitted its accession. The ensuing negotiations resulted in the signature of the Agreement Creating An Association Between The Republic of Turkey and the European Economic Community (the "Ankara Agreement") on 12 September 1963. This agreement, which entered into force on 1 December 1964, aimed at securing Turkey's full membership in the EEC through the establishment in three phases of a customs union which would serve as an instrument to bring about integration between the EEC and Turkey. The Additional Protocol of 13 November 1970 set out in a detailed fashion how the Customs Union would be established. It provided that the EEC would abolish tariff and quantitative barriers to its imports from Turkey (with some exceptions including fabrics) upon the entry into force of the Protocol, whereas Turkey would do the same in accordance with a timetable containing two calendars set for 12 and 22 years, and called for the harmonisation of Turkish legislation with that of the EEC in economic matters. Furthermore, the Additional Protocol envisaged the free circulation of natural persons between the Parties in the next 12 to 22 years.

ILO

ILO's [177] norms can also be added to the list, as a prime source of influence over the formation of Fordist like structural forms in the realm of industrial relations in Turkey. ILO regulations provide the principle source of international labour law. With the condition of ratification, ILO conventions become a source of national legislation[178] (Tunçomağ and Centel, 2003:32; Çelik, 2003:24, 25; Erdut, 2002).

The aim of ILO has always been to internationalise the principles mentioned in the constitutional framework of the ILO conventions. [179] An important part of the work of the institution is on the preparation and supervision of the implementation of international labour standards that were shaped mainly by the Philadelphia Conference in 1944.[180]

These standards complied with the USA norms of production on which the US founded her economic superiority. ILO conventions set an international labour law, regulating the use of labour power in conformity with US norms of production. For instance, the rule on the prevention of competition at the expense of workers was the basics of the first expansion of Fordism in which wage rigidity had utmost importance in the planning of future investments.

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[177] ILO is one of the specialised agencies of the United Nation, but it differs from the other specialised agencies both in history and in structure: it is the only organization in which not only governments but also employers and workers organizations are represented and it was established in 1919, just after the Soviet Revolution, a long before the establishment of the united nations system (Osieke, 1985:5-7).

[178] Article 90/5 of the Turkish Constitution states that "International agreements that duly put into effect, carry the force of law. No appeal to the Constitutional Court can be made with regard to these agreements, on the ground that they are unconstitutional". For an analysis of ILO-Turkey relations, see Koç (2000), Erdut (2002), Güzel (1996).

[179] See Article 1 of the ILO Constitution, and the Declaration of Philadelphia referred in the text of the Article 1 as being the main text that determines the purposes of the institution.

[180] In 1944 in Philadelphia, the International Labour Conference adopted a declaration to redefine the aims and purposes of the Organization, which were subsequently incorporated in the ILO Constitution.

The Constitution of the ILO lays down a number of principles, such as freedom of association; freedom of expression; the principle of non-discrimination; the principle of fight against poverty; the principle of economic security and equal opportunity; all of which had been the basic features of labour codes in the golden age Fordism and had not been severely in conflict with the existing conditions of the domestic countries until the beginning of the second crisis and the emergence of NICs in the 1970s. The purposes of standards were to regulate labour matters of an international character and to serve as a guide to governments, workers and employers (Lordoğlu and Özkaplan, 2003:38).

The influence of labour standards provided by ILO can be observed in the headings, thus in the forms of the relevant articles of the Turkish regulations on industrial relations. As in the case of other peripheral countries, while the forms in which these struggles realised are generally established by ILO norms, the context of the articles, thus sanctions and orders included into the legal texts, are determined by the outcomes of the domestic struggles on the given text (Munck, 1995:211-244). Yet the influence of ILO norms is not limited to the heading and the form of the provisions. When the Conventions on the freedom of association; freedom of expression; the principle of economic security and equal opportunity are ratified, they became a source of power for the working class. If we are not to reduce law to the needs of the powerful party, the state's commitment to consistency articulated with other signs signifying substantive principles, such as social justice or liberty, may empower the worker to the extent that the given freedom contains rights for workers. Subsequently, the new powers introduced by the ratified Convention may have an influence on the existing set of structural forms.

Even in the formulation of the article headings of the first Labour Act no. 3008, entered into force on 15.60.1937, despite the main principle it was established on

was the public benefit in 'a central European sense' of the time[181] (Çelik, 2003:9), headings of the articles had a resemblance to the basic labour standards formulated in ILO conventions. Items of the act, such as maximum hours of work, rest breaks and the Saturday leave, [182] the protection of wages,[183] the employment of women and children,[184] health and safety[185], and employment agencies[186] were formulated by keeping the ILO conventions in mind, yet their context was severely differing from the ILO recommendations. Besides, The Trade Unions Act of 1947 (numbered 5018) adopted several democratic principles, resembling the headings of the articles of ILO conventions. For instance, the rule stating that prior permission from the administrative authorities was not required to set up a union was in conformity with the relevant ILO convention.[187] The establishment of organisational forms resembling to the Fordist model of development, among others, may have been stimulated by this provision. However, when the application of the liberties were considered, the status of the Turkish worker and the workers of the central economies, where similar headings could be found in corresponding regulations, were strikingly different.

On the other hand, the acknowledgement of the right to association and the emergence of trade unions and trade union federations whether yellow coloured or

[181] While Law of Associations of 1938 was prohibiting the establishment of associations based on class representation, the Criminal Code Article 141 and 142 had brought heavy penalties on the activities concerning every form of class-consciousness. The years of War had also witnessed the enactment of National Security Law that had abolished the protective provisions of Act no. 3008.

[182] Article 2 of the Convention concerning the application of the weekly rest in industrial undertakings, dated, 25 October 1921.

[183] Article 1 of the Convention concerning the creation of minimum wage fixing machinery, dated, 30 May 1928.

[184] Convention concerning the employment of women on underground work in mines of all kinds, dated, 4 July 1935.

[185] Convention concerning workmen's compensation for occupational diseases, dated, 4 July 1934.

[186] Convention concerning Fee-Charging Employment Agencies, dated, 8 June 1933.

[187] Convention concerning freedom of association and protection of the right to organise, dated, 17 June 1948.

not, have had influence on the ‘formation of working class’ which would otherwise be different. Form was, to a certain extent, determining the context. The rule stating that workers and employers shall have the right to establish and join organisations of their own choice without previous authorisation had ensured the working class a right that working class as isolated from the world could not be gained.

Emerging working class, as a result of the industrialisation project, which has always been in the hegemonic projects -albeit in different proportions-, of the Republic, had always been one of the determinants of policy making (Boratav, 2003). Yet, the relative weight of the working masses, with the organisational prospects provided by law, increased after the 1950s. Thus, the importance of social justice (a sign signifying substantive principles) for the maintenance of Turkish Capitalism, has tended to become important after the 1950s. The fractions of capital in search for power used this card. Yalman (1997: 164) mentions that the same reason is also influential in the political consciousness of the ruling class.

The 1961 Constitution established the employees’ right to bargain collectively and to strike (Articles 46 and 47). Trade Unions Act no. 274 and the Collective Agreement, Strike and Lockout Act no. 275 realised the constitutional rights of workers. The role of the ILO conventions on the formation of the new labour regulation of the 1950s and the 1960s is widely accepted in literature (Gülmez, 1988).

Bretton Woods Institutions

It is worth remembering that Turkey was not the only country that a policy of macro economic stability, on the basis of the neoclassical principle of comparative advantages, was ‘recommended’ by the US administration, sometimes with and sometimes without the assistance of Bretton Woods institutions. These ‘recommendations’ also included the social organisation methods and the institutions in which they could be realised. The introduction of Central Banking contributed to the enhancement of the working class consumption norm and thus

contributed to the development of Department 2. In the same vein, the relative weights assigned to alternative sources of finance in order to realise the policy priorities has always been produced/backed up by the contesting fractions of ruling classes. As the Turkish Economy increasingly became dependent on external sources for the financing of its development projects, the non-industrial part of ruling class has always found a strong support in face of the representatives of industry in the same party or in different parties. To put it differently, the existing domestic inter-class and class struggles found their expressions within the new structural forms provided by the mode of regulation in central economies.

4.2.2. Turkey throughout the First Stage of Fordist Expansion

4.2.2.1. The Dominant Mode of Regulation and the Wage-Labour Nexus

The question of Turkey's integration into the international division of labour (world economy) is not a new matter. The same question was also on the agenda of post-War Turkey, yet in the 1950s, peripheral economies in general were unable to demand a place in the world market for manufactures due to the productivity gap between the economies of centre and periphery. The exogenous introduction of the structural forms was included into a wide range of relations, which tied company management, banks, trade unions and political parties, as well as governments in post-War Turkey. During this period, macro planning and import substitution became synonymous.[188] The dynamics of the 1950s prepared the conditions of the 1960s (Keyder, 1987).

From 1954 onwards, import substitution, which was in contradiction with the role given to Turkey in the world economy on the basis of the neoclassical principle of comparative advantages, and which was demanded by the business community in the form of 'the maintenance of a reasonable system of protection', became the

[188] In fact, the origins of the inward-oriented strategy can be traced back to the etatist period of the 1930s, corresponding to the first major industrialisation drive in Republican Turkey. The State Economic Enterprises were founded during the 1930s and provided the institutional framework for the major industrialisation surge under the guidelines set by Mustafa Kemal Atatürk.

dominant regime of accumulation and the main hegemonic strategy (Keyder, 1987). The Turkish economy between 1950 and 1976 experienced a relative growth in capital and consumption goods sectors under the strategy of import substitution[189] (Yeldan, 2001:32). However, the first part of the 1950s represented efforts on the part of a populist government to force the momentum of growth in a predominantly agrarian and primary exporting economy, while the terms of the international trade were worsening for the primary exports. Import substituted industrialisation[190] emerged partly as an unplanned response to the balance of payments difficulties under the worsening of the conditions of primary exports, which in turn gave power to the advocates of industrialisation (Öniş, 1998:33).

Industrialisation efforts of the post-War Turkey resulted in the occurrence of local capital, the presence of a sizeable middle class and the occurrence of a semi-skilled working class. The industrial structure had been increasingly concentrating and the market structure was oligopolistic (Hale, 1981). Incomes of industry were concentrated. On the other hand, the growth in social demand was not institutionally regulated or adjusted to productivity gains in local Fordist branches at the national level.

The real wages were growing slower than productivity. However, domestic demand was increasingly being structured by the earnings of the wage earning class. Endogenous growth in money supply (increased deposits) and continual

[189] Import substitution is accepted and legitimised as a conscious development strategy, which was aiming the completion of the substitution process in consumer goods and consumer durables. The first five years plan of 1963 extended the strategy of import substitution, which was expected to be financed officially by external financial resources, into more advanced branches (Öniş, 1998:34).

[190] This strategy included the reinforcement, by way of import substitution, of industrial sector, often under the aegis of a populist state (Lipietz, 1987:7; Richards, 1997:30-31). The limits of this strategy can be track down in 1958 stabilisation package put in place by the IMF, primarily so as to satisfy the international creditors. Having exhausted all the possibilities of maintaining the import requirements of the economy, Turkish policymakers of Menderes era had to confront the outcomes of the need for the debt-rescheduling. World Bank, albeit in a different position than it occupies now, was referring to global economic conditions, which would only improve if each country cease to see the industrialisation as an end in itself (Yalman, 1997:134). An adjustment in conformity with the liberal economic policy making had to be pursued.

improvements in the legal coverage of labour and social security laws accompanied by developments in acquired rights were among the properties of Turkey before the end of the 1970s, which demarcates the times that the sustained increase in public expenditure became problematic. On the other hand, in addition to the structural constraints deriving mainly from the dynamics of production, and in relation with these constraints, workers had retained their ties to agricultural incomes (cf. Ayata, 1990) and informal sector had a destabilising role over wage-labour nexus. Under these conditions, wages and the costs of reproduction of labour power have never become compatible at the national scale, meaning that the Fordist wage-labour nexus has not been totally established in Turkey (cf. Çetik and Akkaya, 1999:207-214). In other words, the Fordist compromise of accepting Taylorism and bargaining for an indexed wage did not occur.

In addition, working class consumption was inadequate to build an industry depending on durable consumption goods. Market, to a certain extent, remained sociologically stratified. The consumption of standardized articles had gradually increased.[191] Wage differentials were not providing a base for the expansion of Fordist production methods due to the rising productivity, i.e. golden age of Fordist model of development, in central economies. While the terms of the international trade were worsening for primary exports, it was nearly impossible to finance the purchase of primary products without international credits (Öniş, 1998). Under such conditions, the objective of industrialisation was non-compatible with the liberalisation of international trade relations as advocated by the 'designers' of the 'new/post war world economic order' (Yalman, 1997:132), whose primary interest was in the establishment of Fordism and its production norms in centre in the 1950s.

Fordism, being a general organising principle of labour under the conditions of rising productivity, was not defusing to the periphery as in the same way with

[191] The recommendations of the Economic Congress of 1948 acknowledged the need for policy measures to expand the internal market (Yalman, 1997:142).

Europe (Lipietz, 1987).[192] The individual capitals located in Turkey were not in need of forecasting their collective growth to hinder the possibility of over-production. In the 1940s and the 1950s, the dominant mode of regulation in Turkey can be characterised by the a posteriori adjustment of the output of the various branches to price movements. The Turkish labour market, from a neoclassical perspective, was considered competitive until the early 1960s (cf. Ansal *et al.*, 2000). Thus, wages appeared to be flexible and market determined. What was being effective was the values and institutions represented by the Fordist central economies.

Yet, certain elements of production organisation that conformed to Taylorist and Fordist methods were introduced (cf. Çetik and Akkaya, 1999:207-214) and a wage labour nexus on sectoral and regional base appeared. In these sectors, labour markets were introduced with administered regulation. Contrary to the overall structure of labour market, the consolidation of a wage labour nexus in some ways resembling to those of central economies was apparent in some sectors and regions. The state practices, including primitive forms of institutionalised negotiation, of bargaining, collaboration and accord about wages, and of the examination of economy policies, between representatives of the parties within and out of the state, were partly observable. Institutionalisation of the wage labour nexus was also relevant with the gradual move away from competitive regulation and contributed to industrialisation. These developments had many things in common with some of the Latin members of the early import substitution clubs, among which are Argentina, Chile, Mexico (cf. Aboites *et al.*, 2002).

[192] In the absence of the crisis of profitability, thus, of the motives for the individual capitals located in the central world to relocate their activities, the failure of Turkish governments in their policies aiming to finance the industrialisation was not specific to Turkey. All the peripheral economies suffered from the same problems (Lipietz, 1987:61). The Turkish experience of industrialisation in 1950s and partly in the 1960s was to a certain extent successful. Yet, Turkey shared the common disappointment of periphery, which indicated the impossibility of industrialisation by using Fordist technology and its model of consumption without either its social labour process or its mass consumption norms, in its insufficiency to articulate international division of labour as an exporting country.

The question of whether the competing polices determining the choice of Turkey were to have an effect on the failure of industrialisation together with the construction of an integrated national economy will not be discussed here. Yes, all these policies were structurally constrained by the conditions of the Fordist division of labour at the international scale, yet not in an a priori functionalist sense, which impedes all the possibilities of the organisation of the conditions of reproduction of capital in a nation state. What remains important is the outcomes of the establishment of Fordist resembling structural forms, which were expected to improve the conditions for Turkey's own interaction with the rest of the world.

4.2.2.2. The Process of Constitutionalism and Structural Forms

The Socio-technical System

The institutions and organisations for realising the state's function of securing the rights of capitalists both in the process of production and in labour markets had gradually resembled the forms of institutions and organisations in the period between 1945 and onwards (Talas, 1992). The acknowledgement of workers' right to organisation was the first step. Then trade unions capacities were re-defined, albeit in an American fashion and without possessing the right to organise a strike until the 1961 Constitution. The Law of Associations of 1938, by which trade unions and employer unions were banned, altered sharply with the enactment of Act no. 5018. A primitive system of interest representation for labour and capital began to emerge. The 1961 Constitution completed the scope of novelties introduced in the Turkish law as of 1945 and introduced the proliferation of rights into the classical liberal freedoms, which were extended to include the right of workers to organise and to bargain and act collectively, and to some 'Marshallian social rights'[193]: for example, to minimum standards of wholesome and cultured living, to the promotion and extension of social welfare and security, and of public health to an equal education correspondent to their ability. This system necessitated additional institutional and organisational changes, autonomous organisations and,

[193] The term 'Marshallian social rights' belongs to Woodiwiss (1992), who observes similar legal changes in countries benefited Marshall aids.

most important of all, intangible means that often correspond to the law of structuring interactions between organisations, a new set of structural forms, which had been in the process of institutionalisation from 1946 onwards, emerged. A new socio-technical system was coming into view. The overall structure of the Turkish state, which had excluded pluralism or the emerging neo-corporatism, were to undergo change. The following paragraphs trace the process of institutionalisation of new state form.

The dynamics of domestic class struggles, such as the demands of the larger (not large) farmers and the small-town merchants profiteered by black market operations of war years, for larger room to manoeuvre were to be interconnected with the organisational principles and with the pluralism inherent in the Fordist mode of regulation. The small private sector industrialists once upon a time backed by the capitalist oriented etatism of the Republican People's Party (RPP), also joined this chorus of dissent represented by the Democratic Party (DP) (Ahmad, 1993:102-121). RPP, the ruling party of the 1946 elections, responded to the rise of DP, whose programme included the principles of free bargaining and the right to strike, with a major change of policy orientation. Thus, international organisations set up in the new international system under the leadership of the USA have become influential just after the War. What Marshall termed as 'a sort of secondary industrial citizenship' had become visible in the amendment to the law of Associations of 1938, which cancelled the ban on establishing class-based associations in 1946, was one of the indicators of that influence (Cizre-Sakallıoğlu, 1992:713; Çelik, 2003:11).[194] Act no. 5018 concerning the structure of trade union organisations with some liberal pluralist orientations had become seriously influential over the industrial relations of Turkey up till the 1960s. Act no. 5953, concerning the working conditions of press workers (1952) and Act no. 6379,

[194] "(T)his cancellation covered the trade unions as well, it was soon followed by the formation throughout Turkey of 600 trade unions, numerous other associations, and even two socialist political parties. However, an additional proviso inserted into the same Act prohibiting these associations from pursuing political activities, and a legal amendment in 1952 making it possible for the government to close them down without judicial proceedings, both point to the continuation of the RPP etatism." (Cizre-Sakallıoğlu, 1992:713)

concerning the conditions of seamen (1954), were among the properties of the era that had been influenced by the European and US norms of production.[195]

Both RPP and DP tried to ensure the conditions for the establishment of the mode of regulation specific to the implications of Fordism in the peripheral world, while keeping a strict control on the substance of trade unionism by way of regulating and legalising the unions for the purpose of depoliticising, weakening and dominating labour. However, this system was not state corporatism due to its commitments to the European model and to interest representation that inherently demands some degree of pluralism (Cizre-Sakalllıoğlu, 1992). The Fordist like socio-technical system of the epoch demanded the state (the Ministry of Domestic Affairs, the Ministry of Work,[196] after the 1960s the State Planning Organisation, etc.) to intervene in the industrial relations both by way of protective provisions, by an amalgamation of arbitration and bargaining and by way of the centralisation of work force under the umbrella of an American-inspired confederation that is suitable for exogenous interferences.

The organisation formed with this purpose is the Confederation of Turkish Labour Unions (Türk-İş) established in 1952 under the DP rule. Legislation for the improvement of working and living conditions, health service, housing provisions, tax exemptions, bonuses and minimum wages for the workers were enacted not because of the initiative of Türk-İş, but of the impact of the Fordist mode of regulation. These policies, together with the changes in the regulation of money (money as a social institution), laid the foundations of an extended internal market.

[195] A list of new acts concerning labour relations were Acts numbered: 4472 on workplace accidents worker health and maternity insurance (1945); 4792 on worker insurance (1945); 4837 on job searching institution (1946); 4841 on the establishment of ministry of work (1946); 5417 on retirement insurance (1949); 5502 on maternity and illness insurance (1950); 5521 on the establishment of Labour Courts;, 5837 on weekend holidays (1951); 6301 on lunch break (1954); 6309 on the work in quarries (1960), 7467 on the annual leave periods (1960).

[196] The Ministry of Work departed from the working directory of the Ministry of Economics in 1946.

Once again, the form provided by the central samples of the Fordist mode of regulation was filled by the substance provided by domestic class struggles. However, the form was going to be influential in determining the function. In the 1960s, when the fractions of ruling classes began to conflict more seriously than in the 1950s, the limited set of rights, provided by the developments of the last two decade together with the rights provided by the 1961 Constitution and the subsequent legislation, were going to be used in the class struggle in a way that Turkish ruling classes hated to see (cf. Gülmez, 1995:289-330).[197]

The 1960 Coup had democratic reformist orientations (cf. Tanör, 1991), which helped in the compliance of the implementation of the Fordist-like structural forms by way of setting or completing the formation of a kind of weak pluralist democracy. Individual rights in general in the realm of individual labour law were greatly strengthened. Individuals acquired a set of rights of redress against the state through administrative courts. The autonomy of the judiciary was considerably enhanced thanks to the Constitutional Court's gaining of power, and judiciary – in cases in which parliament and/or applicants of the first degree court's appeal- was enabled to review legislation with a view of establishing their constitutionality. The rights to work (Article 42), to fair working conditions (Article 43), to rest (Article 44), to demand a fair and equal pay (Article 45), to establish trade unions (Article 46), to collective agreement and strike (Article 47), to social security (Article 48) have become constitutional rights.

Pluralism was essential if autonomous organisations were to be effectual in the overall regulation of peripheral capitalism of Turkey depending, to a certain extent, on interest representation. The designers of the coup did not intend to include masses in politics. Rather, they aimed autonomy for organisations (interest associations) of regulation by way of setting institutions in the Constitution. Yet, the regulations on individual labour legislation had individual consequences concerning the role of labour in the technical division of labour. On the other hand,

[197] See Celal Bayar's comments on 1961 Constitution in Tanör (1991:29-30).

the emancipatory formulations of labour issues in the 1961 Constitution did not find their echoes at all in the subsequent labour acts numbered 931 (enacted in 1967) and 1471 (enacted in 1971) enacted after the annulment of Act no. 931[198] by the Constitutional Court in 1970. From the same vein, the benefits acquired by Türk-İş were given in return for its promise to keep above party politics.[199] [200] The establishment of the autonomy of working class organisations vis-à-vis governments, was, however, going to conclude with rights given to the working population. Thus, attention must be given to the erosion of Türk-İş's powers in the late 1960s (Koç, 2003). This development became influential over the ruling classes' capacity of control over work force. This line of explanation coincides with the role of JP as a 'right of centre' party in the initiation of the progressive welfare legislation.[201]

Prior to 1963 legislations[202], which were in conformity with the soul of the 1961 Constitution, trade unions had been banned from political activities. The scope of

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[198] The decree of the Constitutional Court approving the litigation of Turkish Labour Party demanding the total annulment of the Act no. 931, had resulted with the re-legislation of a very similar Act (1471) with some insignificant changes.

[199] Türk-İş enjoyed access to the decision making process within the state. Its representatives sat officially in special commissions of the state planning organisation, minimum wage commissions, executive councils of public economic enterprises and other public bodies in a way reminiscent of an institutionalised compromise with the ruling class in making and implementing public policies. For a detailed analysis on the politics of Türk-İş, see Koç (2003), Güzel (1996).

[200] Another feature of the era was pluralism introduced to collective labour law. The structure of 1963 legislations on collective labour law enabled rival organisations to be emerged against the rule of Türk-İş. There would be multiple unions based on voluntary membership in a work branch (industry). Yet the centralisation strategy worked for the harm of pluralism. In 1970, the provision on acquiring representation rights have changed. The barrier for representation increased from one fourth to one third. The other corporatist inducement of compulsory membership was in 1963 code. It was necessary for a union to give written approval for non-unionised workers to benefit from a collective agreements. (Cizre-Sakallıoğlu, 1992:719)

[201] The Justice Party, the successor of DP, remained in power with absolute majorities in between 1965-1971. They enacted legislation covering a broad range of issues including social security payments in the form of retirement pensions and benefits for health, family, children and housing. Together with the rising tendency in real wages between 1963 and 1971 this system granted the working class greater privileges and rights.

[202] These regulations include Trade Union Act no. 274 and collective Labour Agreement and Strike and Lockout Law no. 275 that had abolished the provisions of the labour act numbered 3008 referring to the ban on strikes and lockouts.

the prohibition narrowed in the 1960s. The 1963 legislations only prohibited any organic link between the political parties and unions meaning that unions were set free to enter political activities. Türk-İş, in conformity with the role designed for itself, played its political role by staying 'above' the parties. Yet its politics gave rise to opposition from the ranks. In 1967, four unions formed the Confederation of Revolutionary Labour Unions (DİSK) [203] on the basis of the rejection of the Türk-İş type of policy making.

The challenge was the ruling classes' capacity of control over the national work force together with the old line collaborationist policies. DISK was not the sole opposition. The formation of a social democratic fraction within the body of Türk-İş itself provides another example.[204] The 1970s witnessed the rise of the confederation of nationalist trade unions (MİSK) in 1970 and the fundamentalist confederation (Hak-İş) in 1976. All of these confederations were operating in an imperfect arena of pluralist interest group politics, which involved more conflict and instability (Cizre-Sakallıoğlu, 1992:723). The outcome of these developments was two fold. On the one hand, ineffectiveness and reduction in the bargaining power of the labour movement as a whole, which served the business in the short run, occurred (Işık, 1995: 118-124). On the other hand, the total labour power of the nation has become uncontrollable for the initiation of a new organising principle depending on cheap labour.

Money as a Social Institution

Industrial relations of the era acquired their meaning with their relation to money as a social institution, which provided the state with the necessary means for a Keynesian type of intervention. The necessary means for employment of centrally conducted mark-up rates and of credit money, which was vital for the finance of industrialisation, did not exist before the 1950s. In the 1960s, import substitution

[203] Yet as a pluralist interest group, its influence on decision making was formally limited due to the fact that it was not included in any official body or meetings. For a detailed analysis on DISK, see Akalın(1995).

[204] For an analysis of social democratic fraction within Türk-İş, see Işıklı (1995; 2003).

was included in the Constitutional order. With the introduction of economic development plans, several changes were made in the Central Bank Law no. 1715.[205] Subsequently, central bank appeared as an institution defining intangible means that often correspond to the law of structuring interactions between credit issuing organisations by way of issuing central currency depending to US currency under the public authority.

The regulation of currency by a national economy hinders the unprecedented changes in the overall realisation of value. With the re-definition of the tasks of Central Bank, as the issuer of the national currency at the midst of the net of credit issuing banks, Turkish industry had obtained a mechanism, which proved successful to prevent the crisis arising from the realisation of exchange value in domestic market. Central Bank's role over industrialisation should also be evaluated with reference to its role over the inflation. Yet this is the task of the subsection on 1980 and onwards.

4.2.3. Turkey throughout the Second Stage of Fordist Expansion (1970-1980)

At the midst of 1970s, some level of Taylorist work organisation with the rigidity paradigm was observable, at least in some industrial regions. The oligopolistic nature of industry and corresponding development of organised labour movements resulted in wage and price rigidities and a certain degree of job security within the modern sector (Boratav, 2003). [206] To the extent that workers depended increasingly on the market for their livelihood, the properties of the existing relations of production had shared some characteristics of central world. Consumption by wage earners became an important feature of accumulation. On

[205] In the same vein, the Law no. 1211, which was enacted on January 26, 1970, redefined the duties and responsibilities of the Central Bank of the Republic of Turkey so as to implement the money and credit policy within the framework of development plans.

[206] The growth in social demand for consumer durables has, therefore become, to a certain extent, predictable. Mechanisation and a combination of intensive accumulation, albeit articulated with pre-capitalist modes of production, and a growing market for consumer durables played a real part in the national regime of accumulation.

the other hand, the decisive difference between central and peripheral economies, that is productivity gap, remained. The majority of workers were not truly dependent on their wages for their living. The ties of working class with agricultural realms of Turkey were strong and this situation was reflected the overall level of wages. So long as workers had strong ties with the countryside, the reproduction of workforce mainly escaped from the disciplinary practices that were not achieved by way of institutionalised compromises depending on productivity gains but achieved by the use of market as a means of coercion.[207] The division of gross national income, in conformity with the early import substitution strategies, characterised populist strategies (Boratav, 2003:123).

4.2.3.1. Failing to Join the Block of NICs: Labour and Control

On the other hand, in general, the 1970s witnessed the emergence of NICs. The Keynesian politics pursued in the central capitalism provided to these countries the necessary markets which were providing internationalised firms with the 'commodity' they had in abundance, namely, labour force. The second expansion of Fordism emerged when the internationalised firms began to think that investing in peripheral workforce may be a solution to the stagnating productivity and rate of profits.[208] The necessary means for this expansion were provided by the strategy of spreading 'branch-circuits' over several pools of unevenly skilled, unevenly unionised and unevenly paid workers. Branch-circuits pushed further the technical division of labour into separate tasks, which could be realised in distinct places, and which enabled a complete separation between conception and production, without providing the employees an institutionalised share of productivity gains (cf. Boyer, 2002a:232).

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[207] The connection between savings and accumulation (and the distribution of income between wages and profits) is not a direct one if the country in question is a peripheral one. The role of non-value form in these countries has a relatively greater place than in those of central countries whose population are dependent largely on wages. Besides, the funding of the budgetary deficits generally depends on foreign debts meaning that the endogenous and exogenous interacts in a specific way that produces a structural inclination to dependency.

[208] This first motivation coincides with the second one, which can be summarised as expanding the market by gaining a foothold in countries protected by high tariff barriers.

The answer of the question of who would be the country of investment was to be given by the domestic ruling classes' capacity of control over the work force and by the geographical suitability of the country. International capital was operating within a global panorama, which had radically altered with the emergence of a growing population of subcontractors, which were in search of extra surplus that was necessary due to the unequal nature of the share of profits with internationalised firms, whom they were hierarchically/vertically linked to (Fröbel *et al.*, 1982; cf. Piore and Sabel, 1984). [209] The utopias of the apologists of capitalist development linking to the dictatorship, liberalisation and social democratisation in the realm of political administration were subjected to change. While the utopia of import substitution was to achieve a stage in which national economy survives without any dependence on the world production system, strategies for export substitution openly declared the impossibility of an integral economy and of social democratisation. [210]

If Turkey were to join the bloc of new exporters, the local capitalists had to act in accordance with the strategies of multinationals to exploit the local labour power under exceptional conditions of exploitation. Capital accumulation was, thus, to be achieved not by local resources, but by international credits, which gave rise to important amounts of value transfer both to international finance capital and to local ruling classes over working masses, in the form of investment re-payments.

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[209] Under such conditions, the neoclassical principle of comparative advantage was not operational, since it was pre-assuming the existence of national economies having a comparative advantage in the production of a certain commodity, in face of another country.

[210] This picture may serve to correct the general misconception that represents the export-oriented countries as countries exporting manufactured goods in sense the pre-War central economies exported manufactured goods. The aim of diminishing the dependency of the economy on foreign resources has always been the death knell of the development plans of the Republic (Yalman, 1997:170). In 1980s, Özal was stressing the increase in the manufactured goods exports with reference to this aspiration. On the contrary, NICs were exporting, yet, their dependency on foreign resources was increasing with their productive activity due to the inherent nature of the second expansion of Fordism.

Throughout the second expansion, peripheral states' capacity to secure the rights of capitalists to control labour power has become a decisive factor for internationalised investments on industry. In countries where the class conflict was organised under the structural forms having resemblances to those of monopolistic regulation, a level of exploitation observed in NICs was not apparently achievable (Aboites, *et al*., 2002; Fröbel *et al*., 1982; Lipietz, 1987; Munck, 1995; cf. Piore and Sabel, 1984).

Throughout the second expansion, in terms of industrial articulation, Turkey remained as an import substituting country, which has experienced a gradual deepening of import substitution in Department 2 (means of consumption) rather than producing Level 3 products of Fordist labour process (cf. Yeldan, 2001:32). Capital and intermediate goods increasingly constituted the main items in the overall portion of imports. Prices were determined on a cost of production basis[211] rather than by competition due to the combined effect of the limited substitution possibilities in production and the oligopolistic nature of the industrial sector. State expenditures in the capital and intermediate goods sectors and the volume of production of state owned enterprises were decisive (Boratav, 2003). Following the completion of the substitution process in consumer goods and consumer durables, a number of disproportions came into view. The heavy dependence of the manufacturing sector on imports of intermediate and capital goods was the determinant element in the appearance of disproportions (Keyder, 1987).

In terms of commercial articulation, the structural need to finance import substitution process was the main incentive. Within this context, economic policies led to repeated applications of stabilisation policies and gave rise to the characteristic stop-go movements of the economy (cf. Aboites *et al.*, 2002). Unlike the central countries, the proceeds of the old division of labour, tourism, the money

[211] Prior to the military take over, there had been an increase in the real earnings of employees. In general, from 1968 to 1978, the real incomes of civil servants and workers increased by 25%. This was propelled by strengthening labour solidarity and the increased need for domestic demand to sell industrial products (Keyder, 1987).

repatriated by emigrant workers and international credits have formed the way the finance of the budgetary deficits were realised. Turkey, except in one or two budgetary year, suffered from a chronic budget deficit (Kazgan, 1999). International borrowing was not requiring a set of conditions established by Bretton Woods institutions in the 1970s. Much of the investment was supplied by state aids and, later on, borrowing on the international bank capital market. Given that financial markets were underdeveloped, the banking system that was transformed with the establishment of Fordist-like structural forms was the main source of finance for the industrial sector (Öniş, 1998:3). Thus, restrictive monetary policies were generally causing significant increases in the cost of borrowing.

Despite the Demirel Government's determination to refute de-linking, and to enjoy the rewards of enhanced participation of the Turkish economy in an ever expanding world trade, on the basis of the principles of comparative advantages, the factor that Turkey has in abundance, namely labour power, was capable of resisting to not only the structural adjustments but also to structural change under the rights provided by the system of the 1961 constitution, even after the 1971 modification, which was carried out by the group empowered by the rightist 1971 military intervention.

The 1970s were not only a period of deteriorating economic conditions, but also a period of intensified class conflict during which the relations between the bourgeoisie and its political representatives would come under increasing strain. Ruling classes were not in control of the free labour as if they could offer it as an instrument of bargaining in international relations with different countries and financial groups. Under these conditions, the willingness of Turkish industrialists to join the block of NICs was questionable.

A prolonged period of political instability was on the agenda of Turkey in the 1970s. As the series of coalition governments, which governed the country, were

unable to cope with the aggravating economic conditions, the 1970s can also be considered as a period of declining credibility for the political parties in general (Ayata, 1990, 1993, 2001). The party ties with business has thus become vulnerable in face of structural deficiency of the Turkish economy in integrating the international division of labour. By the end of the decade, Turkish state elites or Turkish ruling classes were responsive to the demands of the bourgeoisie, as in the case of the Demirel Government of 1979[212], yet, they were not capable of changing the legal discourse backed up with the institutions of the Fordist model of production.

When we consider the Turkish case from the perspective of the state's function of securing the rights and capacities of capital to control labour power in the production process and of regulating the terms and conditions of the capital labour relation in the labour market and labour process, both the statist and anti-statist hegemonic projects exhibited a fundamental continuity in terms of depriving the dominated classes from establishing their own economic and political organisations capable of creating counter-hegemonic strategies (cf. Yalman, 2002). On the other hand, the gradual transformation in the state form, which had its peak in the military coup of 1960, demarcates a change in the form-determined condensation of class forces. When considered with the uncompetitive levels of productivity, resulting in inner market dependent growth and chronic budget deficits and the dominance of non-value form in the reproduction of labour power, the emergence of a relatively unified market with the pursuit of 'populist' redistributive policies and changes in the constitutional order, in the institutionalities, and in organisational structure, resulted in a decline in the capacity of control of ruling classes over the national work force and/or deterioration of the Turkish State's function of securing the rights of capital to control labour power both in the

[212] Unlike, Ecevit, Demirel in conformity with the track change in 1978, was prepared to abandon the deepening of import substitution but failed due to the extreme tension between organised labour and capital.

process of production and in the labour market.[213] Within this context, "the inability of the Turkish bourgeoisie to emerge as a hegemonic class did not stem from its dependence upon the state, but rather from its unwillingness to come to terms with the emergence of the working class as an entity prepared to contest its opponent's hegemony" (Yalman, 2002:35). In sum, Turkish bourgeoisie could not achieve a level of control, which is enough to charm crisis driven capitals of the centre, over working classes.

Given that Turkish industry did not aim to structurally adjust its industrial fabric to deal with the production of level 3 activities of the Fordist labour process, Turkish industry could not develop a strategy that would be instrumental in realising an articulation with the dominant tendency in the international production system, which refers to the strategy of spreading 'branch-circuits' over several pools of unevenly skilled, unevenly unionised and unevenly paid workers. Rather, the policy makers of the Turkish production system insisted depending on the object of integral economy in which various components of factors of production is produced within the same national economy (Kazgan, 1999:92-130; Yeldan, 2001:38-62). The utopias of the apologists of capitalist development linked to the dictatorship, liberalisation and social democratisation in the realm of political administration remained untouched. The utopia of import substitution continued to survive.

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[213] Thus, contrary to neo-liberal and statist institutionalist perspectives, there was no dominance of political rationality over economic rationality. The idea of "the combination of the state's discretionary command over a large amount of resources and a party system that became extremely responsive to the localised and particularistic demands of its constituencies inhibited the political system's ability to address matters of public policy", was at the heart of neo-liberal and statist perspectives (Yalman, 1997:169). This in turn paved the way for the dominance of the discourse of 'privatisation' with in the neo-liberal discourse of 1980s and 1990s. From the perspective of this explanation, which considered the state as an explanan without analysing its constituents, the realisation of macroeconomic stability was related to the un-rationality (political rationality) of the public goods administration. Yet this is not to deny the discretionary command over resources or clientelistic relationships. These were social facts yet, their existence were not deriving from the inherent qualities of Turkish state. They were results, rather than reasons, of the way the class formation in Turkey influences the same state's way of integration with international division of labour. There was no state as an object existing 'out of the civil society' and there was no failure on the side of the state in balancing the requirements of 'adjusting' and/or industrialisation under the structural constraints provided by the international division of labour.

Under these conditions, existing policies encountered increasing difficulties in extending import substitution into intermediate and capital goods industries, since internal markets were not sufficient and economy was lacking the capacity to compete in international markets (Kepenek and Yentürk, 1996). Moreover, exogenous factors, such as the first and second oil shock of 1974-1975 and 1978-1979, American Embargo in the aftermath of the 1974 Cyprus War, resulted from a significant increase in import bill combined with the inherent crisis of import substitution. Turkey was suffering from the deterioration in the foreign balance due to the rise in the cost of capital goods imports, which would, in turn, lead to a desperate search for new sources of finance under the deteriorating conditions of import substitution. A turning point had been reached in the evolution of the patterns of import substitution in mid 1970s.[214]

The economic crisis manifested itself in 1977. The IMF was involved in negotiations with Turkey, all of which failed throughout the crisis period of late 1970s. After the failure, Ecevit Government presented the programmes as being imposed by external donors against its own will. Such a perception was completely in conformity with the conceptualisations of the international division of labour from the perspective of the Dependency School of Thought, which was dominating the Turkish leftist intelligentsia.[215] This government opted to deepen import substitution strategy on the basis of public investment and foreign

[214] Judged on the basis of the growth rate of industrial production and overall output, the performance of the 1963-77 period was impressive. The average growth rate of gross national product was recorded as 7.0 per cent, while the average growth rate of industrial production was 9.0 per cent (Öniş, 1998:126).

[215] Conceptualisation of international division of labour in this thesis is not similar to the 'world economy' of Dependency school, which had/has been very influential in the radical accounts of the Turkish economic history telling. First of all, international division of labour is not an expression of an omnipotent capitalism, which imposes its needs to the victimised countries of south, in many times only via the circulation of commodities. Secondly, the internationalisation of branches was not something, which national economies of the north discovered for their wealth. On the contrary, internationalisation of the branches, was also against the national economies of the north.

borrowing[216](Öniş, 1998:127), while the representatives of the Turkish private sector opted for waiving from the strategy of deepening import substitution policy (Yalman, 1997). Such a policy shift cannot be explained by reference to the belief that the peripheral industrialisation, in all cases, is in contradiction with the interests of central economies. On the contrary, in some cases the international groups were investing in the countries in which the control over labour force was stricter.

Turkey was suffering from the lack of its ability to mobilise its labour resources in conformity with the internationalised capital's requirements. Furthermore, this deficiency was not something that could be changed only by way of political decisions without changing the state form. There was a need for a new hegemonic apparatus that would be instrumental for the initiation of a new hegemonic project with substantial implications for constructing a new way to articulate with the international division of labour. The articulation should have allowed the appropriation of surplus value to become compatible with the investment requirements of internationalised capital. What was needed was a structural change imposed in all the spheres of reproduction of the conditions of capitalist relations of production.

4.2.4. Constitutionalisation of Labour: Relative Dominance of Collective Labour Law

The investigation into the responses to the changing nature of the international division of labour in the first expansion indicated that Fordist wage relation provided a model that was influential over the structures creating class effect in Turkey. In addition, it has been established that the same state form, in conformity with the tendencies in the international division of labour, created difficulties in the way the Turkish industry articulated into the world production.

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[216] The fourth five year plan, which was envisaged a further round of import substitution in capital goods industries, and which was prepared in 1978, supports this argument (Öniş, 1998:127).

The same investigation embraces the necessary elements of the process of constitutionalisation of labour from the perspective of political economy employed by this study. So far, it has been established, with regard to technical division of labour, that labour law has the function of determining the powers of the parties in a workplace and with regard to social division of labour, to the extent that labour is constitutionalised in a given country, that labour law has the function of determining the cost of labour to capital in general in a given national formation. Yet this function of law is structurally constrained by value form.

The oligopolistic nature of the Turkish industry was providing fertile grounds to implement the exported Fordist norms of production in certain industrial zones/sectors (cf. Yeldan, 2001:38). On the other hand, the stabilisation of wage relation did not refer predominantly to the compromises achieved by collective bargaining, even in the period between 1954 and 1978, due to the role of agricultural incomes in the total incomes of workers and to the low levels of productivity in face of central economies. In fact, when considered from the perspective of the overall international competitiveness of the Turkish industrial production, there were no additional gains, which would be used in exchange for Taylorisation of workforce, for the import substitution driven strategies (cf. Çetik and Akkaya, 1999:206-214). The disorganised nature of class forces led to an extraordinary application of individual labour law in the stabilisation of wage relation (cf. Narmanlıoğlu, 2001:1-7; Şen, 2002:179-187).

Yet, collective agreements have found a certain area of impact in the stabilisation of wage relation in certain sectors (Koç, 2003:26-30). The improvement of department 2 and the appearance of the paradigm of inflexibility, as a result of wage bargaining, were, between 1950 and 1980, to a certain extent, observable in the Turkish case (Boratav, 2003). Turkey witnessed the appearance of a peripheral kind of wage labour nexus (cf. Çetik and Akkaya, 1999:56-57).[217] Throughout the

[217] On the other hand, the wage-labour nexus was interrelated to the other conditions having an impact on the monetary system. Transformations on the central banking system provided the necessary means to credit the purchase of labour capable of making collective agreements.

epoch, collective bargaining increasingly acquired a place in the determination of wage-labour nexus as an intangible apparatus structuring interactions between various set of organisations in state, trade unions and employee organisations. In some sectors, the social insurance system, the power to demand stable wages, firing regulations having a certain degree of job security were the elements of compromise in return for the management's right to intensified control over the labour process. This led to the stabilisation of the production norms specific to import substitution, including rigidity of work contract and relatively high wages. The role of collective bargaining over the stabilisation of wage relations throughout the epoch was increasingly expanding. The organisational rights provided by the collective labour legislation have positively influenced the incomes of wage earners (Boratav, 2003).

These changes were interrelated to the changes in way the state secured the rights and the capacity of capital to control labour power in and out of the production process, and indicate that the state took active measures and involved directly to the regulation of the terms and conditions of capital-labour relation both in the labour market and in the labour process. The 1961 Constitution and the following legislation acknowledged the workers the right to strike and extended the scope of collective bargaining further. Despite the 1971 military interregnum that curtailed the constitutional rights provided by the 1961 Constitution, the institutional framework acknowledging the existence of trade unions having the power of collective bargaining and the legal system recognising democratic rights, including freedom of speech, remained operational. The constitutional court, jurisprudential implementation of labour law in court system, trade unions etc, backed up with public opinion, was capable of vitalising the 'soul' of the 1961 constitution. In conformity with the dominance of the protectionist logic (the second position), the context of ILO norms, together with their forms, was being approved (Işık, 1995:176-189).

When labour constitutionalised we are presented with a new image of the relationship between society and the state. The new state was not a sole guarantor and it did not assume only a formal ordering. Neither did it negatively register social reality, but rather put social reality into question and partially embraced it with the discursive realm that it had created. Fundamental rights were, at the same time, bestowing power to single interests and were acquiring a new juridical meaning, in which social interests defined by the state are represented.

The social democratic discourse, the second position, which qualifies law with some conception of equality, had become the dominant discourse in the formulation of the provisions of labour law. Legislation was considered as a means to aid, which regulates the power of management and of the organised labour, to workers. The labour contract was not considered to be containing the equality the law assumes to be present in a contract for sale (cf. Tunçomağ and Centel, 2003; Çelik, 2003; Narmanlıoğlu, 2001). Rather, the dominant discourse provided the lawmakers a point of departure for the recognition of conflict and its inevitability in industrial society. Thus, the individual regulation of workers' subordination the labour contract has become subjected to interferences as an indicator of the paradigm of rigidity in industrial relations. The obligations of the worker were becoming defined by the factory rules, juridical decrees, and detailed provisions of individual labour law rather than the subjective needs of the employer. Put differently, the act of submission inherent in the labour contract depended on impersonal criteria, such as the requirements of work and the rules governing that type of work, both of which were determined by the requirements of the norms of production established in central economies. The individual labour law of the era provided a countervailing force to counteract the inequality of bargaining power as a protective legislation, including the legislation on the employment of women, children and young persons, safety in mines, factories and offices, payment of wages in cash, guarantee payments, race or sex discrimination and unfair dismissal. Within this context, the individual capitalists' right to organise and operate the production process without any significant, legally supported challenge or restraint

from workers was not absolute. The articulation of the property rights of capitalists with the powers of workers embedded in labour regulations characterised the notion of the capitalist mode of ownership in the era.

In central economies, in which productivity levels were increasing with regard to the rest of the world, constitutionalisation of labour ensured the capitals command over labour power. Unions ceased to challenge the legitimacy of the right of ownership but helped to enhance the power to control labour process in exchange for social rights and acceptance (Hardt and Negri, 1994:96; Strath, 1996:61). However, in Turkey, in which the process of accumulation have the characteristics of peripheral states and thus the balance between the Departments 1 and 2 was absent together with requisite levels of productivity, but in which the law and regulations resembled to the central countries –the countries experiencing the early import substitution- the recognition of the conflict and the subsequent constitutionalisation of labour did not define the borders of class struggle and did not expand and strengthened the command of capital over labour power.

This instability, deriving from the incomplete and unsuccessful re-composition of the particular experience of working class resistance in the general capitalist project of the social management of accumulation by way of the devices of socio-technical system, is reflected in the international competitiveness of the country. The continuous process of the production of norms by way of organisations and institutions continuously reproducing the relations regulated by the labour law had become an impediment over the Turkish industry.

So far, we have investigated the state's function of securing the rights of Capitalists within the context of the constitutionalisation of labour, being the main indicator of the socio-technical system in the period between 1950 and 1980. Our interpretations, in conformity with the assumptions of the Regulation Theory, implicitly referred to the fact that the outcome of social and economic reproduction is in the last instance played out through the mediation of class conflict, whose

formal expressions are manifested within the state form that shapes and is shaped by the international dynamics of capital accumulation (Jessop, 2002a). Unlike the East Asian countries, in which the socio-technical system included openly repressive normative technologies, and like the Latin American states, whose socio-technical systems included the adaptation of Atlantic Fordism's regulatory devices under the conditions of early import substitution, the constitutionally recognised rights of the workers the fortified working class resistance in Turkey. [218]

4.3. From the 1980s to Present: Removal of the Ideological Constraints over the Import-Substituted Economy

Today, paid employment is becoming more and more precarious, the foundations of the quasi-social welfare state of Turkey are collapsing. Those who depend upon a wage or salary in full-time work represent only a minority of the economically active population. The majority earn their living in more precarious conditions. People are travelling vendors, small retailers or craft workers (Ansal *et al*., 2000:127-135). They offer all kinds of personal service or shuttle back and forth between different fields of activity, changing from agricultural activities to housework. This nomadic multi-activity is not a pre-modern relic but a rapidly spreading variant in contemporary Turkey.

Labour market flexibility has become a political mantra. Incompliance with the nomadic multi-activity occurring throughout the world, the jobs on offer become short-term and easily terminable. European Union's labour politics, various treaties and the discursive set consisted of structural adjustment programmes for greater flexibility, together with domestic demands referring to the control of work force

[218] This is not to allege that all the changes in the ideological sphere were shaped by the external factors. The constitutional changes may well be related to the needs of Republican People's Party's (RPP) experience, which indicates the need to protect the RPP's right to opposition under the umbrella of constitution, in face of the allocation of votes that were inclined to bring rightist governments. From the same vein, the articulation of the interests of industrial bourgeoisie with those of military bureaucrats against the land owners and merchants may be the source of conflicts. Yet, the changes in the state form affected the ways and the means of this struggle to the extent that Turkish State was to reproduce the capitalist relations of production.

and costs, had a profound impact on the 'discoveries' of regulatory devices. The orthodox defensive strategies degraded to a position in which they have to be defended. The redistribution of risks away from the state and the bourgeoisie towards the individual is achieved under the banner of flexibility.

The consequence is that the more work relations are deregulated and flexibilised, the faster work society (or semi work society as in the case of Turkey) changes into a risk society incalculable in terms of individual lives. State intervention takes the from of a legal/economic policy of regime transition. Yet, the destination of this transformation is unclear. Under these conditions, one trend is clear. A majority of people, even the middle classes, will live in endemic insecurity.

The shift in labour policy is in correlation with the structural shrinkage in the margins for manoeuvre of fiscal and budgetary policies. The dream of industrialised society[219], which has far leaved of in the political realm, is on its way out of the ideological realm. The instruments available to the central bank, which have been malfunctioning throughout the last twenty years, have been transformed by deregulation by the sophistication of new financial instruments, and by the globalising trend of financial markets.

This subsection investigates the impacts of the implementation of neo-liberal programmes in Turkey over the states function of securing the rights of capital to control labour power within the context of the articulation between the conditions of the second expansion of Fordism and the internal contradictions of Turkey. So far, it has been clarified that the Turkish states' function of securing the rights of capital to control has never reached a level in which the ruling classes benefited from the extraordinary absorption of relative surplus value. Not only the collective capacities of labour to intervene in the national policies, thus the labour's capacity to interfere into the money as a social institution, but also the socio-technical system, including the regulations on the organisation of the technical division of

219 'Great Turkey' as Demirel calls it.

labour and the regulations on the collective action of labour in the labour market and in the process of production had become a source of impediment over the 'successful' transformation of existing hegemonic strategies to an export-oriented strategy. Thus, this section investigates the impact of neo-liberal programmes over the Turkish bourgeoisie's capacity to control labour power within the structural constraints provided by the international juxtaposition of national economies and by the conditions of international competitiveness.

4.3.1. Changing Nature of the Influences of the International Division of Labour: Europe, ILO and Bretton Woods Institutions

Following the pattern used in the previous subsection, the European influence, the ILO norms and Bretton Woods institutions will be analysed before dealing with the changes in the norms regulating industrial relations which are the mediations of the socio-technical system.

The European Influence: Acquis Communautaire and Turkey

With the rise of neo-liberalism in Turkish polity, the Europe's influence as a main example/model over the constitutional order, institutions and organisations of socio-technical system has been weakened. Yet, paradoxically, it has become a source of legislation due to Turkey's commitment to European Unification. Unlike the effect of the ILO norms, which can only be influential by way of ratification, the EU law has both direct [220] and indirect effect[221] on the Turkish law (Tekinalp and Tekinalp, 1997:61; Dereli, 2000).

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[220] Customs agreement with EC gave individuals the power to claim rights conferred directly by EU treaties, regulations, decisions and directives (after their effective date) even if Turkey fails to introduce them into domestic law or fails to implement them correctly. These rights may be claimed by an individual against the state (vertical direct effect), or in relation to another individual (horizontal direct effect) because they are also subject to the same overarching framework of EU rules. However, the ECJ has been reluctant to rule in favour of horizontal direct effect in the application of directives.

[221] This requires the domestic courts of Turkey to interpret all national laws in the light of directives, even if the law in question was not based on the directive. It is irrelevant whether a national statute was enacted before or after a directive came into force. Yet, EU law, except regulations, have to be enacted if they are to be a part of national law. Thus, indirect effect means that if the relevant EU law is to have an effect it has to be issued formally by the national authorities.

The Community institutes a new legal order, [222] [223] which the member states complies with by limiting their own sovereign rights within designated fields.[224] Acquis communautaire, including the regulations related to the individual labour law issues, have impact over the Turkish legal system. What's more, Turkey is under obligation to harmonise its legislation with the EU law. [225] On the other hand, Turkey is not in the new territory of the European labour, in which labour moves freely. Thus, the EU legislation cannot be considered without taking into account the dynamics of internal market backed up with the principle of non-discrimination, which introduces an entirely new way of organizing labour by which the regulation concerning labour mobility is translated into national practices and into structures having a class effect.

Changing Content of ILO Interference: Flexibility Clauses

When the industrialisation of the third world became a phenomena after the emergence of the second expansion of Fordism as a response to the crisis of capitalism, the main problem encountered in framing international labour standards arose from the diversity of national (economic, ideological and political) conditions under the new geography of the international division of labour (cf. Lordoğlu and Özkaplan, 2003:38, 58; Munck, 1995; Erdut, 2002). In the 1970s, industrialisation was not something belonging strictly to the central world. ILO decided that ILO

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[222] EJC (Case 313/86) states that, the Community regulations do not aim to transform the particular features of the different systems, nor validates systems 'in itself lead to discrimination'. Thus, the integration process does not abolish the particularity of social security systems, and the internal market proceeds by way of heterogeneous practices of welfare (i.e. of local forms class struggle), and by virtue of the freedom of the member states to organize their social protection systems.

[223] A co-existing vertical order of social security systems and their particularities can only be recognised within a hierarchical (aborescent) legal order. It is within this vertical and hierarchical aggregate that the free flow of labour is realised by linking the general notion of freedom of movement to the particular social security systems and thereby linking one territory to another.

[224] ECJ Case 26/62.

[225] The Common market is expected to achieve 'a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it' (EEC Treaty, Article 2).

regulations should remain universal in character. In order to take account of the diversity of conditions in the world, recourse was to be taken to various types of flexibility clauses inserted in the conventions (ILO, 1996:32). The flexibility clauses enabled the Turkish administrations to take the form advised by ILO and formulate the content in a specific way that will be discussed in Chapter V. Lastly it should be mentioned that ILO norms, especially after the European Social Charter started to acquire a direct influence on the European labour legislation (Weatherill and Beaumont, 1995).

Bretton Woods Institutions: Washington Consensus and the Legitimisation of the Finance of Import substitution

The discourse of the so-called 'Washington consensus', in conformity with the new rights premises, provided the Turkish ruling classes, with a new hegemonic apparatus that would be instrumental in dealing with the heritage of the mixed economy of the 1970s (Yıldızoğlu, 2000). New requirements of borrowing in the international arena included the opening of the economy, reordering of public expenditure priorities, financial liberalisation, privatisation, deregulation of labour markets, the provision of an encouraging environment for the private sector, and thus, championing the vigorous virtues of individuals, capable of 'emancipating' from intermediary, democratic and corporatist powers (Yalman, 1997:187, 225-226). This situation was not in conflict with strengthening the authoritarian prerogatives of the state, deprived from entrepreneurial activities. On the contrary, this was in line with the new right thinking that a strong state would be necessary as the political guarantor of economic individualism[226] (World Bank, 1997:3-4).

In conformity with the traditional perception of liberalism, it was assumed, once again, that Turkish market economy, like any other capitalist economy, faced

[226] For both the new right governments of monetarist era in Anglo-American world, and Turkish governments throughout 1980s, were keen to consolidate the new order by portraying the previous one as a highly undesirable one characterised by civil strife and disorder on the one hand, and as the reason of the economic crisis caused by outdated policies on the other, the rhetoric of the military regime as well as the Motherland Party government was quite resembling to the conservatives in the United Kingdom and USA (Yalman, 1997:227).

instability because of exogenous interventions of a rent seeking state, rather than its inherent systemic characteristics. However, throughout the last two decade, Turkish state was expected to contribute to the market in such a way that its exogenous intervention would socialise the risk of private sectors rather than initiating programmes for the articulation of the Turkish economy to international division of labour (Yeldan, 2001:26). Other ways of state intervention has been considered to be a source of uncertainty.

4.3.2. Turkey throughout the Second Phase of the Structural Crisis

What was preventing Turkey to Become a NIC?

Throughout the 1970s, the benefits of world trade were open to the peripheral countries having higher degrees of control over their national workforce. The traditional mode of the articulation of the Turkish economy with the international division seemed unsuccessful in face of the growing amounts of exports from NICs, which were not in a better position than Turkey before the 1970s. The 1980s were the years in which economic policies were radically reoriented. The major footprints of the 1980 alterations can be found in the 24 January stabilisation programme[227]. The main objectives of the programme were a reduction in government involvement in productive activities, an increased emphasis on market forces and the replacement of an inward-looking strategy with an 'export-oriented strategy of import substitution' (Kepenek and Yentürk, 1996). The programme aimed to go beyond standard stabilisation that had been conducted by the structural forms established by reference to the golden age central capitalism.

In the time period between January 24 and September 12, 1980, the first three-year stand-by in the IMF's history was introduced.[228] The government agreed to implement a significant rise interest rates, which resulted in significant changes in

[227] Justice Party under Demirel took up office in November 1979. The new government get started to conclude a new medium-term IMF agreement, which would represent a fundamental reorientation of economic policy. This programme announced at 24 January 1980.

[228] The IMF and World Bank were in a working relationship in the financing of Turkey. From 1980, the World Bank has become the dominant partner.

income policy and in the incomes of wage earners, and agreed to establish labour contract coordinating committee, which was intended to encourage employer-employee dialogue on the basis of unequal powers of the parties (Ahmad, 1993). The existing industrial relations structure that was generating its powers from the constitutional order, institutions and organisations of the previous socio-technical system resisted. On 12 September 1980, the military dissolved the parliament and suspended all civilian political institutions,[229] together with the legitimate, organised resistance.

After the military coup of 1980, in conformity with the rest of the peripheral world experiencing the second phase of the crisis, Keynesian like economy policies of pre-1980 governments ceased to be pursued. Pre-1980 social entitlements and institutionalised compromises have gone under threat. İn conformity with the political climate of the second international division of labour, conservative/liberal calls for a reduction in the protective involvement of the state in labour issues have been realised. Not only a change in the political regime but also a change in the set of structural forms constituting the state was on its way. Due to the fact that means of representation are themselves a part of the conjuncture that determine class interests, the balance of class forces, or, to say in Structuralist terms, the shared borderline between the classes, which were registered in the state itself, was to be changed (Yalman, 1997:218, 242).

The articulation of the Turkish economy with the new international division of labour so as to make Turkey an export-oriented country has been explicitly stated as a state policy. The post-1980 hegemonic project succeeded to present the state having no relation to class interests and to present the market and the civil society

[229] Within forty-eight hours of seizing power, the military officially informed the IMF and the World Bank of their intention to continue with the policies of structural adjustment, with Özal appointed deputy prime minister in charge of economic policy (Öniş, 1998:129).

as autonomous spheres (cf. Ahmad, 1993),[230] and concealed the fact that state and market are the sites where the hegemony of the bourgeoisie is exercised.

Turkey managed to reach inflows of international credits in the first years of Özal governments[231], despite the lack of any policies to promote the introduction and effective implementation of sectoral policies necessary for a productive linkage to the existing division of labour. The role of the so-called second cold war and the wake of the events in Iran and Afghanistan may partly provide a reason for the Turkish success in having access to capital inflows and favourable borrowing conditions during the adjustment period.[232] Furthermore, despite the newly emerging impacts of internationally conducted monetarism of the central world, major debt reschedulings[233] were not resulting in spillover effects in other countries. Yet the situation was to be changed after the Mexico 1982, Brazil and Argentina crises. With the continuation of the borrowing facilities of the state after the January decisions, which resulted in a relaxation of supply constraints, Turkish bourgeoisie found a base to depend upon its earlier practices and did not radically opt for the initiation of investments necessary for the implementation of export substitution (Öniş, 1998:77, 128). Within this context, the 'Export-oriented strategy of import substitution' meant the government aimed to achieve structural adjustment by liberalising the finance without structurally changing the investment patterns of Turkish bourgeoisie. In conformity with this situation, we observe the lack of supportive hegemonic discourses, which were the common characteristics

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[230] In this respect, Turkish experience in the 1980s certainly contrasts with the previous attempts to maintain a hegemonic rule.

[231] "Turkey, thus, emerges as the only developing country to have so far conformed to the pattern that the World Bank originally envisaged for the structural adjustment lending process as being a medium term relationship involving five structural adjustment loans over an equivalent number years." (Yalman, 1997:191)

[232] "OECD Consortium agreed that external finance was the key to recovery, provided that the appropriate set of policy reforms were implemented, but were unwilling to make major bilateral commitments in advance of Turkey reaching agreement with the Fund on a stabilisation programme. Hence, the Fund was under pressure to reach agreement with Turkey, which would act as a catalyst for the release of additional external funding. " (Öniş, 1998:128)

[233] Together with Turkey, Zaire and Peru can also be added to the list of these countries.

of NICs in the sphere of relations constituting technical division of labour as in the case of '*Kigyoshugi*'[234] in Japan (cf. Woodiwiss, 1992).

What then was Preventing Turkish state from Initiating the Structural Change Necessary to be a NIC?

İn conformity with our theoretical approach to state, the state power will be considered to be limited with the paradoxes of capital relation and/or with the states' controversial relation with the accumulation process having international dimensions (cf. Holloway and Picciotto, 1991:146-147). Law, being a part of state power, is inserted into the dialectic of social relations condensed/concentrated around the dynamics of accumulation. To provide an answer to this question, the limitations of state action will be investigated by referring to the structural constraints over the Turkish economy, to the responses of Turkish bourgeoisie, to these constraints and to the determinants of wage relation.

Trends in the international division of labour do not determine the mode of growth of a country by itself. Rather, they define the borders of a state's capacities to change the given situation. The changing balance of social forces in a determinate conjuncture determines the way the state power functions in the articulation of a peripheral economy to international division of labour (Boyer and Saillard, 2002a:40; Jessop, 1990a; 2002). The monetarist shock and the subsequent changes in the realm of the international division of labour did not encourage the initiation of domestic changes in industrialisation in Turkey. One reason for this might be the capability of the structures creating class effect to resist the stress pursued by way of political means. One another may be the unwillingness of the Turkish bourgeoisie to transfer economy, thus to transfer its conditions of existence into an export-oriented country. I will now discuss the structural constraints over the

[234] '*Kigyoshugi*' refers to the enterprisism or belief in the intrinsic virtue of the company in Japanese industrial relations (Woodiwiss, 1992:87). This term refers to identifying Japanese company as the principal object of the hegemonic discourse. It is clear that 'Kigyoshugi' is not the sole source of themes in the hegemonic discourse in Japan, but only that it is the dominant source of such themes and therefore of the interpellative means whereby the Japanese people are attached and attach themselves to their society.

Turkish economy as a determinant of the Turkish bourgeoisie's unwillingness to articulate to the international division of labour as an export-oriented economy, despite the repressive means provided by the military.

4.3.2.1. Structural Constraints Deriving from International Division of Labour

The distinguishing feature of the international environment in the emergence of the first generation NICs was the combination of internationalisation of capital with the Keynesian management of the central economies. Another point was that when NICs entered into world markets, there were few competitors sharing their position. In the 1980s, however, the strategy of export orientation regulated centrally by IMF recommendations and pursued by many developing countries of similar positions. In other words, the strategy of export orientation became a worldwide hegemonic strategy, but this time the energy generated by these states would be directed to enhance the level of competition between these countries.

Internationalisation was to be ineffective for the purposes of creating a counter tendency to the tendency of the general profit rate to fall, when the other capitals in crisis applied the same alternative. Mainly with the monetarist politics in the central economies, then after with the Latin American crisis at the beginning of the 1980s, the candidates, stimulated with the apparent success of first generation NICs were to be frustrated by the highly 'conditionalised' barrowing facilities directing themselves into similar patterns of investment that would increase competition with other candidate NICs and NICs (Chossudovsky, 1999). By the end of the 1980s, a new element joined this list of negative conditions. It was the fall of the Soviet Bloc, thus, the emergence of new competitors, who were closely tied to the European continental bloc and who were privileged in their relations with Europe due to the political and economic importance (Öniş, 1998).[235]

[235] They provided for European capital new realms of investment due to the significant de-valorisation of the existing capital invested in these realms. They were also important in sense that their integration with Europe would be an impediment to the re-vitalisation of Soviet Union.

Under the conditions of this new juxtaposition, Turkish industry mainly suffered from the competition between would be NICs. The existence/possibility of a crowded set of would be competitors was discouraging for the initiation of an export-oriented re-structuring since it was involving a potential zero sum game into the investment calculations.

Secondly, the first generation, despite the fact that they had moved into the production of more sophisticated products, did not abandon their basic, competitive and labour intensive technologies (Lipietz, 1987). Despite the growth in their labour costs, due to industrialisation and emergence of organised labour movements, they were still capable of holding the wages relatively low. Contrary to the expectations, which were referring the difficulties of controlling organised industrialised work force, their capacity of control over their domestic labour force remained high by way of orienting rural or immigrant work force to labour intensive productive branches, of expansion of work relation to neighbouring countries and of creating domination technologies that are not challenged by a list of rights provided by the principle of rule of law (Munck, 1995). Electronics (Level 3 activities of Fordist labour process), textiles, clothing, shoes, were still in their combination of export-oriented and import-oriented economic structure (Lipietz, 1987).

Thirdly, transnationals were advancing new legal, coercive, industrial technologies so as to increase their share of value added in face of the individual developing country. Consequently, the share of 'developing' countries was getting lower than a decade before (Chossudovsky, 1999). In addition, the host countries were loosing their power to bargain, given the rising amounts of new competitors. Moreover, labour saving innovations and skill dependent activities were in advance. In face of these developments, low wages per se were no longer attractive. Furthermore, in the second phase of the crisis of Fordism, the rates of interests and the ratio of debt servicing to exports, in the periphery, rose (Chossudovsky, 1999:16; Kiely, 1998:65). Roll over costs of the principal debts were increasing significantly. Not

only the candidate NICs but also the genuine ones were experiencing real difficulties in borrowing from 'centralised' international like structural forms. They were also under the burden of increasing their productivity in face of increasing the competitiveness of other NICs, which were 'somehow' forced to structure their industries for the production of resembling products. Lastly, unlike the non-tariff barriers encountered by the first generation NICs, the new non-tariff barriers[236] included by various trade agreements and by GATT, was placing considerable constraints on countries attempting to utilize overt export subsidies as a basis for building up competitive positions (Öniş, 1998:438).

As Lipietz (1987) notes, new continental blocs, in which new juxtapositions and hierarchies were emerging, were becoming influential. Öniş (1998), being out of the jargon of Marxist systematisation of international division of labour, systematises, in terms of liberal Structuralist macro economy, the effects of continental blocs as the tendency/possibility to construct 'specific ties with north [of the continent in which the 'developing' country in question belongs] by way of regional trade agreement' for development[237] [238]. He then mentions that if Turkey is to achieve it, she has to achieve macro-stability by way of 'state strength' referring to the ability of the state as an entity out of the civil society, to insulate monetary and fiscal policy being free from the interventions of specific interest

[236] This means, the so-called `free trade' is not applied even-handedly when it jeopardises the interests of powerful countries. Since the initiation of the export substitution policy, Western OECD countries have, as the biggest trade partners of Turkey, been persistently inflicting protectionist quotas on the exports of Turkish service sector industries such as fashion, advertising and entertainment. Turkey's appeals to OECD countries to exempt its service sector exports from tariffs are constantly turned down. Another set of impediments have been introduced by the rising amount of standards forcing the NICs to comply with the social norms of advanced world. These sorts of restrictions have limited exports in relation to imports and, accordingly, led to trade deficits.

[237] The emergence of Thailand and Malaysia in the 1980s can be evaluated with regard to the effects of continental blocs. North American continental bloc and Mexico relations in 1990s can be another example.

[238] From the same vein, the chairman of Koç Holding, Rahmi Koç, refers the influence of continental blocs when he mentions the tendency of developing countries to be a member of the continental centre that the country in question is dependent (TİSK, 1995:24).

group pressures. The next chapter deals with the possibility of the existence of 'state strength' in the sense Öniş (1998) requires.

This bulk of structural constraints might provide a reason for the unwillingness of the Turkish industry to opt for labour-intensive and internationally competitive investments, even within a political environment that was tailored for their tastes. They were incapable of both deepening the industrial structure and redirecting their interests for the commencement of export orientation. Given the positive effects of the European continental bloc on its peripheral industries, seemed to be limited with that of Spain, Portugal and Greece, nor was there a chance to strike the right balance between capital-intensive industries using modern technologies and labour intensive, export-oriented industries as in the case of South Korea, which was benefiting from the Japanese continental bloc, similar to the NICs of Europe (Inoue and Yamada, 2002:266).

Under these structural constraints, Turkish industrialists remained dependent upon the investment patterns functioning for the continuation of import substitution.[239] Since an attempt for export-substitution under the conditions of post-monetarist juxtapositioning of national economies would lead to an export failure, which, in turn, results with severe labour conflicts due to the lack of any legitimising increase in the exports and due to lack of middle classes [240] capable of substituting working class consumption. Even the World Bank contributed to the formulation of the Plan V in a way that did not include the policy of 'giving priority to employment creation' (Yalman, 1997:235).

[239] This is the case for the majority of Latin American industrialists operating under similar structural constraints (Yalman, 2003:466-469).

[240] "As the austerity measures gave way to more expansionist policies in the mid-1980s, the rhetoric of 'orta direk' lost its significance and dropped out of the current political vocabulary." (Yalman, 1997:236)

4.3.2.2. Turkish Bourgeoisie and Economic Policies

Structural adjustment programmes, which would not truly be implemented in Turkey with regard to the structuration of the industry, occurred as a result of the interaction between the peripheral capitalist state of Turkey and the dominant class, which was tied to international financial circles in a specific way deriving form its dependency on imports. However, these policies were associated in the public mind with the Government itself, rather than with the bourgeoisie and with Bretton Woods institutions, who were decisively influential in the Turkish market reforms.[241]

The incentive behind the adaptation of the rhetoric of free market/open economy was the aim of establishing the bourgeoisie's political and ideological hegemony after the hegemonic crisis experience of the 1970s. The nodal point here was the implicit denial of any kind of representation of workers as being the bearers of class relations vis-à-vis bourgeoisie. Thus, structural adjustment rhetoric had to be backed up with the slogan of 'putting an end to class based politics'[242] which was itself a class strategy par excellence (Yalman, 1997:225, 231). Given that external financial sources were available, and that public enterprises were the bearers of the costs, the 1980s witnessed retrieval of import substitution. The potential sources of conflict between the objectives of macroeconomic stabilisation, which includes political interventions aiming to reach short-term adjustments, and of the structural change in industry, implicitly assumed to be reconciled or, at least, was not accounted for (Boratav, 2003; Kazgan, 1999; Yeldan, 2001).[243] A temporary increase in exports had also contributed to these policies.[244]

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[241] From the perspective of the IMF and the World Bank, this was a major 'tactical victory' since they were in search of low public profile due to the apparent reaction of the masses to these institutions.

[242] It is worth to remember that the bourgeoisie never presents itself as a class, because that would have been detrimental to the maintenance of its hegemony as a dominant class.

[243] Both the main representative organisations of the big business, namely Turkish Confederation of Employer Associations (TİSK), TÜSİAD, the Union of the Chambers of Industry (Union of the Chambers of Industry was established in 1975 purportedly to enhance the influence of the industrialists upon the policymaking process), Economic Development Foundation (The private

The Turkish industrial bourgeoisie's support to the policies aiming to reach stabilisation offered by Bretton Woods institutions had been unconvincing until 1978. They were supporting these policies to the extent that these policies would enhance the reproduction of the import substitution. The aim of reaching an integral economy that should be able to strike the right balance between capital-intensive industries using modern technologies and labour intensive export oriented technologies can be observed in the industrialists' reaction to EEC relations on customs union throughout the 1970s (Kepenek and Yentürk, 1996). Private bodies, such as Economic Development Foundation (İKV), Association of Car Manufacturers, explicitly argued for a shift in the composition of the industrial output from consumer durable products to capital and intermediate goods (Öniş, 1998:16). This situation states that, in mid-1970s, the representatives of the Turkish industrialists, who were a strong fraction of the ruling class, were not providing a sign that can be ascribed as demanding policies strongly compatible with export substitution as a means to achieve capital accumulation with relation to internationalised capital.

From 1978 onwards, the Turkish business community decided to change track from the previous route aiming to reach an integral economy. With the aim of finding new sources of foreign credits to supply the needs of their import dependent industries, industrialists came realise the IMF's and World Bank's

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sector body specifically founded in the 1960s to promote the relations between the Turkish private sector and the EEC), Association of Car Manufacturers, and so on, from 1979 onwards, and the post-1980 military as well as civilian governments, contributed vastly to the application of this strategy.

244 The significant rise in the share of manufactures in the overall exports was not deriving from any effective implementation of sectoral policies that created conditions of internationally competitive productivity in any sector. Nor there was a rise in foreign direct investments, demonstrating the re-location of any Level 3 activities of Fordist labour process. This success depended on the capital intensive pre-1980 industries. The state intervened the market by promoting the exports, by effective depreciation of currency and by other measures. In 1980s, in key sectors such as the automotive, the recovery from the crisis years of the late 1970s in terms of increased production levels, were due mainly to the recovery of the internal market, which was protected, at least until 1989, with high tariff barriers and with a set of import levies (Kepenek and Yentürk, 1996).

commitment to short term adjustment. Yet, this track change was deriving just from the waiving of the desire to 'deepen' the import substitution process, without waiving of the import substitution itself (Boratav, 2003; Kazgan, 1999; Yeldan, 2001). The expansion of import substitution to the substitution of intermediate and capital goods imports would not be a policy of concern after 1978. [245]

Despite the route change in 1978 and the contribution of the Turkish industrial bourgeoisie to 24 January programme, Turkish industrialists, in the majority of the years belonging to the post-1980 period, did not/could not opt for the adaptation of necessary structural changes for an export-oriented programme. Their pattern of investment behaviour would hardly deem to be in compliance with the requirements of 'selling cheap labour' or 'skill intensive activities'. They did not invest on labour intensive sectors that internationalised capital declared its interest. Nor did they articulate with the internationalised capital under the conditions of vertical hierarchy (Ansal ***et al.***, 2000:69-70).

In the absence of the investment patterns that would utilise the labour dwelling in Turkey, thus of a change in the structure of the industry, placing greater reliance on market forces in policy-making, became a political mantra. The need to reduce the state intervention to economy has been emphasised with a special stress on microeconomic strategies. Privatisation as a part of supportive hegemonic discourses had been the most famous of these strategies, including tax reduction, financial deregulation. The capacity of state economic enterprises' productive existence has always been massive with regard to the capacity of the Turkish industry (Boratav, 2003). Yet, contrary to the allegations dependency inspired commentators, nobody would intend to buy them with the aim of de-industrialisating Turkey.

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[245] "Therefore the debate about whether it was the international financial institutions or the Turkish policy makers which instigated the January 1980 stabilisation programme becomes rather academic since the key strategic choices were already made with the connivance of the external factors [in 1978]." (Yalman, 1997:178). Interestingly enough the Turkish-EEC relations would be put on hold in 1978 with the support of, at least significant sections of, the Turkish industrialists.

The significance of the issue rests on the effects of the privatisation on the separation of the legal statutes of public officials and workers (Tunçomağ and Centel, 2003:48; Çelik, 2003:36). Privatisation has been the source of controversy due to its role in the introduction of the category of 'contract worker' in the Turkish labour law. This category would also be used in the re-organisation of public services in 2003. In an attempt to 'economically rationalise' the personnel regime in the public sector and to facilitate the process of privatisation of the State economic enterprises, decree no. 233[246] of 1984 allegedly aimed to curb union power in the companies under the scope of privatisation and to make them more attractive targets for private entrepreneurs to buy, came into force.

Due to the fact that the values to be privatised have been a part of total capital that has been under the risk of de-valorisation together with the import dependent bulk of industry,[247] the state owned industrial complex, except the ones producing services and goods that are monopolistic in nature and thus qualified as public service, have not been charming for international capital. Furthermore, the state economic enterprises were functioning (in an a posteriori sense) to transfer the cost of many intermediate goods from private to public under the protection of high tariffs. Yet, especially after the reductions in tariffs without changing their norms of production, their productive capacity severely weakened. With some exceptions, up till the end of the 1990s, the extent of privatisation, the number of enterprises

[246] Later amended by legislative decree no. 308 in 1989, it raised a great deal of controversy, and following appeals made was reviewed by the Constitutional Court that struck down several of its articles on 25 July 1989. The government moved on and issued a new decree, no. 399, on 29 January 1990, which upon appeals made, was partially repealed again by the Constitutional Court on 4 April 1991. Finally the parliament formed after the October 1991 General Elections passed act no. 3771 on 5 February 1992, which, by taking the verdicts of the constitutional court into consideration, gave the subject its present form. The regulation is in contradiction with the ILO Conventions no. 87 and 151 both of which states the right of working people to organise and unionise.

[247] Unlike France (Coriat, 2002:251) and Japan (Woodiwiss, 1992) that have achieved the goal of massive privatisation in just a few years in 1980s.

involved as well as the scale of divestiture, has been extremely limited[248], especially considering the amount of rhetoric the idea has generated.

In a report published in 1986 Turkish industrialists expressed their approval of privatisation, with the condition of obtaining the management rights to a set of state economic enterprises. Yet, this approval was not deriving from their intention for taking over publicly owned companies (Öniş, 1998:158). Their approval was deriving from their need for the continuation of the policies that provide foreign exchange. Thus, the Turkish case in the privatisation experiment has hitherto been distinguished by its pragmatic nature; it has not taken a shock-treatment approach. In conformity with our position in this thesis, in 1989, the business community, together with the Social Democratic Party, interpreted the sale of the Petkim, a petro-chemical complex, as a threat to national sovereignty (Öniş, 1998:158).

The labour front, on the other hand, generally views privatisation as a move to weaken the labour movement. They have already witnessed a decline in their membership as a consequence of preparations for privatisation. The criticisms of the unions can be categorised under three items: the creation of the contract workers' category in the SEE's, erosion of workers' job and income security, the creation of a non-union environment (Dereli, 1998:327).

In fact, capital is always born and developed on the basis of exploitation, transforming the concreteness of that social relationship into the abstraction of its own configuration. Thus, the objectives of privatisation could only be reached by way of changing the terms and conditions of the concrete capital labour relation in the labour market and labour process in conformity with the new norms of

[248] In line with the neo-liberal reform project, the privatisation programme that was mapped out in the mid-1980s aimed the resolving of the problem of the low efficiency of public enterprises. Yet, priority of privatisation in Turkey was accorded to the most efficient state companies. Initially, the government sold some large public enterprises, such as the CITOSAN cement industry, and the Eregli Demir-Celik steel and iron industry. Later, many other important companies, such as PTT, the postal-telecommunications industry, and MKK, the arms industry, were also added to the privatisation plan.

production. The process of legal de-constitutionalisation of labour was on its way, yet these changes had to respond, on a material plane, to the changes in the reproduction of capitalism under the conditions of crisis (cf. Hardt and Negri, 1994:104). The overall structuration of industry impeded to respond on a material plane to the changes in the reproduction of capitalism.

The Impasse of Export-led pattern of Import Substitution

The export-led growth of import substitution path, which was dependent on wage suppression, the depreciation of the domestic currency, and extremely generous export subsidies reached its economic and political limits by 1988 (Boratav ***et al.***, 2000). The way out of the impasse (by accident or design) turned out to be the liberalization of the capital account in August 1989. The full convertibility of the Turkish lira was realized at the beginning of 1990. Boratav ***et al.*** (2000) state that the 1989 benchmark was, indeed, the second turning point in the economic policies of the post-1980 period in terms of both its distributional implications and macro-economic consequences.

The neo-liberal legitimisation of financial and capital account liberalisation has been based on the idea that the expansion of financial sector would finance the growth and change of the industry. Yet, Turkey, together with a bulk of Latin American states (Yalman, 2003:470), remained to be one of the most significant examples that repudiated the neo-liberal wisdom up till today. Unlike East Asian economies, where the main beneficiary of export-oriented growth strategies have been exporting bourgeoisie, financial liberalisation resulted in increasing imports of luxury goods and domestic consumption (Boratav, 2003).

Capital account liberalization increasingly forged the economy to become dependent on the newly emerging financial cycles, in which Turkish private banks remained as domestic agents. The improved capacity of the mechanisms that accelerate capital flight/capital outflows and reserve accumulation changed the conventional linkages between growth, current account balance and capital flows. And, finally, arbitrage-seeking (‘***hot money’***) inflows and outflows started to

constitute a rising share within capital movements, and contributed to rising external and domestic instability (Boratav, 2003; cf. Chossudovsky, 1999; Yeldan, 2001).

The end of the 1980s were the times in which private sector increasingly complained on the fallacies in its investment pattern. A group of industrialists stressed the need to play a complementary role in face of European capital.[249] It is also noteworthy that this idea of playing a 'complementary role' would turn out to be justification for the new forms of diversification that the Turkish groups would be engaging in, such as off shore banking, joint venturing, and tourism, rather than investing on labour intensive activities of world production (Duruiz and Yentürk, 1988).[250] Turkih industrialists, in the course of the 1990s, together with the groups backed by the Özal governments, were interested in expanding to sectors for which domestic market is the priority, and to newly privatised public utilities, such as energy or telecommunications, or cement and food-processing industries (Kepenek and Yentürk, 1996). Turkey's vision as a country, which was specialised in unsophisticated sectors with relatively simple technologies, which was weak in terms of international competitiveness, seemed to be maintained. Exporting remained as a residual activity for the overwhelming majority of the private sector firms. The striking point here is the occurrence of similar results in Latin American countries, which have been applying similar neo-liberal recipes throughout the 1980s and 1990s, regarding international competitiveness (Yalman, 2003:466-469).

[249] The chairman of İKV, Kamhi, stated in 6.12.1989 in an interview that they do not want to compete with European industries. What they wanted was to play a complementary role. For that reason, they would like to see European direct investments in the Turkish manufacturing industry to increase (Yalman, 1997:196). This kind of rhetoric can be considered as an indicative of a kind of change that has taken place in the perceptions of the Turkish industrialists.

[250] In the same vein, Sakıp Sabancı, the chairman of Sabancı Holding, in 1995 stated the importance of foreign partners if Turkish industry is to achieve international competitiveness (TİSK, 1995:15).

The labour intensive characteristic of the level 3 activities of high-tech based industries was not implemented on the industrial complex. Turkish industrialists have kept their domestic market preference in the 1990s (Boratav, 2003; Yeldan 2003). Contrary to the expectations of the designers/advocates of 'liberalisation', the public sector's share in financial markets remained high. Financing behaviour of corporations did not show significant change, and credit financing from the banking sector and inter-firm borrowing continued (Boratav and Yeldan, 2001).

From late 1980s onwards, many prominent industrialists[251], who were standard bearers of import substitution strategy, have opted for joint ventures with foreign capital. Yet, in many cases, these partnerships did not include a strategy for gaining access to foreign markets. Production for domestic market remained as the main objective. In favour of the handsome rewards for import substitution, there was a disincentive to export. When considered with the structural constraints over the economy, this disincentive becomes clearer. The Turkish industry was obtaining its old advantages in domestic markets without creating new ones related with international markets.

Yet, this is not to say that Turkish industrialists lost their eagerness to become incorporated into the global production organisation of the multinational corporations as manufacturers of components. Given that the availability of real credit emerges as the principal determinant, and thereby forms the key constraint on the expansion of both the private and the overall level of investment, (Öniş, 1998:26), and given that the structural constraints provided by the international division of labour were making it difficult to opt to sell cheap labour, they opt joint ventures operating in the domestic market, with the aim of avoiding international competition.

[251] At that point, it should be mentioned that, despite the bulk of contrary argumentations, there has never been an exporting bourgeoisie in Turkey. Nor were there efforts in diversifying exports over a wider range of products that have a relatively high labour cost (Yalman, 1997:204).

Slippage to Non-productive Activities: Banking Sector

The domestic capital intensified its efforts for the employment of new means to mobilise itself under the conditions of low level productivity. Together with the financial mechanisms provided by the financial liberalisation (Yeldan, 2001:26), their diversified structures enabled them to adapt to the changing circumstances especially at times of crisis. Here it should be mentioned that, Turkish industrial bourgeoisie was not simply a distinct fraction of the total Turkish capital, as conceptualised by the Classical Marxism, rather it was organised in 'groups', which were capable of investing money capital both to industry and, when needed, to financial institutions (Sönmez, 1998:26-31).

Given the fact that the combination of the rigidity of productive structures in Turkey and constraints caused by their participation in the world economy were posing a real threat, the rising numbers of private banks belonging to these 'groups' provided the necessary means for the strategy of merger with banks, a strategy, which was necessary for escaping from de-valorisation by socialising the risks. The industrial groups, after the relaxation of regulations in the late 1980s, rushed to establish their own banks or to buy the existing small commercial banks. The interest rate differentials exploited by borrowing cheaply abroad. Besides, the banking system provided these groups to issue credits backed up by the state. Throughout the 1990s, groups used this facility given consciously by the state, by issuing credits that will not come back to the bank. The rationality behind such decisions was the fact that, in many cases, the borrowers were the pseudo companies, which were established with the purpose of taking credits and of depositing these credits in offshore banks in the name of the owners of the banks in question.

The money market itself has become a genuine realm for the valorisation of capital from 1980s onwards, especially after the initiation of financial liberalisation in 1989 (Arın, 2003; Yeldan, 2001:26). Given the uncompetitive nature of the industry, the 1980s were the years in which the banking sector expanded

considerably by relying not on the returns of the credits given to the industry but on foreign exchange denominated saving instruments:

> Indeed, throughout the course of these events Turkish banks became detached from their conventional functions, started to act as institutional rentiers, made huge arbitrage gains when conditions were appropriate, but became extremely vulnerable to exchange rate risks and to sudden changes in the inflation rate.
>
> (Boratav and Yeldan, 2001:2).[252]

Within this context, pre-validation of productively invested values in process ceased to be the main function of banks operating in Turkey.

Difficulties of Financing Import Substitution in the 1990s

The reliance on domestic debt as a result of weak international competitiveness of the industry replied by a vicious circle with a detrimental impact on the overall productivity of capital. The convertibility of the national debts to internationally accepted forms of money appeared as a common threat to the total industrial structure. The country's creditworthiness allowed the financing of the budgetary deficits by short-term borrowing with the expense of fast-growing short –term foreign indebtedness as well as slow-growing foreign exchange earnings. The overvalued currency, deriving from high deposit interests provided by the banks in search of exchanges, was the consequence of the politics relying on domestic debt. Consequently, devaluation had become a real source of risk. There were hardly any chance for Turkish governments to sustain the current account deficit through foreign investment without increasing the debt stock. On the other hand, reliance upon portfolio investments, which were considered as independent invariable of growth by liberals and which prerequisites regulatory reforms aiming to enhance

[252] In their new functions (such as being the intermediary agencies of exchange supply, the centre of speculative/deceptive investments that would not return to the banks, a strategic tool of transferring industrial investments to financial investments, etc.) Banks gradually emerged as the dominant fraction within business groups capable of influencing and manipulating economic policies. And, due to the falling rates of profit in many internationalised industrial branches, the activities of giant international financial creditors that were centred upon the speculative transactions provided a necessary base for this kind of banking transactions. The unregistered speculative activities, together with informalisation of financial markets as a result of structural adjustment programmes, were providing a base for the informal economic relations undermining the formal economies of Turkey as well as the other countries periphery (Chossudovsky, 1999:22).

the efficiency of markets, would, at the end, result with dis-credibility in the international financial markets as a result of deteriorating 'country risk assessment's (Boratav, 2003; Kazgan, 1999; Yeldan; 2001).

> [the Striking pattern in 1993] was that almost the whole of the central government's budgetary expenditures were being allocated to current expenditures, interest payments on domestic and external debt and transfer payments, leaving very little in turn of public investment as key contributor to long term economic growth.
>
> (Öniş, 1998:519)

The above mentioned non-competitive configuration, together with the increase in wages and increase in agricultural support prices, in the period of 1989-1993, thus, can be considered as the continuation of import substitution. And, the subsequent crisis, which was resulted in a major outflow of short term capital, occurred as a crisis of confidence on the viability of import substitution strategy as a dominant strategy including majority of the industry.

A massive depreciation of the exchange rate in the early months of 1994[253] brought another major stabilisation program in association with the IMF. Unlike the 1980s, refusing Turkey would mean, for IMF and the World Bank, to face spillover effect that can transfer the Turkish crisis from being a national one to an international one. Once again, there was no policy error or distributional crisis that would be used in accusing both the increased wages and 'populist' state[254] of

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[253] Imports dwindled by 15%, GDP fell by 5.5%, and the inflation rate soared to 106% with the sudden drainage of short-term funds in the beginning of January 1994 (Yeldan, 2001:51).

[254] In the absence of a structural change in the overall picture of industrial investment, by the end of 1980s, the structural adjustment policies pursued with the anticipation of sustainable growth based on strong export orientation strategy, seemed to be largely failed. Repressive distributional policies, legitimised with reference to a promise of success, became crucial; it was becoming more and more difficult to sustain these policies within the political and social map prevailing at the end of 1988. Worsening income distribution throughout the decade was considered to be the cost of the adjustment with growth strategy. In terms of liberal political economy, distributional pressures exerted themselves in the low growth, high inflation and balance of payments disequilibrium precipitating a new stabilisation crisis (Öniş, 1998:24). Under the light of the failure of structural adjustment policies, a reversal of neo-liberal policies could have been expected. Yet, the dominant discourse insisted on the credibility of these policies and accused the 'strong' Turkish State, while

changing the dynamics of economy. Turkey was suffering from a chronic disability deriving from 'import substitution without deepening' strategy.

The post-1994 crisis management depending crucially on wage suppression coupled with re-invigoration of short term foreign capital inflows. Labour markets became places in which significant shifts in income distribution were realised.[255] Wage costs on US currency basis decreased substantially and enabled export earnings to rise. In this manner, Turkey has once again, switched back to a mode of surplus extraction whereby export performance of import dependent industrial sectors depended upon savings on wage costs rather than rising productivity. In fact, the disequilibrium could have only been accommodated by the massive flexibility displayed by real remunerations of wage-labour (Ansal *et al.*, 2000:59-63). Together with the decline in wage earners income, the inflows of foreign capital enabled the financing of the fiscal gap and the consequent current account deficit and created the conditions of another crisis. Acceleration of the interest burden on Treasury's borrowing instruments was the social cost of the crisis. [256]

When hit by the Asian financial crisis starting in the August 1998 Turkish economy was already under the adverse conditions of severe macroeconomic disequilibria with accelerating fiscal and current account deficits, high inflation and

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'dirigiste' East Asian governments, which maintain tight import controls and tight regulations in the capital markets, were experiencing success in the overall accumulation in their countries. The accusations were in conformity with Turkish bourgeoisie's economy policies that were not aiming to benefit from cheap labour. If their plans were covering a structural change in the industry such an allegation would be echoed in the ranks of working people. The state, which is considered to be an identifiable entity in face of and out of the Turkish society, in which market forces remains as the victims of political rationality (chickens in the hencoop); and which is an arena for the pursuit of particularistic interests, is alleged to be an impediment over the optimal economic outcomes as well as a fetter on civil society. Moreover, it was argued by statist-institutionalists that while East Asian entrepreneurs were backed by a kind of state, which was committed to a coherent, long-term industrial strategy, and which has persuaded and forced entrepreneurs to avoid rent-seeking and speculative activity to develop an industrial outlook, Turkish entrepreneurs were in lack of such a support.

[255] Real wages in manufacturing declined by 36.3% (Yeldan, 2001:44).

[256] The average real rate of interest offered on the government bonds increased to 24.9% after the 1994 crisis, and servicing of the domestic debt reached to 10% of the gross national income after 1996 (Yeldan, 2001:302).

unemployment, and increased social unrest (Kazgan, 1999). The inherent characteristics of the growth-crisis-adjustment cycles have had quite different macroeconomic dynamics in operation than it did in the pre-1989 era. During the 1990s, changes in the level and direction of capital movements generated a financial cycle of boom/ bust/ recovery, which, in turn, resulted in the rising instability of the growth rate (Boratav *et al.,* 2000, Boratav, 2003; Yeldan, 2001, 2003).

While the role of export-led process was determinant in the growth process of the 1980s, the 1990s witnessed the employment of capital flows in the financing of import oriented industry (Boratav and Yeldan, 2001). A growing amount of current account deficit has been financed by inflows of primarily short-term capital flows. Indeed, the post-1990 years exhibit four downturns (1991,1994, 1998-99, 2001), the latter three of which also incorporate financial crises of different intensity; and four booms (1990, 1992-93, 1995-97 and 2000). It is also striking that as we move into the 21st century, the duration of the *mini* business cycles seems to have shortened even further.[257]

4.3.3. The 2000s: Worsening Conditions of the Reproduction of Labour Power

From 1998 onwards, IMF oriented economic policies have played a significant role over the 'discoveries' of policy makers in search of credits. Given that financial or capital account liberalisation had already been achieved, the pro-market rhetoric became inadequate for the initiation of necessary regulations. Turkey had to confront with a new bill if the import oriented structure of the industry was to go on producing. Put differently, the price of re-producing capitalist relations of production in a peripheral country which had no conveniently disciplined labour force for international markets, became greater than before.

[257] The growth rate is observed to be negative in ten of the last sixteen quarters from January 1998 up till the end of 2001." (Boratav and Yeldan, 2001).

The main axis of IMF policies, especially after February, 2001 aimed to reach stabilisation by way of rebuilding market confidence.[258] According to this strategy, Turkey was to undertake the necessary reforms that were designed by IMF and would be subjected to direct control of the same institution on a regular basis. If, after each regular control, the controllers announced Turkey as successful, then the markets would assess/perceive her as trustable and the aim of rebuilding market confidence would be deemed to be achieved (Yeldan, 2003). The expected outcome of this 'success' was the decrease of risk margins for international finance capital and a rise in the consumption and investments together with total development.

In practice, this strategy is legitimised under the banner of the strategy of competitive disinflation aimed to create price advantage over the main transnational competitors. This policy assumes de-indexation of wages, a decrease in employer costs and strict control of budgetary expenditures. It is hoped that competitive gains would case a correction of market shares and thereby have a favourable effect on unemployment. Yet given the above structure of Turkish industry such an attempt has a destiny of failure.

The domestic implementers of the programme state that they "are putting in place a fiscal framework to increase the public sector primary surplus from the targeted 5.5 percent of GNP in 2001 to 6.5 percent of GNP in 2002" (Standby Agreement of 2002).The 7% growth performance in the first quarter of 2003, by domestic implementers, is considered to be a success in this framework. Yet, Yeldan (2003) states that when we analyse the sources of recent growth, the main incentive behind it appears to be the decrease in the labour costs. The effect of devaluation on imports appears to be another reason of growth. Thus, the growth has nothing to do with monetary measures introduced by IMF. The recent IMF programme aims to drop the interest rates. Yet, given that the high interest rates were not influenced

[258] Standby Agreement acted on January 2002 clearly states "In support of these objectives, we will … (c)ontinue … to strengthen our debt position and rebuild market confidence."

by the fall in many other macro economic indicators, it is safe to say that the main characteristics of financing with Banks investing on Treasury Bills and on exchange, remained. [259] Furthermore, it also indicates the unfeasibility of new investments necessary for any kind of structural change aiming to articulate the existing international division of labour.

The impact of the continuation of the impasse of import substitution over labour force can also be traced in the exclusion of women from working life. Available data indicate a substantial fall in the ratio of the female labour force to the female population aged between 15 and 64. It declined from 16.4 in 1980 to 14.6 in 1996 (Ecevit, 1998:45). Women comprised only one-quarter of the total labour force in the 2000s (Koray, 2000). Given that female participation as a source of cheap labour in comparison to their male counterparts has had a worldwide upward trend over the past several decades in export oriented countries (Joekes, 1998), the sharp decline in Turkey can be attributed to the Turkey's structural inability to make 'correct' investments on labour.

Moreover, Yeldan (2003:174) states that in a national economy, in which the cost of debt interests is over than 15% of the gross national income, the intended public sector primary surplus target of 6½ percent of GNP[260] can only be carried on by significant cuttings in health, education, and public investments. Yet such policies

[259] The following statements in the recent standby agreement indicate how difficult to change the structure of the financial market. "The program aims to continue the strengthening of the banking system and oversight framework that has been underway since 1999. The focus is on measures to strengthen private banks, resolve intervened banks (those under the control of the Saving Deposit Insurance Fund, or SDIF), further improve the efficiency of state banks (with privatisation the final goal), put in place frameworks for dealing with nonperforming bank loans, and further improve prudential regulation and supervision. …(A)ccordingly, in issuing new domestic debt we will pay particular attention to the need to allow banks to match their foreign exchange and interest rate exposures." (Yeldan, 2003: 34)

[260] "For 2002, our priority will be to restore financial and macroeconomic stability, and to further progress in structural reforms. To this end, we will ensure that our ambitious public sector primary surplus target of 6½ percent of GNP will be met. This, together with our active and flexible debt management strategy, should ease government debt rollover. We are also determined to deepen our structural reforms to build on the important results achieved so far" (Article 7 of Standby Agreement 2002)

results in stepping down of productivity of labour power and creates a vicious cycle over productivity. Growth under such conditions is known as impoverishing growth in the international commerce literature (Yeldan, 2003). Thus the principal aim of the recent programme, which is not only providing political objectives to policymakers but also implicitly implying new regulations, is a programme of managing the debt problem of Turkey. Consequently, it is safe to say that, in 2003, the Turkish economy has become totally dependent on external financing and lost its ability to grow with its own resources and regulatory institutions without commencing a structural change. The reduction of public spending will soon become an obsessive objective with destructive effects.

The neo-liberal re-structuring of the Turkish state has resulted in an ongoing decline (except the period between 1989 to 1993[261]) in the portion of real wages and agricultural incomes throughout the 1980s, the 1990s (Köse and Yeldan, 1995) and in the first years of the 2000s (Boratav, 2003). Overall real wages declined 1.3% in 2002, within the same year, incomes in manufacturing sector dropped by 4.6% and real wages in manufacturing sector in public sector declined 2.6% (Yeldan, 2003:178-200). Within the years following 1980, the conditions of the reproduction of labour power consistently worsened for the individual worker. The process that has officially started with open economy rhetoric exhausted the majority of the wage earners', including the state officials', capacity to be a member of middle classes.

The process of informalisation had negative impacts on wages, and covered all areas of productive activity. The import substitution as a hegemonic project disappeared but as a social reality remained to be decisive in the reproduction of the capitalist relations of production. New institutionality in work, together with the refusal of the aim of deepening import substitution, declined the portion of the skilled workers in overall workers. Given that trade unions weakened significantly,

[261] Throughout 1990s and, in addition to DISK being again permitted to operate, more than 15% of white collar workers were organized into trade unions, despite government opposition (OECD, 1999).

the informal sector expanded, the pressure of the reserve army on the working power intensified, and the limited rigidity paradigm of the 1970s lost its meaning. Being an economy in which production is orientated predominantly towards the internal market, the decline of wages had a decisive impact on overall growth. Furthermore, mainly after 1989, with trade liberalisation, the limited domestic market became subjected to competition. Throughout these years, the fragmentation within the ruling class lost its meaning in face of the rising power of the financial sector and of politics necessary for the finance of the industry.

This situation states that the main dynamic of growth after 1994 have become the ongoing deterioration of wages, thus, of conditions of reproduction of the collective labour power rather than successful management of economy over domestic implementers of IMF designed programmes.

4.3.3.1. Changing Context of Legal Discourse with the Changing Capacities of Socio-Technical System

Having seen the conditions of the reproduction of labour force from the perspective of wage policies, we can now analyse the institutional and organisational forms contributing to the socio-technical system.

A New Labour Market: Less Unions and a More Market-directed System of Resource Allocation

Unions are the organisational forms operated throughout competitive and monopolistic modes of regulation, yet their function have been in ongoing transformation (Hyman, 1999; Munck and Waterman, 1999). Yalman (1997:231) notes that parallel to the experience of certain authoritarian regimes in the Third world, Pinochet's Chile being the prime example, the new labour containment strategy after the 1980s opted for the market as a mechanism to control and weaken the unions to the extent that their existence would not turn to be the arenas of counter-hegemonic strategies. What was offered/imposed was an export-oriented trade and development strategy based on the legitimisation provided by the neoclassical principle of comparative advantages, but this time, closely together

with the aim of reaching a more market-directed system of resource allocation within the framework of re-organisation of existing structural forms, within which working class representation was/has been almost non-existent, and in which the bourgeoisie, like had been in pre-1980 years coalition governments, was, clearly, not condemned to any kind of political insignificance.

Needless to say, the 'market-directed system' in question was referring to the labour markets alongside with the commodity markets. Throughout the 1970s, the labour market strategies of workers articulated with heightened class conflict, which was not solely aiming an increase in wages that were already relatively high but aiming to reach/create further rights, at least in the eyes of ruling classes, that may be in conflict with the traditional, Anglo-American way of conceptualisation of ownership rights of bourgeoisie. The existence of Soviet Union[262], together with the heightened class conflict nourished the bourgeoisie's frustration, as a result of which bourgeoisie had started to perceive the working class as the potential threat to the existing order.

In conformity with the insistence of the Turkish bourgeoisie on the import substitution, the post-1980 framework for collective bargaining did not aim to link wage rises to productivity increases, despite the stated objectives of the employers (cf. Boratav, 2003).[263] Put differently, productivity increases so as to achieve international competitiveness was not among the prior concerns of Turkish industrialists (cf. Kazgan, 1999). The conditions for an export oriented industrial policy did not appear despite the extreme pressure provided by the military regime and the succeeding civil governments, which have certainly had the necessary means of coercion against every kind of democratic organisation. Labour costs

[262] Given the fact that until the mid-1970s Soviet Economy had been experiencing a relative stability of growth (Sapir, 2002:274), unlike Western Economies of the time, that fear was by no means totally fictitious.

[263] Having not confronted with the expected serious outcomes of the policy of reducing labour cost in such a way to compete cheap labour countries, Turkish government did not take any loan from Bretton Woods institutions to promote the introduction and effective implementation of sectoral policies necessary for sustained economic growth in 1980s (Yalman, 1997).

were decreased[264], yet without any industrial attempt to utilise them as a source of international competitiveness (Duruiz and Yentürk, 1988). Given that the productivity growth was not a means for articulating the international division of labour by entering into commodity chains realised in internationalised branches, throughout the 1980s, the reason for the ongoing assault on workers rights was, the determination of Turkish bourgeoisie, under the legitimisation provided by the rise of new right, to appropriate the surplus that would otherwise be remained in the hands of workers under the conditions of the 1970s. Thus, the market as a mechanism to control and weaken the unions remained decisive.

On the other hand, when the finance of growth became possible without deteriorating wages, the bourgeoisie was not totally against the wage rises. To put it differently, without playing with the industrial relations legislation, in which they find a legal base for arbitrary dismissals, replacement of unionised workers, and the use of sub-contractors so as to avoid facing with the workers directly as well as avoiding the burden of social security premium, and without leaving their commanding positions, the Turkish industrial bourgeoisie was ready/prepared to grant substantial real wage rises so as to increase the domestic consumption (Işık, 1995). Especially before the trade liberalisation wage rises were not totally in conflict with the benefits of the groups who enjoyed the merits of consumption in a market protected by high tariffs. Therefore, Turkish bourgeoisie, under the pressures deriving from inner market dependency of their conditions of realisation of surplus value, was not against some level of increase in workers wage up till recently. Consequently, it is safe to say that, in the 1980s, a certain level of job insecurity prevailed without resulting in a radical decrease in wages since unlike the export-oriented economies, it was more a political apparatus than an economic one.

[264] Between 1978 and 1988, the real incomes of civil servants shrank by two-thirds, and those of workers halved between 1979 and 1988 (Cam, 2002).

The labour legislation of the post-1980 era clearly represents the concerns of ruling classes and represents the imprints of 'a more market-directed system of resource allocation', and in conformity with this situation, the collective labour law has become a place in which the organisational capacity of working class deteriorated sharply. Repressive strategies have become dominant in face of conciliatory strategies, meaning that the patriarchal understanding[265] of state supervision have become favourable in face of legally-mediated private discipline (Işık, 1995:257-287). Within this context, legislations on labour issues have never referred to the procedures to achieve institutionalised compromises. The pressure was applied on the collective capacities of the national labour force to the extent that these capacities were decisive in the formation of labour market strategies of labour front. On the other hand, the protective capacity of the individual labour law, together with the interferences of the collective labour law to technical division of labour, remained, to a certain extent, both in the case law up till the 1990s and in the legislation up till the recent labour act (cf. Çelik, 2003:15, 17; Tunçomağ and Centel, 2003:2). Given that labour markets differ fundamentally according to the criterion of whether, and to what extent, buyers and sellers, who are the bearers of powers penetrated to economic and legal relations, can actually utilize rational market strategies, the labour market had changed in conformity with the 'market-directed system of resource allocation' strategy.

Decentralisation

At its highest level in 1979, union density was no more than 27% of all employees (Cam, 2002). In 1980s in conformity with the global decline in unionisation and with the excessive usage of repressive means of domination in domestic politics, trade unions weakened. Workers right to organise and to collective bargain limited

[265] The ecological dominance of capitalism over the lawmakers, judges and arbitrators is mediated in part through the managers of different organisations' calculations about the likely impact of their decisions on alterations in the labour markets and on the wage-labour nexus on which their legitimacy depends. It is clear that the way the mediation realised is dependent on the dominance of certain discourses within the given time and space.

severely.[266] Even the white-collar workers precluded from joining a union in the public and private sectors, presumably, due to their role as 'petty bourgeoisie' in 'making of working class' (Akalın, 1995; Işık, 1995). Furthermore, the role of anti-democratic regulations in unionisation was decisive in the first half of the 1980s. The rising marginalisation of work force in daily jobs, the destabilization of the critical standpoint of Marxists in face of the decline of Soviet Union, the replacement of unionised workers by temporary employees all served for the deterioration of labour solidarity.

The most important aspects of golden age labour relations were centralised wage bargaining and inclusion of social labour force into the labour policies. Centralised and monopolistic interest intermediation was among the most important characteristics of centralised bargaining even in peripheral countries. The protectionist rents of a closed economy with an overvalued exchange rate, to a certain extent, enabled institutionalised compromises to become apparent on sectoral basis, in the peripheral world of early import substitution. Within this context, the trade unions acquired powers, including the power to bargain with the representatives of capital, being the representatives of abstract/collective worker in certain sector, company etc., within the limits of wage bargaining; and power to produce counter hegemonic strategies.[267] The first power refers to the abstract notion of labour, that had been, to a certain extent, constitutionalised in 1961. The second power, on the other hand, is in correlation with the labour as a potential expression of life thus with concrete labour. This aspect of labour has never been included into labour policies both in the central and peripheral world. In fact, the expected outcome of wage bargaining on the basis of abstract conceptualisation of labour was to overshadow this second power. Yet, the acknowledgement and

[266] The first five years of Özal Governments benefited widely from the wage fixing decisions of Supreme Arbitration Board, which based its decisions on the government's targets (OECD, 1999).

[267] The Unionisation Act of 1982, which arbitrarily excluded certain sectors from unionisation and banned the workers right to question the economy policies of the governments provided the necessary legal means for such an operation.

organisation of the power to make wage bargaining had been influential in living labour's capacity to express its demands.

After the collapse of Fordism together with its socio-technical system including the legal constraints embedded in a wide rage of provisions regulating collective bargaining and workplace labour relations, it had become clear that labour organisations, even on the basis of abstract labour as a founding principle, could not be accepted (Boyer, 2002a). The need to labour inputs had a far more priority in face of the need to reproduce labour power as a generic human activity. Within this context, even the limited inclusion of social labour force into the formation of labour practices considered as unbearable. While the extension of the previous socio-technical system into the social division of labour was expressed in the protective collective labour law, the emerging socio-technical system of the neo-liberal epoch is expressed in fragmented and decentralised industrial relations pursued mainly at workplace level.

After the military takeover, the working class organisations lacked the ability to negotiate with the state, in which bourgeoisie was represented on an extended basis in the 1982 constitution[268] (Tanör, 1991:54-60). Furthermore, after 1982, collective bargaining has been destabilized by various limitations introduced in the Constitution and further legislation.[269] [270] Many sectors of the economy were designated as strategic thereby strikes were prohibited. The strategy of the

[268] 1982 Constitution went far beyond 1961 Constitution with regards to the representation of bourgeoisie. I had induced the employers' unions representing the state economic enterprises to rejoin TİSK so as to achieve a more coordinated thus tougher implementation of the market based strategy with the expense of the traditional image of the state in the eyes of more moderate trade unionists and workers as the impartial referee of industrial disputes.

[269] For instance, the conduct of collective bargaining negotiations on the basis of branches of industry rather than the enterprise has reinforced the position of the employers' unions, which acted in accordance with pre-determined guidelines by their confederation (Koç, 2003).

[270] See also the Declaration no 7 of National Security Council, Acts no 2316 on the administration of the properties of the closed unions, 2324 on the regime of Constitution, 2364 on the re-application of the terminated collective labour contracts.

decentralisation[271] of work force can be traced in the facilities for the establishment of new trade unions when the Revolutionary Workers Unions Confederation (DİSK) was banned for being outlawed throughout the 1980s. Furthermore, decentralisation policies aiming to generate an ideological ambivalence within the working class can be observed in the foundation of Islamist Hak-İş in 1983, under the supervision of the government.

Yet, the subordination of the working class cannot be confined to direct coercion pursued in the working class organisations. The implicit authorization of the supply front in the labour market to pursue strategies aiming to surpass legal regulations on the rigidity of labour contract should also be included into the account of coercion practised by the bourgeoisie and backed up by the state. In this period, the lockout strategy has become a constitutional right, where in the Japanese law, being the prime example of patriarchal legislation (Woodiwiss, 1992) individual capitalists have never achieved such a degree of legal protection. When considered together with the weakening of the trade unions such strategies can contain enormous pressures together with high levels of exploitation in and out of the work place. These changes were in correlation with the discursive re-ordering of the social reality since the basis of neo-liberal recipes have always -and necessarily- been a kind of imagined economy in which economic management, governance and guidance are always oriented to specific subsets of 'value free' economic relations that have been discursively and institutionally fixed as objects of such intervention.

[271] The usefulness of the strategies of centralisation and decentralisation are dependent on overall economic strategies of the bourgeoisies in question. An internationalised or partly internationalised industrial bourgeoisie, in conformity with the needs of internationalised branches managing the production of a certain outcome in different countries, may prefer to restore their right of management with the cost of industry-wide negotiating bodies. "Turkish bourgeoisie felt the need for centralised bodies to impose the bargaining terms and wage increases in a manner that would suit the leading forms of the each sector, whilst coordinating it at an economy wide level; sometimes at the expense of medium and small scale capital" (Yalman, 1997:233).

4.3.3.2. Discourses of Production and Turkish Judiciary: Changing Perception of Labour Legislation by Business and Courts

Mainly after the 1994 crisis, the main dynamic of growth has become the ongoing deterioration of wages, thus, of conditions of reproduction of collective labour power due to the ongoing stress deriving from the structural deficiencies of import substitution reflecting onto the budget deficits. This could be the main reason for the changing perception of the individual labour legislation by business, mainly after 1994. The post-1994 years witnessed business announcements for a radical change in the individual labour law and other regulations together limiting the capacity of labour contract.[272]

1994 also remarks certain changes in the traditional perception of labour law by the courts. This change track, mainly in the Court of Cassation's rulings [273] , provides us with some hints in the understanding of recent changes which are in conformity with the demands of Turkish bourgeoisie, whose allegations will further be analysed in Chapter V. From 1995 and onwards the Turkish Court of Cassation has commenced to produce rulings changing the Collective Agreements (Özveri, 2002). The acceptance of the economic crisis as an excuse to change the conditions of collective agreements or to invalidate them by the Court of Cassation,[274] have had serious implications. The most important of these implications is the denial of the notion of the collective labour agreement as a source of binding provisions, which regulate industrial relations as objective legal rules.[275]

Furthermore, the post-1994 years witnessed the postponement and/or suspension of strikes with reference to the economic crisis (Işık, 1995). Even in the case law and

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[272] See Akalın's comments in TİSK (1995).

[273] Court of Cass., 9th Div., 31. January 1995, Dec. no. 1995/1307.

[274] Court of Cass., 9th Div., 24 April 2001, Dec. no. 2001/7019.

[275] See Article 53 of the Constitution and Collective Labour Agreement, Strike and Lockout Act Article 2/1 and 6/1.

juridical comments on law of Obligations, which covers the sale of real commodities,[276]the re-evaluation of any kind of contract depends upon the principle of protecting the weak party.[277] However, the re-evaluations pursued by the Court of Cassation protected the industry rather than workers. The legitimisation is provided by the argument that refers to the importance of the protection of the enterprise that would in turn lead to the protection of the worker (Özveri, 2002:222). A kind of public interest test is, then, established in this argument under the principle of social utility. We can clearly track the signs of neo-liberal argumentations trying to ignore the conflictual characteristic of industrial relations in the legitimisations of the Court of Cassation. From the same vein, legal doctrine has commenced to change its explanations on the main principles of labour law by referring to the importance of public interest tests as a counterbalancing force to the principle of the protection of workers.[278] What's more, the burden of the protection of enterprise, in conformity with the developments explained above, is now on the workers rather than on the state, which would provide protection by way of taxes, credits, providing information etc.[279]

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[276] The legal forms developed in private law in general cannot be directly applied to the realm of labour law.

[277] The Court of Cassations attitude against the enforcement of collective agreements in favour of workers in times of crisis is also in conflict with the existing labour regulation including the provisions of the Constitution (Articles, 90, 119, 121), ILO Conventions ratified by the Country (no. 87 and 98), Maritime Act no. 2935, (Articles, 10, 11).

[278] Compare Çelik (1990:21) with Çelik (2003:18).

[279] President of the 9th Division, which is the principal chamber for the rulings of the first degree courts on labour contestations, of Court of Cassation Dr. Aydın Özkul mentions that collective agreements could be considered mainly as like as the other agreements/contracts in law of obligations under the conditions of the ongoing crisis. He, further states that the interferences of the Court of Cassation to the provisions of collective agreements referring the wage rises, are decided - in informal meetings and in the rulings of the Court of Cassation- to be limited to 10 or 15 per cent where they were about 100 percent before 1994. Furthermore, Özkul states that their position would not be changed unless the conditions of the crisis change (Özkul in Istanbul Barr Association, 2002:262).

In conformity with the changing climate after 1994 and with the failure of the new policies to deliver the anticipated solutions, rigidities in labour relations have joined the growing group of problems held responsible for the economic troubles of the country. The axis of accusations in search for an excuse for the clear failure of neo-liberal policies has become the rigidities of labour legislation in 1990. The significant changes in the discursive realm in which the judges made their decisions, allowed judiciary to apply what was in fact a socially pragmatic methodology of law finding instead of invoking a set of substantive principles.[280]

The capacity of labour to question the economic policies of the state was deteriorated with the military take over in 1980. Yet, despite the above-mentioned change track in Judiciary, thus, in case law, the powers of the worker in work place mainly supplied by individual labour law remained to a certain extent. Until the recent changes, the Turkish individual labour legislation, which still had a line of contact with the second understanding of labour jurisprudence, to a certain extent, served for the workers' front in individual conflicts. The complete bulk of case law created respectively by the court of cassation and the first degree courts interpreted the provisions, in many cases, for the benefit of the individual workers. Given that import oriented industrialisation is still in an ongoing crisis, the post-1994 upsurge in demands for change in the legal framework regulating labour relations within the workplace and regulating the conditions of sale of commodified labour, aimed to remove the rights of the individual worker to extract more surplus value both in the absolute and relative sense.

Symptomatic of this situation has been the increasing demands of the private sector to modify the legal conditions of labour contract, a view that has been on several occasions openly echoed by their representatives. This fact is also articulated with the fact that labour rights in post-1980 Turkey lack the social acceptance enjoyed by all European labour movements. Labour movement in Turkey also lacks the

[280] For similar developments in the United States and Japan see Woodiwiss (1992:118-145).

capacity to act in the militant defence of its rights, which from time to time has been exhibited by the Italian, French and British labour movement.

4.3.4. De-Constitutionalisation of Labour*:* Relative Dominance of Individual Labour Law

Turkey has been in lack of wide range of strategies, actors and conditions, all of which are necessary to create a mode of regulation that is compatible with the creation of an export-oriented industrial schema of reproduction. The hegemonic projects pursued throughout the history of Turkish Republic have always been successful in terms of depriving the dominated classes of establishing their own economic and political organisations capable of influencing policy making on fundamental choices or 'discoveries'. This situation has remained and intensified in the post-1980s. A fairly-weak level of representation and organisation of working classes, respectively, in and out of the state has become a persistent feature of Turkish industrial relations. On the other hand, it would be consistent to allege that the conscious policy articulations on the part of specific interest groups altogether consisting the ruling classes, have always been represented[281] within the state throughout the history of the Republic, whether they belonged to the 'peripheralised' civil society or not.

However, the deprivation of working classes from the means of interference in policy making as defined in the above paragraph is not equal to the requisite level of control over workforce to be a NIC. Before the second expansion of Fordism thus before the appearance of the conditions of selling cheap labour dwelled in peripheral world, peripheral countries were not in need of reaching certain levels of productivity within the context of labour intensive technologies. Within this context, the second position, which recognises the unequal and inherently contesting nature of industrial relations, was the dominant discourse in the 1961 Constitution and the following legislation. This situation was in conformity with

[281] Whilst collective bargaining process has been decentralised form the workers' end, it has been strictly centralised from the other end as demanded by the employers' unions since the pre-military coup days (Koç, 2003).

the Fordist like socio-technical system of Turkey existed until the 1980s. On the other hand, throughout the 1970s, the benefits of world trade opened to the peripheral countries having higher degrees of control over their national workforce. The traditional mode of articulation of the Turkish economy with the international division seemed unsuccessful in face of the growing amounts of exports from NICs, which were not in a better position than Turkey before the 1970s.

Law, being a part of state power, is inserted into the dialectic of social relations condensed/concentrated around the dynamics of accumulation. Law regulating the rights and duties of the individual worker and the law for organised action of workers derive from the double nature of wage relation. The coercion observed in non-NIC peripheral countries generally focuses on the collective labour legislation that concentrates on wage relation mainly as a relation of exchange. On the other hand, the collective labour legislation as a means to formalise the demands of living labour has never been appeared both in peripheral countries and in central economies. Wage relation as a relation of production, thus the individual labour law, generally comes to the fore when the concerns for productivity intensify or when the level of exploitation had to be increased due to the impasse of import substitution.

We have investigated the role of bourgeoisie's capacity of control over labour force in the emergence of NICs in the second expansion of Fordism. In Turkey, the law on industrial relations had not been enacted with the idea of reaching certain levels of productivity within the context of labour intensive technologies. Nor was the Turkish industry determined to take the necessary steps for such a kind of re-organisation.[282] The process of legal de-constitutionalisation of labour in Turkey responded on a material plane on which collective labour law has lost its function as a determinant of Turkey's peripheral/sectoral type of wage labour nexus and on

[282] The analysis on the attitude of the bourgeoisie and the role of financial liberalisation and banking system revealed the way the risks are socialised. And, it is concluded that bourgeoisie may be successful in socialising its costs yet the problem of convertibility of credit as a structural constraint of import substitution remains as a problem of national economy.

which individual labour law is conceptualised in a context in which its class dimension is denied, to the changes in the international division of labour. In conformity with the tendencies in non-NIC countries, the changes in the realm of labour law had firstly become observable in the realm of collective labour law. Throughout the 1980s, labour legislation following the enactment of the Constitution mainly interfered to collective labour law, thus, dealt mainly with labour relations within the realm of social division of labour (cf. Narmanlıoğlu, 2001).[283]

Within this context, the amendments on the labour act together with the enactments of Collective Labour Agreement, Strike and Lockout Law no. 2822, on 7 May 1983 and of Trade Union Law no. 2821 on 5 May 1983, all of which came into effect at the end of the military period, indicated that labour containment strategy for the post military regime era would not be in conformity with a kind of state corporatist framework but with the general thrust of the new right politics aiming to put the organised action of workers into its place (Işıklı, 2003). The status of the parties had been changed at a degree in which 'economic rationality' of market mechanism became the primary source in the labour relations.[284] Under these conditions, labour law became a particular set of discursive practices, which are defined by their strain towards consistency and are legitimised by way of reference to close systems theory of neo-liberal paradigm, within the context of the crisis of import substitution and of the crisis of the state form in which the constitutional

[283] Article 52 of the 1982 Constitution had brought clear strict and absolute restrictions on unions' political activities. Article 37/II of Act no. 2821 expressed these restrictions in a more detailed manner by declaring that 'Unions and confederations must not pursue any political objective, or carry on any political activity, or establish and maintain relations and cooperation with political parties or act together in any way on any matter with political parties'. The parliament, in 1995, among the many other Constitutional changes, repealed Article 52 of the Constitution at all (Act no. 4121, dated 23 July 1995). However Act no. 2821 is still in force and further enforced by the Act no. 4277, dated 28 June 1997, which 'enriched' Article 37 of the Act no. 2821 by introducing new constraints on union activities.

[284] For instance the due to the magnitude of the necessary duration before commencement of a strike that is not included into the wide range of provisions concerning prohibition and suspension of strikes (Articles 29, 30, 31, 32, 33, 34 of the Act no. 2822), in its provisions, the Act no 2822 seems to be interested in impeding the use of the right to strike.

order, institutions and organisations of the previous model of development existed in a distorted and malfunctioned manner.

The labour law of the post-1980s formed under the conditions of de-constitutionalisation in which labour, even in the form of abstract labour, is condemned to insignificancy in the discursive conceptualisation of economy in its liberal and narrowest sense. Living labour has come to be seen as a cost (of production) and is forgotten as a source of demand under the conditions of the second expansion of Fordism. When the terms and conditions of the concrete capital labour relation in the labour market and the labour process change, the state's function of securing the rights of capital in labour process and labour market change. The text of the 1982 Constitution carries the footprints of the two decades before it came into the force, albeit, these footprints can only be read with regard to reactions shaping the main discourse of the text. The former 1961 Constitution was providing a legal framework that would provide the basis for the workers to identify themselves as a class by granting them the right to strike as well as that of collective bargaining, which were among the functions of the Fordist resembling structural forms regulating the reproduction of capitalist relations of production. 1982 Constitution carries the footprints of a reaction against the collective representation of workers in and out of the state as a class, in conformity with the climate of the second international division of labour. Subsequently, the collective labour law has become a realm, in which the organisational capacity of working class deteriorated sharply. Repressive strategies have become dominant in face of conciliatory strategies, meaning that patriarchal understanding of state supervision have become favourable in face of legally-mediated private discipline (cf. Işık, 1995:257-287).

Collective bargaining, with the contribution of financial centralisation and as a result of the world-wide changes in the conceptualisation of work,[285] has lost its

[285] The overall picture of work society in the west was changing radically. The emergence of non-Fordist types of work lead to the revision of legal forms existing in the west. Although Turkey was not experiencing flexibility deriving from the changing dynamics of the industry, this tendency

role as a means to prevent competition for low wages even in the oligopolistic market structures. In addition, collective bargaining's function as a means of realising periodic increases in the purchasing power deteriorated. Within this context, legislations on labour issues have never referred to the procedures to achieve institutionalised compromises even at sectoral level. The striking point here is the interference of courts in the intangible apparatus structuring interactions between trade unions and employee organisations, thus, in collective bargaining agreements. Subsequently, the institution of collective bargaining as a determinant of wage labour nexus has significantly lost its function. The deterioration in the organisational capacity of class forces led to an extraordinary application of individual labour law in the stabilisation of wage relation (cf. Narmanlıoğlu, 2001:1-7). The relative compromise reached between 1950-1980 including collective bargaining, social insurance system, the power to demand stable wages, firing regulations having a certain degree of job security, eroded together with the relatively high wages. The pressure was applied on the collective capacities of the national labour force to the extent that these capacities were decisive in the formation of labour market strategies of labour front.

On the other hand, in the realm of individual labour law, the protective capacity of law, together with the interferences of collective labour law with the technical division of labour, remained, to a certain extent, both in the case law up till the 1990s and in the legislation up till the recent labour act (cf. Çelik, 2003:15, 17; Tunçomağ and Centel, 2003:2). The neo-liberal discourses of production included the commodification of labour power by way of the employment of labour contractsin the labour market on an expanded basis, yet did not include the re-regulation of the technical division of labour by way of abolishing the protective provisions of labour legislation until the recent changes.

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articulated to the hegemonic strategy, which was aiming to discredit the trade unions by turning them into incompetent structures that were even, incapable of delivering to their members, the expected benefits of organised action for wages.

However, from the 1990s onwards, the protective provisions of individual labour law remained in a context in which the recognition of conflict and its inevitability in industrial society have been evaporated from the consideration of jurisprudence. Individual labour law has been affected from this discursive shift. First of all, the definition of the individual labour law in jurisprudence is changed. Today labour law is being defined as the law regulating the relations between the worker and the employer on the basis of market relations (Ulucan, 2002:301). This definition implies that regulation in the sense individual labour law makes, is only aiming to reach a system in which labour is a pure commodity and has no collective identity against the individual capitalist, which is a fraction of collective capital. The application of the existing protective provisions of labour law (case law) has begun to change in the direction of the law of obligations, meaning that the first position in labour jurisprudence has become influential (cf. Özveri, 2002). Furthermore, an intersection between the changing application of court rulings and the changing content of the discourses of production became observable.

The residues of the obligatory provisions today could only be found in the realm of provisions concerning information and the health protection of individual workers. While the extension of the previous socio-technical system to technical division of labour was expressed in the protective individual labour law, the emerging unstable equilibrium, which may hardly be considered as a new socio-technical system, is expressed in the law of obligations and/or civil law, which embraces the new individual labour law and which, due to its nature, is in lack of capacity of regulating human relations within the scope of non-value form imbedded in society. Flexibility became a political mantra. The protective obligatory provisions are now obliged to take into consideration the measures of flexible specialisation that were investigated under the heading of labour-time models. In conformity with this situation, the court rulings had begun to change before the enactment of the recent individual labour act. The individual worker is now a juridical subject who has no connection with collective labour.

When legal constraints embedded in a wide rage of provisions regulating collective bargaining and individual labour legislation are eradicated; deregulation implies the rule of market. Individual labour law is increasingly becoming determinant in the formation of the norms of production, which, in the absence of an international rate of profit as a limit for exploitation, have become dependent on political action. In the light of the recent changes in individual labour law, which will be investigated in Chapter V, it is safe to say that the workplace relations will be regulated on the basis of the labour contract and of the law of obligations. Thus, contrary to the developments observed in the central economies, the term de-constitutionalisation seems to be relevant for Turkey, both for collective and individual labour law.

4.4. Conclusions

This Chapter is divided into two subsections. The first subsection investigated certain determinants of the socio-technical system of Turkey from the end of Second World War to the 1980s. It has been established in this first subsection that, under the stress created by the productivity gap between central and peripheral world in the first expansion of Fordism and similar to those of the states categorised under early import substitution, the Turkish state's function of securing the rights of capital to control had never achieved to a level at which the ruling classes benefited the extraordinary absorption of relative surplus value. When the second expansion of Fordism became an observable phenomenon, not only the collective capacities of labour to intervene in the national policies, thus the labour's capacity to interfere into the money as a social institution, but also the socio-technical system, including the regulations on the organisation of technical division of labour and the regulations on the collective action of labour in labour market and in the process of production had become a source of impediment over the 'successful' transformation of existing hegemonic strategies to an export oriented strategy.

The second subsection investigated the impacts of the implementation of the neo-liberal programmes in Turkey over the state's function of securing the rights of capital to control labour power within the context of the articulation between the conditions of the second expansion of Fordism and the internal contradictions of Turkey. For this purpose, correlation between the dynamics of accumulation referring to the impasse of import substitution, and the state's form, in which the state's function of securing the rights of capital to control labour power both in the labour process and in the labour market realised, has become a point of departure for the assessment of state power, which is limited with the paradoxes of capital relation and/or with the states controversial relation with accumulation process having international dimensions.

If we summarise the results of the ongoing import substitution, the Turkish industry bought machinery on credit, yet it could not utilise this by increasing its productivity both in the international realm and in the domestic market. The overall use of the credits entering the economy did not serve for the pre-validation of values in process, which, as expected, will complete the full cycle of valorisation and realisation, since Turkish domestic market was not enough for their realisation and the industry was not open to external markets. The motionless mass of past labour waiting to be valorised formed a barrier against the expansion of the system, which is in search for new domains of valorisation by way of changes in both the social and technical divisions of labour (Aglietta, 1987:356), whose dynamics are provided by the notion of competition, which, as a social relation of production, is consisted of class and commodity relations.[286]

[286] Inflation, which could be defined as a decline in the monetary expression of the abstract working hour (Lipietz, 1985), is now (under the conditions of financial crisis) heightened under the conflict between the stimulus generated by the existing structural forms of the society demanding recovery of the capital invested and the living labour time of the society, which creates the new conditions of the future. The conflict of these two time dimensions is expressed in a dysfunctioning of the financial markets, which are under the pressure of the anarchic proliferation of monetary funds that are not the result of the realisation of income. The result is the polarisation of incomes in a weakening economy due to the distortion of the range of interest rates away from the hierarchy of real returns that guarantees a balance growth of assets (Aglietta, 1987:373-374).

Given that Turkey, unlike India in the period between 1960 and 1981 (Lipietz, 1987), has not used the polarisation of incomes to its own advantage by harnessing domestic savings to finance industrialisation, the ratio of debt servicing to exports indicates its structural weaknesses clearly. Besides, the expenditure of credits invested in labour, which would not be validated on the world market, a structural flow of imports deriving from buying luxury goods indicates how these credits were consumed. The recession faced by the industry can be tracked down in the rising amounts of joint ventures[287] producing for the home market, in the failure of the privatisation of productive assets of public sector, in the speculative transactions of banking sector, in overall disability to invest, etc.

However, the failure of the Turkish attempt in productive industrialisation was not a true failure, or was somehow a pseudo failure for the Turkish bourgeoisie since the group based on industrial structure mentioned in this chapter made it possible for the ruling classes to transfer the loss of industrial bourgeoisie to the gains of financial bourgeoisie. In that process, in which various legal and illegal means were used, conditions of legality became unclear and corruption developed. Given the fact that they were the different faces of the same coin, especially after 1989, under the conditions of capital liberalisation, which has resulted with the high degrees of capital mobilisation, the loser was not in the aligned or imbricated front of capitalist sections of ruling classes. The loser was the working class, who, especially after the 1980s, was deprived of legal, political and economic means together with social acceptance, to challenge the economy policies of the nation.

Throughout the chapter, the structural constraints over the Turkish economy, the responses of Turkish bourgeoisie to these constraints and the determinants of wage

[287] Capital is not obliged to be represented by the same representatives, rather it changes its representatives. However, this time the new representatives were not from Turkey or were joined with the ones from Turkey. The impact of this change in the ownership was not something that can be understood by reference to capital transfers. The new ones had become a part of Turkish bourgeoisie, thus, have represented as a decisive part of it, in Turkish power bloc and formally, in Turkish state including parliament. Given that bourgeoisie had changed, the hegemonic strategies it once designed had also become subject to change, may be, together with the legal conceptualisation of working class and with the legal conceptualisation of it.

relation have been investigated. Our investigations established that the 'discoveries' of policy makers and the demands of Turkish bourgeoisie did not include certain policies aiming to reach export substitution as a means to articulate the existing international division of labour. The reason for this was not the conscious resistance of working classes to the deterioration of their living conditions. Given that state power, as revealed in the conjunctural effectiveness of state interventions, is a form-determined condensation of the balance of political forces, the answer of the question of which was preventing the Turkish state to initiate the structural change necessary to be a NIC lies at the capability of -structurally constrained- Turkish power bloc to benefit from external support without facing the cruel conditions of the second international division of labour and after. The impulse behind the re-organisation of the political system derives not from the struggles of working classes but from the dynamics of accumulation as a form determined by class struggle (cf. Holloway and Picciotto, 1991:163).

The answer of the question of what was preventing the Turkish state from initiating the structural change necessary to be a NIC paves way to the answer of the question of why and under what circumstances law entered industrial relations at particular points in time. It has been mentioned that when conditions of the second expansion of Fordism articulated with the internal contradictions of a given peripheral country neo-liberal programmes have found a base to be implemented on.

Turkey reveals the characteristics of a group of peripheral countries, in which the regulatory devices of the socio-technical system had become a source of rights for working masses to resist against the demands of ruling classes, and in which the industrial investment in labour has been weakened, and the unproductive activities pursued by the finance sector constituted the main portion of the economic activities. Within this context, the form-determined condensation of the balance of political forces provided the power bloc with the capacities to benefit from external

support without facing the cruel conditions of the second international division of labour and after.

In conformity with the pattern followed by the other countries in this group, the main concern for post-1980 Turkey seemed to be the re-regulation of collective labour law as a device regulating the collective capacities of the working class to interfere with national policies. Within this context, the neo-liberal revolution did not include the structuration of industrial organisation to charm international investments. Given that labour processes within the overall process of national production pattern remained to a large extent untouched, individual labour law became a point of reference only after the 're-regulation' of collective labour law.

In the final of Chapter III, we have offered two analytical reasons for the evaluation of the dynamics behind the need to change the individual labour law in these countries. Our investigations revealed that the first reason seems to be the most relevant for Turkey, meaning that the recent changes in the realm of the individual labour law of Turkey mainly derives from the stress created by unproductive investments on the division of total income of the nation. Under the conditions of the impasse of import substitution, the remaining share of labour within the gross national income is now being demanded. Yet, given that the division of total value produced in an economic realm is not an activity based on static forces, the changes in the process of production and distribution, including the changes in the right of capital to control labour power, may give rise to an environment in which the international conditions of investment in labour may occur.

On the other hand, the second reason referring to the conscious social engineering to charm international investments seemed to be fairly less relevant in face of the form of the state investigated throughout the chapter. While the rising amounts of joint ventures and the rising influence of IMF together with some degree of internalisation in some branches provided a certain fraction of ruling classes with

the economic base of autonomy from popular masses, which is the most important condition of peripheral industrialisation, the residues of the state form, the dominance of market as an *ex post* mode of coordination in face of *ex ante* modes of coordination, and the structural constraints of the Turkish industrial production indicate the relative superiority of the first reason. On the other hand, given that the above-mentioned two reasons may be in the same shoes, they support each other or each may provide the other the reasons for legitimisation as a basis of the strategies pursued by the ruling classes. The assessment of the relative weight of these reasons is not exhaustive and may contain new possibilities and potentials that are not within the direct concerns of this study.

The answer of the question of why and under what circumstances did individual labour law enter industrial relations at particular points in time, seems to be the exhaustion of the capability of -structurally constrained- Turkish power bloc to benefit external support without facing the cruel conditions of the second international division of labour and after, within the context of the impasse of import substitution and of the crisis of state form. The future and the potentialities of this form and of the existing development strategy will not be discussed in this study. From the same vein, the individual labour law will not be discussed by reference to its possible impacts on the development trajectory of the state form in Turkey.

Having investigated the dynamics behind the enactment of the recent labour act concerning the realm of individual labour law by way of reference to the correlation between the dynamics of accumulation and the state's form, in which the state's function of securing the rights of capital to control labour power both in the labour process and in the labour market is realised, one task remains to be fulfilled, which is the change in the powers of the parties of industrial relations in the realm of individual labour law, as a step in the process of the de-constitutionalisation of labour. This is the task of Chapter V.

CHAPTER V

WORK, EMPLOYMENT AND THE INTERNATIONAL DIVISION OF LABOUR IN AND BEYOND THE LABOUR LAW: AN ANALYSIS OF THE LABOUR LAW IN TURKEY IN THE 2000S

"Insisting on stability in a changing world reminds me
Don Quijotte's attack on windmills"
Refik Baydur
The President of TİSK
(TİSK, 1999b:9)

"Politicians, for God sake, do not rule the industrial relations
with an act dated 1936'
Tuğrul Kudatgobilik
Member of the executive committee of TİSK
(TİSK, 1999b:69)

"If you do not obey the other rules of competitiveness the number of
the dismissed workers would not change any thing"
İlyas Köstekli
Türk-İş representative
(TİSK, 1999b:73)

5.1. Introduction

Given that individual labour legislation as a part of legal discourse and of state power is inserted into the dialectic of social relations condensed/concentrated around the dynamics of accumulation, meaning that it is capable of making possible and facilitating certain forms of social relations while discouraging and

disadvantaging others in relation with the dynamics of accumulation, this chapter aims to explore the individual labour law in Turkey in the 2000s in the context of the historical and socio-economic circumstances within which it is embedded. Hence, this chapter seeks to achieve a functional analysis of individual labour law, thus, of the power relations imbedded in the norms regulating the realm of the technical division of labour and the labour contract, on the basis of the partial systematisation and thus, of the conceptualisations established throughout the study.

Individual labour law facilitates and makes industrial relations possible mainly in the realm of the technical division of labour. In addition, with regard to the cost of labour power to capital, thus to social division of labour, it regulates the sale and purchase of labour power between the individual capitalist and the individual worker in a juridic form; that is, labour contract. The limitation of the labour contract in conformity with the norms of production has been realised by way of individual labour law throughout the golden age. Within this context, individual labour law, in addition to its regulatory functions over the relations within the context of technical division of labour, served to normalise and stabilise the dynamic of struggle, conflict and competition within the realm of the social division of labour. On the other hand, the regulation of the pre-conditions of so-called 'equilibrium' prices based on the equilibrium between the volume of supply and demand of labour power, depends on a complex set of social relations out of the scope of individual labour law. In the realm of the industrial relations, collective labour law provided the most pervasive set of norms to regulate the relations containing the pre-conditions of the so-called equilibrium. Yet, with the collapse of institutionalised compromises and with the second expansion of Fordism the functions of the subsections of labour law, which are individual and collective labour law, have changed radically worldwide.

Given that the capitalist world order provides the context within which Turkey's participation and role is determined, the correlation between the dynamics of

accumulation and the state's form with reference to the correlation between the impasse of import substitution and the process of constitutionalisation and de-constitutionalisation of labour in Turkey are investigated in the previous chapter. Having investigated the relative dominance of individual labour law in the process of the de-constitutionalisation in Turkey in the 2000s, one task remains to be fulfilled, that is the form of change in the powers of the parties of industrial relations in the realm of individual labour law, in the process of de-constitutionalisation of labour. Hence, this chapter examines the change in the powers of the parties of industrial relations in the realm of individual labour law in Turkey in the 2000s.

Against this background, the second section of this chapter analyses the conjunction of the legal discourses and the discourses of production in Turkey in the 2000s. The way the particular positions of the legal subjects in relation to the others are constituted, have a clear link with the conceptualisation of 'economic', which constitutes the discursive borders of the capacity of control in the technical division of labour and, to the extent individual labour contract intervenes, in the labour market.

The third section of this chapter deals with the analysis of the legal borders of the employers' liberty (capacity of control). The new provisions related to the capital's right to control labour power both in the labour process and, to the extent that labour contract intervenes, in the labour market, are, in conformity with the existing discourses of production, covering many areas, including a transformation in the obligations of worker and the subsequent changes in the main conceptualisations of individual labour law, a shift in the regulatory scope of labour contract, the introduction of new type of labour contracts, all of which refer to a change in the norms of production and consumption determining the ratio of surplus value to capital (rate of profit). The investigation on the legal borders of the capacity of control will be pursued on two grounds. I will firstly investigate the legal borders of the capacity of control in technical division of labour. Secondly,

the shift in the regulatory scope of the labour contract in the labour market and the subsequent introduction of the new type of labour contracts referring to the changing limits of regulatory powers of the labour contract will be dealt with. This second task also contains a survey on the legal subjects that are excluded from the protection brought by the protective provisions that brought limits to the labour contracts. The notion of flexibility, which can be evaluated only after the accomplishment of the first two tasks, will be investigated as a third task. To conclude our attempt to reach a functional analysis of individual labour law, thus, to reveal the power relations imbedded in the norms regulating the realm of technical division of labour and labour contract, I will deal with collective labour law to the extent that these norms and institutions have an influence over the notion of flexibility.

5.2. The Conjunction of the Discourses of Production and the Discourses of Law in Turkey in the 2000s

5.2.1. Discourses of Production:

Market Rigidities Declared by Turkish Bourgeoisie and Their Representatives

Regulatory devices including institutions and organisations frame the obligations of the parties of the labour contract. The 'discoveries' of the regulatory devices are shaped by the complementarity of the discourses framing our imagination on economy (Jessop, 2002a). The calculations of managers about the likely impact of their decisions on alterations in the labour markets and on the wage-labour nexus is thus dependent on the dominance of certain discourses within the given time and space. Given that the changing role of the rhetoric of the labour market rigidities in the legitimisation of neo-liberal discourse worldwide is investigated in Chapters II and III, and the connotations of the same rhetoric in the Turkish context, including different forms of the labour market rigidities and correspondent proposals of reforms declared in several meetings after 1994,[288] will be investigated in this

[288] Erdoğan Karakoyunlu, the vice president of TİSK in 1995 declared in a meeting that it is with 1994 crisis that a 'dialog' between the parties of industrial relations established on the matters on flexibility including leave offs without payment, short term working, compensatory work etc

subsection. This investigation is expected to shed light on the discursive borders of the capacity of control in the technical division of labour.

Until recently, the protective provisions of labour law on recruitment and dismissals, in conformity with the above mentioned rhetoric, have been considered as the most important impediment for both individual capitalists, which have alleged that they have been suffering from 'political rationality' in general, and from 'primitive', 'old' understanding of industrial relations combined with 'populism' in particular. For instance, Yaşar Okuyan, the Labour Minister of the coalition government that has stipulated and to a great extent, outlined the existing Labour Act, declares in a speech:

> In employer-worker relation, which is a matter of private law, Labour Act brings out insurmountable responsibilities mainly to the employers. The wills of the parties are ignored thus the parties are deprived of implementing the changing needs of industry to the industrial relations.
>
> (Okuyan quoted in İstanbul Barr Association, 2002:277)

From the same vein, Rahmi M. Koç, the chairman of Koç Holding, concludes that the draft bill of 1993 on job security would have a "depressing effect on our [Turkish Industrialist's] competitiveness at international level".[289] Sakıp Sabancı, the chairman of the Sabancı Holding states that the Turkish labour code has always been detrimental over the exporting capacity of Turkish industry (TİSK, 1995:13,21). In addition, Refik Baydur declared in a meeting:

> A political organisation that is not giving priority to the [labour] contract in the resolution of labour disputes would be incapable of helping industrial relations.
>
> (Baydur quoted in TİSK, 1999b:7)

(TİSK, 1995:37). İlyas Köstekli, the representative of Türk-İş, in a meeting declared that discussions on flexibility is particularly commenced after 1994 (TİSK, 1999b:71).

[289] Interestingly enough the quoted allegation was declared in a meeting, whose overtly declared aim was to contact Turkish business and government in order to start a dialog between parties of industrial relations and which excluded the worker organisations (TİSK, 1995:26).

In order to shed light on the discursive borders of the capacity of control in the technical division of labour, we can categorise the demands of the Turkish Bourgeoisie in the 2000s under the headings of a) cost of hiring, b) cost of firing, c) unemployment benefits, d) contracts for a definite period (fixed-term contracts), e) working time, duration of work and part time, f) health and safety at work, g) geographical and sectoral mobility.

Cost of Hiring

Regulations on unfair competition, regulation and length of probationary (testing) periods, minimum wages[290] and barriers to a completely free-market recruitment (quotas for handicapped people, employment lists, bureaucratic procedures) are considered under the cost of hiring. While Turkish bourgeoisie demanded the internationally accepted forms of flexibility, it also demanded additional flexibilities that would be valid in times of crisis. At that point the Turkish bourgeoisie puts its difference from its European counterparts by overtly stating that some of the 'modern' labour law provisions cannot be taken into consideration in 'developing' countries, in which high inflation is a part of daily life (Onaran, 2000).

Within this context, the need for the legal establishment of transitory work relation, referring to the employer's right to 'transfer' the worker to another employer without abolishing the existing contract, has been openly declared since 1994. The origin of transitory work relation can be found in the Japanese institution ***shukko*** (cf. Woodiwiss, 1992:132), in which employer's patriarchal obligation to provide lifetime employment to the worker is embedded. It seems that in Turkish case the employer's patriarchal obligation to provide lifetime employment to worker has never been voiced, and ***shukko*** has been transformed to a new system in which

290 In a booklet published and prepared by TİSK, the association declares that minimum wage regulation of the previous Labour Act is inflexible due to the fact that it did not acknowledge the principle of payment with regard to the actual working time of the employee (TİSK, 1999a:43).

workers intensified subordination has not been compensated for. [291] From the same vein, the principle of "equal pay to equal work" is criticised by industrialists (TİSK, 1997; 1999a). TİSK(1999a) declares that the above-mentioned principle should be replaced by the principle of "equal pay to equal value production", meaning that a woman's work might be cheaper than that of a male counterpart doing the same job. As expected, proposals in this context regard longer probationary periods and the abolition of the employment lists. In addition, a temporary exemption from social security taxes for new hiring is a very common way to reduce the cost of labour. The principle of payment with regard to the actual working time of the employee is another demand of business (Işıklı, 2003). This demand is in connection with the new conceptualisation of working time, which refers to certain hours in a day rather than a certain part of the life of the worker, and workplace together with new obligations and new –personalised- dependencies to the individual capitalists.

Costs of Firing

As far as market rigidities are concerned, the main issues are the firing restrictions, the notice period, the severance pay and job security.[292] Advocates of deregulation call for the complete abolition of firing restrictions, such as provisions on job security, for shorter notice periods and for lower severance pays or for the socialisation of the cost of severance pays (TÜSİAD, 1997; TİSK, 1997). Since, they argue that firms would continue to be very reluctant to hire workers that they cannot easily get rid of. Erdoğan Karakoyunlu, the vice president of TİSK in 1995, declared that in case of the enactment of the draft bill on job security, the peace in industrial relations would be negatively effected by the outcomes of such an action. Furthermore, he mentioned that if a bill was to be enacted on matters on job security, then the provisions on severance pay would be re-evaluated due to their

[291] See Erdoğdu (1994), TİSK (1999a:47-54).

[292] In some national regulation, like Italy, large firms cannot fire workers without a good reason -"*giusta causa*"-; while in most countries, included the US, firing is at least submitted to some form of restriction against discrimination (see Piore and Sabel, 1984).

close connection (TİSK, 1995:37). On the other hand, these issues cannot be considered in isolation; without taking into account wage setting, unemployment benefits, the overall social security system, the regulation of collective bargaining and of trade unions in the national legislation. For instance, the inclusion of the provisions on unemployment benefits into the new Labour Act created demands, on the side of bourgeoisie, to dismantle further the firing restrictions. On the other hand, trade unions refer to the decreasing amount of wage costs in the overall cost of production to produce counter arguments (Türk-İş, 1998). They argue that referring to firing costs as an impediment is a fairly weak argument due to the low level of the contributions of these costs to overall costs.

Unemployment Benefits

In general, the organic intellectuals of the Turkish bourgeoisie allege that higher unemployment benefits discourage job search and so unemployment loses its 'disciplinary effect'[293] within the labour market (Centel, 1999; Yavan, 1999 ***inter alia***). Keeping in mind the near to the ground degree coverage of the current unemployment benefit in face of high degree of unemployment, the discussions should relegate the disciplinary role of unemployment.

Contracts for a Definite Period (Fixed-term Contracts)

Contracts included by this topic noticeably offer a direct opportunity for flexibility for the individual capitalists by enabling them to hire workers for a limited period of time without assuming any commitment. When fixed term contracts are discussed, proposals concentrate on the possibility to use this type of contract without any limitation and the possibility of renewing them an indefinite number of times (TİSK, 1999a). On the other hand, this kind of de-regulation is closely connected with firing costs. However, even if firing becomes free, this type of contract would be used since, the flexibility clauses used in ILO Conventions provide law-makers a chance to exclude the workers under this category from the

[293] The term 'disciplinary effect' refers to the fact that the unemployment induce lowers wages and so an increase in the demand for labour.

coverage of the protective provisions. In compliance with this situation, in many countries, the employment structure has shifted from secure jobs towards temporary ones.[294] İn conformity with the global trend yet faster than it, the number of temporary employees in Turkey has considerably increased in recent years. According to Cam (2002:214), the total number of employees working under this system climbed from 20,000 to 500,000 between 1985 and 1996. Consequently, fixed term contracts become compensation for legal rigidities referring to dismissals long before the enactment of the new Labour Act.[295]

Working Time, Duration of Work and Part Time

At the international level, the discussion on labour time mainly refers to the variations in the changing norms of production and of consumption for the legitimisation of new forms of working time. On the other hand, Turkish industrialists generally refer to the principle of payment with regard to the actual working time of the employee rather than a kind of flexibility occurring due to the variations in the production and consumption. For example, TİSK(1999a:43-46) declares that Articles no. 26, 33, 61, 62, 63 of the previous Act no. 1475, concerning the daily wage, constitutes the main reason of rigidity in terms of time flexibility. In other words, Turkish bourgeoisie is not in search of using labour in accordance with the change in the nature of norms of production, but it is in search of not fully paying the daily wage mainly in times of crisis.

Time flexibility, both in terms of working periods and in terms of duration of work, is generally considered in relation to the regulation of working times and of the duration of work in times of crisis rather than in times of over production. In

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294 Amongst the EU countries, for example, temporary employment grew from 5% to 8% in the UK, from 4% to 12% in Italy and from 6% to 13% in France between 1985 and 1997 (OECD, 1999). As for Turkey, temporary employment has risen from 5% in 1985 to 14% in 1997 (OECD, 1999). This proportion may be even higher, since the short spells of employment for women engaged in the home-based jobs in the textile industry are not always declared in labour surveys (Özbay, 1990).

295 "It has to be noticed that countries where the access to fixed term contracts has been heavily relaxed - such as Spain - do not seem to have reversed their bad unemployment trends." (Pianta and Vivarelli, 1993:173)

conformity with this situation, the total weekly duration of work has not, between 1994 and 2003, been questioned in the booklets, panel notes, conferences, of the representatives of the bourgeoisie (TİSK, 1995, 1999a, 1999b; TÜSİAD, 2002). On the other hand, compensatory work providing the employers to surpass the restrictions on overtime in crisis times, the option of payment of wages with free time/ with no additional costs, the re-regulation of resting periods are all demanded in the various proposals of Turkish bourgeoisie (TİSK, 1995, 1999a, 1999b; TÜSİAD, 2002). These proposals not only included the 'reform' demands on individual labour law but also the 'reform' demands in collective labour law.

Health and Safety at Work

Especially under miserable conditions of the labour process in some industries, health and safety at work can be costly for the employer (cf. Nichols and Sugur, 1996; Peker; 1996). This is also the case for un-registered activities if the worker can prove her/his allegations (Tunçomağ and Centel, 2003:33; Çelik, 2003:33). Thus, proposals on behalf of deregulation propose that, at least, the possible costs should be socialised by way of establishing health funds with the contribution of wages (Şardan, 2004). It is obvious that these kinds of proposals would have a detrimental impact on the already deteriorated social security system (Alper, 2003).

Geographical and Sectoral Mobility

From a wide perspective, the international competitiveness and the actual pace of technical change all call for a larger labour mobility both in terms of location and in terms of activity (Drache, 1997; Jessop, 2002a). In Turkey, however, this may provide necessary means to decrease labour costs when considered with the possibility of hiring workers to another employer, especially, in times in which production diminishes. Before the enactment of the new Labour Act, sub-contracting was the most used legal method to achieve mobility (Özşuca, 2003). Today transitory work relation offers new perspectives to industrial groups that were not able to use the subcontracting mechanism, whose operation is limited with unskilled workforce and with jobs (cf. Şen, 2002).

5.2.1.1. Demands of Turkish Bourgeoisi:

Functionalist, Economic Reductionist and Determinist

So far, we have investigated the liberal discourses of production and have given references to the demands of Turkish industrialists declared in various meetings. The discourses of production can now be considered as the declaration of a new paradigm in which the concepts used in the golden age capitalism are subjected to change. The re-acceptance of labour power as a pure/simple commodity and the shift from classical theory to the neo-liberal argumentations in the explanation of social facts (The novelty in the 'discovery'), thus the 'discovery' of the so-called labour market rigidities as an excuse, all represent this change. Within this context, the investigation revealed a certain consistency between the changes in the terms and conditions of the concrete capital labour relation in the labour market and labour process and the capital's way of abstraction of this relationship into its own discourses. We are now able to reveal the presumptions behind the new discourse with reference to the criticisms directed to Marxism explored in Chapter II.

At that point, it is fair to say that the presumptions of the advocates of the bourgeoisie on the recent changes in the realm of individual labour law are functionalist (*a priori*), economic reductionist and determinist in all the senses of the term that are analysed above. They are functionalist since the defendants of the new Turkish Labour Act, whether liberal or Turkish style conservationist, make their allegations on the basis of capitalism's or world system's requirements, which are eventually to be fulfilled by Turkish legislators. Such a conceptualisation implies that the changes in the realm of individual law came into existence because they fulfil a certain function.

From the same vein, Turkish bourgeoisie's argumentations on wage costs and on social security refer to a kind of conceptualisation of economy, which encourages a direct mapping of the concept of market economy to an unregulated labour market; thus, they are economic reductionist. The same argument is also determinist since, in this case, an economic process independent of the actors constituting its

elements is expected to determine the social action of human beings considered as unaware of the real motives behind their actions. The individual and collective agencies in this case, are considered as pre-given and incapable of influencing the structures that are shaping their behaviours.

References used in the presumptions of the bourgeoisie to the recent technical developments occurring in the labour processes, include the reduction of the course of technical changes in the instruments of work to legal changes, thus they are economic reductionist. Moreover, the way they refer to the technical developments contains, at the same time, determinism since here the power of the economic processes are considered as capable of determining social action. These declarations are grounding their claims on the neoclassical dichotomy between economics and politics especially when they refer to the harms of political rationality that hinders the realisation of their needs. Beside economic reductionism, this allegation includes determinism since it presupposes the independent existence of social structures in face of actors and their linear/direct causal influence on them.

5.2.2. Discourses of Law: Neo-Liberal Foundations of Legal Discourse

In our attempt to analyse the discursive borders of the capacity of control, we have examined critically the liberal discourses of production and have given references to the demands of Turkish industrialists declared in various meetings. To establish the link between the conceptualisation of ‘economic’ as a part of hegemonic project employed in a specific context and the way the particular positions of the subjects in relation with the others are constituted in law, we will now shortly examine the discourses of law with reference to two critical problems.

Neo-liberal foundations of legal discourse on which the process of legal de-constitutionalisation of labour is realised have to face two critical problems that are revealed in the debate around the flexibilisation and in the corresponding challenge to the existing legal provisions that determine the organisational capacity of the official labour movement and determine the capacity of employer to extract surplus

value from the individual worker in the labour process. Firstly, while some key elements of corporatism have disappeared, for instance the state as guarantor of basic workers' rights, its role as a mechanism to control labour's demands continues to be central. To the extent that this is the case, the most formal aspects of corporatist interest representation will need to be preserved. However, this might prove an impossible task given the uncertain terrain into which corporatism is being extended by the collapse of socio-technical system specific to Fordism.

Such a conclusion/allegation (the impossibility and necessity of corporatism in a new form to control labour's demand), in turn, is in correlation with a second paradox; that is, the failure of neo-liberalism to generate viable alternatives for social consensus around the international accumulation pattern currently being followed. Due to the paradoxical objective of controlling labour in technical division of labour in the absence of a state as a guarantor of basic workers' rights and of wage compensation within a context where, unlike 'successful' NICs, there is not a tendency for an openly repressive domination guaranteeing the accumulation pattern, discourse of labour law texts becomes the realms in which the denial of workers' rights are realised by way of the labour market as a means of coercion.

This is the point where Turkey (together with other non-NICs) makes tracks with the old terrain of Atlantic Fordism, in which Schumpeterian Workfare State is emerging (cf. Jessop, 2002a). While, in the latter, the state becomes a place in which its function of securing the capital's right to control labour is established in exchange for its function to support labour in a new format, that is, in the form of workfare state who subordinates social policy to the demands of economic policy without leaving investment including education, to labour, in the former, the subordination of social policy to the demands of economic policy referred to the states withdrawal from investing in labour and in poverty including neglect/disregard to education, health and training (impoverishing growth).

5.3. Legal Borders of the Employers' 'Liberty' (Right of Control) in Turkey in the 2000s: The Labour Law Reform

In the process of establishing the link between the conceptualisation of 'economic' as a part of hegemonic project and the way the particular positions of the subjects in relation with the others are constituted in law, we have posed two critical problems whose answers revealed the contradictory foundations of neo-liberal legal discourse on which the process of legal de-constitutionalisation of labour is realised. The study will now elaborate on the changing content of the legal regulations constraining the employers' 'liberty' (right of control) in the technical division of labour and in the labour market. Within this context, the erosion in the powers of the individual worker in the workplace will be investigated with regard to labour contract, which is regulated not only by the wills of two 'individuals' but by a complex series legislation, case law, and norms in the realm of production and of consumption.

The legal borders of the capacity of controlling labour power in the technical division of labour and in the labour market is defined by a certain juridic form, namely labour contract, by which the conditions of the purchase of labour power and the subordination inherent in this contract is established. The mutual relations between the bearers in the position of employer and employee can only be transferred to the realm of rights (in which control becomes a right) by way of labour contract. The individual capitalist's right to control as established in the labour contract has a certain bearing both in the realm of exchange relations and of the production relations thus both at the realm of individual and of collective labour law. However, individual labour law regulates mainly the relations in the realm of production. As a relation of production, the norms regulating wage relation mainly focuses on the use value created by labour power, thus, on the abstraction of surplus value both in the relative and absolute sense in the labour process. These norms arise from a qualitative difference in the positions of the two main classes vis-à-vis the conditions of production. Both the collective and individual labour law may include provisions regulating the extraction

(exploitation) of concrete labour in the realm of production; yet the major regulatory device with in the realm of the technical division of labour is the individual labour law. Moreover, given that individual labour law not only regulates capital labour relations in the technical division of labour, but also regulates the essential features of labour contract, being the main juridic form regulating the capital labour relation in the labour market, it is safe to say that the labour contract is essentially a feature of individual labour law. We will now establish the borders of labour contract as described in the provisions related to the realm of the individual labour law.

The New Labour Act (no.4857)

Labour Act is the most basic and comprehensive status regulating individual labour relations based on a labour contract. It covers the main components and limitations of labour contracts, such as the form of employment contracts, payment of wages, working hours, rest days, annual paid leave, protection of children and pregnant women workers compensation, work rules. On 22 May 2003, the National Assembly of Turkey passed a bill to re-regulate/de-regulate the individual labour law. The amendments were covering many areas of employer worker relations belonging to the technical division of labour and to capital-individual worker relations in the labour market. The new provisions are, in conformity with the existing discourses of production, covering many areas, including a transformation in the obligations of the worker and the subsequent changes in the main conceptualisations of the individual labour law, a shift in the regulatory scope of labour contract, introduction of new type of labour contracts, all of which refer to a change in the norms of production and consumption determining the ratio of surplus value to capital (rate of profit). This means that the relatively durable pattern of structural coherence (social fix) in the handling of the contradictions and dilemmas inherent in the capital relation in peripheral capitalism of Turkey is under a process of change (cf. Jessop, 2002a). Within this context, the coverage of the new Labour Act expanded to other realms, once regulated by the obligations act and a completely new individual labour status has come into existence.

5.3.1. The Changing Form and Content of the Worker's Obligations

The objective of controlling labour in the technical division of labour by way of market as a means of coercion, without further establishing additional repressive means of domination, increased the ecological dominance of capitalism, thus, the role of civil law/law of obligations in such a way that the text of the Labour Act and the other legislation concerning the individual labour law has become similar to that of the law of obligations. We observe the dominance of the law of obligations in the discourse of labour law. In conformity with this tendency, the main conceptualisations of individual labour law have become subjected to fundamental changes. The striking point here is that the essential changes in the fundamental concepts of labour law have not been referred to by the participants of the discussion on the recent Labour Act. Rather, the discussion has been pursued by reference to the new obligations of the worker as if the discursive context of the previous Labour Act existed. This subsection will discuss the changing content of the main conceptualisations of the individual labour law on the axis of the change in the notion of subordination.

5.3.1.1. The Changing Meaning of Subordination

The Relation between the Control and Subordination of the Worker and the Entrance of the Socio-Technical System into Industrial Relations

Workers' subordination to the employer in the performance of a certain job is the fundamental pre-requisite of working relation. The power to determine the actual deployment of labour in the production process is dependent particularly on this obligation of the worker. The power to determine the actual deployment of labour in the production process, that is the power to control, has two analytical components also acknowledged by the labour law. These components are the individual capitalist's right to demand the worker to do the job that is framed by the labour contract and to issue orders related to the subject matter of the contract. These rights can be used by representatives, who are at the same time [white collar] workers of the same individual capitalist. Only by way of subordination can the

conditions of the extraction of surplus value, among which exists the workplace organisation, be established.

Recently, in addition to the two analytical components mentioned in the above paragraph, and in conformity with the increasing dominance of the first position (neo-liberal discourse) throughout the world, the notion of control has acquired a new criterion, that is, the duty to perform the job on behalf of the company (Çelik, 2003:75). Individual labour law, unlike collective labour law, is capable of extending to unregistered activities since the actual existence of the performance of a certain job is enough for the acceptance of work relation without further proof, such as a written labour contract. When considered with the ability of the individual law to influence the unregistered activities, this new dimension requires the workers to perform their job in conformity with the new norms of production. In sum, the notion of control appears as the point at which socio-technical system enters into the technical division of labour by way of regulatory powers of the state, in which capital is represented unequally. Thus, the way the concept of subordination is conceptualised is central to the legislation related to the industrial relations.

Subordination and Labour Contract

The worker shall be considered as the person who works under a labour contract (Article 2 of the new Labour Act). The whole bulk of regulations concerning both collective and individual labour law are based on the legal category of the worker as a party of the labour contract[296] [297](Tunçomağ and Centel, 2003:33; Çelik, 2003:33).

[296] One exception to this rule is the Trade Union Law, no. 2821 whose scope of application is extended over labour contract and included the transformation, publication and ordinary partnership contracts (Article 2 of the Act no. 2821).

[297] Currently, those covered by the Labour Act will be subject to its provisions, while the labour contracts of seamen and white-collar press workers are governed by their respective Acts. Those who fall outside the scope of all this legislation, work under the provisions of the Obligations Act concerning the labour contract. However, it seems that references to the Obligation Act would diminish, since, unlike the previous Act, the definition of labour contract is given in the new Act. Yet, as regards those matters not regulated by the provisions of the Labour Act, the Maritime

In the previous Labour Act, the concept of the individual employment contract was not defined. The judiciary was referring to Article 313 of the Obligations Act, stating that the labour contract is a type of contract whereby the employee undertakes to perform a definite or indefinite service in return for the employer's obligation to pay a certain wage. What was missing in this definition was the subordination of the employee to the employer. The gap in the legislation was settled by the Constitutional Court declaring that "a labour contract consists of three constituent: a- performance of a service or task, b- payment of a certain wage, and c- subordination. A person working under a labour contract is, *to a certain extent*, subordinated to his employer, that is he performs the *specified service* under the control and supervision of the employer"[298] (Italics are mine). It is clear that, subordination, as a natural outcome of employment relation, was understood with reference to the nature of the 'specified service' that would be carried out by the worker. Moreover, in any case, the worker's obligation of subordination would be limited as the clause 'to a certain extent' stresses.

In the narrowest sense, an individual labour contract establishes a personal relationship between the employer and the worker, both of which represents capitalists and collective worker respectively. The obligations deriving from this relationship were based on the general principles of the Obligations Act. Given that the employment relation was regulated by a series of legal texts within the framework of institutions, the outcomes of this hidden reference to obligations law, throughout the time in which the previous Act had been in force, was not caused a 'market friendly' case law. In the previous system,[299] the employer's orders and instructions were limited by the needs of the establishment. Jurisprudence

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Labour Act and Press Labour Act, the provisions of the Obligations Act shall continue to apply as they are of a more general nature.

[298] Constitutional Court, 26-27 September 1967, 1967/29 (Official Gazette, 19 October 1968, 13031)

[299] See Court of Cass., 9th Div., 17 July 1987, 1987/10300, 11205

commented that these civil law obligations on the parties were applicable provided that they were not contradictory to the essential principles of the employment relationship as understood by the judiciary (Dereli, 1998:83), which was deeply influenced by the second type of understanding mentioned above.

The Change in the Meaning of the Concept of Subordination: Definition Brought by the New Labour Act

The first sentence of Article 8 of the New Labour Act defines the labour contract as a type of contract whereby a party (employee) undertakes to perform, under subordination, a service in return for which the other party (employer) undertakes to pay him a certain wage. At first sight, the Constitutional Court's decree with regard to the definition of the labour contract seems to be taken into consideration. Subordination of the employee to the employer is recognised.

The other change is in the removal of the terms 'definite or indefinite', which were stated in the Article 313 of the Obligations Act, indicating that subordination cannot be limited by defining a certain form of it as definite. The role of the 'nature of the specified service', which would be carried out by the worker in conformity with workplace rules, case law, and protective measures brought by law, ceases to be determinative in the assessment of the limits of subordination under these conditions. Moreover, under the light of the new Act on individual labour law, the worker's obligation of subordination will not be limited as the expression 'to a certain extent' in the Constitutional Decree ceased to be valid. When considered together with the removal of the terms '*indefinite and definite service*', the concept of subordination acquires a new meaning in which the powers of the employer in the determination of conditions of work are increased in face of the decrease in the restrictive role of the notion of 'nature of the work' in question.

İn conformity with the above mentioned comment on the changing nature of the notion of subordination in labour law, Article 9 of the new Labour Act states that parties can determine the context of the service in question by their own will, unless the provisions of the relevant legislation were violated. Such a statement

overtly declares that the custom and the nature of the work as interpreted by the judiciary cannot be an impediment over the formulation of the individual labour relations.

Subordination becomes a Pre-condition of Selling an Ordinary Commodity

Another change in the conceptualisation of subordination can be traced in the possibility[300] to bring the dispute before the arbitration tribunal in case of the unfair dismissal in workplaces employing more than 30 workers (Article 18 of the new Labour Act). In contrast to the role given to the state, which can be summarised as intervening positively in the imbalances between labour and capital, in the previous legal discourse, the inclusion of arbitration, (which is in fact a civil law institution and thus which is only relevant to private law conflicts in between equal parties having equal rights and interests), into industrial relations, reflects a serious change in the overall picture of class positions. Subordination then becomes a pre-condition of selling an ordinary commodity and thus, becomes a relation between individuals rather than being a process of relations between the worker, and the nature and the worker and the capitalist in labour process.

The Principle of Social Utility

Classical labour law aims to protect the workers due to the power imbalances in the nature of the work relation (Tunçomağ, 1971:1-12; Işıklı, 2003). This approach is fully consistent with the specific character of the commodity in question. The new understanding ***softens*** [301] the principle of the protection of the worker under the light of the principle social utility that finds its legitimisation in neo-liberal theory. The protection of the worker is considered to be related to the protection of the existence of enterprise, which in turn provides the worker its wage. The change in the importance of the principle of the protection of worker directly replicates the

[300] Article 20 of the new Labour Act states that in cases where arbitration tribunals are referred in collective bargaining agreement, parties will have the right to bring the case before the arbitration tribunals.

[301] The expression of "Softening the principle of the protection of worker with the principle of public utility" belongs to the Mustafa Kılıçoğlu, who is the member of the 9th division of Court of Cassation dealing with labour conflicts (Istanbul Barr Association, 2002:264).

connotation of subordination. The legal impediments over the individual capitalist's enjoyment and usage of labour power disappear in face of the priority given to the protection of the enterprise.

This situation is also in conformity with the trends in advanced capitalist societies (Woodiwiss, 1992:99). The public interest test has gained a general pertinence to the degree that it provides the basis for mediation in the passage to the first position from the second position in the absence of clear protection of individual capitalists from statutes and codes. As in other societies in which the first position has gained a dominance, the prominence of a public interest test carries the possibility that, in the absence of a clear countervailing discursive principle such as might be represented by the privileging of the rights of labour, judgements will depend upon the nature of the prevailing values and individual judges' understandings of them, as it seems to be recognised to varying degrees by the Turkish jurists dominating the civil court system.

The Principle of Acquired Right Losing Its Meaning

The obligation of the employer to pay wage in return for the obligations of the worker, among which subordination to the instructions of the employer remains, is changed. The worker can (be forced to) choose to take free time in expense of overtime payment that he gained. Before the enactment of the new Labour Act, the Court of Cassation insisted that this could not be done due to the principle of acquired right.[302] Yet, the same rulings indicate that before the enactment of the new act, in the case of an overt statement in the collective agreements signed, the payment of overtime work by way of giving free time to the workers at another time convenient for the employer, is legitimate.

[302] Court of Cass., 9th Div., 04 December, Dec. no. 36026/35024; 09 July 1997, Dec. no. 12355/14232

Employer's Right to Surpass Collective Bargaining by Way of Individual Labour Contracts

The change and expansion in the regulatory realm of labour agreement against the protective principles and provisions of industrial relations legislation has brought new connotations to the notion of subordination. The first paragraph of Article 6 of the Collective Labour Agreement, Strike and Lockout Law (no. 2822) states that "unless otherwise stated in the collective labour agreement, no employment contract may be in contradiction with collective labour agreement in question". This Article clearly declares the autonomy of collective labour agreement. The notion of flexibility provides, in TİSK (1995; 1999a; 1999b)'s argumentations, a base to change the principle of the autonomy of collective labour agreement meaning that individual labour contract could be in conflict with collective labour agreement, but still be valid. In conformity with the prevailing values, individual judges' understandings changed and the case law, before the enactment of the new Labour Act, abolished the autonomy of the collective labour agreement together with the application of the first paragraph of Article 6 of the Collective Labour Agreement, Strike and Lockout Law (no. 2822).

Transfer of Ownership at Workplace

The slippage in the conceptualisation of subordination is also observable in Article 6/5 of the new Labour Act, stating that the transfer of ownership in the workplace does not give the worker the right to terminate the contract without prior notice. This means that the worker would lose his right to severance pay if he refuses to serve the new owner. This was also the case in the Case Law concerning the Previous Act (Çelik, 2003:57), yet the overt statement of the new Act empowered the new employer providing 'economic', 'technical' and organisational reasons, with the right to terminate the contract 'without prior notice' meaning that the employer can now fire the worker without paying his severance pay under certain conditions. When considered with the workers of the companies in the scope of

privatisation this provision makes available the cost free dismissals of ex-officials that were subjected to new act.[303]

5.3.1.2. The Changing Conditions of Work

Another point to be mentioned is the legal regulation of the change in the conditions of work (Article 22). While the previous Act was stating that "if the employer materially alters the conditions of employment or fails to apply them" the worker would have a right to terminate a contract without prior notice (Article 16/II e) and he would have a right to severance pay (Article 14), the employer of the new Labour Act is powered to force the worker to work under new conditions by stating in writing that the change is compulsory and is based on a valid reason or that he has any other valid reason (Article 22).

The changing content of the concept of subordination can further be monitored by examining the new group of articles regulating the duration of work and overtime work. Given the poor levels of productivity in the Turkish industry, under the current conditions, the further extraction of surplus value from the workers requires the currently extracted levels of absolute surplus value from the collective worker to be increased.

Regulation of Weekly Duration of Work

The previous Labour Act was considering work going over daily working time as overtime without making further investigations into the weekly working time (Articles 35 and 61) and declared that the duration of work shall not exceed 45 hours per week (Article 63). While the previous Act was compulsively stating that this period shall be distributed evenly over the work days of the week without exceeding 9 hours (if the workplace operates 5 days) and without exceeding 7.5 hours (if the workplace operates 6 days), the new Act enables the employer to

[303] Article 112 of the new Act states that the personnel, who are not subjected to the new act and to the statutes no. 854, 5953, 5434, of public corporations and institutions founded by law or the authorisation of law, and the ones working by contract in a public corporation, shall deemed to be compensated in cases where they were received any sum corresponding to severance pay.

regulate the distribution of the working hours of the week discretionally up till 11 hours a day (Article 41).

Throughout the 1990s, however, in conformity with the recent changes in the individual labour law, the Court of Cassation, rather than referring to daily working time in conformity with the text of the previous Labour Act, referred to the weekly working time in the accounting of overtime (TİSK, 1999:44). At the same time, TİSK(1995; 1999a; 1999b) and TÜSİAD, in various booklets and declarations after 1995, demanded the provisions of the Labour Act on time flexibility re-regulated, if Turkey is to have a 'modern' Labour Act. These proposals included the calls for waiving from dividing the weekly duration of work into equal pieces for each working days; acknowledgement of compensatory work and flexibility in the regulation of the leave offs, etc. The New Act also states that the employer can force the worker to work 11 hours a day, providing that this work is in the limits of the weekly duration of work with reference to the average of the previous two months. What's more, this two month periods can be extended to 4 months, when included into the collective agreements (Article 63).

Commencement and End of Daily Work

Article 67 of the new Labour Act clearly empowers the employer to regulate the working hours within the 24 hour time period, discretionally. The flexibility brought by the Article is known as slippage in the duration of work in central capitalist countries and in application since the early 1970s (Tuncay, 2003:164). The power of the employer is enlarged in two dimensions by this legal technology. The first dimension is the power to determine the commencement time of the working day (simple slippage). The second dimension is the power to determine not only the commencement hours of the working day but also to determine the duration of the working day (qualified slippage). The new Act, in Article 67, by stating that the commencement and ending hours of the daily work is declared by the employer to workers, opens the way for the qualified slippage.

Resting Breaks

Article 64 of the previous Labour Act stated that when work lasts four hours or less a rest break would be 15 minutes and one hour when work lasts more than seven and a half hours. The new Labour Act, in conformity with the demands of Turkish industrialists (TİSK, 1999a: 35) and EC Directive no. 104, left the regulation of the breaks to the employer (Article 67/1). This situation is clearly in contact with the new institutionality, which signifies the change in mass production patterns, in which masses of workers started to work, eat together, and went back home at the same time.

Compensatory Work

One of the striking features of the new Labour Act is that it introduces compensatory working into the industrial relations system (Article 63, 41/3). The worker's obligation ends when s/he provides his service under the command of the employer, whether or not the employer uses it. Compensatory work is an invention to prevent the worker from gaining wage in some certain cases where the employer lacks the ability to use labour power. Here we observe the way the different structural power differentials are shaped by the labour contract and relevant legislation under the neo-liberal discourse of law. To put it differently, we observe the correlation between the legal discourse and content of the labour contract (the right of individual capitalist to control labour power) within the framework of the codes regulating the labour relations in the society.

Article 63 states that in case of the suspension of work due to *force majeure*, to closure before and after the national feasts and general holidays, to permission given to the worker by request, or 'etc', the employer, within two months, can demand from the worker to work for compensation, thus, to work without any corresponding payment. Under the previous Act, such a compensation was not legally/technically possible since every kind of work exceeding the daily work was legally considered as overtime (Article 35 of the previous Act). The new Labour

Act clearly stated the right of the employer to demand from the worker to work for compensation.

Overtime Work and Over Work

Over work is a new conceptualisation. In workplaces in which the duration of weekly work is less than 45 hours, the extra work up till 45 hours is called as over work. In cases of over work, the wages shall only be 25 per cent above the normal hourly rate, while wages for overtime, which is the work over 45 hours, are going to be fifty percent above the normal hourly rate. Accordingly, to work for 45 hours a week is considered as a duty of collective worker in the new Labour Act. We see here a peculiar/negative kind of limitation of labour contract. This time limitation works for the benefit of employers meaning that protective provisions have become protective for the individual capitalists.

Furthermore, the previous Act was stating that the work beyond the daily work period prescribed by its articles shall not exceed three hours a day. From the same vein, while the previous Act was limiting the total overtime work to the total number of days (90 days), the new Act limited the total overtime work to the total number of working hours (270 hours), meaning that the obligation of the worker to work overtime well may be over 90 days in a year (Article 41). The new act totally annihilated the 3 hour daily limit for overtime and overwork, from the labour contract, meaning that a worker's working time can exceed 11 hours working day in return for only 25 per cent increase in her/his income. What's more, the new Act powered the employer, if s/he can 'persuade' the worker, the power to force the worker to use the benefits of overtime or over work as an idle/resting time in times in which the density of the work decreased (Article 41). These shifts are in conformity with the emergence of de-standardised, fragmented, plural employment system, as a result of which the realm of application of protective individual labour law provisions has been limited to the periods in which work is performed in the strictest sense. This transformation is followed by the re-conceptualisation working time, which refers to certain hours in a day rather than a certain part of the life of the worker, thus, followed by an additional shift in the meaning of subordination.

Reduction in Duration of Work and Corresponding Remuneration

In the previous Labour Acts regulating the duties of employers, the duty to pay wages was totally on the employers' side. The employer's right to demand certain services from the worker, thus the notion of subordination, owes its legitimatisation to the obligation of the employer to pay wages. Yet, Turkish lawmakers, in the new Labour Act, provided the employers with the right to socialise the risk of failing to pay wages in times of recession.

The procedure of the socialisation of the risk of failing to pay wages has two variants. The first variant is related to the appearance of a general economic crisis, thus to relatively objective conditions (Article 65). In case of the economic crisis or *force majeure,* the employer who significantly decreases the weekly working hours or suspends working shall inform the Turkish Labour Exchange institution and if any, the relevant trade union. The Ministry of Labour and Social Security examines the suitability of the application. If this period of suspension exceeds four weeks, the workers, who are entitled to unemployment remuneration, will be compensated by an unemployment security fund, which is supplied by the cutbacks from the wages and by a minor contribution of employers (Article 65). The other variant is the disability of the individual capitalist to disburse its debts (Article 33). In case of concordat, insolvency or a licence of meagreness (Article 33), all of which result in a disability to pay the wages, the employers will be able to use the benefits of a fund that would pay the wages on behalf of the employer (Article 33). The conditions relating to the second variant correspond to the inability of individual enterprise's management. While in the first variant (Article 65) the beneficiary seems to be the Turkish industrial capitalists in general, in the second variant (Article 33) the workers of the individual capitalist, together with the individual capitalist in question can become beneficiaries, for a limited 3 months (Article 33). Within the context of new regulation, the employers acquire the power to socialise

the risks of the duty to pay wages, by way of acquiring the power to apply wage guarantee[304] or unemployment security funds.

When Articles 65 and 33 are considered together with transitory work, the compensatory work and over work, it is safe to say that the 'novelties' in the new Labour Act is aiming to empower the employer's side in case of the crisis of production rather than creating the conditions of productivity.

5.3.1.3. The Changing Definition of the 'Employer'

So far we have investigated the changing content of the workers' obligation to subordinate within the context of new provisions and conceptualisations of the individual labour law. Workers' obligations are the opposite components of the rights of employers. The investigation reveals the enhancement in the rights of employers. The qualitative change in those rights brings out a new employer. Thus, the new form of subordination becomes clearer when considered with the new definition of the employer in the new Labour Act.

In the previous regulation,[305] each partner of joint ventures were separately responsible against the worker as separate employers. This situation was providing the worker with a right to demand compensation from each partner in the ordinary partnership that constituted the joint venture since ordinary partnership, which is the legal definition of joint venture, did not have a legal personality. This power was essential in cases where the domestic partner liquidated. Whether or not in conformity with the rising amount of joint ventures in the previous decade, the new Labour Act granted the ordinary partnerships the necessary powers to be counted as a single employer, thus abolished the above-mentioned power of the worker to apply the juridic personalities forming the ordinary partnership, separately.

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[304] Wage guarantee fund will be composed of one per cent of the total premiums of the employers deposited to unemployment security fund (Article 33).

[305] The provisions of the Obligations Act.

We can now try to give the picture of the new employer described by the new Labour Act. It is a legal subject capable of determining the conditions of work, in many times regardless of the nature of the work in question; capable of appealing to arbitration as if the conflict in question were a private law conflict; of asserting the principle of 'the protection of the existence of enterprise' in face of the principle of protection of worker; of 'persuading' the worker to choose to take free time in expense of overtime payment; of signing labour contracts that are in conflict with collective labour agreements; of transferring the ownership of the workplace without facing rightful termination of work contracts by workers; of terminating the previous labour contracts of the workplace that it has acquired without facing the risk of paying severance pays; of distributing the working hours of the week discretionally up till 11 hours a day; of determining the commencement time of working day (simple slippage); of determining the duration of the working day (qualified slippage); of determining the breaks; of not paying the wage in some certain cases where it lacks the ability to use labour power; of demanding worker to work in return for only 25 per cent increase in certain cases (over work); of socialising the risk of failing to pay wages in times of recession; of hiding behind an ordinary partnership (joint venture) and so on.

Such a definition creates a new structure in the reciprocal relation between the worker, as a fraction of collective labour, and individual capitalist, as a fraction of capital in general. The worker as defined in the new Labour Act is the opposite of the employer meaning that the power he has or the energy of his muscles and brain has become closer to ordinary commodities whose trade is subjected to the rules of the market. The class effect[306] it produces will be clearer when the analysis of labour contract is made further.

[306] Another novelty introduced in the new Act is that it empowered the high degree white collars working as employer's representative, by providing them a right to represent the company out of the work place (Article 2). This item constitutes an amendment to the Commercial Code. The dissimilarity in the class positions of high degree white collars can further be traced in their exclusion from the job security provisions (Article 18/5).

5.3.2. The Shift in the Regulatory Scope of Labour Contract

In the previous subsection, the legal borders of the capacity of control in technical division is investigated. In this subsection, I will deal with the shift in the regulatory scope of labour contract in the labour market and the subsequent introduction of the new type of labour contracts referring to the changing limits of the regulatory powers of the labour contract, thus to the increased determination of the universal principle of the freedom of contract in the establishment of the labour contract. However, any investigation into the limits of the regulatory powers of the labour contract requires a survey on the legal subjects that are excluded from the protection brought by the protective provisions that brought limits to the labour contracts. This issue will also be dealt by this subsection.

5.3.2.1. Relative Dominance of the Universal Principle of Freedom of Contract

The power to sign new types of labour contracts in conformity with the universal principle of freedom of contract is introduced to the system of norms regulating the labour contract recently. The second Paragraph of Article 9 overtly declares the above-mentioned freedom that was not declared in the Act in the previous legislation. Within this context, contractualism refers not to any actual or hypothetical agreement between capital and labour but to a condition by which public nature of the contractual situation is ignored.

In general, labour contracts are subjected to the rules applying to the other kind of contracts, thus, labour contracts are subjected to law of obligations. Yet, in conformity with the social characteristic of the private labours, the labour law is not an indisputable part of the private law. At the outset, market-based distribution of labour power is not something like distributing, for instance, water melons. Various constitutions acknowledged the right to work as a universal human right and this right cannot be reduced to the right to ‘put up for sale’ (Woodiwiss, 1998). Secondly, at least from the perspective of the second position in jurisprudence, the individual labour law has been overtly declared as the protector of the weak in industrial relations (Tunçomağ, 1971:8-12). Consequently, the generality of the

condition set up by contractualism inherent in Article 9, cannot be linked to the actual positions of social subjects that belong to a specific society. The limits of the universal principle of freedom of contract in labour relations refer to the legal construction of the hypothetical agreement between capital and labour thus refer to the way the economic and legal are imagined.

Throughout the study, we have seen -within the context of the rupture of the conciliation between accumulation and its regulation and of the dominance of value form- that the economic crisis was above all a crisis of capital's ability to control its conflictual relationship with labour through a social and political dialectic. Within this context, the strategies for crisis management, mainly in countries that could not be articulated to the international division of labour as an export subtituter, shifted from mediation to exclusion of the labour from collective negotiation, which had been partly established throughout the early import substitution period. Under these conditions, the legal construction of the hypothetical agreement between capital and labour is based on the individual agreements, thus on labour contracts, in which the universal principle of freedom of contract has gradually become dominant and has changed the previous limits brought by the protective provisions of Labour Acts.

5.3.2.2. The Narrowing Limits of the Universal Principle of the Freedom of Contract

The limits of the regulatory capacity of labour contract in the Turkish legislation derives firstly, from the residues of the protective provisions of the individual labour law, then from labour law in general including the constitution, the legal statutes other than Labour Act and the international conventions including acquis communautaire and ILO conventions, the case law, regulations and by-laws enacted by the execution. There are many types of the limits. This subsection will deal with the limits that are in direct relation with the shift in the regulatory scope of labour contract in the labour market. To do this, the issues that are most frequently taken into consideration by the parties before the authorisation of the labour contracts will be dealt with. The issues that are most frequently taken into

consideration are chosen with reference to the discourses of production and of law, as revealed by the representatives of the bourgeoisie and trade unions, and the by labour law practitioners.

Provisions on Workers' Health and on Employment of Women and of Child Labour

While women's participation in labour force, as mentioned above, is not increasing (cf. Ansal ***et al.***, 2000:106) thus, one of the main consequences of selling cheap labour is not emerging in conformity with the ongoing dominance of import substitution in Turkish industry, the new act increases the cost of employing women for companies by extending the duration for the maternity leave for two more weeks in comparison to the previous Act (Article 74). When this positive change is evaluated with the anti-labour discourse of new Labour Act together with rising unemployment and increasing numbers of reserve army, it would be safe to say that this positive change serves for the legitimisation of the new Act as a progressive and protective legislation. This change can further be evaluated with in the conservative positioning, which implicitly aims to put women in their place, that is at home. In addition, the preamble of the new Labour Act refers to the EU Directive 1992/85. Once again, the form provided by the central economies is filled by the substance provided by domestic class struggles.

Even the most primitive labour legislations prohibit the employment of children under certain conditions. The new Act reiterated the previous Act and prohibited the employment of children below the age of 15 (Article 67). It is possible, however, to employ children who are above the full age of 14 in light work, which do not hinder child health and education/training (Protection of General Health Act, Articles 173, 176). The notion of light work is not clear. In addition, children between 14 and 18 years old must pass a medical examination in order to be certified as physically fit for the job to be performed, taking into consideration the nature and conditions of the work (Article 87). While the nature and conditions of work have been losing their importance in the determination of the worker's duty to subordinate, the same notions are considered to be imperative in issues related to health.

Boys under the age of 18 and girls and women irrespective of their age are prohibited to work in underground or underwater work (Article 72).[307] Another limitation of the labour contract in the new Act is that children who have not attained the age of 16 years are prohibited to work at arduous or dangerous employment (Article 86). In addition, no one would be employed for any arduous or dangerous work without having a certificate based on the results of a medical examination made either at the time of hiring or during their employment to prove that they were physically fit and healthy for the job in question (Article 86).

Quotas for Disabled Persons and Ex-convicts

Every employer employing 50 or more workers is compelled to employ disabled persons and ex-convicts. The number to be employed was the six per cent of the workforce for each category (Article 30). While this obligation had been determined over the number of permanent workers in the previous Act (Article 25), the new Act refers to the contracts for a definite and an indefinite period. Given the suitable legal and extra discursive conditions encouraging the use of subcontractors in workplace, the replacement of the term permanent workers with the contracts for a definite and an indefinite period helps employers surpass the already difficult condition brought by the new Labour Act.

Job Security[308]: General Limits of the Right to Terminate the Individual Labour Contract

Termination of Labour Contract

The notion of the freedom of contract provides a legitimate base for both the employer and the worker to terminate the individual labour contract merely by notifying the other party unilaterally. The individual labour law has imposed certain restrictions, such as the suspension of the individual labour contract under certain conditions, especially during strikes and lock-outs, the compensation of

[307] For instance, work in mines, cable –laying and the construction of sewers and tunnels.

[308] For a detailed analysis of job security in Turkey, see Centel (2002), Kaya (2001; 2002a), Tuncay (2003), Yüksel and Yıldız (2002).

abusive exercise of the right to terminate the employment contract, and the freedom to terminate the labour contract for reasons of public order. The list of restrictions has narrowed in the new Act despite Article 18 on the employer's obligation to provide a valid reason for the termination of the labour contracts for indefinite period under certain conditions.

Contract Termination Notice

Article 17 of the new Labour Act states that in the event of a failure to comply with the requirements for giving notice, the defaulting party is liable to pay compensation equal to the wages corresponding to the length of the terms of notice specified in the same article. Article 13 of the previous Act was regulating the same issue. Both the new and the previous provisions entitled the worker to demand compensation equal to three times the wages corresponding to the appropriate term of notice in cases where there is a manifest abuse of the right to terminate a contract for indefinite period of time. In case of the abusive exercise of the right to terminate the labour contract the burden of proof is on the side of the worker (Tunçomağ and Centel, 2003; Çelik, 2003).

Additional Compensation in case of the Termination of Labour Contracts of Workers dealing with Activities of Labour Organisations

In the case of dismissals for participation in union activities, Article 31 of the Trade Unions Act (no. 2821) provides a sanction. The Act states that no worker shall be dismissed on account of his participation in the activities of any labour organisation outside his hours of work (or during his work with the employer's permission). The compensation granted to an employee who is dismissed because of his participation in union activities shall in no case be less than the workers total annual wages (Article 31/V) (Dereli, 1998:92).

Collective Dismissals

Article 24 of the previous Act had imposed certain restrictions on the employers' right to terminate the labour contract before the 2002 amendments[309] claiming to bring job security. An aim of providing some degree of job security in the event of collective dismissals was observable in the text. The previous Article 24 stated that if an employer intended to lay off one-tenth or more of his workforce, amounting over ten workers, by a single total dismissal or by subsequent dismissals, to reduce the volume of work or the number of workers in his service, he should inform the Regional Directorate of Labour in writing, from his intentions at least one month prior to the lay off. If the employer in question started to re-operate the establishment with the previous capacity within six months from the lay off, he should give notice to the workers dismissed in accordance with the lay off decision.

Individual Dismissals

The 1975 amendments by Act no. 1927 on the Article 24 extended the scope of the protection and included even the termination of the labour contract of a single worker in certain cases. The amended article stated that the employer was not permitted to engage, within six months of such a termination, with a new worker in order to replace the vacancy created by the dismissal, if the contract had been terminated on the basis of Article 13 (termination by serving the appropriate term of notice), or of Article 16/III (*force majeure*). The vacancy should be filled by recalling the dismissed worker. Furthermore, in the case of workers whose contracts were terminated under subparagraphs I(b) and III of Article 17[310], if the reasons necessitating termination have been eliminated within the six month period, the above mentioned provisions would also apply.

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309 These amendments are brought by the Act no. 4773, enacted in 09.08.2002 and entered into force in 15.03.2003.

310 That is, if the employee suffers from a communicable disease or from an offensive disease to an extent, which is incompatible with the performance of his duties, or *force majeure*.

In Article 24 of the previous Act, we can observe the first steps of a kind of job security for labour contracts for an indefinite period of time. The employer was banned to terminate the individual labour contract arbitrarily in certain cases. The approved/ratified ILO Convention no. 158 extended the protection provided by Article 24 and stated that the employment of worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service (Article 4).

Reinstatement Rights for Workers

Until recently, reinstatement rights for workers, who have been dismissed, did not exist in the Turkish legislation (Centel, 2002). Collectively bargained job security provisions have not gained acceptance in judicial rulings. Throughout the last 30 years, the workers' organisations have increasingly demanded enhanced forms of job security through legislation (Dereli, 1998; Işık, 1995). Some of these requests found their expressions in several draft bills. The ratification of ILO Convention no. 158 provided the proponents of job security with a base to argue their demands on stronger grounds. However, the recent developments demonstrated, clearly, that the principals provided by the ILO Convention would not be efficient both in the light of the flexibility clauses provided by the same Convention and of the regulatory objectives of the policy-making in Turkey.

Article 18 of the new Labour Act

The new Act provides some kind of reinstatement rights for workers, who have been unjustly dismissed. At that point, it should be mentioned that job security in Turkish legislation, was first regulated in Act no. 4773, which had amended Article 13 of the previous Labour Act (Kaya, 2001; 2002a). Yet, just after a short time from 15 March 2003, which is the date of entry of the Act no. 4773 into force, the new Labour Act re-regulated the issue. Article 18 of the new Labour Act states that, in case of dismissal, an employer employing more than 30[311] workers in a

[311] The Act no. 4773 was requiring 10 where the new Labour Act demands 30.

workplace (not in a company) has to refer to a valid reason connected with the capacity or conduct of the worker or to the operational requirements of the undertaking, establishment or service, if the contract termination in question is for a contract for an 'indefinite period of time'; which had been in force for more than six months.

Another point to be mentioned is that when subsequent dismissals to reduce the volume of work or the number of workers in the employer's service occur in time limits for more than one month time, the new dismissals would not be considered as collective dismissals (Article 29/3), meaning that employers right to dismiss its workers collectively should be realised in periods of 31 days.

Article 18 and the ILO Conventions

The wording of Article 18 clearly includes a reference to the ILO Convention No. 158 (Article 4). Yet while Article 4 of the Convention is directed to all workers working in an enterprise under any kind of labour contract, Article 18 of the new Act refers to the enterprises, which, in their workplaces, employs more than 30 workers under contracts for an indefinite period of time. The flexibility clause in Article 2/II-a of the Convention[312] is vastly abused in the formulation of Article 18. Another problem rises in the calculation of the workers working in the workplace in question. Will all the actually working people in the work place be included in this metaphysic-mystified number of 30? Will the workers working for another employer be added to the workers actually working in the workplace in question? Why are the workers of the employer working in other branches or in the head quarter of the company excluded? Does it have something to do with the grouped nature of the Turkish industry or the internationalised branches of multinational companies?

312 "A Member may exclude the following categories of employed persons from all or some of the provisions of this Convention: (a) workers engaged under a contract of employment for a specified period of time or a specified task."

An Article without a Sanction

Job security, in the event of collective dismissals, is regulated, under the new Act, by Article 29. Article 29 states that when the employer wishes (not decides) to dismiss collectively a group of workers, it has to do so by noticing 30 days before the dismissal to union representatives, to labour exchange and the relevant Regional Directorate of Labour. Article 24 of the previous Act stated that if the employer in question started to operate the establishment with the previous capacity within six months from the lay off, he should give notice to the workers dismissed in accordance with the lay off decision to come and re-start their previous job. The new Act waived from the sanction that constitutes the soul and the reason of the existence of any provisions regulating the collective dismissals. Furthermore, it has unnecessarily stated that if the employer wishes to employ workers for the same job within the six months from the lay off, he could call the dismissed workers to work (29/6). There is no sanction and no reason to formulate such a provision. In the absence of sanctions, the regulation of collective dismissals seems to be the explicit recognition of the right of the employer to dismiss its workers collectively.

Article 18 and Acquis Communautaire

The Council Directive 98/59/EC of July 1998 on the approximation of the laws of the Member States, relating to collective redundancies, defined collective dismissals in Article 1 as dismissals ‘effected’ by an employer, rather than ‘terminations of an employment contract, which occur on the employer's initiative’. And in cases of termination of an employment contract which occur on the employer's initiative, 5 dismissals were considered to be collective dismissal, meaning that the resemblance, thus, the effect of the EU law remains only in form.

Article 18 and the Protection of Certain Employee Representatives During their Absence from Work

A certain level of employment security for workers leaving the workplace temporarily to participate in certain activities was provided by the previous Act.

The new Act repeats the previous Act's provisions in general.[313] Besides, Article 18 of the new Act contains a new formulation. The Article provides a sampling list stating negatively the reasons that cannot be a valid reason for dismissal. The first two items of the list state that being a workplace union representative and pursuing union activities after work hours or -with the permission of the employer- in work hours cannot be a valid reason. However, the 'protection' brought by way of negatively stating the ones in the scope of the provision, at the same time, includes an implicit protection to the employers who use their 'right' to fire the ones out of the scope of the provision. Employers now have the right to dismiss the union supporters/members other than union representatives with the condition of proving that these workers pursued 'union activities' in work hours without the permission of the employer. Given the notion of 'union activity' is ambiguous and in the absence of the case law may contain anything, including talking about the fundamental human rights in resting hours, the implicit protection brought to employers seems to be stronger than the negatively stated rights of workers.

On the other hand, a low degree of employment security provided to the professional union officials by the Trade Unions Act (no. 2821) that is still in force.[314] When considered with the wide scope of application of the employer's right to dismiss workers that are involved in union activities, yet are not elected as members of chairman of the management committee of a trade union or

[313] Article 55 of the new Labour Act repeats the previous Act by stating that in the calculation of annual leave with pay, periods when an employee could not report for work because of the need to attend meetings of conciliation or arbitration boards, attendance at such boards as an employee representative, attendance at assemblies, boards, committees or meetings organised under relevant labour legislation, or attendance at conventions, conferences or committee meetings of international organisations as an employee or union representative, are considered to be worked.

[314] Article 29 of the Unions Act, no. 2821 states that "in the event an employee who has left employment of his own free will after being elected as member of chairman of the management committee of a trade union or confederation wishes to be reinstated on ceasing to hold office because he does not run for re-election, fails to be elected or resigns form office, the employer shall be bound to reinstate him within one month from the date of request in his past post or one adapted to it, giving him priority over all other candidates. In this case the employee shall retain all seniority rights and his wage level. The employee concerned shall be entitled to exercise the above right any time during the three months following the date on which he ceases to hold office in the union or confederation".

confederation, it is safe to say that the neo-liberal belief that trade unions might in some way represent interests antithetical to public welfare is suggested in a rather oblique way by the introduction of this employee right in the course of what otherwise appears to be the straightforward reiteration of basic worker rights represented by Article 29 of the Trade Unions Act (no. 2821).

Article 18, under the above mentioned considerations, seems to be serving for the acceleration of the slippage in the legal form of labour contract vastly from contracts for an indefinite period to fixed term contracts rather than providing some kind of job security to the workers. This issue will further be evaluated. At this point, it is safe to say that the current system has no progressive effect on the issue of job security. Article 24 of the previous Labour Act, together with the linking changes in the previous Article 13 should have been the basis of the job security system if the Turkish law maker intended to regulate job security in conformity with the ILO Convention no. 158 and acquis communautaire.

In pursuit of the investigation into the shift in the regulatory scope of labour contract in the labour market we have analysed the changes in the protective provisions bringing limits to the universal principle of the freedom of contract by reference to the provisions on workers' health and on the use of women and of child labour, to the general limits of the right to terminate the individual labour contract (job security), and to the reinstatement rights for workers within the context of normative regulations, which are embedded in the overall accumulation and regulation pattern of the society. The investigation into the change in the meaning of the concept of subordination and into the limits of the universal principle of the freedom of contract revealed that the protective/regulatory provisions are weakened in face of the expansion in the universal principle of the freedom of contract. The next subsection deals with the subsequent introduction of the new types of labour contracts in which the changing limits of the regulatory powers of the labour contract and the increased determination of the universal

principle of the freedom of contract in the establishment of the labour contract, acquire a concrete meaning.

5.3.2.3. Practices and Labour Contracts Regulating Wage Relations

This subsection will investigate workers' exclusion from the remaining protective provisions of the new Labour Act with reference to the forms of labour contracts. We will first deal with the existing forms of labour contracts used to achieve flexibility. Then the forms established and re-regulated by the new Labour Act will be taken into consideration.

Three Forms of New Institutionality in Turkish Practice

Under this heading, fixed term contracts, sub-contracting and homeworking contracts will be discussed due to their frequent application to surpass the legal constraints before the enactment of the new Labour Act. Moreover, these institutions still have a wide usage and decisive importance in the structures creating class effect.

Due to the increasing structural deficiencies of the industry, the slowly[315] rising non-agricultural employment could not nourished by a productive activity.[316] Within this context, marginal employment patterns emerged. Thus, the population of wage earners absorbed in marginal activities are increasing (cf. Ansal *et al.*, 2000). Unlike the commodities, whose expected saleability determine their way of entrance to the market place (Offe, 1985:16), labour power is continuously dependent on the supply of the means of subsistence, meaning that, it has, in the

[315] The share of agriculture in total employment was the 45% in 1997 (Cam, 2002:43)

[316] Between 1986 and 1996, nearly 300,000 workers were dismissed from state economic enterprises. In addition to privatisation, a relative increase in the automation of production, and the introduction of new management techniques designed to cut labour costs and to increase labour productivity, also hampered employment growth in non-agricultural sectors. Since the beginning of the neo-liberal era, therefore, the share of industry in total employment has stagnated at 2I%, albeit its contribution to GDP has gone up from 26% to 32%. Likewise, while failing to increase the service sector's 52% share in GDP, neo-liberal reforms slowed down the annual average of employment growth in this sector by 3% between 1980 and 1997 from 7.6% annual average between 1960 and 1980 (Cam, 2002:51).

labour market, no way of controlling its own volume of supply (Jessop, 2002a:14). Besides, Offe (1985:29) notes that in contrast to all other commodities, the supply of labour power tend to rise when the demand and wages fall since the possibility of not participating in the labour market becomes increasingly impractical for economic reasons. Given the specific nature of labour supply, high level of unemployment and insecure jobs, imposition of the worsening conditions of work relation become even easier.

The pressure of the labour market on individual workers provided the individual capitalists with the necessary social means to use sub-contractors. In addition, the generality of the condition set up by contractualism provided the same individual capitalists the legal means to fill their vacancies through the workers provided by the sub-contractor and/or homeworkers, instead of permanent ones. In the Turkish case, deregulation did not imply additional hiring and thus did not imply the development of employment, yet corrupted the existing conditions of work by way of creating vacancies that would be filled by temporary workers or by the workers provided by sub-contractors. The coercion practised by way of implicit authorization of the demand side in the labour market to pursue strategies aiming to surpass legal regulations on the rigidity of labour contract are visible in these labour contract types.

Beyond the further limitations imposed on the coverage of labour contracts, pro-market policies of the post-1980 Turkey worsen temporary employment by providing the supply front with the necessary grounds in the labour market to pursue its strategies in three juridic forms, namely contract work, 'sub-contracting' and homeworking system. The contract work system as a temporary employment model (including some characteristics of fixed term contracts) became an overriding recruitment strategy in the public sector companies, which had been scheduled to be privatised after the mid-1980s (Cam, 2002). This form reduces the costs by providing a legal base to avoid the worker’s right to severance pay. In this model, the exhaustion of the time mentioned in the contract automatically brings

the work relation to an end without any further costs. The majority of the white-collar workers in the state economic enterprises were employed within the limits of this model. The blue collars were to be included in this strategy by the extension of the system in the early 1990s (Türk-İş, 1998).

The other form employed to increase the pressure over labour markets is the sub-contracting system.[317] Market as a means of coercion finds its real meaning in the operation of this system. In subcontracting 'hirer of the labour power' or 'the contracting party in face of worker' is a person (hirer), who is legally independent of the 'real' employer/capitalist for whom the labour power is used. To put it differently, in this case, the principal capitalist uses the labour power while the subcontractor hires the worker on his behalf. Possession, the narrowly economic ability to determine the use or operation of the production process, remains in the hands of the real employer. This is also true for the title, which refers to the basis upon which claims to any surplus is made. Yet, in subcontracting the third element of ownership, control acquires an indirect way of assertion. The ability or power to determine the actual deployment of labour in the production process becomes dependent on the intermediation of another employer (hirer) in theory. In practice, however, the right to use labour power provided by the hirer remains without any challenge or restraint from employees that are in obligation to serve the hirer. The separation of the hirer of labour power and the user of the labour power brings out a legal/technical/organisational novelty expressed in a form that may excellently serve to intensify the exploitation at the workplace.

[317] By the mid-1990s, all 22 plants of CITOSAN, the public cement industry, had been privatised. It is estimated that one-third of the workers in cement factories were then employed under the sub-contracting system. The model was introduced to other privatised companies as well. Nearly 25% of the work force is now supplied by sub-contracting firms for privatised companies. Furthermore, over the past several years, the system has also grown in the construction industry where workers were conventionally employed through this model. Since the mid-1980s, the residential building sector has thrived; its share in GDP leapt from 4% to 7% between 1984 and 1996. The number of workers working for a sub-contractor in the construction industry had increased from 550,000 in 1983 to 1.2 million in 1997 (Cam, 2002:55).

The novelty here is the transfer of responsibility and, thus, of the costs and penalties to hirer. Given the fact that the workers were hired by another person, the legal responsibilities[318] transfer to the hirer regardless of his capacity to compensate the worker or to pay the penalties demanded by the state. The responsibility transfer in case of subcontracting has three tracks. In the first one, the employee, with the condition that s/he is employed in a position that is not within the context of the contract signed between the real employer and the hirer,[319] loses his/her title as an employee and thus loses his/her powers attached to this position in face of the real employer. In the second one, thanks to the jurisprudence who change track in 1996[320] with a Ruling of the General Council,[321] in conformity with the neo-liberal discourse, and thanks to the new Labour Act (Article 2/6), the hirer is deemed to be legally disconnected to the real employer if the hirer's contract with the real employer is not considered to be in a direct link with the production or if the hirer is not using the same workers in the accomplishment of the job.[322] In the last and the most influential track, the responsibility of the real employer ends simply with the conclusion of the work that the subcontractor undertakes (cf. Tunçomağ and Centel, 2003; Çelik, 2003; Şen, 2002).

The last form to be mentioned is homeworking. This last form refers to a kind of work relation by which the work is carried out at the dwellings of the workers. Workers are paid on piecework after the submission of the products of their labour to the individual capitalist and/or the small merchants who, in many cases, work for the individual capitalists. The responsibility of the individual capitalist is

[318] The obligation to pay 'mandatory' national minimum wage or the obligation to compensate the worker in case of accidents can be given as examples.

[319] Court of Cass., 9th Div., 22.02.2001, 2000/19790, 2001/3151

[320] Court of Cass., Ruling of the General Council, 07.02.1996, 1995/9-901, 1996/44

[321] Rulings of the General Council shall be obeyed by first-degree courts (Court of Cassation Act, Article 16/5).

[322] Court of Cass., 9th Div., 04.03.1991, 1990/11890, 1991/3190

limited to the payment of the necessary amount. Mainly after the 1990s, with the general acceptance of flexible production norms in some industries, including the realm of the consumer durables production, the employers narrowed their core workforce and the application of homeworking in industrial cities have enormously increased (Selçuk, 2002). When compared to other classical types of employment models, in which the worker finds a base to insert her rights, the last two forms seem to be the most slavery-like ones.[323] Moreover, they serve the interests of the ones who want to by-pass the Social Security Code, which rules out employment without social security. Contract work and the 'sub-contracting' system demonstrate the dimensions of the power of capitalist to control labour power before the enactment of the new Labour Act.

The New Types of Individual Labour Contracts Recognised in the New Labour Act

The capacity of control in the technical division of labour and, to the extent individual labour contract intervenes, in labour market is legally framed by hypothetical agreement between individual capitalists and the individual workers. If the relative power balance between the employer and the worker change, the types of labour contracts are to be changed.

Transitory Work Relation

The previous Act stated that “if the employer materially alters the conditions of employment or fails to apply them” the worker would have a right to terminate the contract without prior notice (Article 16/II e) and he would have a right to severance pay (Article 14). The application of this Article, however, had been increasingly difficult in face of the changing content of the decisions of the Court of Cassation mainly after the second half of the 1990s (cf. Çelik, 2003).

The powers granted to the worker by the formulation of the previous act had been criticised severely by the advocates of the bourgeoisie (Kuban, 2002; Engin, 2002

[323] Türk-İş reported that the sub-contractor based employment was in contradiction with the ILO provisions, which were ratified by Turkey in 196O (Türk-İş, 1998).

inter alia). Yet, the new Act provided the employers more than what they expected: the right to 'transfer' the worker to another employer without abolishing the existing contract (Article 7). This regulation enabled the employers to transcend the benefits of the sub-contracting system, which were appropriate for only small business capable of serving mid-range and big companies and which was not operational for the industry. Subcontractors are incapable of providing with the industry the skilled or semi skilled workers, who were trained by the conditions of operation of industrial workplaces. With the materialization of transitory work relation, the industry acquired the power to use the core workers without bearing the cost of paying wages in times of recession.

Moreover, this formulation is also in conformity with the organisation patterns of the Turkish industry. Groups are now able to 'transfer' the labour power they already have in 'stock' from one of their companies to another. Thus, they have acquired, against their workers, the right to demand the performance of various jobs under the same labour contract. The neo-liberal argumentation that flexibility creates jobs is completely inconsistent with the situation in transitory work relation. Neo-liberal conceptualisation of labour power as a pure commodity is 'strengthened' by a new implicit conceptualisation in which 'worker's capacity to perform a certain task is replaced with the 'worker'. The preamble of Article 7 clearly demonstrates this 'support' by overtly stating that the labour contract, like other sales contracts can be assigned to a third party. Workers' duty to perform a certain task in a certain place for a certain employer is now, under the conditions of transitory work relation, transferred to a duty to be in any place and to perform any task required by any employer.

Another difference of this legal 'discovery' from sub-contracting is that, unlike sub-contracting, workers obligation to obey the orders of employer doubles, meaning that s/he is now under the obligation to serve two employers with one labour contract.[324] It may be alleged that Article 7 is conditioning the written

[324] "…[Second employer] has the right to give instructions." (Article 7/1)

approval of the worker for the establishment of transitory work relation and this written approval can be considered as a new labour contract. The bizarre point here is that one cannot sign a new labour contract without abolishing the previous one. In contrast, EU regulation 2001/23/EC dated March 12, 2001, regulating the transfer of the works or of the labour contracts, does not bring the novelty of creating two employers for one worker.[325]

In the Japanese law, which is the prime site of the patriarchal labour law discourse (Woodiwiss, 1992), the topic whose discussion best illustrates this point is that of *'shukko'* (worker transfer to related firms), which is the point at which the patriarchal obligation to provide 'lifetime employment' comes into the fore. Today such transfers are among the chief means used by larger Japanese companies to avoid dismissals when faced by unfavourable market conditions and, for this reason, the requirement that employees should obey to transfer orders is usually included in a company's work rules that are not considered as a part of labour contract but as a part of the law of the enterprise (Woodiwiss, 1992:132, 141). In case of '*shukko*', the burden of deciding what to do with surplus personnel and of protecting the personnel resources together with balance sheets shifts to the new employer. In the absence of a hegemonic discourse, such as '*Kigyoshu*gi', and of high wages and life time employment, this new obligation seems to increase the deterioration in the working conditions of workers and produce new legal problems whose solution lies not in the contractual condition but in the way in which individual judges understand the needs of economy and public interest.

[325] Directive 2001/23/EC relates to the safeguard of employee's rights in the event of transfers of undertakings. The defendants of the new Labour Act have referred to the Directive to prove the universal application of the transitory work relation regulated by the new Labour Act. Yet, given that the dual obligation of the worker in transitory work relation does not exist in Directive 2001/23/EC, reference given to the EU directive seems to be illusionary.

Labour Contracts with a Trial Clause

The trial clause enables the parties to test if they can conduct the working relationship under the existing conditions with an acceptable performance. Article 12 of the previous Act entitled the parties of the contract to agree on a trial period both in contracts for a definite and indefinite period. Within this period both of them had the right to terminate the contract without notice. Article 15 of the new Labour Act alters the previous Article 12 by extending the probation period from one month to two months and states that this period can be extended up to four months in collective labour agreements.

Apprenticeship Relation

New regulation on the apprenticeship has provided the employers with new forms of surpassing the protective limits that have already weakened, in the new Labour Act. When the exceptions in Article 4 of the new Labour Act are compared to Article 5 of the previous Act, the changes in the scope of the law become clear.[326] The legal status of apprentices is regulated in Article 4 of the new Labour Act. While the previous Act and Case Law[327] were only excluding the apprentices who had not completed 18 years of age, the new one, in the absence of Case Law, seems to be excluding all apprentices from the scope of application, thus from the scope of limited protective provisions, of the new Act (cf. Çelik, 2003).[328] This situation might/would provide the demand side in the labour market a legal basis to exclude

[326] Until recently, the ones working in agriculture were completely out of the scope of Labour Act. The first legal recognition of Turkish agriculture workers in a Labour Act, albeit in a limited scope, can be found in Article 2 of the new Labour Act, which states that the workers in agricultural workplaces including over than 50 workers shall be covered by the New Labour Act. Yet, given that 50 is a very high number in face of the optimum in Turkish agriculture, this expansion will not be that much effective. Besides, the door keepers (workers in janitorial services at dwellings) and employees of the headquarters and branch workshops of the Turkish Charity Association (Yardımseverler Derneği) are included to the new Act.

[327] See Court of Cass., 9th Div., 28.03.1973, 1972/36038, 197376625

[328] The Job Training Act no. 4702 has extended the scope of application of Apprenticeship by bestowing the job training committee the power to decide the activities within the scope of the Act meaning that the scope of application of the liberal principles of law of obligations are extended (Çelik, 2003:39).

the workers from the very limited coverage of the new Act by employing and keeping them as apprentices.

Contracts for Temporary and Permanent Work

An employment relation, owing to its nature, does not last more than 30 working days, is deemed to be temporary employment (Article 10/1). The provisions of the Obligations Act shall apply to temporary employment, meaning that a vast majority of the workers in the realm of insecure work will be out of the scope of the new Labour Act and their labour will be condemned to be a simple commodity.[329] This type of labour contract should not be confused by the fixed term contracts, where the wills of the parties are decisive rather than the nature of employment and where the provisions of Labour Act shall apply. Employment for a longer period is considered as permanent employment.

Contracts for Full Time and Part Time Work

In contrast to a full time contract, which involves work consistent with the regular weekly or daily working time, a part time employment contract entails a partial working time, whose duration is shorter than the regular working time practiced in the workplace in question. The new Act states that in cases where the weekly work time of the worker is significantly less in comparison to a prototype/standard worker working in the workplace, s/he would be deemed to be a part-time worker (Article 13). Previously, there were no clear provisions to apply to part-time work neither in the Labour Act nor in the Obligations Act. The accepted opinion in the jurisprudence was the applicability of the Labour Act on the part time work, except the Articles overtly regulating full time work.

[329] Articles 3, 8, 12, 13, 14, 15, 17, 23, 24, 25, 26, 27, 28, 29, 30, 31, 34, 53, 54, 55, 56, 57, 58, 59, 75, 80 and the provisional Article 6 will not be operational with regard to disputes mentioned in Article 10/2 of the new Act.

Work on Call

The new Labour Act enables employers to materialize contracts by which workers would come to work in case they are called. The new Act formulates that work on call is a "work relation in which the workers duty to work begin when the service of the worker are required by the employer" and that this kind of work relation should be realised by way of part time labour contract as the most convenient legal form (Article 14). This legal form enables the employer to determine the time and the duration of total work demanded from the worker. In cases where the duration of work is not determined clearly by the labour contract, the duration of weekly work is considered to be 20 hours (Article 14). The judiciary had included this type of work in the scope of the individual labour law in 1995[330] with the aim of providing protection to the workers that would otherwise be included into the scope of the law of obligations. Judiciary's interpretation entitled the workers working on the basis of work on call to demand severance payment. The judiciary's interpretation, however, has lost a significant portion of its protective aspects by the enactment of the new Labour Act, which is going to abolish the severance pay after the establishment of the severance pay fund (Provisional Article 6 of the new Labour Act).

The juridic form provided for the contracts for part time work, including work on call, has to be evaluated with reference to the newly introduced notion of over work, which enables, in workplaces in which duration of weekly work is less than 45 hours, the employers to pay extra work only the 25 per cent above the normal hourly rate, where wages for overtime, which is the work over 45 hours, are going to be fifty percent above the normal hourly rate.

[330] Court of Cass., 9th Div., 08.06.1995,1995/5048, 1995/5358

Contracts for a Definite Period (Fixed Term Contracts) and Contracts for Indefinite Period

The previous Act referred [331] to individual labour contracts concluded for a definite and indefinite period without defining them in the Act. A contract for a definite period has a specified duration while a contract for an indefinite period is open ended. While a contract signed for a definite period expires automatically at the end of the duration specified in the contract without causing the employer a duty to pay severance pay, the cancellation of the contracts signed for an indefinite period by the employer, generally ends up with severance pay in legal practice.

In the application of the previous Act, the verdicts of the Court of Cassation demonstrated that when the employer abuses his contractual rights by entering into successive contracts for a definite period with the same worker so as to surpass his obligation to pay severance pay, she/he would be forced to pay it with a court order. Signing a labour contract for a definite period and then continuing to work relation under successive contracts, each of which has been signed for one year time, had been held to be the abusive exercise of the freedom of contract.[332] Thus, the High Court's Case Law had prohibited the use of subsequent contracts for a definite period, namely, chain contracts, and had required them to be treated as contracts signed for an indefinite period before the enactment of the new Labour Act.

The new Labour Act, however, overtly aimed to change the judiciary's assessment on the nature of the chain contracts. In a sense, it is formulated against the judiciary with the purpose of not causing a gap that may be interpreted by it for the benefit of the individual worker. The third paragraph of Article 11 states that a series of a fixed term contracts signed on the basis of a fundamental reason shall be valid. Thus, the new Labour Act is openly giving the individual capitalists the power to

[331] Articles 9, 13, 16 and 17.

[332] Court of Cass., 9th Div., 26 December 1962, 4/193, 116; Court of Cass., 9th Div., 12 November 1965, 9024/9141; 15 April 1968, 12436/3039; 20 April 1970, 1841/3958.

conduct strategies for the creation of fundamental reasons and thus, for firing the worker without bearing the cost of severance pay. Another striking feature of the new Act is in the duration of the fixed term contracts. The first paragraph of Article 11 states that the cessation of the fixed term contracts can be formulated on the basis of the appearance of a certain event or a certain 'phenomenon'. The Wording of the Article means that an employer can formulate an agreement stating that the work relation would survive until the emergence of a crisis.

5.3.2.4. The Exclusion of the Majority of Working Population from the Protection of Legal Regulations

We have investigated the content of the changes in the regulatory scope of labour contract, thus the content of changes in the relevant protective provisions of the individual labour law, having an impact on the capital-labour relations in the labour market. To precede the investigation further, the study will now focus on the procedure by which the legal subjects are excluded from the protection brought by the remaining protective provisions.

Making Flexibility Clauses Provided by ILO Conventions Operable

After the ratification of the ILO Convention no. 158 in 1994, its provisions have become a part of the Turkish labour legislation in an indirect manner meaning that Turkish lawmakers are in obligation to consider the rights and duties covered by the Convention in law making.[333] Article 2 of the ILO Convention no. 158 states that the convention applies to all branches of economic activity and to all employed persons. Yet, the rule stated with the first sentence of Article 2 is followed with a flexibility clause within the subsequent sentence. The second sentence states that member states are entitled to exclude some categories of employed persons from all or some of the provisions of the Convention. The categories mentioned in Article 2, given the rising amount of un-stabilised lives in search of daily or weekly living hood are increasing strikingly in the number of total employed people,

[333] Article 1 of the Convention states that "The provisions of this convention shall in so far, as they are not otherwise made effective by means of collective agreements, arbitration awards or court decisions or in such other manner as may be consistent with national practice, be given effect by laws or regulations."

provides a basis for national legislators to exclude a majority of working population from the remaining limited protection of legal regulations.

The above-mentioned flexibility clause (Article 2) provides the basis for the designers of the new Labour Act to exclude a- workers working on the basis of a fixed term labour contract, which is the new dominant legal form in the labour contracts, b-workers serving for a period of probation, c-workers engaged in jobs with a causal basis, from relatively democratic norms of the approved ILO Convention no. 158. When considered with the recent changes in the Turkish labour legislation, providing the employers with the rights to make a series of fixed term contracts (chain contracts), the dimensions of the exclusion from the outset becomes clearer. Ironically enough, the convention, by referring to the would be attempts to surpass the principles embodying its text, states, without any sanction, that adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time (fixed term contracts), the aim of which is to avoid the protection resulting from the convention. As mentioned above, far from providing adequate safeguards to prohibit the use of fixed term contracts, the Turkish law-makers intended to employ fixed term contracts as a conventional legal form, in which the relations of employment were shaped.

Here we can observe a change in the dominant legal form regulating the construction of labour contracts. The new dominant legal form emerges in the form of fixed term contracts, while the labour contracts for an indefinite period lose their place as being the principal form. The slippage to fixed term labour contracts provides the necessary discursive apparatuses to the lawmakers to pursue new restrictions on the protective provisions under the banner of liberalising principles. The protective provisions of the ILO Conventions and Acquis Communautaire generally direct their regulatory influence to the labour contracts for an indefinite period. Thus, accepting the protective provisions of these agreement regulating contracts for an indefinite period and transforming the contracts for a definite period to the dominant form help lawmakers to surpass the limits brought by these

agreements. While the contracts for an indefinite period serve for the legitimisation, exceptions to the rule are directed to the fixed term contracts, which become more and more influential in the regulation of work relation between the individual capitalist and the worker.

The vital point in the evaluation of the Turkish Labour Act with relation to ILO convention, despite its profound effects over industrial relations, however, is not the role of the fixed term labour contract as a means to surpass the ILO norms. The new Labour Act did not even consider the principals of the ILO Convention in the matters on the termination of labour contracts of an indefinite period. The most important two of the ILO principals are the ones regulating severance pay and benefits from unemployment insurance (Article 12).

Severance Pay, Severance Pay Fund and the Residues of a 'Rigid' Labour Act

Even the first Labour Act no. 3008, dated 1936, contained provisions on severance pay. Additionally, the most controversial developments experienced in the 1975 amendments to the previous Act, which are still in force. Amendments of 1975 increased the sum of severance pay from a 15 day pay to a 30 day pay for each complete year service. While before 1975 it was payable to an employee who had been employed by an employer for at least three years, the 1975 amendments lowered the required minimum period to be one year and also expanded the scope of the contract termination categories which entitled the worker to severance pay. Since 1975, a growing bulk of grievances directed to the rigidity of Labour Act from the employers' side referred to the famous Article 14 of 1975 amendments (Dereli, 1998:153). Some of these grievances were taken into consideration by the September 12 military coup, who set an absolute ceiling on the amount of the severance pay by changing the wording of Article 14.

The allegations on the purpose and the function of severance pay have always been in contradiction in the Turkish jurisprudence. A group of jurists interpreted it as a kind of payment to reward the employee's commitment to and loyal performance in the workshop. Another group have regarded it as a form of redundancy payment,

which, in the absence of a formal job security system and unemployment insurance served to provide some degree of employment stability by making it costly for the employer to lay off workers as well as securing some income for the displaced employee. Some have treated it as a form of compensation to make good the employees' losses incurred in the course of the employment relationship. Thus, depending on the interpreters' taste, the proposals to initiate specific amendments, acquired different conclusions.

By the acceptance of a peculiar kind of job security (Article 18 of the new Labour Act) for workplaces employing more than 30 workers by way of labour contracts for an indefinite period and of a strange unemployment security system that will further be investigated, the advocates of the bourgeoisie declared that they were considering the severance pay, which was subjected to their grievances, as a form of redundancy payment (TÜSİAD, 1997). [334]

Given that labour contract for a definite period expires at the end of the specific period with no severance pay, severance pay is generally[335] a matter of dispute in labour contracts for an indefinite period. While in the previous act chain labour contracts, which are the contracts composed of labour contracts for a definite term, were creating same legal consequences with labour contracts for an indefinite period, the current legislations paved way to make chain labour contracts without ending with a labour contract for an indefinite period, and provided the employers the necessary grounds to escape from paying severance pay.

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[334] The president of TİSK, Refik Baydur, in an official meeting declared that it would be disingenuous to enact a bill on Job security unless severance payment obligation of employers is eliminated (TİSK, 1995:10).

[335] Yet, a worker working under a labour contract for a definite period is entitled to severance pay if the employer breaks the contract before the expiration of the specified period for reasons of health or for force majeure or if the employee breaks it according to Article 16. Worker's death, military service entitlement to social security benefits are also further reasons for the entitlement of severance pay.

It is fair to say that there is a global tendency to minimise the coverage of severance payments in the 'developing' world[336] if not in some 'developed' countries. A worker, who has completed a certain length of service and, whose employment contract has been terminated under certain conditions specified in Article 14 of the previous Labour Act[337], which will be in force in matters related to severance pay until the act on severance pay fund enters into force, gains the power to compensation legally formed as severance pay. After the establishment of the severance pay fund, Article 22, which includes a kind of penalty payment in case of unfair dismissal approved by the courts, will remain as a weak barrier over the employer's freedom to terminate the labour contract. The Article states that in case of unfair dismissal of a worker having a contract for an indefinite period, the dismissed worker shall be re-employed or shall be paid an amount up to his 4-8 month wage. In case of labour contracts for a definite period, which is the dominant form, this penalty reduces to three times of the contract termination notice, which roughly corresponds to a period of 2 months (Article 17/7).

Severance Pay Fund

In the previous legislation, the employer has been barred from socialising his obligation to pay the worker severance pay (Article 14 of the previous Act). This

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336 See National Working Law of Argentina (1995 Amendments), Labour Act of Colombia (1990), Labour Act of Venezuela (1990 amendments), Labour Reform Act of Chile (1978).

337 Current regulation states that severance pay is to be paid if the employer terminates the contract for reasons other than 17/II. Article 17/II of the previous Act that is still in force due to the reference made by the new Act (provisional Article 6), states that, in case of malicious, immoral, dishonourable other types of misconduct on workers side the employer would be entitled to terminate the labour contract without paying severance pay. Furthermore, in certain cases, the obligation of the employer to pay severance pay continues even in case of termination of the contract by worker (Article 16). This means that severance pay shall be paid, if the worker terminates the labour contract for reasons of health or for immoral or dishonourable conduct of employer (Article 16). Unlawful lock-outs gives the workers to terminate the contract with a severance pay, yet given that unlawful strikes which, due to the formulation of Trade Unions Act, is a wide category, give the employer the right to terminate the contract without paying severance pay, this is not a right in real sense for the workers. Moreover, collective agreements could stipulate that the workers, who ended the employment relationship by issuing a term of notice, are entitled to receive severance pay. Yet, after 1980 military coup, the rulings of the court of Cassation (Court of Cassation, 9th Div., 2 April 1982, 3021/4158; 22 January 1990, 7863/389) prohibited such regulations by way of collective agreements (Dereli, 1998:154).

situation was in conformity with the prohibition to socialise the obligation to pay wages as a founding characteristics of wage relation. Both of the prohibitions over the socialisation of characteristic obligations of individual capitalists are eradicated in the new Labour Act, albeit in a limited way.

The aim of the prohibition to socialise the risks of paying severance pay was to guarantee some job security for workers who were widely deprived of alleging organised claims over economy policies of the government. To the extent that policies aiming to sell cheap labour or to deprive wage earners from their already extremely lowered wages for the continuation of import substitution were not in the agenda of Turkey, the regulations for socialising the risks of paying severance pay did not occur. The last paragraph Article 14 of the previous Act was paving the way to a severance pay fund under certain conditions[338], yet, the fund did not come into legal existence. The subsequent crises of the 1990s paved the way for the realisation of severance pay fund (cf. Kaya, 2002b).

The arguments and amendments on labour legislation in general, and on severance pay in particular, is a part of the ongoing class struggle occurringunder different legitimising arguments within the state. In conformity with the strength of the bourgeoisie's representation in face of the working class after the 1980s, and with the post 1998 labour politics, which were accepting the increased interference of IMF under the banner of competitive disinflation, the new Act and the forthcoming regulations would abolish the residues of the period, in which the deepening of the import substitution was a political objective both in private and public sectors.

[338] The last paragraph of Article 14 of the previous Act stated that " The employer is expressly responsible for the purpose of old age retirement, disability, death or lump sum payment, for establishing a severance pay fund with the state, organisations established by law or a bank which the state owns more than 50%."

Unemployment Insurance [339]

So far, the severance payment, being one of the ILO principals regulated in Article 12 of Convention no. 158, has been discussed. The other ILO principal is the unemployment insurance (Article 12). Act no. 4447, which has entered into force on 1 June 2000, is among other issues, mainly on the social security system regulating the issue.

Article 47/c of Act. no. 4447 states that the holders of the right of insurance, who have lost their job without any fault or malice on their sides and who have the wish, capacity, and adequacy to work, shall be compensated for a certain time and extent by way of unemployment insurance.[340] The wording of the Article is clearly taking its legal form from the principles regulated in the ILO conventions no. 158 and 102; yet, once again, the content is different from the purposes of the ILO conventions.

To make the shift in the content of the Article clear, the four conditions for gaining the right of unemployment security shall now be evaluated. Moreover, this evaluation is necessary to understand the efficiency of the Act. Furthermore, the existence of the act is used for the refusal of the severance payment, which is considered as a compensation for the non-existence of unemployment security, by the representatives of the Turkish bourgeoisie. So, politically, the enactment of the relevant provisions of Act no. 4447 can also be considered as a concession given in return for the weakening of the conditions of severance payment.[341]

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[339] For a detailed analysis of unemployment insurance see Centel (2000), Gençler (2002), Kutal (1999).

[340] This insurance is compulsory. All the workplaces and the workers in the context of social security law automatically include into the scope of the new insurance. An unemployment security fund that has no financial autonomy, is also established with the Article 53 of the Act no. 4447.

[341] Refik Baydur overtly declares the perception of job security as a compensation for the decrease in collective employer's obligation to pay severance pay by Turkish industrialists (TİSK, 1995:10).

The first condition for a worker to take the benefits of Act no. 4447 is that the dismissal of the worker should be realised in a way out of the will and of the failure/fault of the worker in question (Article 51 of the Act no. 4447). When considered together with the changing content of the workers' obligation to subordinate the employer, this first condition becomes even harder to accomplish (Alper, 2003).

The workers are obliged to pay premium for the 120 days before the dismissal. Yet the obligations on the premiums are not limited to this one. The same worker has also pay premium for at least 600 working days within the last three years before the dismissal. The worker is obliged to pay 2 percent of his monthly income where the employer is obliged to pay 300 per cent of the same amount as a compulsory premium. However, the burden over the employer is somehow compensated by the abolishment of another compulsory premium.[342]

Application to the official labour exchange bureau within 30 days after the dismissal is another condition. If the individual worker fails to apply in 30 days, the time s/he loses would be dismounted/deducted from the time-period for the unemployment remuneration.

Only after the fulfilment of the above-mentioned conditions, does the worker gain a right to unemployment remuneration, which amounts to fifty per cent of the average incomes of the worker for the last four months before the dismissal. Yet, the amount of unemployment remuneration cannot exceed the national minimum wage for the adult workers. Given the significant decrease in the union membership, the expanding scope of unregistered work and the excessive usage of subcontractors, the conditions for the compliance of the application requisites, including the necessary information, seem to be complicated for the majority of the working population.

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[342] Premiums collected for the law on the encouragement of working people to savings are brought to an end by the Article 62/3 of the Act no. 4447.

5.4. Flexibility and Labour Law in Turkey in the 2000s

The tendency to re-categorise labour force with reference to various sets of labour contracts has been observed by the study on the assessments on the individual labour law of central economies. A new institutionality in industrial relations becomes clearer in legal discourse.[343] In conformity with this tendency, the majority of working population is excluded from the protection of legal regulations. We have revealed in the previous subsections that the tendency to re-categorise labour force is at work in Turkey. However, unlike the central economies, in which the concerns for productivity in an emerging workfare state are dominant in labour policies, thus, in which the state's function of securing the capital's right to control labour is established in exchange for its function to support labour in a new format, the tendency to re-categorise labour relations under new types of labour contracts seems to be implying different conclusions on the state's function of securing the capital's right to control in Turkey. In Turkey, the subordination of social policy to the demands of the economic policy referred to the state's withdrawal from investing in labour and in poverty including neglect/disregard to education, health and training (impoverishing growth). This situation becomes clear when the changing context of the notion of subordination and the way the universal principle of contract is investigated. This is the point where Turkey (together with other non-NICs) makes tracks with the old terrain of Atlantic Fordism.

The content of the contract (the right of individual capitalist to control labour power) changes together with the uneven waves of commodification as expressed in the changing regulatory scope of the universal principle of freedom of contract. Put differently, the labour contract has to be in conformity with the codes

[343] We have revealed that there is no natural or ready-made social objects for the regulatory devices. Objects are always the outcome of some active process that 'discover' a solution to an existing problem within the borders of a common imaginary. The way the problem is posed and the answer is conceptualised refers to the ideological nature of 'discovering' the object. The recent 'discovery' of the lack of flexibility in industrial relations can be evaluated from this perspective. It follows that if objects of regulation can be created, than they can similarly be dismantled and abandoned as in the case of abandonment of the provisions protecting the worker at workplace.

regulating the labour relations in the society (Offe, 1985:21), thus has to be in conformity with the function of structural forms in a given social fix, as a result of which different structural power differentials between the respective possibilities for the supply and demand sides to employ rational market strategies are preserved and re-produced. In the Turkish case, the types of labour contracts in use, being the juridic forms of the new institutionality in industrial relations, carry the footprints of the diminishing capacity of the protection of the relevant individual labour legislation and of the changes in the notion of subordination. Within this context, the notion of flexibility refers to the complex process of the change in the discourses of production, juridical decrees, jurisprudence and the protective provisions of individual labour law, all of which have extra-discursive roots including the dynamics of competition in the international sphere and the crisis of accumulation strategy. To put it differently, the notion of flexibility refers to the changing content of the contract (the right of individual capitalist to control labour power) that change together with the uneven waves of commodification as expressed in the changing regulatory scope of the universal principle of the freedom of contract.

5.4.1. Flexibility and Individual Labour Law

The new Labour Act is fully developed in defining forms of flexible work, thus it does not leave any room for jurisprudence, whose decisions had already begun to represent a shift (from the 1990s onwards) from the second position to the first before the enactment of the new Labour Act, to produce any comments in favour of the weak party in the labour market. Keeping in mind that forms of flexibility are combined and imbricated, we can now analyse the new legislation's impact on the flexibility.

The legal means used for the establishment of external numerical flexibility, which means employers decide how many employees they want at any given time, are given by the juridic forms defined under the headings of fixed term contracts, sub-contracting, the homeworking contracts, part-time work, work on call, transitory work relation. Even the , apprenticeship relation and contracts with a trial clause

serve for this purpose in the daily practice. When considered with the group nature of the Turkish industry and with the discourses of production in the declarations of Turkish industrialists, it is fully accomplished in legislation.

As forms of internal numerical flexibility, which means that working hours and shifts, etc are decided according to employers' needs, the new act clearly empowers the employer to regulate the working hours within the 24-hour time period, discretionally. The new act enables the employer to regulate the distribution of the working hours of the week discretionally up till 11 hours a day (Article 41). From a general perspective, Turkish industrialists are now entitled to increase the overall level of absolute surplus value extracted. Their new powers on the regulation of weekly duration of work, of commencement and the end of daily work, of resting breaks, of compensatory work, of overtime work and over work, of compensatory working and of reduction in the duration of work are relevant to this issue. This issue is clearly in harmony with our investigation into the structural constraints of the Turkish industry in which relative surplus value extraction is limited due to the impasse of the accumulation strategy that is import substitution.

Externalisation of work force via various forms of sub-contracting and transitory work relation is another principle of the articulation of the diminishing capacity of the protection of the relevant individual labour legislation and of the changing notion of subordination. Another principle of articulation can be found in functional flexibility. Here job assignment and rotation is determined according to the employers' needs. The significant changes in the notion of subordination and the new definition of the employer clearly put an end to the 'rigidities' over the individual capitalist's right to control the worker. Lastly, wage flexibility, in which wages are adjusted according to performance and productivity, could be mentioned. The changes in the connotation of the notion of subordination and the principle of the freedom of contract entitle individual capitalists to apply the wage flexibility without recourse to new juridic forms.

When we consider the flexibility with reference to the role of the work force in labour process, skill flexibility within the national work force is realised by transitory work relation. Besides, the individual capitalist's new rights related to the issue of transferring the ownership in the workplace and of defining the conditions of work are relevant to this issue.

5.4.2. Flexibility and Collective Labour Law

The main contours of the right to control labour force in a given country in the labour process and in the labour market are shaped by the socio-technical system that is regulating the capital labour relations including the relations in the realm of social and technical division of labour. In the previous subsections in this chapter, the sources of flexibility in individual labour law are discussed by reference to the state's function of securing the right of the individual capitalist to control the labourer at the workplace and to the extent that labour contract matters, in the labour market. The regulation regarding the domination of the collective worker, in the realm of industrial relations, is realised by way of collective labour law including the collective labour agreements. To put it differently, the industrial relations within the realm of social division of labour, including wage bargaining, thus having an impact over the cost of labour to capital, are regulated by the legislation concerning the collective action of labour. However, collective labour law also has a certain bearing on the regulation of the relations within the technical division of labour. Thus, to the extent that flexibility refers to the extension of the individual capitalist's right to control, the regulations covering mainly the relations within the socio-technical system have to be discussed with reference to their bearings on individual labour law. To do this, the analysis of the relevant apparatuses of the socio-technical system will shortly be evaluated. Then collective labour agreements that constitute the border between individual labour law and collective labour law will be discussed within the context of flexibility.

5.4.2.1. Labour Contract and Constitutional Order

The labour contract, in which the individual capitalist's right to control has acquired a juridical dimension, and which has not only a supportive but also a

creative role over the right to control, is not only a contract between the two individuals but also a contract between a fraction of collective labour and capital in general. Thus, it is not limited to relations within the scope of the workplace (Burawoy, 1979;1989). The main contours of this legal instrument are shaped by the socio-technical system.

Given that the relations comprising the socio-technical system cover a vast area, labour contract will, in this section be connected only with the collective labour aspects of the constitutional order for the purposes of clarity. Two institutions, the social security system and the collective bargaining, occupy the principal places within the constitutional order due to their relatively decisive role over the indirect determinants of wage income and thus over the wage-labour nexus. For this reason, the labour contract related aspects of post-1980 collective labour law and the dimensions social security system will be shortly dealt with in order to asses the rising formal importance of collective labour agreements in the regulation of the industrial relations within the realm of social division of labour. Yet, it should be mentioned that while formal importance of the collective labour agreements rises with the diminishing of the protective capacity of collective labour law, collective labour agreements lose their influence for the same reasons.

Depriving Individual Labour from Appealing to Collective Representation

Articles of Acts no. 2822 and 2821, both of which entered into force shortly after the military coup, in 1983, have brought certain impediments on the right to organise, which is acknowledged by the ILO conventions ratified by Turkey. The restrictions concerning the protection of the right to organise in public service and concerning freedom of association are not in conformity with ILO Conventions 87 and 151. From the same vein, the provisions of Act no. 2821 on the conditions to establish a workers confederation (Article 1), the scope of collective agreements (Article 3), the regulation on the determination of branch of activity (Article 4), the organisation of the organs of the unions (Article 9), the electoral procedures (Article 14), etc are in contradiction with ILO Conventions no. 87, 98 and 151.

This subsection demonstrates that the object of the regulations on collective labour law is to weaken the power of labour suppliers in labour markets.

The Interferences with the Right to Vote and to be Elected

Constitution firstly changed the way the workers' organisations elect their representatives, organise their administration and activities. These were the issues directly related to the collective representation of the individual worker as a member of collective labour. Article 51/7 of the Constitution states that the workers must hold the status of a labourer for at least ten years to become an executive in a labour union or in higher organisations. Together with Article 51/5, stating that workers and employers cannot hold concurrent membership in more than one labour union or employers' association, the wording of the article was clearly in contradiction with ILO Convention no. 87[344], which was going to be ratified in 1992 by Act no. 3847.[345]

Interferences with the Power of Unions to Produce National Strategies for Labour Front in General

Article 52 of 1982 Constitution clearly states that trade unions [not employers' organisations], in addition to the general restrictions set forth in Article 13, will also not pursue a political cause, engage in political activity, receive support from political parties or give support to them, and shall not act jointly for these purposes with associations, public professional organisations, and foundations.[346] This provision clearly states the change track from the classical route, which had tried to imitate the tripartite, corporatist organisational forms provided by the European

[344] Convention concerning Freedom of Association and Protection of the Right to Organise.

[345] The convention in Article 3, stated that workers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

[346] The remainder of Article 52 is such "(T)he fact of engaging in labour union activities in a workplace shall not justify failure to perform one's work. /The administrative and financial supervision of labour unions by the State, and their revenues and expenditures, and the method of payment of membership dues to the labour union, shall be regulated by law. /Labour unions shall not use their revenues beyond the scope of their professional aims, and shall keep all their funds in State banks."

example between 1945 and 1980. Another thing to be mentioned here is that such kind of impediments/regulations in modern law does not appear in constitutions. They are rather regulated by relevant acts.

The introduction of the Supreme Arbitration Board having clear paternalistic orientations in the absence of countervailing social indemnities, such as life time employment, high wages etc., has provided the ruling class in Turkey another means to prevent workers' participation in the formation of economy politics in Turkey. While Article 52 prevented workers from organised claims against anti-labour policies, Article 54/5,[347] in many cases, impeded workers' right to strike and directed their claims to a board; the Supreme Arbitration Board. The Article is in contradiction with ILO Convention no. 98, stating that workers shall enjoy adequate protection against acts of antiunion discrimination in respect of their employment. What's more, the Constitution's provisions on industrial relations are totally in contradiction with the democratic element covering all aspects of acquis communautaire on the European social policy (Güzel, 1998:118).

The third step in the isolation of labour in the Constitution is the same Article 54. The article states that "The circumstances and places in which strikes and lockouts may be prohibited or postponed shall be regulated by law … (P)olitically motivated strikes and lockouts, solidarity strikes and lockouts, occupation of work premises, labour go-slows, production decreasing, and other forms of obstruction are prohibited.". The above mentioned prohibitions brought by Article 54 overtly aim to isolate the individual worker so as to cut its power to bargain collectively in face of a part of a collective capital, that is the individual capitalist. It is also in contradiction with the ILO Convention no. 105 concerning the abolition of forced labour since the constitution introduces legal means to force labour power as a

[347] Paragraphs 5 and 6 of Article 54 state that "In cases where a strike or a lockout is prohibited or postponed, the dispute shall be settled by the Supreme Arbitration Board at the end of the period of postponement. The disputing parties may apply to the Supreme Arbitration Board by mutual agreement at any stage of the dispute./The decisions of the Supreme Arbitration Board shall be final and have the force of collective bargaining agreement."

means of labour discipline[348], of punishment for having participated in strikes[349], and of political coercion.[350]

Impediments Created by the Legal Form Provided to Workers' Self-Organisation

Turkish regulations on industrial relations from the 1950s onwards assumes that employee self organisation can or should only take one form, that of a formally constituted trade union. The divergent discursive strategies between the two epoch so far analysed have this presumption in common. A further question may be posed at that point: why is it that the Turkish labour law operates with a relatively tight definition of what constitutes a trade union and of what constitutes an appropriate legal syndicate action? One major disadvantage has been that the collective actions of unorganised workers are unprotected. The textual foregrounding of the term trade union reinforces the suspicion that it is possible to read the intent of the law as the containment of trade unionism, which might otherwise be supported by other legal forms of associations to surpass the impediments over the representation of de-unionised workers, i.e. homeworkers and agricultural and small-scale workforce. This reading is further enhanced by the content of Article 38 of Act no. 2821, which disqualifies trade unions as organisations, which principally aim at carrying on political or social movement. Moreover, Article 7 of the same Act provides explicit confirmation of this reading. The requirements as to what a union constitution should look like and as to how a union should carry on its affairs are remarkably specific. While there is nothing inherently objectionable about the majority of these requirements, the sheer number and specificity of the requirements makes it clear that the unions envisaged by the law were literally a world away from the self-defined and, therefore, highly varied associations known to the European law. The law may be read as contributing to an ordering and not simply to a democratising process is a reading that is also supported by the

348 In contradiction with ILO Convention no. 105 Article 1(c).

349 In contradiction with ILO Convention no. 105 Article 1(d).

350 In contradiction with ILO Convention no. 105 Article 1(a).

presence of the rather surprising provisions on conditions for founding members[351] (Article 5) and conditions for establishment (Article 6). [352]

In sum, Turkish labour organisations were to be formed in a single mould chosen for them by the lawmaker's taste. In this way the law may be read as promising to simplify and order, even if it could not be expected immediately to pacify, the chaotic industrial world which so worried employers and the authorities in the 1970s. Taken together and contrasted to the bulk of European regulations on labour law, the wording of the Turkish regulation on labour law suggests rather clearly that it is possible to read the prime 'hope' of the law as that unions should discipline a privileged core group of employees whilst not themselves offering to great a challenge to employers.

As the above-mentioned properties of collective labour law make it clear, no significant right, which concludes with the empowerment of the worker's self-organisation as being the choice of self-chosen ends are given. The analysed articles reveal that those who drafted it were worried of spreading rights to those defining their own proper purposes. Whether or not the drafters were aware of this possibility, the manner in which the articles are written makes it very difficult for it

[351] Article 5 of the Trade Unions Act, no. 2821 states that "Founding members wishing to establish a union: … (s)hould not be sentenced to a term of imprisonment of one year or more for a contravention or for an offence, …, (n)ot have been convicted of offences specified in Chapter I Volume II of the Turkish Criminal Code or of publicly inciting and encouraging those offences, not have been convicted of offences specified in the second paragraph of article 312 of the Turkish Criminal Code for publicly inciting or encouraging hostile acts based on racial, religious, language class or regional discrimination, and not have been convicted of committing the offences specified in Article 536 ... (o)f the Turkish Criminal Code for *political or ideological purposes.*" (italics are mine)

[352] Article 6 of the Trade Unions Act, no. 2821 states that "The founders of any union set up pursuant to this law shall submit a petition to the governor of the province including …(c)opies of the birth certificates of each founding member, copies of the residence certificates of each founding member, curriculum vitae of each founding member indicating their occupation and trade, certificates for each of the founding members proving that they have been actively employed within the branch of activity of the union, copies, if any, of the criminal records of any founder, a list of the persons responsible for the management and administration of the organisation until the first general congress is held and a declaration certified by a notary public of their assets and those of their spouse and of children under their care. A receipt shall be obtained. … (T)he regulation of unions and confederations shall not be contrary to the democratic and fundamental principles of the Republic, as set out in the [1982] Constitution of the Turkish Republic."

to be read in such a way that employee rights may be said to be in any way separable from the goal of establishing an orderly system of industrial relations with all of the duties this system implies. Thus, the law may be read as seeking to constrain the already restrained constitutional rights of employees even more by associating their granting with definite and pre-defined ends. These ends, very definitely, did not include the allowance of what Marshall termed 'a sort of secondary industrial citizenship' whereby trade union civil rights could be used for the purpose of asserting or enforcing political and social rights against the calls of duty, let alone asserting protection from individual labour law.

Labour Law and Social Security System

Social security as an institution of the constitutional order and social security system as a part of the socio-technical system has a certain bearing on the indirect determinants of the wage income. However, like collective labour law it is more related with the industrial relations within the realm of the social division of labour. It has three dimensions. The first dimension is the list of social risks covered by the social security system in question. Some of the risks in the list have a connection with the relations regulated in the individual labour law such as job security, unemployment payments, the provisions regulating the employer's obligation to pay in case of economic crisis, and severance payment etc.[353] Our investigation into the individual labour law revealed that the impasse of the import substitution has created a tendency to socialise the risks of the employer on an extended basis by way of various funds partly taking their sources from the wages of the workers.

The second dimension of the social security system is the portion of overall working people covered by social security system. This point is related to the unregistered workers' position and to the flexibility reached by way of unregistered

[353] Moreover, the issue is not limited to the social security of the registered part of the work force. Wage arrangements for elderly person over than 65 years old (Act no. 2022) and social assistance and the encouragement of solidarity fund (Act no. 3294) are directed to the people experiencing social discrimination. Yet the protection provided by these funds are dramatically weak.

activities of economy. The third dimension is the systems ability to respond to the changes in the norms of production and of consumption. This last issue is implicitly discussed in the section discussing Turkish economy's dependency on import substitution in the previous chapter.

When considered with our investigations on the conditions of unemployment insurance, it is fair to say that the strategy employed behind the changes is to decrease the cost of social security to the companies. A system, in which public authorities have taken, in the name of Turkish Bourgeoisie, the initiative to create the possibility of conditional and very weak unemployment benefits for a minority of core workers, have begun to emerge. This involves the minimal income support assumed to help access to a job and other types of security incomes for a minority of working population.

5.4.2.2. Labour Contract and Collective Bargaining

Within this context, in which protective and supportive provisions of collective labour law eradicated together with the ability of labour to engage in continuous and complementary strategic adaptations in labour market and, in which the exchange of social purchasing power for anticipated re-distribution of gross national income, lost its meaning, collective labour agreements/collective bargaining have become realms in which the relative powers of the parties are represented and thus have realms in which the dominance of law of value working at global scale is implicitly become the source of legitimisation of the dominance of market as a mode of coordination. The scope of the participation of workers to the creation of decisions of management through collective bargaining has always been limited in the Turkish industrial relations and in the relevant regulations. On the contrary, the discourses of production, mainly after the 1994 crisis, have referred to the regulatory powers of collective bargaining on matters of flexibility.

In conformity with the logic of the 1982 Constitution, Article 1 of the Collective Labour Agreement, Strike and Lockout Act no. 2822 states that a collective labour agreement changes an individual labour contract for the benefits of the worker, but

the vice versa is also possible, meaning that a collective labour agreement may include provisions in favour of the employer [354] (Centel, 1999:59). The aim of Article 1 of the Act is to provide the principles and the procedures for the conclusion of collective labour agreements" regardless of the outcomes.

The main problem here is that under such a regulation, how, then, does one explain the transfer of the power of representation to trade unions if this power could be used against the one that assigns it? To put it differently, in cases of concessions reached by way of collective labour contracts, can a representative use its powers for the ill of the represented? This is a vital question since a concession, from the beginning, includes some provision against the benefits of the worker to protect other benefits of the worker. In practice, the job security, the preservation of the job, is considered to be the most important benefit, and other benefits of the workers are weaved for the sake of this ultimate benefit. Yet, this is not an innocent practice, it contains the complete mechanism of the market as a means of coercion. The price to be paid to get the job, namely the concession, appears as the outcome of the stress over the individual worker who is always under the threat of being replaced by another member of the growing reserve army. Under the conditions of relatively stable period of import substitution, in which the exchange of the social purchasing power for the anticipated re-distribution of gross national income were possible, this practice had a certain credibility. Today, under the conditions of the impasse of the accumulation strategy, we observe that this practice has become the principal nexus on which the influence of the market as a means of coercion is realised. Subsequently, the only possible response of the individual worker to market forces, which lies in the unionisation for the purposes of pursuing some labour market strategies, has lost its meaning. [355]

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[354] Article 1 of the Collective Labour Agreement, Strike and Lockout Act, no. 2822 states that the purpose of the Act is to provide employees and employers with the principles and the procedures for the conclusion of collective labour agreements which stipulate their economic, social and work, conditions, the settlement of disputes through peaceful means and strikes and lockouts.

[355] In the last decade, a drastic fall in the number of unionised workers, together with their capacity to pursue some labour market strategies, is observed. The fall in the ratio of unionised workers in private sector is astonishing. Today, 150.000 workers over the total amount of 7.500.000 workers

Flexibility Clauses and Collective Agreements

Flexibility clauses in collective agreements can be considered under two main headlines: a- concessions at the enterprise level and b-concessions related to the nature of industrial relations.

The Concessions at Enterprise Level

Tendency to de-centralise collective labour agreements meaning that workplace level collective labour agreements have become dominant throughout the globe, is relevant but not directly connected to the politics of flexibilisation. In cases in which internationalised capital produces the same commodities in different workplaces in different countries, this strategy provides certain advantages to the relevant transnational in the adjustment of the overall costs of production. However, even in this case, companies might vote for branch level collective labour contracts as a threat implicitly stating the possibility of transferring the production to another workplace (cf. Munck, 1995).

While the establishment of trade unions on occupational activities or on a work site basis are banned (Article 3 of the Act no. 2821), enterprise level collective labour agreements are possible in the Turkish legislation.[356] Concessions at the enterprise level generally consist of enterprise-based regulations on factory rules, on duration and commencement of work and on health and security (cf. Çetik and Akkaya, 1999:140-152; Munck, 1995). Thus, they are more related to the work relations within the technical division of labour than the social division of labour. However,

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working in the private sector are unionised. These numbers provides us some points of reference on the efficiency of collective agreements over the issues on flexibility and job security (as a kind of compensation). What's more, the number of skill requiring jobs that may provide a certain form of job security due to the inherent qualities of the worker in question, have a relatively small place in the overall jobs offered by the public and private sectors. Given that de-unionisation is the decisive feature of the industrial relations of Turkey, it is safe to say that flexibility reached by way of law and individual labour contracts are of importance for the individual capitalists.

[356] Article 3/2 of the Collective Labour Agreement, Strike and Lockout Law no. 2822 states that "In an enterprise belonging to a corporation or public organisation or institution which has more than one work site in the same branch of activity, only one collective labour agreement shall be concluded covering all the work sites of the enterprise. Such an agreement shall be referred to as an enterprise collective labour agreement in this Act."

in this case workers obtain the power of speaking as a fraction of collective labour. The supply side strategies in the labour market can include concessions on the duration of work so as to keep existing jobs. Another strategy that can be pursued by the collective labour agreements at the enterprise level is the taking over of the company by the trade union.[357] Yet the Turkish system, while leaving enough room for the collective agreements to bring provisions on the matters related to flexibility, has severely limited the scope of participation to the matters related to right of control (Dereli, 1998:325). This situation brings a severe impediment to make concessions for workers' front in return for the right to participate in the decisions of management, one of which is the matters related to job security, thus bringing an impediment over the democratisation of industrial relations.

Concessions Related to the Nature of Industrial Relations

The second type of concessions under the banner of flexibility refers to the conditions of employment, generally, at the national level. This type of collective agreements implicitly reflects various kinds of official and unofficial bargaining between governments, employer organisations and worker organisations.

Agreements between labour organisations and employer's organisations at the national level have some main areas of interest in general and include state intervention. Firstly, they are consisted of measures including budget, economic and monetary policies, the distribution of the cost of wage at the national level and of strategies aiming to create new jobs, and to achieve economic stability. The second area of interest in collective agreements at the national level is the rules regulating the technical division of labour and labour market. The duration of work and working time in actual industrial relations are among the most important

[357] When the government decided to close down the allegedly unprofitable steel mill in Karabük, claiming that its technology was too old to be renovated, union reactions led to the buying out of the enterprise by the workers. the enterprise was sold to workers at a symbolic price; a joint stock company was set up, giving workers and other stakeholders shares. The new company, Kardemir, has been operating with reasonable efficiency under the workers' control so far. On the other hand, the attempted buying of Et ve Balık Kurumu, the big state conglomerate processing meat and fish products, by the Hak-İş Confederation, elicited strong reactions from many diverse groups, which were instrumental in thwarting the Union's bidding, in 1995.

ones. Flexibility of wages and flexibility in the organisation of the work and in the dismissal of the worker are also among concerns of this type of bargaining. The reform of the social security system constitutes the third item. Within this context, the collective representation at the national level seeks for the protection of jobs by increasing the level of coordination both in between the contesting parties and between the workers organisations.

All of these measures have certain bearings on the configuration of mutual relations among different types of work organisations, life styles and ways in which the notion of control in its widest sense over labour force is reproduced. The components of the historically observable configurations of the capital-labour relation, which are investigated throughout the dissertation, such as the influence of the impasse of import substitution on the value of existing means of production (the threat of de-valuation) and on the social and technical division of labour, the ways in which workers are attracted and retained by the firm (the influence of the army of reserve workers on the conditions of work), the direct and indirect determinants of wage income (some of which are severance pay and unemployment benefits), and the workers' way of life to the extent that they depend on wage incomes, are counted for that.

The first and third items cannot formally be conducted by the working class organisations due to the legal impediments provided by the post-1980 system.[358] However, the contributions of working class organisations in the last crisis occurred in 2001, and proved to be vital in the accomplishment of policies aiming to suppress wages. Given that the number of the members of the unions were near to the ground, this effect owes more to the ideological reasons than wage costs.

[358] Article 37/2 of the Trade Unions Act, no. 2821 states that "Unions and confederations shall not pursue any political objective or carry on any political activity, establish and maintain relations or cooperate with political parties, or act together in any way on nay matter with political parties. … (O)ccupational activities of unions and confederations solely aimed at the protection and promotion of economic and social rights and interests of their members shall not be considered as political activity."

The working class organisations have been deprived of rights to offer policies at the national level unless this type of contribution is needed by ruling classes.[359]

Somehow unexpected [360] the 2001 crisis burst out shortly after the announcement of a quarrel between the President and a minister of coalition government in the national security council. Shortly after the occurrence of the crisis, the policies aiming to deteriorate the working class incomes were/are considered to be vital if Turkey was to get out of it. The media announced the need for a 'consensus' between the representatives of workers and employers. Unlike the neo-corporatism inspired by the social consensuses of Europe in the 1990s, such as the 1993 consensus in Italy (Işık, 2002:288), the 'consensus' was to be reached by the loss of wages in return for almost anything. No reform for the participation of working class organisations to the formation of economic policies was proposed. Inadequacies of the industrial structure of the Turkish industry did not come into question. The policies for the creation of new jobs were not in the agenda. The IMF control over economy policies and the traditional Turkish Labour policy, reflecting the tastes of the Turkish bourgeoisie impeded the representation of workers' interests in many areas of social life despite the decrease in the overall wages.

Under these conditions, the flexibility reached by way of collective labour agreements seems to be operational not in establishing but in framing the peripheral conditions of productivity by setting an example to the remainder of capital labour relations, including the unregistered activities. This situation is fully consistent with the current position of the Turkish industry vis-à-vis international division of labour.

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[359] At 1999, two years before the 2001 crisis TİSK (1999a:48) declared the importance of consensus reached by way of conversation between the parties of industrial relations.

[360] Tuğrul Kudatgobilik, member of executive committee of TİSK, in December 1999 declared that the Turkish industrialists were expecting annual 5% percent growth in the forthcoming years (TİSK, 1999b:69).

On the other hand, in the countries that have developed a central bargaining tradition, the working class strategies in the labour market were proved to be more challenging in face of the bourgeoisie's demands expressed within the discourse provided by neo-liberalism. One of the strategies of working class organisations in the labour market in European Countries is the reduction of the duration of work.[361] Despite its ineffectiveness over wages, this strategy proved to be successful in socialising the risk of dismissal of a single worker. Furthermore, this strategy, in some cases based on the encouragement of 'responsible autonomy' and semi-flexibilisation strategy, proved compatible with the time-flexibility demands of the industry. The bargaining between the government representatives, the representative of industrial and financial bourgeoisie and working class organisations in Belgium in 1996, just like the one conducted in Italy in 1993, has brought certain concessions in favour of flexibility applications. Workers gained, in return for the wage decreases, the rising representation of their interests in the making of economy policies mainly in the realm of the creation of new jobs and coordination of the application of the rules on flexibility at work places. Holland had two repressive attacks to the wages in 1982 and 1993, each of which concluded, despite the decreases in wages, with some kind of above-mentioned compensations.

Yet, the success of such labour market strategies remained limited mainly due to the disobedience of individual companies to the plans for creating new jobs (Cam, 2002). There is a wide failure of a democratic attempt to negotiate flexibility throughout the European economies due to the collapse of patterns of wage relation under the weight of de-regulation and rising unemployment (Coriat, 2002:252).

So far, we have analysed the categories in which collective labour contracts in the widest sense can be signed. Recent changes in individual labour law made it possible to bring flexibility clauses, which were not possible under the previous

[361] Agreement of Aubray, after the apparent failure of Auroux, signed in 1998 in France aimed to reduce the weekly duration of work to 35 hours. The implementation of the agreement commenced in 2000 and it is still in process (Coriat, 2002:252).

legislation to the texts of collective labour agreements.[362] The rights regulated by individual labour agreements seem to be included into the realm of collective labour agreements. Such a regulation would be more democratic and legitimate if the protective provisions of the labour law were in force. This is the way the representatives of worker's front percept this shift. While there are no explicit announcements on the trade union front, personal declarations of the representatives indicates that, at least, unions interpret collective agreements as a means to economic democracy, which serves for the unification of labour market, rather than a means for reaching flexibility.[363] On the other hand, in conformity with the process of de-constitutionalisation of labour and with the impasse of existing accumulation strategy, Turkish business seems to be 'open' to dialogue with workers' front and to reform proposals for collective labour agreements that have a wider scope than the collective agreements as regulated in the act and as interpreted by the judiciary, in cases in which the collective labour agreements become operational for achieving flexibility.[364]

5.5. Conclusions

This chapter represents an attempt to analyse the new individual labour law of Turkey with reference to the changes appearing in the international division of labour throughout the last structural crisis of capitalism. For this purpose, our investigation seeks to achieve a functional analysis of individual labour law, thus, of the power relations imbedded in the norms regulating the realm of technical division of labour and labour contract, on the basis of the partial systematisation and thus, of conceptualisations established throughout the study.[365] Our

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[362] For instance, the provisions on overtime and over work, the transitory work relation, compensatory work, etc. make it possible to regulate working hours by way of collective labour agreements that would be null under the conditions provided by the previous Act.

• See TİSK (1999b:77)

[364] Refik Baydur notes that collective labour contracts at national level could be composed by the parties (TİSK, 1999b:8).

[365] The coherence of institutions toward each other is observed ex post in regulation theory. Neither globalisation and internationalisation nor internal dynamics of a country, do not lead to a

investigations revealed that the power relations imbedded in the norms regulating the realm of technical division of labour and labour contract have a clear link with the conceptualisation of 'economic', which constitutes the discursive borders of the capacity of control.

Our research on the legal borders of the capacity of control revealed that the individual capitalists' capacity to control labour power is increased in the technical division of labour and, to the extent individual labour contract intervenes, in the labour market. The change in the meaning of the concept of subordination, the new definition of the employer and worker, the entrance of the universal principle of the freedom of contract into labour law legislation, the forms of new institutionality in Turkish practice and legislation were among the elements of the expansion of the the individual capitalist's right to control labour within and out of the workplace. The new provisions are in conformity with the existing discourses of production, covering many areas, including a transformation in the obligations of worker and the subsequent changes in the main conceptualisations of individual labour law, a shift in the regulatory scope of labour contract, introduction of new types of labour contracts.

In the process of establishing the link between the conceptualisation of 'economic' as a part of the impasse of the given accumulation strategy and the way the particular positions of the subjects in relation with the others are constituted in law, we have posed two critical problems whose answers revealed the contradictory foundations of neo-liberal legal discourse on which the process of legal de-constitutionalisation of labour is realised. We have indicated that the recent changes in the individual labour law are realised in a social environment in which the failure of neo-liberalism to generate viable alternatives for social consensus around the international accumulation pattern currently being followed, has become clear. Moreover, they are realised without recourse to a peripheral kind of

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geographical or historical automatic convergence of institutional architecture. The syntax of the institutions in a hierarchic structure and their viabilities are only relevant if they are consonant with the overall institutional architecture of the society.

organised interest representation to control labour's demand at the national scale. This is the point where Turkey (together with other non-NICs) makes tracks with the old terrain of Atlantic Fordism, in which Schumpeterian Workfare State is emerging (cf. Jessop, 2002a). While, in the central economies, the state becomes a place in which its function of securing the capital's right to control labour is established in exchange for its function to support labour in a new format, that is, in the form of workfare state who subordinates social policy to the demands of economic policy without leaving investment including education, to labour, in Turkey, unlike the central economies, in which the concerns for productivity in an emerging workfare state are dominant in labour policies, the subordination of social policy to the demands of economic policy referred to the states withdrawal from investing to labour and to poverty including neglect/disregard to education, health and training (impoverishing growth).

Turkish legislation has the imprints of a concerted bid at the de-regulation of labour markets within a context where there is not a tendency for an openly repressive domination guaranteeing the success of an accumulation pattern. In the absence of a state as a guarantor of basic workers' rights and of wage compensation, recourse to the labour market as a means of coercion has become the most viable solution for the postponement of the paradoxical objective of controlling labour in technical division of labour. Under these conditions, discourse of labour law texts becomes realms in which the denial of workers' rights are realised by way of presupposing market as the only mode of coordination for the use of national labour power. The concerted bid at de-regulation of labour markets within a context where there is not a tendency for an openly repressive domination, represents, at the same time, the inability of the Turkish industry to construct a new accumulation strategy and/or Turkish State's failure to secure the rights of capital to control labour force at requisite level. This way of interpretation is also in conformity with our reasoning on the ability of the peripheral states to discover political solutions to the structural crisis.

The objective of controlling labour in technical division of labour by way of market as a means of coercion, without further establishing additional repressive means of domination increased the ecological dominance of capitalism, thus, increased the role of the civil law/law of obligations in such a way that the text of individual labour law has become similar to that of the law of obligations. This transformation can be observed both in the shift in the regulatory scope of labour contract in the labour market and the subsequent introduction of the new types of labour contracts referring to the increased determination of the universal principle of the freedom of contract in the establishment of the labour contract and in the increasing numbers of the legal subjects that are excluded from the protection brought by the remaining protective provisions that brought limits to the labour contracts.

The notion of flexibility refers to the complex process of the change in the discourses of production, juridical decrees, jurisprudence and the protective provisions of the individual labour law, all of which have extra-discursive roots including the dynamics of competition at international sphere and the crisis of accumulation strategy. To put it differently, the notion of flexibility refers to the changing content of the contract (the right of individual capitalist to control labour power) that change together with the uneven waves of commodification as expressed in the changing regulatory scope of the universal principle of freedom of contract. The labour contract has to be in conformity with the codes regulating the labour relations in the society (Offe, 1985:21), thus has to be in conformity with the function of structural forms in a given social fix, as a result of which different structural power differentials between the respective possibilities for supply and demand sides to employ rational market strategies are preserved and re-produced.

The relation of labour contract with the codes regulating the labour relations in the society necessitated an investigation on the relation between collective labour law and labour contract, which at the same time carries the footprints of the changes in the protective provisions of labour legislation and the discursive re-construction of

basic conceptualisations of labour law, including the transformation in the obligations of worker and the subsequent changes. For this purpose, the elements of constitutional order that represent diminishing organisational capacities of collective labour and thus, represent the changing content of the power structures between the main parties of the labour market are investigated. Then, the normative analysis is linked to the historical process by reference to collective agreements concerning concessions at enterprise level and concessions related to the nature of industrial relations, which include various kinds of official and unofficial bargaining between governments, employer organisations and worker organisations. Under the light of argumentations established throughout the study, it has been argued that the contemporary collective representation at the national level mainly seeks for the protection of jobs by increasing the level of coordination both between the contesting parties and between the workers' organisations. To put it differently, under the conditions of new institutionality, which refers to the changing content of the power structures, the main concern for the compromises reached by way of collective labour agreements has become job security. In a social environment, in which the strategy depending on the exchange of social purchasing power for anticipated re-distribution of gross national income loses its meaning, job security becomes the main axis through which the complete mechanism of market as a means of coercion enters the context of compromises.

Within this context, flexibility appears as a principle of articulation between the diminishing capacity of protection of the relevant individual and collective labour legislation, and the expansion of the market in the form of the universal principle of freedom of contract in the regulation of industrial relations, under the conditions of impasse of import substitution that requires more absolute surplus value rather than an increase in the levels of productivity.

CHAPTER VI

CONCLUSION

In this study, I have attempted to establish a framework in which labour law can be understood in relation with social relations surrounding its provisions. The theory developed by various branches of Structuralist Marxism that has been combined and cited in this study, provides the study of law a place in the lived experience of social relations and thus provides a base to reject the systematisation of law as a set of rules suspending on the air. Another virtue of approaching law as a part of mode of regulation rests in this approach's capacity to refuse law as an institutional expression. Thus, the principal substantive point made in this study has been the examination of the connection between the power relations embedded in norms and the wider social context, within which Turkish industrial relations have developed. By way of conclusion, I do not intend to go over all the presumptions and findings of this study, since conclusions have already been made as the arguments have matured and at the end of each chapter. Rather I aim here to emphasise the main contentions that form the basis of the study.

Firstly, law rarely, if ever, functions alone, but in combination or connection with other aspects of the social, including regulatory mechanisms other than law, and -given capital is a social relation- the dynamics of accumulation. This approach to law requires certain nexuses, which are to be chosen with reference to the theoretical presumptions of the researcher in question, and which are capable of connecting legal to social. From the perspective employed by this study and for our

purposes, these nexuses/connection points are the dynamics of wage relation, including the essential contradiction in the commodity form of labour between its exchange-value and use-value aspects, and the correlation between state and capital accumulation to the extent that this correlation illuminates the relations in between state, law and international division of labour, and helps to understand law as a mode of regulation.

Secondly, a functionalist interpretation of labour law, based on contemporary structuralist inspirations, is possible. This paradigm paves way to interpret labour law as a part and a parcel of the processes and procedures by which socio-technical system secures rights and capacities of capital to control labour power in the production process and in labour market. The essential contradiction in the commodity form of labour between its exchange-value and use-value aspects inherent in wage relation has its footprints on the main/classical divisions of labour legislation that are law regulating rights and duties of individual worker (individual labour law) and law for organised action of workers (collective labour law). Within this context, individual labour law intervenes the relations between the individual capitalist (as a part of collective capital) and the single worker in the realm of technical division of labour in which labour process is realised, and it regulates the terms and conditions of the employment of individual labour within the framework established by the law of value (and/or value-form) and collective struggles of workers both in labour market and in labour process. Individual labour law has many suggestions on the establishment of the categories that reveals the structural selectivity of the state visible, and this fact helps to understand why the labour contract has to be in conformity with the codes regulating the labour relations in the society.

Thirdly, the functionalist interpretation of labour law employed in this study paves way for considering law as a part of mode of regulation. In Regulation Theory, the principles of action for structural forms, whose basic forms/surface forms are constituted by economic, juridic and other kinds of relation categories, are law,

compromises and the value system on which routines are based. This approach negates the conceptualisation of the hierarchic relationship between institutions being the source of law and society as being mere applier of law in the instrumentalist approaches which inevitably derive their theoretical standpoints from legal formalism. The central role of law requires the influences of value system and compromises realised over the forms provided by law. Law provides a variety of norms sometimes included within the relations constituting a structural form and sometimes remain passive and do not give rise to any kind of institutional regulation. Industrial relations have a continuing effect, thus an active legal dimension, in which the legal aspect of work relation plays an important part. Legal dimension of work relation does not become significant only when a dispute or some other problems arise, rather it is always on agenda due to the inherent characteristic of the relation that reproduces at the same time the structural positions and the powers of the parties in industrial relations.

Various social structures constituting the class effect are shaped by the rules, which are by themselves partially shaped by these structures. Thus, law, in the realm of industrial relations, is consisted of continuing set of practices that contributes to the reproduction and transformation of social relations. It serves to normalise and stabilise the dynamic of struggle, conflict, and competition. Within this context, law has the capacity to re-reproduce or de-reproduce the existing economic relations. Subsequently, the rules regulating industrial relations that constitute a part of socio-technical system contributes to the mode of regulation and, in cases where a stable mode of regulation not exists, contributes to the reproduction of industrial relations under the conditions of crisis.

Fourthly, the importance of all these points for the understanding of the social significance of (individual) labour law as a function of socio-technical system, is that they change the nature of the questions one asks. The questions directly about the effects of labour law on the size, internal organisation and morale of a supposed working-class army (the traditional Marxist questions) loose their importance in

face of the questions about the effects of labour law on the strength of the forces that bind and separate these two classes economically, politically and ideologically, and of the questions which explore the ease or difficulty of capital's appropriation of surplus labour. In the course of this study, the task of elucidating the structural constraints and powers of individual and collective subjects in the sets of relations, amidst which they live, required two substantive historical questions to be asked: Why and under what circumstances did law enter industrial relations at particular points in time? How was it that particular legal interventions had the outcomes they did? These questions enabled us to use our nexuses/connection points used to connect legal to social.

The attempt to provide an answer to the first question included the examination of the dominant model of production (Fordism) and the conceptualisation of international division of labour. Hence, conditions of existence and transformations of the frame in which the state's function of securing the rights and capacities of capital to control labour power in the overall reproduction of capitalist relations of production is realised have been investigated. Given that there is a correspondence between institutional and organisational developments, and their principles for action (law) and radical changes in wage formation, the same investigation is considered to be capable of illuminating the dynamics behind these rules. Individual labour law and collective labour law are considered to be the main legal devices in the regulation of industrial relations as being the most important realm on which the capacities and rights of capital to control labour power is, to a great extent, determined.

The analysis on the structural forms regulating the accumulation in monopolistic mode of regulation established that throughout the period the regulation regarding the stabilisation of wage relations in a series of companies that are forming a branch involved binding/protective regulations, which included collective agreements and obligatory provisions for labour contracts and which applied to all employers within a given branch or region with the aim of preventing competition

for low wages and of enabling periodic increases in the purchasing power, in a social environment in which social peace depended on high level of productivity and, thus, on continuous accumulation.

Under the pressure of monetarism and of the process of stagnation, the changing functions of classical structural forms 'After Fordism' have been elaborated. The investigations revealed that collective bargaining's role over stabilisation of wage relations is increasingly deteriorated by the changing nature of work, including new institutionality, by increasing influence of business over labour politics, by the labour market strategies of the governments of central economies and by dominance of the discourse of flexibility. The analysis of the responses to the supply side crisis of Fordism indicated that those countries, which stick to the classic Fordist wage relation (rigidity plus Taylorism) and to its classical mode of regulation in the realm of labour law (protective labour law), would be gradually outclassed. However, the structural constraints over the national cases are not forcing them for a single solution, at least for now. A country may chose to leave wage rigidity characteristics of Fordism, or to leave the Taylorist element or apply an amalgamation of these politics. In all cases, it has become apparent that the role of collective bargaining over the stabilisation of wage relation is significantly weakened.

On the other hand, protective provisions of individual labour law whose origins remain in the law created/produced in monopolistic mode of regulation remained effective, however in a different context and with a new discursive frame which is established on the denial of conflict and its inevitability in industrial society and on a single juridical subject having no connection with collective worker. Another feature of the new individual labour law is the insertion of the paradigm of flexibility into its temporal and spatial realm of application.

Researching an answer to the question of why and under what circumstances did law regulating industrial relations have changed radically at particular points in

time, the socio-technical system of Fordism, its crisis and the changes in labour law have been investigated. This attempt, however, provided a part of the answer. To provide a complete answer to the question, the notion of international division of labour and the place of 'developing' countries within this systematisation had been analysed.

The amalgamation of dynamics of accumulation and of class structures of both the central and peripheral states resulted with the emergence of second international division of labour in which NICs and non-NICs emerged. Only after investigating the role of competition, the dynamics of the different periods of capital accumulation and the changing functions of the two international like structural forms being effectual on 'developing' states' labour politics by way of structural adjustment programmes, the theoretical background became adequate for framing labour politics of peripheral states.

The peripheral state is considered as a structural unity rather than an organic entity in conformity with our theoretical approach to state. The structural constraints of peripheral states are considered in detail. The way the state's function of securing the right of capital to control labour power is realised in the early import substitution policies and in the current international division of labour is explored. Thus, in addition to the structural constraints, the political determinants of the class structure with reference to the notion of control are considered. It has been mentioned that one of the permanent elements of the state labour policy of the peripheral world has always been reluctance to level the extreme inequalities of the power relations both in labour market and in labour process. The peripheral state's function of securing the rights and capacities of capital to control labour power in the production process and regulating the terms and conditions of the capital labour relation has always included repressive domination as a result of the dynamics of peripheral relations of production. Within this context, the peripheral world's inherent tendency to hegemonic crisis is established.

Then the answer of the historical question of why and under what circumstances did law enter industrial relations at particular points in time is given conditionally. It has been argued that, given the heterogeneity of the vast space occupied by 'developing' economies, a partial systematisation based on the common characteristics of peripheral countries, may not be suitable for deduction and for linear causal explanations of the concrete social phenomena in each peripheral country. Yet, provided that the concrete facts are examined well, the attempts to partially systematise the tendencies in international division of labour, together with the medium and high level abstractions on the political economy of capitalism, cannot be considered totally fruitless for an understanding of the dynamics of accumulation at global scale over peripheral formations.

Against this background, it has been mentioned that when conditions of second expansion of Fordism articulated with the internal contradictions of a given peripheral country neo-liberal programmes including flexibilitisation of the norms in the realm of industrial relations, have found a base to be implemented. Yet this implementation has roughly two variants, which in some cases may be observed in the same economic space divided by internationalised branches and which resulted with dualistic application of the labour law at different branches in the same country. In peripheral economies, in which the ruling classes were capable of controlling labour force under the conditions of extraordinary absorbation of relative surplus value, not only the collective capacities of labour to intervene the national policies, thus the labour's capacity to interfere into the money as a social institution, but also socio-technical system, including the regulations on the re-organisation of technical division of labour and the regulations on the collective action of labour in labour market, has remained under restrictive practices of the state. Neo-liberal practices have been implemented in the realm of money as a social institution with the exclusion of democratic practices including labour's intervention. Within this context, the peripheral capitalism specific to NICs have always included remarkably *ex ante* modes of coordination besides market-based allocation of resources.

Another group of peripheral countries, in which the regulatory devices of socio-technical system had become a source of rights for working masses to resist against the demands of ruling classes, industrial investment to labour has been weakened and unproductive activities pursued by finance sector constituted the main portion of economic activities. Logically, the main concern for the countries in the second variant seems to be the re-regulation of collective labour law as a device regulating the collective capacities of working class to interfere national policies. The neo-liberal revolution in these countries did not include the structuration of industrial organisation to charm international investments. Given that labour process remains to a large extent, untouched, individual labour law becomes a point for reference only after the 're-regulation' of collective labour law. Analytically, there are two possible reasons for this. First reason may derive from the stress created by unproductive investments over the division of total income of the given nation. In this case, the industry in search for extra incomes may demand the remaining share of labour within the gross national income. Yet, given that the division of total value produced in an economic realm is not an activity basing on static forces, the changes in the process of production and distribution, including the changes in the right of capital to control labour power, may give rise to an environment in which the international conditions of investment to labour may occur. The other reason may derive directly from the need to charm international investments. Yet, in this case, the most important condition of peripheral industrialisation, that is autonomy from popular masses, has to be achieved prior to this aim. The process of internationalisation together with internationalised branches may provide a certain fraction of ruling classes the economic base of this autonomy by way of increasing exports and/or by way of joint ventures, providing internationalised capital a gate for representing its interests as a part of domestic capital in the given peripheral state, and the ideological components of this strategy may be created by way of mobilising religious and national movements. On the other hand, the above-mentioned two reasons may be in the same shoes, support each other or each may provide the other the reasons for legitimisation as a basis of the strategies pursued by ruling classes. We have categorised Turkey in the second group. This

categorisation contained references to the specific legal incidents themselves and the historical context in which they occur.

In the investigation of certain determinants of the socio-technical system of Turkey from the end of Second World War to the 1980s, it has been established under the stress created by the productivity gap between central and peripheral world in the first expansion of Fordism and similar to those of the states categorised under early import substitution, Turkish state's function of securing the rights of capital to control had never achieved to a level in which the ruling classes benefited from the extraordinary absorption of relative surplus value. Within this context, the second position, which recognises the unequal and inherently contesting nature of industrial relations, was the dominant discourse in the 1961 Constitution and the following legislation. This situation was in conformity with the Fordist-like socio-technical system of Turkey, which existed until the 1980s. When the second expansion of Fordism became an observable phenomenon, not only the collective capacities of labour to intervene the national policies, thus the labour's capacity to interfere with the money as a social institution, but also the socio-technical system, including the regulations on the organisation of the technical division of labour and the regulations on the collective action of labour in labour market and in the process of production had become a source of impediment over the 'successful' transformation of existing accumulation strategy to an export-oriented strategy. In order to examine the impacts of the implementation of the neo-liberal programmes in Turkey over the state's function of securing the rights of capital to control labour power within the context of the articulation between the conditions of second expansion of Fordism and the internal contradictions of Turkey, correlation between the dynamics of accumulation including the impasse of import substitution, and the state's form, in which the state's function of securing the rights of capital to control labour power both in labour process and in labour market realised have become a point of departure.

Firstly and in conformity with the purposes of the study, the state's form has been analysed with reference to labour law. It has been concluded that the hegemonic projects pursued throughout the history of the Turkish Republic have always been successful in terms of depriving the dominated classes of establishing their own economic and political organisations capable of influencing policy making on fundamental choices or 'discoveries'. This situation has remained and intensified in the post-1980s. A fairly-weak level of representation and organisation of working classes in and out of the state have become a persistent feature of Turkish industrial relations. However, deprivation of working classes from the means of interference to policy making is not equal to the requisite level of control over workforce to be a NIC.

It has been argued that, the law on industrial relations had not been enacted with the idea of reaching certain levels of productivity within the context of labour intensive technologies in Turkey. Nor was the Turkish industry determined to take the necessary steps for such kind of a re-organisation. The process of legal de-constitutionalisation of labour in Turkey responded on a material plane on which collective labour law has lost its function as a determinant of Turkey's peripheral/sectoral type of wage labour nexus and on which individual labour law is conceptualised in a context in which its class dimension is denied, to the changes in the international division of labour.

The coercion observed in peripheral countries that could not adopt an accumulation strategy based on the trade of cheap labour, generally focuses on the collective labour legislation that concentrates on wage relation mainly as a relation of exchange. In these countries, wage relation as a relation of production, thus the individual labour law, generally comes to the fore when the concerns for the trade of cheap labour intensify and/or when the level of exploitation had to be increased due to the impasse of import substitution. İn conformity with the tendencies in non-NIC countries, the changes in the realm of labour law had initially become observable in the realm of the collective labour law in Turkey. Throughout the

1980s, labour legislation following the enactment of the Constitution mainly interfered with the collective labour law, and thus, dealt mainly with capital-labour relations within the realm of the social division of labour.

The labour law of the post-1980s shaped under the conditions of de-constitutionalisation in which labour, even in the form of abstract labour, is condemned to insignificancy in the discursive conceptualisation of economy in its liberal and narrowest sense. Living labour has come to be seen as a cost (of production) and is forgotten as a source of demand under the conditions of the second expansion of Fordism. When the terms and conditions of the concrete capital- labour relation in the labour market and labour process change, the state's function of securing the rights of capital in the labour process and labour market changes. The text of the 1982 Constitution carries the footprints of the two decades before it came into the force, albeit, these footprints can only be read with regard to reactions shaping the main discourse of the text. The former 1961 Constitution was providing a legal framework that would provide the basis for the workers to identify themselves as a class by granting them the right to strike as well as that of collective bargaining, which were among the functions of the Fordist resembling structural forms regulating the reproduction of capitalist relations of production. The 1982 Constitution carries the footprints of a reaction against the collective representation of workers in and out of the state as a class, in conformity with the climate of the second international division of labour. Subsequently, the collective labour law has become a realm, in which the organisational capacity of working class deteriorated sharply. Repressive strategies have become dominant in face of conciliatory strategies, meaning that patriarchal understanding of state supervision have become favourable in face of legally-mediated private discipline.

The deterioration in the organisational capacity of class forces led to an extraordinary application of individual labour law in the stabilisation of wage relation. The relative compromise reached between 1950-1980 including collective bargaining, social insurance system, the power to demand stable wages, firing

regulations having a certain degree of job security eroded together with the relatively high wages. The pressure was applied on the collective capacities of the national labour force to the extent that these capacities were decisive in the formation of labour market strategies of labour front.

On the other hand, in the realm of the individual labour law, the protective capacity of law, together with the interferences of collective labour law with the technical division of labour, remained, to a certain extent, both in the case law up till the 1990s and in the legislation up till the recent labour act. The neo-liberal discourses of production included commodification of labour power by way of the employment of labour contracts in the labour market on an expanded basis, yet did not include the re-regulation of the technical division of labour by way of abolishing the protective provisions of individual labour law until the recent changes.

However, from the 1990s onwards, the protective provisions of individual labour law remained in a context in which the recognition of conflict and its inevitability in industrial society have been evaporated from the consideration of jurisprudence. Individual labour law has been affected from this discursive shift. First of all, the definition of individual labour law in jurisprudence is changed. Today labour law is being defined as the law regulating the relations between worker and employer on the basis of market relations. This definition implies that regulation in the sense individual labour law makes, is only aiming to reach a system, in which labour is a pure commodity and has no collective identity against the individual capitalist that is a fraction of collective capital. The application of the existing protective provisions of labour law (case law) has begun to change in the direction of the law of obligations, meaning that the first position in labour jurisprudence has become influential. Furthermore, an intersection between the changing application of court rulings and the changing content of the discourses of production became observable.

The residues of the obligatory provisions, today, could only be found in the realm of provisions concerning information and health protection of individual workers. While the extension of the previous socio-technical system to technical division of labour was expressed in the protective individual labour law, the emerging unstable equilibrium, which may hardly be considered as a new socio-technical system, is expressed in the law of obligations and/or civil law, which embraces the new individual labour law and which, due to its nature, is in lack of capacity of regulating human relations within the scope of non-value form imbedded in society. Flexibility became a political mantra. The protective obligatory provisions are now obliged to take into consideration the measures of flexibility. In conformity with this situation, the court rulings had begun to change before the enactment of the recent individual labour act. The individual worker is now a juridical subject who has no connection with collective labour.

In pursuit of the analysis of the correlation between the state's form and the dynamics of accumulation, the impasse of import substitution has been investigated. For this purpose, the structural constraints over the Turkish economy, the responses of the Turkish bourgeoisie to these constraints and the determinants of wage relation have been investigated. Our investigations established that the 'discoveries' of policy makers and the demands of Turkish bourgeoisie did not include certain policies aiming to reach export substitution as a means to articulate the existing international division of labour. The reason for this was not the conscious resistance of working classes to the deterioration of their living conditions. Given that state power, as revealed in the conjunctural effectiveness of state interventions, is a form-determined condensation of the balance of political forces, the answer of the question of what was preventing the Turkish state from initiating the structural change necessary to be a NIC lies at the capability of -structurally constrained- Turkish power bloc to benefit external support without facing the cruel conditions of the second international division of labour and after.

The answer of the question of what was preventing the Turkish state to initiate the structural change necessary to be a NIC paves way to the answer of the question of why and under what circumstances did law enter industrial relations at particular points in time. It has been argued that when the conditions of the second expansion of Fordism articulated with the internal contradictions of a given peripheral country neo-liberal programmes have found a base to be implemented.

Turkey reveals the characteristics of the group of peripheral countries, in which the regulatory devices of the socio-technical system had become a source of rights for working masses to resist against the demands of ruling classes, and in which the industrial investment in labour has been weakened and unproductive activities pursued by the finance sector constituted the main portion of economic activities. Within this context, the form-determined condensation of the balance of political forces provided the power bloc with the capacities to benefit from external support without facing the cruel conditions of the second international division of labour and after.

In conformity with the pattern followed by the other countries in this group, the main concern for the post-1980 Turkey seemed to be the re-regulation of collective labour law as a device regulating the collective capacities of the working class to interfere with national policies. Within this context, the neo-liberal revolution did not include the structuration of industrial organisation to charm international investments. Given that labour processes within the overall process of national production pattern, remained to a large extent untouched, individual labour law became a point of reference only after the ‘re-regulation’ of collective labour law.

Two analytical reasons for the evaluation of the dynamics behind the need to change the individual labour law in these countries have been offered. Our investigations revealed that the first reason seems to be the most relevant for Turkey, meaning that the recent changes in the realm of the individual labour law of Turkey mainly derives from the stress created by unproductive investments over

the division of total income of the nation. Under the conditions of the impasse of import substitution, the remaining share of labour within the gross national income is now being demanded.

On the other hand, the second reason referring to the conscious social engineering to charm international investments seemed to be fairly less relevant in face of the form of the state investigated throughout the chapter. While the rising amounts of joint ventures and the rising influence of IMF together with some degree of internalisation in some branches provided a certain fraction of ruling classes with the economic base of autonomy from popular masses, which is the most important condition of peripheral industrialisation, the residues of the state form, the dominance of market as an *ex post* mode of coordination in face of *ex ante* modes of coordination dominant in NICs, and the structural constraints of Turkish industrial production indicates the relative superiority of the first reason. On the other hand, given that the division of total value produced in an economic realm is not an activity basing on static forces, the changes in the process of production and distribution, including the changes in the right of capital to control labour power, may give rise to an environment in which the international conditions of investment to labour may occur. Moreover, given that the above-mentioned two reasons may be in the same shoes, support each other or each may provide the other the reasons for legitimisation as a basis of the strategies pursued by ruling classes, the assessment of the relative weight of these reasons is not exhaustive and may contain new possibilities and potentials that are not within the direct concerns of this study.

Having investigated the dynamics behind the enactment of the recent labour act concerning the realm of individual labour law by way of reference to the correlation between the dynamics of accumulation and the state's form, the study tracked down the changes in the powers of the parties of industrial relations in the provisions of the individual labour law, as a part and parcel of the process of de-constitutionalisation of labour. The new individual labour law of Turkey in

correlation with the changes appearing in the international division of labour throughout the last structural crisis of capitalism have been analysed. Given that the coherence of institutions toward each other is observed *ex post* in regulation theory, and that neither globalisation and internationalisation nor internal dynamics of a country, lead to a geographical or historical automatic convergence of institutional architecture, our attempt for a functional analysis of labour law would be incomplete without an analysis of the power relations imbedded in the norms regulating the realm of the technical division of labour and labour contract, on the basis of the partial systematisation and thus, of conceptualisations established throughout the study.

Our investigations revealed that the power relations embedded in the norms regulating the realm of the technical division of labour and the labour contract have a clear link with the conceptualisation of 'economic' that constitutes the discursive borders of the capacity of control. Against this background, the study attempted to search the legal borders of the capacity of control as established by labour law. Our analysis revealed that the individual capitalists' capacity to control labour power is increased in the technical division of labour, and, to the extent individual labour contract intervenes, in the labour market. The change in the meaning of the concept of subordination, the new definition of the employer and worker, the entrance of the universal principle of the freedom of contract into labour law legislation, the forms of new institutionality in Turkish practice and legislation were among the elements of the expansion of the individual capitalist's right to control labour within and out of the workplace. The new provisions are, in conformity with the existing discourses of production, covering many areas, including a transformation in the obligations of worker and the subsequent changes in the main conceptualisations of individual labour law, a shift in the regulatory scope of labour contract, introduction of new type of labour contracts.

Turkish legislation has the imprints of a concerted bid at the de-regulation of labour markets within a context where there is not a tendency for an openly

repressive domination guaranteeing the success of accumulation pattern. In the absence of a state as a guarantor of basic workers' rights and of wage compensation, recourse to the labour market as a means of coercion has become the most viable solution for the postponement of the paradoxical objective of controlling labour in the technical division of labour. Within this context, Turkish bourgeoisie demanded the internationally accepted forms of flexibility. Moreover, it demanded additional flexibilities that would be valid in times of crisis. At that point Turkish bourgeoisie puts its difference form its European counterparts by overtly stating that some of 'modern' labour law provisions cannot be taken into consideration in 'developing' countries in which high inflation is a part of daily life. Under these conditions, discourse of labour law texts become realms in which the denial of workers' rights are realised by way of presupposing market as the only mode of coordination for the use of national labour power. The concerted bid at de-regulation of labour markets within a context where there is not a tendency for an openly repressive domination, represents, at the same time, the inability of the Turkish industry to construct a new accumulation strategy and/or Turkish State's failure to secure the rights of capital to control labour force at the requisite level. This way of interpretation is also in conformity with our reasoning on the ability of the peripheral states to discover political solutions to the structural crisis.

The objective of controlling labour in the technical division of labour by way of market as a means of coercion, without further establishing additional repressive means of domination increased the ecological dominance of capitalism, thus, increased the role of civil law/law of obligations in such a way that the texts of the individual labour provisions have become similar to those of the provisions of law of obligations. This transformation can be observed both in the shift in the regulatory scope of labour contract in the labour market and the subsequent introduction of the new type of labour contracts referring to the increased determination of the universal principle of the freedom of contract in the establishment of the labour contract and in the increasing numbers of the legal

subjects, who are excluded from the protection brought by the remaining protective provisions that brought limits to the labour contracts.

In conformity with these changes, the protective capacity of law regulating the capital labour relations within the realm of technical division of labour, together with the interferences of collective labour law to this realm, have changed in court rulings after early 1990s. The protective provisions of individual labour law are considered in a context in which the recognition of conflict and its inevitability in industrial society have been evaporated from consideration of jurisprudence. The result of this track change can be observed in the acceptance of wide spread usage of the fixed term contracts that are used to escape from the remaining protective provisions of labour regulations and in the new conceptualisation of working time. The definition of the function of the individual labour law in jurisprudence is changed. To day labour law is being defined as the law regulating the relations between worker and employer on the basis of market relations. The New Labour Act follows these changes and enhances the 'liberty' of individual capitalists. These conclusions imply that regulation in sense the New Labour Act makes, is only aiming to reach a system, in which labour is a pure commodity and has no collective identity against the
individual capitalist that is a fraction of collective capital. More over an intersection and/or harmonisation between the changing application of court rulings and the changing content of the discourses of production became observable.

The notion of flexibility refers to the complex process of the change in the discourses of production, juridical decrees, jurisprudence and the protective provisions of individual labour law, all of which have extra-discursive roots including the dynamics of competition in the international sphere and the crisis of accumulation strategy. To put it differently, the notion of flexibility refers to the changing content of the contract (the right of individual capitalist to control labour power) that change together with the uneven waves of commodification as

expressed in the changing regulatory scope of the universal principle of freedom of contract. The labour contract has to be in conformity with the codes regulating the labour relations in the society (Offe, 1985:21), thus has to be in conformity with the function of structural forms in a given social fix, as a result of which different structural power differentials between the respective possibilities for supply and demand sides to employ rational market strategies are preserved and re-produced.

The relation of labour contract with the codes regulating the labour relations in the society necessitated an investigation into the relation between collective labour law and labour contract, which at the same time carries the footprints of the changes in the protective provisions of labour legislation and the discursive re-construction of basic conceptualisations of labour law, including the transformation in the obligations of worker and the subsequent changes. For this purpose, the elements of constitutional order that represent diminishing organisational capacities of collective labour and thus, represent the changing content of the power structures among the main parties of the labour market are investigated. Then, the normative analysis is linked to the historical process by reference to collective agreements concerning concessions at enterprise level and concessions related to the nature of industrial relations, which include various kinds of official and unofficial bargaining between governments, employer organisations and worker organisations. Under the light of argumentations established throughout the study, it has been argued that the contemporary collective representation at the national level mainly seeks for the protection of jobs by increasing the level of coordination both among the contesting parties and among the workers' organisations. To put it differently, under the conditions of new institutionality, which refers to the changing content of the power structures, the main concern for the compromises reached by way of collective labour agreements has become job security. In a social environment, in which the strategy depending on the exchange of social purchasing power for anticipated re-distribution of gross national income loses its meaning, job security becomes the main axis through which the complete

mechanism of market as a means of coercion enters into the context of compromises.

When legal constraints embedded in a wide rage of provisions regulating collective bargaining and individual labour legislation are eradicated; deregulation implies the rule of market. Individual labour law is increasingly becoming determinant in the formation of norms of production, which, in the absence of an international rate of profit as a limit for exploitation, have become dependent on political action. In the light of the recent changes in individual labour law, it is safe to say that the workplace relations will be regulated on the basis of the labour contract and of the law of obligations. Thus, contrary to the developments observed in the central economies, the term de-constitutionalisation seems to be relevant, for Turkey both for collective and individual labour law. Against this background, the examination of the normative context, within which the parties of the Turkish industrial relations have acquired powers for alternative strategies, discloses a certain social-structural resistance to the acceptance of the existence of protective labour law, a resistance whose roots run far deeper than the political will expressed in the 1980 military coup.

Within this context, flexibility appears as a principle of articulation between the diminishing capacity of protection of the relevant individual and collective labour legislation, and the expansion of the market in the form of universal principle of freedom of contract in the regulation of industrial relations, under the conditions of impasse of import substitution that requires more absolute surplus value rather than an increase in the levels of productivity.

This is the point where Turkey (together with other non-NICs) makes tracks with the old terrain of Atlantic Fordism, in which Schumpeterian Workfare State is emerging. While, in the central economies, the state becomes a place in which its function of securing the capital's right to control labour is established in exchange for its function to support labour in a new format, that is, in the form of workfare

state who subordinates social policy to the demands of economic policy without leaving investment, including education, to labour, in Turkey, unlike the central economies, in which the concerns for productivity in an emerging workfare state are dominant in labour policies, the subordination of social policy to the demands of economic policy referred to the states withdrawal from investing to labour and to poverty including neglect/disregard to education, health and training (impoverishing growth). This may be because in the former, thanks to the political successes of social-democratic parties, union-supportive ideas have become embedded in the hegemonic discourses. On the other hand, the latter lacks the social acceptance enjoyed by all western European labour movements, whilst, in part because of this status, it also lacks that capacity to act in the militant defence of its rights which from time to time has been exhibited by the European labour movements.

Given these remarks, the last conclusion is that law, being the constitutive of powers of the subjects entering social relations, should be treated as a form determined realm of struggle in which the political and ideological contradictions generated by uneven capitalist development in Turkey are condensed. Researchers should avoid the tendency to believe in the realism of concepts, meaning that while the disregard to the structural selectivity embedded in norms would be mistaken, it is also mistaken to ignore the importance of the struggle within the limits provided by law. To put it differently, while the freedom, equality and universality associated with wage labour are compatible with class subordination, they are nonetheless material factors which give capitalism its emancipatory potential. The general inequality existing between capital and labour in no way prevents the fact that the relation between capital and labour is not fixed once and for all but is one in which labour may acquire more or less influence, recognition and share of wealth.

This is why ideas matter most of all. Ideas tell agents what has gone wrong and suggest what to do in situations of uncertainty that lack fixed preferences and clear

conceptions of self and/or class-interest. If one ignores this difficulty and assumes that structures come with an instruction booklet, one cannot explain why the new institutions constructed took the form that they did without falling into rather circular post hoc logics. Nor for that matter can one satisfactorily explain why labour in one period and business in another would go to all the trouble and enormous expense of developing and deploying these ideas in the first instance.

In conclusion then, it should be remembered that agents' interests are sometimes unclear, especially in those moments when institutions and regulatory norms had started to refer to the anarchy of market and thus started to lose their regulatory capacities and/or to malfunction. Structures do not come with an instruction sheet, and neither do moments of structural change. The partial systematisation employed by this study is thus important because it provides agents with a modest part of that instruction sheet. Students of political science, therefore, should reorient their thinking about political change away from the notion that one must choose between ideas and interests and toward an analysis that takes both ideas and material factors seriously. As the principle of unity of Marxism reveals, "Ideal" and "material" are analytic distinctions, not synthetic ones. Conceiving of institutions and institutional change apart from ideas is to see this question solely as an issue of mobilizing material resources, including labour potentials of individuals. However, to do so implicitly, requires form the policymakers the answer of the question of what to do with those resources. This is why elaborated partial systematisations are much more important than ad hoc responses, which inescapably contains un-discussed, eclectic and incoherent systematisations of social reality.

APPENDIX-A

TÜRKÇE ÖZET

Türkiye'de emek sermaye ilişkisini düzenleyen normlardaki değişim sürecini emek sermaye ilişkisinin diğer boyutlarından yalıtmaksızın, toplumsal üretim ilişkilerinin bütünü içerisinde incelemek endüstriyel ilişkilerde taraf olanlar için olduğu kadar, hukuk uygulamacılarından akademik çevrelere kadar bu ilişkilerin periferisini oluşturan toplumun büyük bir kesimi için de önemlidir. Bu amacı gerçekleştirmek için çalışma soyuttan somuta ve basitten karmaşığa doğru çeşitli aşamalardan geçerek kısmi bir sistemleştirme yapmayı hedeflemiştir. Buradaki anlamı ile soyutlama, açıklama eyleminde kullandığımız teoriyi mümkün kılan nedensel mekanizmaları fikri düzeyde izole etmeye yönelecektir. Bu perspektife göre pek çok belirleyici tarafından oluşturulmuş, (karmaşık somut durumu anlamanın aracı olan) teorinin içerisinde nedensel mekanizmaların işleyişini anlamak için (somut başlangıç noktasından hareketle) bunlara ilişkin soyutlama yapmak daha sonra bu soyutlamayı geriye doğru somuta tekrar uygulamak gerekecektir.

Bu bağlamda, çalışma öncelikle en yüksek soyutlama düzeyinde bir kavram seti kurmaya çalışmıştır. Zira, endüstriyel ilişkiler sistemimizdeki dönüşümü kısmen sistemleştirerek açıklamayı mümkün kılacak kavram setleri mevcut hukuk öğretisinin (yasal pozitivizm) içinde bulunmadığı gibi, alternatif olabilecek hukuksal yaklaşımlar da ülkemiz hukuk öğretisinin bir parçasını oluşturmamaktadırlar. Ayrıca, merkezi ülkeler akademilerinde alternatif bir yaklaşımın genel çizgileri bulunsa bile, birkaç ilksel çalışma dışında, iş hukuku üzerine teorik çalışmalar azdır. Bu nedenle çalışma iktidarın hukuksal örgütlenmesi

ile iktidarın toplumsal yapılanmasını, bir başka deyişle norm ve olgu arasındaki (biçim ve içerik arasındaki) kesişme noktasını göz önüne alarak ilerleyebilmek için epistemolojik olarak tutarlı bir duruş geliştirmeye ayrıntılı bir yer vermiştir.

Yukarıdaki paragrafta anılan kavram seti üç alt gruba ayrılabilir. Birinci alt grup düzenleme okulunun emek sermaye ilişkisi üzerine açıklamalarını içerir. Çalışma Türkiye'de emek sermaye ilişkisini düzenleyen normlardaki değişim sürecini emek sermaye ilişkisinin diğer boyutlarından yalıtmaksızın, toplumsal üretim ilişkilerinin bütünü içerisinde inceleyebilmek için yasal olanı sosyal olana bağlayabilme kabiliyeti olduğu çalışmanın dayandığı teorik duruş tarafından kabul edilen, belli başlı eksenler kabul etmiştir. Bunlar emeğin meta biçiminde gizli paradokslar da dahil olmak üzere ücret ilişkisinin dinamikleri ve devlet biçimi ile sermaye birikimi arasındaki bağlantıdır.

İkinci alt grup devlet, sınıf ve üretim ilişkilerine düzenleme okulu içerisinden ve yapısalcılığın çağdaş versiyonları üzerinden getirilen açıklamaları bir araya getirir. İlk iki alt grup yapısal biçim kavramı çerçevesinde bir araya gelirler. Yapısal biçimler verili bir toplumdaki düzenleme biçimini oluştururlar. Üçüncü alt grup hukukun toplumsal düzenleme içerisindeki yerini tartışır. Düzenleme okulu yaklaşımına göre yüzey biçimleri iktisadi, hukuki/siyasi, ideolojik ilişkiler tarafından oluşturulan yapısal biçimlerin işlevi/hareketi hukuk üzerinden gerçekleşir. Bu yaklaşım hukukun kaynağı olarak kurumlar arası hiyerarşik ilişkileri alan ve toplumun da bu şekilde yaratılan hukukun tatbik edildiği pasif bir bölge olarak kabul edildiği, ortodoks yaklaşımları ve bunların ortak paydaları olan yasal biçimciliği dışlar. Endüstriyel ilişkiler alanındaki ilişkileri düzenleyen yapısal biçim, devletin sermayenin emeği kontrol etme hakkını yeniden üreten koşulları yarattığı sosyo-teknik sistemdir ve bu yapısal biçimin işlevi de aktif bir şekilde bu ilişkileri düzenleyen, bu ilişkilerin taraflarının karşılıklı sınıfsal konumlarını belirleyen, ve bu konumlar üzerinde belirleyici etkiler yaratan iş hukuku ile gerçekleşir.

Bu geri planı tesis ettikten sonra çalışma iki temel soruyu sorabilecek düzeye gelir. Zira iş hukukunun önemi hakkındaki teorik giriş, iş hukuku düzenlemelerinin işçi sınıfının büyüklüğü, morali, örgütleri üzerindeki etkileri hakkındaki sorular karşısında iş hukuku düzenlemelerinin sınıfları iktisaden, siyaseten ve ideolojik olarak ayıran sınırlara müdahalesini ve yine bu düzenlemelerin sermayenin artı değere el koyuş biçimleri üzerindeki etkilerini araştıran soruları ön plana çıkartmaktadır. Toplumsal üretim ilişkileri içerisinde bireysel ve kolektif aktörlerin hareket sınırlarını belirten yapısal sınırlamaları aydınlatma görevi iki esaslı soruyu gerektirir: belirli bir toplumsal oluşumda (dolayısı ile Türkiye örneğinde) endüstriyel ilişkileri düzenleyen hukuk neden ve hangi koşullar altında yürürlüğe girer, bir başka deyişle, değişir ve bu yasal müdahaleler etkilerini nasıl gösterirler? Bu noktada belirtilmelidir ki bu iki temel soruya verilecek cevaplar aynı zamanda çalışmanın soyuttan somuta ilerleyen metodolojisi ile uyumlu olarak, somuta varmak için ara düzeyle kavramsallaştırmaların kullanılacağı ikinci basamağı ve somuta ilişkin saptamaların yapıldığı Türkiye ile ilgili bölümler için üçüncü basamağı yani somut tespitleri oluşturacaklardır.

İlk soruya verilebilecek cevabın anahtarı hakim birikim rejimini ve krizini, uluslararası iş hukuku ile bağlantısı içerisinde incelemekte yatmaktadır. Bu cevap aynı zamanda tarihsel boyutu da çalışmanın sınırları içerisine sokacaktır. Böylece fordizm öncesinde, fordist dönemde ve fordizm sonrasında birikimin dinamikleri, uluslararası işbölümü ve merkez ve çevre ülkelerde iş hukuku, Türk İş Hukukunu sınıflandırabilmek için incelenmiştir. Çalışma yapısal biçimlerdeki dönüşümleri, yeni paradigmaların çıkışlarını, üretimin söylemlerindeki değişiklikleri, sendika biçimdeki dönüşümleri, iş ilişkilerindeki yeni kurumları/tarzları ve uluslararası işbölümündeki yerlerine göre ülkelerin işgücü piyasası politikalarını incelemiş, ancak uluslararası işbölümünün her şeye kadir kapitalist tasarlayıcı olarak ele alındığı kavramsallaştırmaların yerine düzenleme okulunun kavramsallaştırmasını kullanmıştır. Bu bağlamda uluslararası işbölümü kavramsallaştırması nedensel açıklayıcı bir perspektif içerisinden uluslararası ekonomi politiğin dinamiklerini açıklamak açısından faydalı olabilecektir. Çünkü, anahtar niteliğindeki sosyo-

ekonomik ilişkilerin üretimi için gerekli koşullara odaklanmak “ekonomi-politik” diye adlandırdığımız yöntemin temelinde yer alır.

Çalışmanın bu bölümünün iş hukukundaki sonuçlarında ise fordizm sonrası dönemde merkez ülkelerde sendikalar ve sermaye arasındaki ilişkileri yapılandıran maddi olmayan bir araç olarak kolektif pazarlığın ve hukukunun ücret ilişkilerini istikrara kavuşturan bir araç olmaktan çıktığı sonucuna varılmıştır. Başka bir deyişle, uluslararası konjonktürde neoliberal söylemin baskın hale gelmesi toplu pazarlığın ve diğer refah devleti uygulamalarının Fordist dönemde ücret ilişkisinin istikrarı yolundaki merkezi önemini azaltmıştır. Neoliberal söylemin söylemsel olmayan kökenleri arasında işin değişen doğasının ve bunun içerdiği unsurlardan iş ilişkilerindeki yeni kurumsallıkların, emek politikaları üzerinde iş dünyasının artan öneminin ve esnek uzmanlaşmanın bulunduğu söylenebilir. Krize verilen farklı cevapların hepsinin içerdiği bir gerçeklik vardır. Toplu pazarlık başta olmak üzere bütün refah devleti kurumlarının ücret ilişkisinin istikrarı üzerindeki etkileri belirgin biçimde zayıflamıştır. Bu bağlamda merkezde ve çevrede bireysel iş hukukunun düzenleyici işlevi artmıştır. Bunun yanı sıra, bireysel iş hukuku kriz şartları altında ücret ilişkisinin istikrarını sağlayan bir disiplin aracı olarak ek bir işlev daha kazanmıştır. Böylelikle bireysel iş hukuku teknik iş bölümünü oluşturan ilişkiler dünyasından sosyal iş bölümünün alanına da uzanmıştır. Son olarak merkezi ülkelerde bireysel iş hukuku kapsamına giren düzenlemeler koruyucu hükümler içermeye devam etmiş ancak bu hükümler endüstriyel ilişkilerde çatışmanın esas alınmadığı bir kavramsallaştırma içerisinde yorumlanmışlardır.

Yukarıdaki bölümde anılan çaba neticesinde belirli bir toplumsal oluşumda (dolayısı ile Türkiye örneğinde) endüstriyel ilişkileri düzenleyen hukuk neden ve hangi koşullar altında yürürlüğe girer şeklinde ifade edilen tarihsel soruya bir cevap vermek için teorik bir arka plan inşa etmek mümkün olmuştur. Kendine has bir üretim organizasyonu olmak anlamıyla fordizmin ikinci genişlemesi olarak adlandırılabilecek dönemde mevcut eğilimler ilgili çevresel formasyonun iç çelişkileri ile eklemlendiğinde her birisi bir alt grupta toplanabilecek iki eğilim

gözlemlenmektedir. Yönetici sınıfların işgücünü artı değerin aşırı sömürüsünü mümkün kılacak koşullarda ve düzeyde kontrol edebildiği ülkelerde emeğin ulusal iktisadi politikalara kolektif müdahalesini engelleyecek düzenlemelerin yanı sıra teknik iş bölümünü kapsamındaki işçi işveren ilişkilerini düzenleyen hukukun da devletin baskıcı uygulamaları altında biçimlendiği görülmektedir. Bu gruptaki ülkeler genelde literatürde yeni sanayileşen ülkeler başlığı altında toplanan ülkeler olmuştur.

Aynı tarihsel dönemde sosyo-teknik sistemin düzenleyici araçlarının çalışan sınıflar için haklar içerdiği ikinci bir grup ülkede ise emeği üretici faaliyetlerde kullanma eğilimi zayıflamış ve finans sektöründe sıcak para faaliyetleri ağırlık kazanmaya başlamıştır. Mantıksal olarak bu ikinci gruba giren ülkelerde devletin baskıcı faaliyetleri toplu iş hukukunun yeniden düzenlenmesinde kendisini gösterirken, bir başka deyişle, emeğin ulusal iktisadi politikalara kolektif müdahalesini engelleyecek düzenlemelerle sınırlı kalırken, teknik işbölümü alanındaki emek sermaye ilişkisini düzenleyen normlar bir önceki döneme nazaran değişmeden kalmışlardır.

Bu ülkelerde, Türkiye'de olduğu gibi, teknik işbölümü alanındaki emek sermaye ilişkisini düzenleyen normların da baskıcı müdahalelere maruz kalması yeni bir olgudur. Bunun mantıki olarak iki sebebi olabilir. Birinci sebep uluslararası verimlilik kriterlerine ulaşamayan yatırımların yükünün gelir bölüşümüne etkisinden kaynaklanabilir. Bu durumda çıkmazdan kurtulma yolları arayan sanayi sermayesi ulusal gelir içerisinde emeğin elinde kalan payı talep edebilir. Ancak bir iktisadi alanda üretilen toplam değerin bölüşümü statik güçlere dayanan bir faaliyet olmadığından, sermayenin emeği kontrol etme hakkının yasal düzenlemesini de içeren, üretim ve bölüşüm sürecindeki değişiklikler, ilgili ülkenin uluslararası yatırımları çekmesiyle sonuçlanabilir. İkinci sebep uluslararası yatırımları çekmeye yönelik bilinçli bir stratejinin sonucu olarak ortaya çıkabilir. Ancak bu durumda, anılan stratejinin tatbik edilebilmesi için çevresel sanayileşmenin en önemli koşulu olan popüler kitlelerden ve taleplerinden bağımsız davranabilecek bir yönetici sınıf

oluşumu gerekir. Uluslararasılaşma süreci içerisinde yönetici sınıfın bir fraksiyonu ihraç sektörü üzerinden böyle bir otonominin iktisadi tabanını tesis edebilir. Diğer yandan, bir ihracat burjuvazisi gelişmemiş olduğundan ve popüler kitlelerden ve taleplerinden bağımsız davranabilecek bir yönetici sınıf oluşumundan bahsedilemeyeceğinden Türkiye için ilk sebebin ağırlık kazandığı söylenebilir. Son olarak, her iki mantıksal açıklama da bir arada olabilir, biri diğerini destekleyebilir ya da bir diğerine meşrulaştırıcı sebepler sağlayabilir.

Endüstriyel ilişkileri düzenleyen hukukun neden ve hangi koşullar altında yürürlüğe girdiği sorusunun teorik arka planı oluşturulduktan sonra Türkiye örneği iki ayrı bölüm halinde incelenmeye başlanmıştır. Türkiye üzerine ilk bölüm Yeni İş Yasası'nın (no. 4857) kanunlaştırılmasının toplumsal boyutlarıyla ilgilidir. Buradaki araştırma, önceki bölümlerde geliştirilen teorik yaklaşımla uyumlu olarak, birikimin dinamikleri ve devletin sermayenin emek üzerindeki kontrolünü gerçekleştirme işlevi ile ilgili olduğu ölçüde, devletin biçimi arasındaki ilişki üzerinden sürdürülmüştür. Devletin biçimine ilişkin olarak, emeğin anayasallaşma ve anayasadan dışlanma süreçleri incelenmiştir. Birikimin dinamikleri ise ithal ikameciliğin çıkmazı teması üzerinden takip edilmiştir. Bu süreçte önemli siyasi ve kurumsal dönüşümlerin birikimin uluslararası dinamiklerine referansla değerlendirilmesi yoluna gidilmiştir. Bir başka deyişle bu bölüm sosyo-teknik sistemin dönüşümünün belli başlı belirleyenleri ile ilgilenmiştir.

Türkiye tarihi iki döneme ayrılarak incelenmiş, İkinci Dünya Savaşı'ndan 1980'e kadar olan dönemde merkezi ve çevresel dünya arasındaki verimlilik farkının ve erken ithal ikameciliğin diğer unsurlarının geri planını oluşturduğu bir ortamda Türkiye'de devletin sermayenin emeği kontrol hakkını tesis etme işlevinin artı değerin aşırı sömürüsüne yol açacak şekilde kullanılmadığı saptamıştır. Anılan durum erken dönem ithal ikamecilik stratejilerinin uygulandığı çevresel formasyonlar için de geçerlidir. Bu dönemde iş hukuku uygulamasında endüstriyel ilişkilerin eşitsiz ve çatışmacı doğasını kabul eden koruyucu söylemin baskın olduğu vurgulanmıştır. 1961 Anayasasının söylemi ve emeği anayasallaştırış

biçimi de bu durumla uyuşmaktadır. Anayasa toplu sözleşme ve grev hakkını düzenleyiş biçimi ile işçilerin kendilerini bir sınıf olarak tanımasının koşullarını yaratmıştı. Bu durum çatışmanın tanındığı çoğulcu Avrupa endüstriyel ilişkiler sistemi ile yakın benzerlikler içeriyordu. Kendine has bir üretim organizasyonu olmak anlamıyla fordizmin ikinci genişlemesi sürecinin önemli bir kısmında, 1980'lerden 1990'ların ortalarına değin, Türkiye'de devletin baskıcı faaliyetleri toplu iş hukukunun yeniden düzenlenmesi alanında sınırlı kalmış, bir başka deyişle, emeğin ulusal iktisadi politikalara ya da işverenlerin haklarına karşı kolektif müdahalesini engelleyecek düzenlemeler ekseninde sürmüştür. Bu süreçte, teknik işbölümü alanındaki emek sermaye ilişkisini düzenleyen normlar bir önceki dönemle karşılaştırıldıklarında önemli ölçülerde değişmeden kalmışlardır. Ancak belirtilmelidir ki bu devamlılık çatışmanın endüstriyel ilişkiler sisteminin doğal bir unsuru olduğunu savunan sosyal demokratik söylemin yerini uyum sloganın aldığı bir toplumsal algı içerisinde gerçekleşmiştir.

1980 sonrası iş hukuku emeğin anayasadan dışlanması koşulları altında şekillenmiştir. Anayasadan dışlanma süreci ekonominin kavramsallaştırılmasında emeğe, soyut haliyle bile, üretimin esas unsuru payesinin verilmemesi, emeğin toplumsal ilişkilerin kurucu vasfı olmaktan çıkarılması, sermayeye karşı çatışmalı pozisyonunun inkar edilmesi olarak tarif edilebilir. Bu koşullar altında emek üretim maliyetinin unsurlarından birisine indirgenirken, onun talep yaratıcı işlevi geri plana itilir. Anayasadan dışlanma süreci ile birlikte toplu iş hukukunu oluşturan normların önemli ölçüde düzenleyici etkilerini kaybetmeleri ve toplumsal alanda emeğin örgütlenme kapasitesinin ve isteklerinin meşruiyetinin azalması neticesinde, ücret ilişkilerinin sürdürülmesi ve görece olarak istikrar kazanmasında bireysel iş hukukunun düzenleyici rolü artmıştır. 1990'ların ortasına kadar bireysel iş hukukunun koruyucu hükümleri işlevlerini sürdürmüş, bu durum, kolektif sermayenin bir parçası olarak bireysel işveren karşısında, işçinin kolektif işçinin bir parçası olarak hareket etmesini mümkün olmaktan çıkaran toplu iş hukukundaki gerilemeyi telafi edemese de, çalışan kesimin haklarını belirli bir ölçüde koruyabilmiştir.

Ucuz emeğin uluslararası yatırımları çekmek için kullanılamadığı/kullanılmadığı ülkelerde gözlemlenen baskı toplu iş hukukunu oluşturan normlar alanında gözlemlenmektedir. Anılan koşullar altında ücret ilişkisi bir değişim ilişkisi olarak ele alınır. Bu ülkelerde ücret ilişkisinin üretim ilişkileri ile olan bağlantısı ancak ucuz emeğin uluslararası yatırımları teşvik unsuru olarak sunulması gerekliliği öne çıktığında ya da mevcut birikim stratejileri krize girdiğinde öne çıkmaktadır. 1990'ların ortalarından itibaren Türkiye'de bireysel iş hukukunun alanını oluşturan yasal düzenlemelerin yorumlanışı ve nihayetinde 2003 tarihinde yasallaştırılan yeni İş Kanunu kapsamında ortaya çıkan değişiklikler ucuz emeğin uluslararası yatırımları teşvik unsuru olarak sunulmasına yönelik bir planlamanın neticesi olmaktan çok mevcut birikim stratejisinin krizi ile ilgili görünmektedir. Üretim süreçlerinin organizasyonunda esaslı bir değişiklik olmaması, bir ihracat burjuvazisinin gelişmemiş olması ve popüler kitlelerden ve taleplerinden bağımsız davranabilecek bir yönetici sınıf oluşumundan bahsedilememesi Türkiye için bu yorumu haklı kılar görünmektedir. Ayrıca Türkiye'nin önündeki yapısal sınırların saptanmasına ilişkin tartışma da bu neticeyi haklı göstermektedir. Ancak bu durum her iki mantıksal açıklama da bir arada bulunabileceğinden, ucuz emeğin uluslararası pazarlanışına ilişkin bir strateji ile de birleşebilir.

Bu noktada "Türkiye'de endüstriyel ilişkileri düzenleyen hukuk neden ve hangi koşullar altında yürürlüğe girer, bir başka deyişle, değişir ve bu yasal müdahaleler etkilerini nasıl gösterirler?" sorusuna, bir başka deyişle, tezin birinci sorusuna bir cevap vermeye çalışılabilir. Türkiye'deki –üretebileceği stratejiler yapısal olarak sınırlanmış olan- iktidar bloğunun ikinci uluslararası iş bölümünün yıpratıcı koşullarıyla yüzleşmeden kriz halindeki ithal ikameci stratejiyi sürdürmek için dış yardım bulma kapasitesinin tükenmesi ve devlet biçiminin krizi, endüstriyel ilişkiler sisteminin üzerinde kurulduğu hukuksal çatıyı önce yargı kararları, doktrin ve üretimin söylemlerindeki değişiklikler ve daha sonra da bireysel iş hukuku alanındaki normların değişmesiyle, dönüştürmüştür.

Bu müdahalelerin etkilerini nasıl gösterdiği sorusu, ikinci soru Türkiye üzerine ikinci bölümün konusunu oluşturur. Bu soruya cevap vermek için emeğin anayasadan dışlanması süreci içerisinde mevzuat ve uygulamadaki değişikliklerin, endüstriyel ilişkilerin taraflarının yetki ve yükümlülüklerini de içeren tanımlar ve kavramlar üzerine etkisi, bir başka deyişle, işçi sınıfının büyüklüğü, morali, örgütleri üzerindeki etkileri hakkındaki sorular karşısında iş hukuku düzenlemelerinin sınıfları iktisaden, siyaseten ve ideolojik olarak ayıran sınırlara müdahalesi ve yine bu düzenlemelerin sermayenin artı değere el koyuş biçimleri üzerindeki etkileri ele alınmıştır. Uluslararası ölçekteki dönüşümlerle yeni mevzuat ve uygulama arasındaki ortak noktalar saptanmıştır. Bu kapsamda teknik iş bölümünü ve iş akdini düzenleyen normlara içkin güç ilişkilerin, aynı zamanda işverenin iş gücünü kontrol etme hakkını da tanımlayan, iktisadi ve rasyonel olanın kavramsallaştırılması ile doğrudan ilişkili olduğu saptanmıştır. Bu saptamaya dayanarak çalışma işverenin kontrol hakkını yeni İş Kanunu tarafından getirilen sınırları içerisinde araştırmıştır. Bu bağlamda denilebilir ki bireysel kapitalistin teknik iş bölümü içerisinde ve, iş akdinin geçerli oluşu ölçüsünde, emek gücü piyasasında, emeği kontrol kapasitesi artmıştır.

Bu durumu olası kılan değişiklikler, üretim alanında hakim söylemlerle uyumlu olarak, işçinin işverene bağımlılığı kavramındaki esaslı dönüşümler, buna bağlı olarak iş hukukunun temel prensiplerinde meydana gelen esaslı değişiklikler, iş akdinin düzenleyici alanındaki genişleme ve yeni tip iş sözleşmeleri başta olmak üzere, sermaye işçi ilişkisinin çok büyük bir alanını kapsamaktadır. Birinci olarak belirtmeliyiz ki mevcut mevzuat emek gücü piyasasının yeniden düzenlenmesini bu alanın kaotik piyasa ilişkilerine terk edilmesi stratejisi üzerinden gerçekleştirmiştir. Devletin temel işçi haklarının korunması görevini terk ettiği ve bu dengesizliğin yüksek ücretlerle dengelenmediği bir ortamda teknik iş bölümü alanındaki sermaye emek ilişkisinin içerdiği çelişkilerin ertelenmesi işsizlik baskısına terk edilmiştir. Bu sosyal ortamda Türkiye burjuvazisi, çeşitli panel ve yayınlarda, esnekliğin uluslararası meşruiyet kazanan biçimlerini talep ettiği gibi, kriz koşullarında geçerli olabilecek özgün biçimlerini de talep etmiştir. Burjuvazi

özgün esneklik biçimlerini, toplumsal önkoşullarını sağlayamayacağı pederşahi sistemlere referansla talep ederken ‘modern’ iş kanunlarının hükümlerinin ‘gelişmekte olan ülkelerde’ tam karşılıklarını bulamayacağını deklare etmiş, diğer yandan talep listesinde bulunan meşruiyet kazanmış esneklik biçimlerini de ‘modern’ kanunların lafzına dayanarak savunmuştur. Bu koşullar altında piyasaya dayalı koordinasyonun ulusal işgücünün değerlendirilmesi için yegane araç olduğu iddiası öne çıkmıştır. Bu durum Türkiye üzerine ilk bölümün de tespit ettiği gibi, Türkiye Burjuvazisinin, yapısal kısıtlamaları içerisinde, yeni bir birikim stratejisi geliştirmekteki sıkıntıları ile uyumludur.

İkinci olarak, kapitalist sistemin ekolojik hakimiyeti artmış, iş kanunu uygulaması ve ardından yeni İş Kanunu ile getirilen normatif değişiklikler, iş hukukunun borçlar hukuku ekseninde geliştiği hukuksal bir ortam yaratmıştır. Bu dönüşümün kendisini en iyi ifade ettiği alan, işçiyi koruyan hükümlerin alanındaki daralma ile beraber, iş akdinin düzenleyici kapsamının artışı olmuştur. Bu alanda evrensel sözleşme serbestisi ilkesi açıkça atıf almaya başlamıştır. Giderek artan sayıda işçi ILO sözleşmelerinin de kabul ettiği esneklik hükümleri aracılığıyla geliştirilen yeni çalışma biçimleri üzerinden koruyucu hükümlerin dışına çıkarılmıştır. Bu ‘istisnai’ çalıştırma biçimleri kamu çalışanlarının statülerindeki değişiklikler ve geçici iş ilişkisi gibi yeni tekniklerle birlikte hakim pozisyona gelmiş, zaten sınırlı olan koruyucu hükümler ise iş gücünün küçük bir kısmı için geçerliliğini sürdürebilmişlerdir.

Üçüncü olarak yargı ve doktrinde meydana gelen dönüşümlerin yeni İş Kanununun akdedilmesinden çok önce ve Türkiye Burjuvazisinin eski kanunun katılığından yakınmaya başladığı 1994 krizinden hemen sonra başladığı belirtilebilir. Doktrin işletmenin korunması ilkesi adı altında bir argümanı işçinin korunması ilkesi gibi esaslı bir ilkenin karşısına koyabilmiş, yargı da bu yeni ilkeyi kararlarında kullanmıştır. Buna ek olarak bireysel iş hukuku alanına giren koruyucu hükümler endüstri ilişkilerinin çatışmasız ilişkiler olduğunun ilan edildiği bir iktisat kavramsallaştırması içerisinde ele alınmışlardır. İstisnai biçim olan belirli süreli iş

sözleşmelerinin süresiz iş sözleşmeleri karşısında hakim biçim haline gelmesi bu dönemde gerçekleşmiştir. Aynı süreçte yargı organında iş hukukunun anlamının da değiştiğini görüyoruz. Bu gün iş hukuku bireysel işçi ve işveren arasında piyasa üzerinden gelişen ilişkileri düzenleyen hukuk anlamına gelmektedir. Bu bağlamda yeni endüstriyel ilişkiler sistemimiz emek potansiyelinin saf bir meta ve bu potansiyelin sahibinin ise kolektif sermayenin bir fraksiyonunu oluşturan bireysel kapitalist karşısında herhangi bir kolektif kimliği olmayan hukuki bir süje olarak kabul edildiği bir kurgu üzerinden değerlerini üretmektedir. Bu noktada üretimin söylemleri ve yasal söylem arasında tam bir çakışma tespit etmek mümkündür.

Yukarıda anılan saptamalar ışığında esneklik kavramını bir yere koyarsak, bu nosyonun uluslararası rekabetin dinamikleri ve mevcut birikim rejiminin krizi ile birlikte üretimin söylemleri, yargı kararları, doktrin, koruyucu hükümlerdeki dönüşümün tümünü kapsayan bir dönüşüm sürecinin bütününe ve bu sürecin belirli kesimlerine aynı anda verilen bir isim olduğu sonucuna varabiliriz. Başka bir deyişle esneklik nosyonu sözleşmenin değişen içeriğine yani bireysel kapitalistin emek gücü üzerinde artan iktidarına ve bu kapsamda iş hukuku söyleminde – yeniden ama farklı bir içerikle- beliren evrensel sözleşme özgürlüğü ilkesine atıfta bulunmaktadır. Türkiye'de esneklik verili birikim rejiminin ve devlet biçiminin krizi altında deneyimlenmektedir. Bu kapsamda, teorik kısımda da belirtildiği gibi, esnekliğin verili toplumsal formasyonda sermaye emek ilişkilerini düzenleyen anayasal hükümler, kurumlar ve örgütlerin işleyiş ilkeleri ile uyumlu olması, bir başka deyişle, verili toplumsal sabitte düzenlemeyi sağlayan mevcut yapısal biçimlerin işlevleri ile uyumlu olması gerektiği ölçüde, Türkiye iş hukuku uygulaması Ulus-sonrası Schumpeterci çalışma refahı devletinin gelişiminin tespit edilebileceği merkezi ekonomilerden ayrılmaktadır. Bu ekonomilerde devletin sermayenin kontrol etme hakkındaki genişlemeye katkısı, emeğin çalışma refahı devleti üzerinden desteklenmesiyle sağlanırken, Türkiye ve aynı grupta klasifiye edilen ülkelerde sosyal politikanın ekonomik politikaya bağımlı olması devletin eğitim ve sağlık alanlarında emeğe yatırımda bulunmaktan vazgeçmesi anlamına gelmektedir. Bu son çıkarım Türkiye iş hukukunu, Türkiye ile benzer çıkmazları

yaşayan çevresel formasyonların gelişme çizgileri içerisinde karşılaştırma noktaları tesis ederek kategorize etme olasılığını gündeme getirdiği ölçüde bu alanda yapılabilecek çalışmalar için bir çalışma programının ilk örneklerinden birisini oluşturabilir.

BIBLIOGRAPHY

Aboites, J., Miotti, L. and Quenan, C. (2002) 'Regulationist Approaches and Accumulation in Latin America' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 280-289.

Abu-Lughod, J. (2003) 'Süreksizlikler ve Süreklilik: Tek bir Dünya Sistemi mi Yoksa Birbirini İzleyen Sistemler mi?' in Frank, A.G., and Gills, B.K. (eds) (trans. Esin Soğancılar) *Dünya Sistemi: Beş Yüzyıllık mı, Beş Binyıllık mı?*, Ankara: İmge, 507-526.

Ackers, P., Smith, C. and Smith, P. (1996) (eds) *The New Workplace and Trade Unionism: Critical Perspectives on Work and Organisation*, London: Routledge.

Addison, J. T. and Siebert, W. S. (1993) 'The U. K.: Labour Market Institutions, Law and Performance' in Hartog, J. and Theeuwes, J. (eds) *Labour Market Contracts and Institutions: A Cross-National Comparison*, Amsterdam: North-Holland, 351-385.

Adler, P. (1993) 'Time and Motion Regained', *Harvard Business Review*, January-February, 97-108.

Aglietta, M. (1987) *A Theory of Capitalist Regulation*, London, New Left Books.

Aglietta, M. (1998) 'Capitalism at the Turn of the Century: Regulation Theory and the Challenge of Social Change' *New Left Review*, 232, 41-90.

Aglietta, M. (2000) 'Shareholder Value and Corporate Governance: Some Tricky Questions', *Economy and Society*, 29,146-159.

Ahmad, F. (1993) *The Making of Modern Turkey*, London: Routledge.

Akalın, İ. (1995) *DİSK Kısa Tarih* Ankara: Öteki Yayınları.

Akın, E. (1997) *Bilim ve Siyasal Sistem*, Ankara: Birey ve Toplum Yayınları.

Allaire, G. and Mollard, A. (2002) 'Sector-Based Regulation: The Case of Agriculture' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 214-223.

Alper, Y. (2003) *Türkiye'de Sosyal Güvenlik ve Sosyal Sigortalar*, Bursa: Ekin Yayınevi.

Althusser, L. (2004) *Marx İçin*, İstanbul: İthaki.

Amable, B. (2002) 'Regulation Theory and Technical Change' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 161-168.

Amin, A. (1992) (ed.) *Post-Fordism. A Reader*, Oxford and Cambridge: Blackwell.

Amin, S. (1973) *Unequal Development: An Essay on the Social Formations of Peripheral Capitalism*, Sussex: The Harvester Pres.

Amin, S. (2003) 'Modern Kapitalist Dünya-Sistemi Kavramına Karşı Eski Dünya-Sistemleri Kavramı' in Frank, A.G., and Gills, B.K. (eds) (trans. Esin Soğancılar) *Dünya Sistemi: Beş Yüzyıllık mı, Beş Binyıllık mı?*, Ankara: İmge, 457-506.

Andre, C. (2002) 'The Welfare State and Institutional Compromises: From Origins to Contemporary Crisis' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 94-101.

Ansal, H., Küçükçifçi, S., Onaran, Ö. and Orbay, B. Z. (2000) *Türkiye Emek Piyasasının Yapısı ve İşsizlik*, İstanbul: Türkiye Ekonomik ve Toplumsal Tarih Vakfı.

Arıcanlı, T. and Rodrik, D. (1990) 'An Overview of Turkey's Experience with Economic Liberalisation and Structural Adjustment', *World Development*, 18 (10), 1343-1350.

Arın, T. (2003) 'Türkiye'de Mali Küreselleşme ve Mali Birikim ile Reel Birikimin Birbirinden Kopması' in Köse, A. H. , Şenses, F. and Yeldan, E. (eds) *İktisat Üzerine Yazılar I: Küresel Düzen: Birikim, Devlet ve Sınıflar*, İstanbul: İletişim Yayınları, 569-611.

Arthur, C. J. (2002) 'The Spectral Ontology of Value' in Brown, A. Fleetwood, S. and Roberts, J. M (eds) *Critical Realism and Marxism*, New York: Routledge, 215-237.

Arthur, J. and Reuten, G. (1998) 'Marx's Capital II, The Circulation of Capital: General Introduction' in Arthur, J. and Reuten, G. (eds) *The Circulation of Capital: Essays on Volume Two of Marx's Capital*, London: Macmillan Press, 1-16.

Ayata, A.G. (1990) 'Class and Clientalism in Republican People's Party' in Finkel, A. and Sirman, N. (eds.), *Turkish State, Turkish Society*, London: Routledge.

Ayata, A.G. (1992) *CHP: Örgüt ve İdeoloji*, Ankara: Gündoğan.

Ayata, A.G. (1993) 'Ideology, Social Bases, and Organisational Structure of the Post-1980 Political Parties' in Eralp, Tünay and Yeşilada (eds) *Turkey since 1970: Politics, Economics and Society*, İzmir, Dokuz Eylül University, 91-110.

Ayata, A.G. (2001) 'Turkey's Mainstream Political Parties on the Centre-Right and Centre-Left' in Lovatt (eds) *Turkey since 1970: Politics, Economics and Society*, İzmir, Dokuz Eylül University, 91-110.

Baert, P. (1998) *Social Theory in the Twentieth Century*, Cambridge: Polity Press.

Baglioni, G. and Crouch, C. (1990) (eds) *European Industrial Relations. The Challenge of Flexibility*, London: Sage.

Baran, P. (1974) *Büyümenin Ekonomi Politiği*, İstanbul: May Yayınları.

Barker, C. (1991) 'A Note on the Theory of Capitalist States' in Clarke, S. (ed) *The State Debate*, New York: St. Martin's Press, 204.

Barkey, H. J. (1990) *The State and the Industrialisation Crisis in Turkey*, Oxford: Westview Press.

Barrow, C.W. (1993) *Critical Theories of the State: Marxist, Neo-Marxist, post-Marxist*, Wisconsin: The University of Wisconsin Press.

Basle, M. (2002) 'Acknowledged and Unacknowledged Institutionalist Antecedents of Regulation Theory' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 21-28

Beardwell, I. (1996) (ed.) *Contemporary Industrial Relations: A Critical Analysis*, New York: Oxford University Press.

Beck, U. (2000) *The Brave New World of Work*, Oxford: Polity Press.

Becker, U. (1989) 'Class Theory: Still the Axis of Critical Social Scientific Analysis?' in Wright, E. O. (ed.) *The Debate on Classes*, London: Verso, 127-156.

Bell, D. (1974) *The Coming of Post-Industrial Society, A Venture in Social Forecasting*, London: Heinemann.

Benko, G. and Lipietz, A. (2002) 'From the Regulation of Space to the Space of Regulation' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 190-197.

Bertrand, H. (2002) 'The Wage-Labour Nexus and the Employment System' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 80-87.

Betcherman, G. (1997) 'Globalization, Labour Markets and Public Policy' in Boyer, R., and Drache, D. (eds) *States and Markets: The Limits of Globalization*, London: Routledge, 250-269.

Bhaskar, R. (1975) *A Realist Theory of Science*, Leeds: Leeds Books.

Bhaskar, R. (1994) *Plato Etc.: The Problems of Philosophy and Their Resolution*, London:Verso.

Billaudot, B. (2002a) 'Institutional Forms and Macroeconomics' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 139-144.

Billaudot, B. (2002b) 'Short and Medium-Term Macroeconomic Dynamics' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 144-153.

Boratav, K. (1994) 'Contradictions of 'Structural Adjustment': Capital and the State in Post-1980 Turkey' in Öncü, A. et al. (eds) *Developmentalism and Beyond: Society and Politics in Egypt and Turkey*, 155-177.

Boratav, K. (2003) *Türkiye İktisat Tarihi 1908-2002*, Ankara: İmge Yayınları.

Boratav, K and Yeldan, E. (2001) 'Turkey, 1980-2000: Financial liberalization, Macroeconomic(in)-stability, and Patterns of Distribution', May, (www.bilkent.edu.tr/yeldane/CEPA2001_B&Y.pdf) (23.04.2004).

Boratav, K. , Yeldan, E. and Köse, A. (2000) 'Globalisation, Distribution and Social Policy: Turkey: 1980-1998' CEPA and New School for Social Research, Working Paper series, No. 20, New York, February.

Boratav, K., Türel, O. and Yeldan, E. (1996) 'Dilemmas of Structural Adjustment and Environmental Policies under Instability: Post-1980 Turkey', *World Development*, 24(2), 373-393.

Boyer, R. (1990) *The Regulation School: A Critical Introduction*, New York: Columbia University Press.

Boyer, R. (1994) 'The Eighties: The Search for Alternatives to Fordism' in Jessop, B., Kastendiek, H., Nielsen, K. and Pederson, O. V. (eds) *The Politics of Flexibility: Restructuring State and Industry in Britain, Germany and Scandinavia*, Aldershot: Edward Elgar, 106-135.

Boyer, R. (1997) 'State and Market: A New Engagement for the Twenty-First Century?' in Boyer, R., and Drache, D. (eds) *States and Markets: The Limits of Globalization*, London: Routledge, 84-116.

Boyer, R. (2000) 'Is a Finance-led Growth Regime a Viable Alternative to Fordism? A Preliminary Analysis', *Economy and Society*, 29, 111-145.

Boyer, R. (2002a) ‘From Canonical Fordism to Different Modes of Development’ in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 231-238.

Boyer, R. (2002b) ‘Is Regulation Theory an Original Theory of Institutions’ in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 312-320.

Boyer, R. (2002c) ‘Perspectives on the Wage-Labour Nexus’ in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 73-80.

Boyer, R. (2002d) ‘The Origins of Regulation Theory’ in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 13-21.

Boyer, R., and Drache, D. (1997) ‘Introduction’ in Boyer, R., and Drache, D. (1997) *States and Markets: The Limits of Globalization,* London: Routledge, 1-31.

Boyer, R. and Durand, J. P. (1997) *After Fordism*, London: Macmillan Press.

Boyer, R. and Juillard, M. (2002) ‘The United States: Goodbye, Fordism’ in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 238-247.

Boyer, R. and Saillard, Y. (2002a) ‘A Summary of Regulation Theory’ in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 36-45

Boyer, R and Saillard, Y. (2002b) ‘Regulation Theory: Stasis or Confirmation of a Research Programme’ in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 45-55.

Braverman, H. (1974) *Labour and Monopoly Capitalism*, New York, Monthly Review Press.

Brenner, R. (1977) ‘The Origins of Capitalist Development: A Critique of Neo-Smithian Marxism’, *New Left Review*, 104, 25-92.

Brewer, A. (1989) *Marxist Theories of Imperalism: A Critical Survey*, London: Routledge.

Brown, A. (2002) ‘Developing Realistic Philosophy: From Critical Realism to Materialist Dialectics’ in Brown, A. Fleetwood, S. and Roberts, J. M (eds) *Critical Realism and Marxism*, New York: Routledge, 168-187.

Brown, A., Fleetwood, S. and Roberts, J. M. (2002) *Critical Realism and Marxism*, New York: Routledge.

Bulutay, T. (ed.) (1999*) The Burdens Related with Turkish Labour Markets and Policies*, ILO/SIS, Ankara.

Burawoy, M. (1979) *Manufacturing Consent: Changes in the Labour Process under Monopoly Capitalism*, University of Chicago Press.

Burawoy, M. (1981) ‘Terrains of Contest: Factory and State under Capitalism and Socialism’, *Socialist Review* (USA), 11(4), 83-124.

Burawoy, M. (1985) *The Politics of Production: Factory Regimes Under Capitalism and Socialism*, New York: Verso.

Burawoy, M. (1989) ‘The Limits of Wright’s Analytical Marxism and an Alternative’ in Wright, E. O. (ed.) *The Debate on Classes*, London: Verso, 78-99.

Burg, N. and Jessop, B. (1994) ‘Flexibilization and State Strategies: Coal and the City’ in Jessop, B., Kastendiek, H., Nielsen, K. and Pederson, O. V. (eds) *The Politics of Flexibility: Restructuring State and Industry in Britain, Germany and Scandinavia*, Aldershot: Edward Elgar, 173-195.

Cam, S. (2002) ‘Neo-Liberalism and Labour within the Context of an 'Emerging Market' Economy – Turkey’, *Capital and Class*, 77, 89-124.

Carchedi, G. (1989) ‘Classes and Class Analysis’ in Wright, E. O. (ed.) *The Debate on Classes*, London: Verso, 105-126.

Castree, N. (2002) ‘From Spaces of Antagonism to Spaces to Engagement’ in Brown, A. Fleetwood, S. and Roberts, J. M (eds) *Critical Realism and Marxism*, New York: Routledge, 187-215.

Catalano, A.M. (1999) ‘The Crisis of Trade union Representation: New Forms of Social Integration and Autonomy-Construction’ in Munck, R. and Waterman, P. (eds) *Labour Wordwide in the Era of Globalisation: Alternative Union Models in the New World Order*, London: MacMillan, 27-40.

Çelik, N. (1990) *İş Hukuku Dersleri*, Istanbul: Beta Yayınları.

Çelik, N. (2003) *İş Hukuku Dersleri*, İstanbul: Beta Yayınları.

Centel, T. (1999) ’Türkiye’de Esneklik’ in TİSK, *Çalışma Hayatında Esneklik Semineri*, İstanbul, 58-64.

Centel, T. (2000) ‘İşsizlik Sigortası Kanunu’na Eleştirel Yaklaşım’ *TÜHİS İş Hukuku ve İktisat Dergisi*, 16(2), 25-38.

Centel, T. (2002) ‘İş Güvencesi ve Dünya Uygulamaları Çerçevesinde Türk Çalışma Yaşamında Esneklik Gereksinimi’; *TİSK-İşveren Dergisi*; 25-11.

Chavance, B. (2002) ‘Institutions, Regulation and Crisis in Socialist Economics’ in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 267-274.

Chorney, H. (1997) ‘Debts, Deficits and Full Employment’ in Boyer, R., and Drache, D. (eds) *States and Markets: The Limits of Globalization*, London: Routledge, 357-382.

Chossudovsky, M. (1999) *Yoksulluğun Küreselleşmesi* (trans. Neşenur Domaniç), İstanbul: Çiviyazıları

Cizre-Sakallıoğlu, Ü. (1992) ‘Labour and State in Turkey: 1960-80’, *Middle Eastern Studies*, 28(4), 712-728.

Clarke, S. (1991a) 'The State Debate' in Clarke, S.(ed) *The State Debate,* New York: St. Martin's Press, 1-67.

Clarke, S. (1991b) 'Marxism, Sociology and Poulantzas's Theory of the State' in Clarke, S.(ed) *The State Debate,* New York: St. Martin's Press, 70-106.

Clarke, S. (1991c) 'State, Class Struggle, and the Reproduction of Capital' in Clarke, S. (ed) *The State Debate,* New York: St. Martin's Press, 183-201.

Coban, A. (2002) 'Regulation and the American Radical School' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 299-306.

Colclough, C. and Manor, J. (1993) *States or Markets? Neo-Liberalism and the Development Policy Debate*, Oxford: Clarendon Press.

Collier, A. (2002) 'Dialectic in Marxism and Critical Realism' in Brown, A. Fleetwood, S. and Roberts, J. M (eds) *Critical Realism and Marxism*, New York: Routledge, 155-168.

Collins, H. (1982) *Marxism and Law*, Oxford: Oxford University Press.

Coriat, B. (2002) 'France: The End of Fordism and no Successor in Sight' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 247-254.

Coriat, B. and Dosi, G. (2002) 'Evolution and Regulationary Theories: Similarities and Differences' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 306-312.

Cox, R. (1987) *Production, Power and World Order: Social Forces in the Making of History*. New York: Columbia University Press.

Creaven, S. (2002) 'Materialism, Realism and Dialectics' in Brown, A. Fleetwood, S. and Roberts, J. M (eds) *Critical Realism and Marxism*, New York: Routledge, 131-155.

Cumbers, A. (1996) 'Continuity or Change in Employment Relations: Evidence from the UK's Old Industrial Regions', *Capital and Class*, 58, 33-57.

Curry, N. (2002) 'Critical Realism: Beyond the Marxism/Post-Marxism Divide' in Brown, A. Fleetwood, S. and Roberts, J. M (eds) *Critical Realism and Marxism*, New York: Routledge, 116-131.

Çetik, M. and Akkaya, Y. (1999) *Türkiye'de Endüstri İlişkileri*, İstanbul: Türkiye Ekonomik ve Toplumsal Tarih Vakfı.

Danford, A. (1997) 'The 'New Industrial Relations' and Class Struggle in the 1990s', *Capital and Class*, 61, Spring, 107-143.

de Cruz (1995) *Comparative Law in a Changing World*, London: Cavendish Publishing.

Delorme, R. (2002) 'The State as Relational, Integrated and Complex: L'etat Relationnel Integre Complexe (EPIC)' in Boyer, R. and Saillard, Y. (eds)

Regulation Theory: The State of the Art, London and New York: Routledge, 115-122.

Demir, F. (1998) 'Bireysel Çalışma İlişkilerinde Güncel Sorunlar' in *Prof. Dr. Metin Kutal'a Armağan*, Ankara: TÜHİS, 79-99.

Derek, S. (1979) *Marx's Method: Ideology, Science and Critique in Capital*, Sussex: The Harvester Press.

Dereli, T. (1981) 'Turkey' in Blum, A. (ed) *International Handbook of Industrial Relations: Contemporary Developments and Research*, London: Aldwych Press, 547-592.

Dereli, T. (1998) *Labour Law and Industrial Relations in Turkey*, The Hague: Kluwer Law International.

Dereli, T. (2000) 'Avrupa Birliği Normları Bağlamında Türk İş Standartlarını Bir Değerlendirmesi: Uyumlaştırma Sorunu', *Yeni Türkiye*, 36, Avrupa Birliği Özel Sayısı II, 954-967.

Drache, D. (1997) 'From Keynes to K-Mart: Competitiveness in a Corporate Age' in Boyer, R., and Drache, D. (eds) *States and Markets: The Limits of Globalization*, London, Routledge, 31-61.

du Tertre, C. (2002) 'Sector-Based Dimensions of Regulation and the Wage-Labour Nexus' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 204-214.

Duruiz, L. and Yentürk, N. (1992) *Facing the Challenge: Turkish Automobile, Steel, and Clothing Industries' Responses to the Post-Fordist Restructuring*, Istanbul: İletişim Yayınları.

Dworkin, R. (1978) *Taking Rights Seriously*, London: Duckworth.

Ecevit, Y. (1998) 'Küreselleşme, Yapısal Uyum ve Kadın Emeğinin Kullanımında Değişmeler', Özbay, F. (ed.) *Küresel Pazar Açısından Kadın Emeği ve İstihdamındaki Değişimler: Türkiye Örneği*, T.C. Devlet Bakanlığı Kadının Statüsü ve Sorunları Genel Müdürlüğü, Ankara, 31-79.

Edgell, S. (1993) *Class*, London: Routledge.

Ehrbar, H. G. (2002) 'Critical Realist Arguments in Marx's *Capital*' in in Brown, A. Fleetwood, S. and Roberts, J. M (eds) *Critical Realism and Marxism*, New York: Routledge, 43-57.

Ekholm, K. and Friedman, J. (2003) 'Eski Dünya Sistemlerinde 'Sermaye' Emperyalizmi ve Sömürü' in Frank, A.G., and Gills, B.K. (eds) (trans. Esin Soğancılar) *Dünya Sistemi: Beş Yüzyıllık mı, Beş Binyıllık mı?*, Ankara, İmge, 139-175.

Ekin,N., Alper, Y, Akgeyik, T. (1999) *Türk Sosyal Güvenlik Sistemi'nde Arayışlar: Özelleştirme ve Yeniden Yapılanma*, İstanbul Ticaret Odası Yayın No: 1999-69.

Ekonomi, M. (1994) 'Türk İş Hukuku'nda Esnekleşme Gereği' in Yaşar Eğitim ve Kültür Vakfı, *Çalışma Hayatında Esneklik*, 55-81.

Elam, M. and Börjeson, M. (1994) 'Workplace Reform and the Stabilization of Flexible Production in Sweden' in Jessop, B., Kastendiek, H., Nielsen, K. and Pederson, O. V. (eds) *The Politics of Flexibility: Restructuring State and Industry in Britain, Germany and Scandinavia*, Aldershot: Edward Elgar, 314-337.

Elam, M. J. (1990) 'Puzzling Out the Post-Fordist Debate: Technology, Markets and Institutions', *Economic and Industrial Democracy*, 11, 9-37.

Eralp, A., Yeşilada, B. and Tünay, M. (1993) *The Political and Socioeconomic Transformation of Turkey*, Praeger.

Erdoğdu, S. (1994) 'Türk İşçileri Açısından İş Hukuku'nda Esneklik' in Yaşar Eğitim ve Kültür Vakfı, *Çalışma Hayatında Esneklik*, 27-31.

Erdut, Z. (2002) *Küreselleşme Bağlamında Uluslararası Sosyal Politika ve Türkiye*, İzmir: Dokuz Eylül Yayınları.

Favereau, O. (2002) 'Conventions and Regulation' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 312-320.

Fay, B. (1996) *Çağdaş Sosyal Bilimler Felsefesi: Çokkültürlü Bir Yaklaşım* (trans. İsmail Türkmen), İstanbul: Ayrıntı Yayınları.

Femia, J. V. (1981) *Gramsci's Political Thought: Hegemony, Consciousness, and the Revolutionary Process*, Oxford: Clarendon Press.

Fine, B. (1986) *Democracy and the Rule of Law: Liberal Ideas and Marxist Critiques*, London: Pluto Press.

Finkel, A. and Sirman, N. (1990) *Turkish State, Turkish Society*, London: Routledge.

Flanagan, R. J. (1993) 'The United States: Decentralized Heterogeneity' in Hartog, J. and Theeuwes, J. (eds) *Labour Market Contracts and Institutions: A Cross-National Comparison*, Amsterdam: North-Holland, 31-77.

Flanagan, R. J., Hartog, J. and Theeuwes, J. (1993) 'Institutions and the Labour Market: Many Questions, Some Answers' in Hartog, J. and Theeuwes, J. (eds) *Labour Market Contracts and Institutions: A Cross-National Comparison*, Amsterdam: North-Holland, 415-447.

Fleetwood, S. (2002) 'What Kind of *Theory* is Marx's Labour *Theory* of Value? A Critical Realist Inquiry' in Brown, A. Fleetwood, S. and Roberts, J. M (eds) *Critical Realism and Marxism*, New York: Routledge, 57-88.

Forgacs, D. (1988) *A Gramsci Reader: Selected Writings 1916- 1935*, London: Lawrence and Wishart .

Frank, A.G., and Gills, B.K. (2003) '5000 Yıllık Dünya Sistemi: Disiplinler Arası Bir Giriş' in Frank, A.G., and Gills, B.K. (eds) (trans. Esin Soğancılar) *Dünya Sistemi: Beş Yüzyıllık mı, Beş Binyıllık mı?,* Ankara: İmge, 41-139.

Frenkel, S. (1993) (ed.) *Organised Labour in the Asia-Pasific Region: A Comparative Study of Trade Unionism in Nine Countries*, Ithaca: ILR Press.

Freysinnet, J. (1993) ‘France: Towards Flexibility’ in Hartog, J. and Theeuwes, J. (eds) *Labour Market Contracts and Institutions: A Cross-National Comparison*, Amsterdam: North-Holland, 267-299.

Fröbel, F., Heinrichs, J. and Kreye, O. (1982) *The New International Division of Labour: Structural Unemployment in Industrialised Countries and Industrialisation in Developing Countries*, Cambridge: Cambridge University Press.

Gençler, A. (2002) ‘Türkiye'de İşsizlik Sigortası Uygulaması‘, *Çimento İşveren Dergisi*, 16(3), 6-22.

Gill, S. (1993) (ed) *Gramsci, Historical Materialism and International Relations,* Cambridge: Cambridge University Press.

Gilly, J. P. and Pecqueur, B. (2002) ‘ The Local Dimension of Regulation’ in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 197-204.

Goldberg, V.P. (1993) ‘Toward and Expanded Economic Theory of Contract’ in Samuels, W.J. (ed.) *The Chicago School of Political Economy*, London: Transaction Publishers, 259-276.

Gönüç, H. (2000) ‘Sermaye Birikim Sürecinde Krizin Çözümü Olarak Sunulan Esneklik ve Çalışma Yaşamımıza Etkileri’ in *Çalışma Hayatında Esneklik ve İş Hukukuna Etkileri*, İstanbul: İstanbul Barr Associaton, 373-382.

Gorz, A. (1982) *Farewell to the Working Class. An Essay in Post-Industrial Socialism*, London: Pluto.

Gorz, A. (1999) ‘A New Task for the Unions: The Liberation of Time from Work’ in Munck, R. and Waterman, P. (eds) *Labour Wordwide in the Era of Globalisation: Alternative Union Models in the New World Order*, London: MacMillan, 41-63.

Grahl, J. and Teague, P. (2000) ‘The Regulation School, the Employment Relation and Financialization’, *Economy and Society*, 29,160-178.

Gramsci, A. (1971) in Q. Hoare and G. Nowell Smith (eds) *Selections from the Prison Notebooks*, London: Lawrence & Wishart.

Gray, J. (1995) *Liberalism*, Minneapolis: University of Minnesota Press.

Gülmez, M. (1988) *Sendikal Hakların Uluslararası Kuralları ve Türkiye*, Ankara: TODAİE.

Güneş-Ayata, A. (1990) ‘Class and Clientelism in the Republican People’s Party’ in Finkel, A. and Sirman, N. (eds) *Turkish State, Turkish Society*, London: Routledge, 159-185.

Güneş-Ayata, A. (1994) ‘Roots and Trends of Clientalism in Turkey’ in Roniger, L. and Güneş-Ayata, A. (eds) *Democracy, Clientalism and Civil Society*, Boulder: Lynne Rienner Publishers, 49-65.

Gürsel, S., Levent, H., Taştı, E., Erçevik, A. and Tercan, P. (2002) *Türkiye İşgücü Piyasası ve Esneklik,* İstanbul: TÜSİAD.

Guttman, R. (2002) 'Money and Credit in Regulation Theory' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 57-64.

Güzel, A. (1998) 'Roma ve Maastricht Antlaşmaları Sürecinde Avrupa Sosyal Modeli ve Türkiye' in *Prof. Dr. Metin Kutal'a Armağan*, Ankara: TÜHİS, 99-127.

Güzel, Ş. (1996) *Türkiye'de İşçi Hareketi* (1908-1984), İstanbul: Kaynak Yayınları.

Hale, W. (1981) *The Political and Economic Development of Modern Turkey*, London: Croom Helm.

Hale, W. (1994) *Turkish politics and the Military*, London: Routledge.

Hardt, M. and Negri, A. (1994) *Labor of Dionysus: A Critique of the State-Form*, Minnesota: University of Minnesota Press.

Hardt, A. and Negri, A. (2001) *İmparatorluk* (trans. Abdullah Yılmaz), İstanbul: Ayrıntı Yayınları.

Hartog, J. and Theeuwes, J. (1993) *Labour Market Contracts and Institutions: A Cross-National Compaison*, Amsterdam: North-Holland.

Hartog, J., Polachek, S. and Theeuwes, J. (1993) 'Evaluation Labour Market Performance' in Hartog, J. and Theeuwes, J. (eds) *Labour Market Contracts and Institutions: A Cross-National Comparison*, Amsterdam: North-Holland, 9-31.

Harvey, D. (1988) 'The Geographical and Geopolitical Consequences of the Transition from Fordism to Flexible Specialisation' in Sternleib, G. and Hughes, J. (eds) *America's New Market Geography*, New Brunswick: Rutgers University, 101-135.

Heper, M. (1994) *Politics in the Third Turkish Republic*, Boulder: Westview Press.

Hindess, B. and Hirst, P. (1978) *Mode of Production and Social Formation*, London, Macmillan Press.

Hirsch, J. (1991) 'The Fordist Security State and New Social Movements' in Clarke, S. (ed) *The State Debate*, New York: St. Martin's Press, 142-156.

Hirsch, J. (1994) 'From the Fordist to the Post-Fordist State' in Jessop, B., Kastendiek, H., Nielsen, K. and Pederson, O. V. (eds) *The Politics of Flexibility: Restructuring State and Industry in Britain, Germany and Scandinavia*, Aldershot: Edward Elgar, 67-82.

Hirst, P. and Thompson, G. (1995) 'Globalization and the Future of the Nation State' *Economy and Society*, 24, 408-442.

Hirst, P. and Zeitlin, J. (1991) 'Flexible Specialization versus post-Fordism: Theory, Evidence and Policy Implications' *Economy and Society*, 20, 1-56.

Hollard, M. (2002) 'Forms of Competition' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 101-108.

Holloway, J. (1991) 'The State and Eryday Struggle' in Clarke, S. (1991) *The State Debate,* New York: St. Martin's Press, 1-67.

Holloway, J. and Piciotto, S (1991) 'Capital, Crisis and the State' in Clarke, S. (ed) *The State Debate,* New York: St. Martin's Press, 109-141.

Hübner, K. (1994) 'Flexibilization and Autonomization of World Money Markets: Obstacles for a New Long Expansion' in Jessop, B., Kastendiek, H., Nielsen, K. and Pederson, O. V. (eds) *The Politics of Flexibility: Restructuring State and Industry in Britain, Germany and Scandinavia*, Aldershot: Edward Elgar, 50-67.

Hunt, A. (1980) *Marxism and Democracy*, London: Lawrence and Wishart.

Hunt, A. (1993) *Explorations in Law and Society: Towards a Constitutive Theory of Law*, London & New York: Routledge.

Hyman, R. (1994) 'The Fetishism of Flexibility: The Case of British Rail' in Jessop, B., Kastendiek, H., Nielsen, K. and Pederson, O. V. (eds) *The Politics of Flexibility: Restructuring State and Industry in Britain, Germany and Scandinavia*, Aldershot: Edward Elgar, 162-173.

Hyman, R. (1999) *An Emerging Agenda For Trade Unions*, www.ilo.org/public/english/bureau/inst/research/network/hyman.htm, (05.05.2004)

ILO (International Labour Organisation) (1996) *Unions in a Changing World: Problems and Prospects in Selected Industrialised Countries*, Geneva, International Labour Office.

Inoue, Y. and Yamada, T. (2002) 'Japan: Demythologising Regulation' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 260-267.

Işık, R. (1999) 'Esnekliğin Küresel Görünümü' in TİSK, *Çalışma Hayatında Esneklik Semineri*, İstanbul, 40-58.

Işık, Y. (1995) *Osmanlı'dan Günümüze İşçi Hareketinin Evrimi (1876-1994)*, Ankara: Öteki Yayınları.

Işıklı, A. (1995) *Sendikacılık ve Siyaset*, Ankara: Öteki Yayınları.

Işıklı, A. (2003) *Gerçek Örgütlenme: Sendikacılık*, Ankara: İmge Yayınları.

İstanbul Barr Association (2002) *Ekonomik Krizin İş Hukuku Uygulamasına Etkisi*, İstanbul: İstanbul Barr Association.

Jacobi, O. (1994) 'Debureaucratization and Flexibility' in Jessop, B., Kastendiek, H., Nielsen, K. and Pederson, O. V. (eds)*The Politics of Flexibility: Restructuring State and Industry in Britain, Germany and Scandinavia*, Aldershot: Edward Elgar, 248-263.

Jessop, B. (1980) 'The Political Indeterminancy of Democracy' in Hunt, A. (ed.) *Marxism and Democracy*, London: Lawrence and Wishart, 55-81.

Jessop, B. (1982) *The Capitalist State: Marxist Theories and Methods*, Oxford: Martin Robertson.

Jessop, B. (1985) *Nicos Poulantzas : Marxist Theory and Political Strategy*, London: Macmillan Press.

Jessop, B. (1990a) *State Theory: Putting the Capitalist State in Its Place*, Pennsylvania: The Pennsylvania State University Press.

Jessop, B. (1990b) 'Regulation Theories in Retrospect and Prospect' *Economy and Society*, 19(2), May, 153-216

Jessop, B. (1991) 'Accumulation Strategies, State Forms and Hegemonic Projects' in Clarke, S. (ed) *The State Debate*, New York: St. Martin's Press, 157-180.

Jessop, B. (1994a) 'Thatcherism and Flexibility: The White Heat of a Post-Fordist Revolution' in Jessop, B., Kastendiek, H., Nielsen, K. and Pederson, O. V. (eds) *The Politics of Flexibility: Restructuring State and Industry in Britain, Germany and Scandinavia*, Aldershot: Edward Elgar, 135-162.

Jessop, B. (1994b) 'The Welfare State in the Transition from Fordism to Post-Fordism' in Jessop, B., Kastendiek, H., Nielsen, K. and Pederson, O. V. (eds) *The Politics of Flexibility: Restructuring State and Industry in Britain, Germany and Scandinavia*, Aldershot: Edward Elgar, 82-106.

Jessop, B. (1995) 'The Regulation Approach, Governance and post-Fordism: Alternative Perspectives on Economic and Political Change?' *Economy and Society*, 24, 307-333.

Jessop, B. (1999) *'Narrating the Future of the National Economy and the National State? Remarks on Re-mapping Regulation and Re-inventing Governance'*, in G. Steinmetz, (ed.), *State/Culture: State Formation after the Cultural Turn*, Ithaca: Cornell University Press, 128-135.

Jessop, B. (2002a) *The Future of the Capitalist State*, Cambridge: Polity Press.

Jessop, B. (2002b) 'Capitalism, The Regulation Approach and Critical Realism' in Brown, A., Fleetwood, S. and Roberts, J. M. (eds) *Critical Realism and Marxism*, London: Routledge, 88-116.

Jessop, B., Kastendiek, H., Nielsen, K. and Pederson, O. V. (1994) *The Politics of Flexibility: Restructuring State and Industry in Britain, Germany and Scandinavia*, Aldershot: Edward Elgar.

Jimeno, J. F. and Toharia, L. (1993) 'Spanish Labour Markets: Institutions and Outcomes' in Hartog, J. and Theeuwes, J. (eds) *Labour Market Contracts and Institutions: A Cross-National Comparison*, Amsterdam: North-Holland, 299-323.

Joekes, S. (1998) 'Küreselleşme ve Gelişmekte Olan Ülkelerde Kadının Statüsü: Türkiye için Dersler' in Özbay, F. (ed.) *Küresel Pazar Açısından Kadın Emeği ve İstihdamındaki Değişimler: Türkiye Örneği*, T.C. Devlet Bakanlığı Kadının Statüsü ve Sorunları Genel Müdürlüğü, Ankara, 5-31.

Johnson, B. and Lundvall, B.A. (1994) 'Flexibility and Institutional Learning' in Jessop, B., Kastendiek, H., Nielsen, K. and Pederson, O. V. (eds) *The Politics of*

Flexibility: Restructuring State and Industry in Britain, Germany and Scandinavia, Aldershot: Edward Elgar, 33-50.

Jones, K. (1982) *Law and Economy*, Canada: Academic Press.

Joseph, J. (2002) 'Five Ways in Which Critical Realism Can Help Marxism' in Brown, A. Fleetwood, S. and Roberts, J. M (eds) *Critical Realism and Marxism*, New York: Routledge, 23-43.

Juillard, M. (2002) 'Accumulation Regimes' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 153-161.

Jürgens, U. (1994) 'Departures from Taylorism and Fordism: New Forms of Work in the Autumobile Industry' in Jessop, B., Kastendiek, H., Nielsen, K. and Pederson, O. V. (eds) *The Politics of Flexibility: Restructuring State and Industry in Britain, Germany and Scandinavia*, Aldershot: Edward Elgar, 233-248.

Kahveci, E., Sugur, N. and Nichols, T. (1996) (eds) *Work and Occupation in Modern Turkey*, London: Mansell.

Kaplinsky, R. (1994) *Easternisation: The Spread of Japanese Manufacturing Techniques to Developing Countries*, London: Frank Class.

Karahanoğulları, O. (2002) 'Marksizm ve Hukuk', *SBF Dergisi*, 57, 61-91.

Karlhofer, F. and Ladurner, U. (1993) 'The Austrian Labour Market: Description and Analysis of Structures and Institutions' in Hartog, J. and Theeuwes, J. (eds) *Labour Market Contracts and Institutions: A Cross-National Comparison*, Amsterdam: North-Holland, 185-209.

Kaya, P. A. (2001) 'İş Güvencesi: Türk Çalışma Mevzuatındaki Düzenleme, 158 Sayılı ILO Sözleşmesi ve Temmuz 2000 Tarihli İş Güvencesi Yasa Taslağının Kısaca Değerlendirilmesi', *Endüstri İlişkileri ve İnsan Kaynakları Dergisi*, 3(1) http://www.isguc.org/arc_view.php?ex=114 (05.02.2004).

Kaya, P, A, (2002a) 'Türkiye'de İş Güvencesi Sorunsalı Ve Bilim Komisyonunun Hazırladığı Yasa Tasarısı Üzerine Düşünceler', *Endüstri İlişkileri ve İnsan Kaynakları Dergisi*, 4(2), http://www.isguc.org/arc_view.php?ex=61 (05.02.2004).

Kaya, P. A. (2002b) '2000'li Yıllarda Türkiye'nin ILO Serüvenine Kısa Bir Bakış', Çimento İşveren Dergisi, 15(4), 14-21.

Kazgan, G. (1999) *Tanzimattan XXI. Yüzyıla Türkiye Ekonomisi: 1. Küreselleşmeden 2. Küreselleşmeye*, İstanbul: Altın Kitaplar

Kenney, M. and Florida, R. (1991) 'Transplanted Organisations: The transfer of Japanese Industrial Organisation to the U.S.', *American Sociological Review*, 65, 381-398.

Kenney, M. and Florida, R. (1993) *Beyond Mass Production: The Japanese System and Its Transfer to the U.S.*, New York: Oxford University Press.

Kepenek, Y. and Yentürk, N. (1996) *Türkiye Ekonomisi*, İstanbul: Remzi Kitabevi.

Keyder, C. (1987) *State and Class in Turkey: A Study in Capitalist Development*, New York: Verso.

Kiely, R. (1998) 'Neo Liberalism Revised? A Critical Account of World Bank Conceptss of Good Governance and Market Friendly Intervention' *Capital and Class*, 64, 63-89.

Koç, Y. (2000) *Türkiye-ILO İlişkileri*, Ankara, Türk-İş Eğitim Yayınları, No. 44.

Koç, Y. (2003) *Türkiye'de İşçi Sınıfı ve Sendikacılık Hareketi*, İstanbul: Kaynak Yayınları.

Köker, L. (1990) *İki Farklı Siyaset*, İstanbul: Ayrıntı Yayınları.

Koray, M. (2000) *Sosyal Politika*, Bursa: Ezgi Kitabevi.

Korver, A. (1993) 'The Netherlands: Labour Market, Labour Contracts and Collective Bargaining' in Hartog, J. and Theeuwes, J. (eds) *Labour Market Contracts and Institutions: A Cross-National Comparison*, Amsterdam: North-Holland, 385-415.

Köse, A. H. and Yeldan, E. (1995) 'Gümrük Birliği Sürecinde Türkiye Ekonomisinin Gelişme Perspektifleri', paper presented in Sanayi Kongresi, TMMOB, Ankara.

Kosonen, P. (1994) 'Flexibilization and the Alternatives of the Nordic Welfare States' in Jessop, B., Kastendiek, H., Nielsen, K. and Pederson, O. V. (eds) *The Politics of Flexibility: Restructuring State and Industry in Britain, Germany and Scandinavia*, Aldershot: Edward Elgar, 263-282.

Kutal, G. (2000) 'Küreselleşmenin Emek Piyasalarına Etkileri' in *Çalışma Hayatında Esneklik ve İş Hukukuna Etkileri*, İstanbul: İstanbul Barr Associaton, 21-45.

Kutal, M. (1999) 'Türkiye'de İşsizlik Sigortasının Yasal Çerçevesi ve Karşılaşılması Olası Bazı Sorunlar', *Basisen*, 62, 42-48.

Laclau, E. and Mouffe, C. (1987) 'Post-Marxism Without Apologies', *New Left Review*,166, November/December, 79-106

Lau, R.W.K. (1997) 'China: Labour Reform and the Challenge Facing the Working Class', *Capital and Class*, 61, 45-81.

Lewis, N. (1994) 'Changes in Socio-Legal Structures: The British Case' in Jessop, B., Kastendiek, H., Nielsen, K. and Pederson, O. V. (1994) *The Politics of Flexibility: Restructuring State and Industry in Britain, Germany and Scandinavia*, Aldershot: Edward Elgar, 195-219.

Liebhafsky, H. (1993) 'Price Theory as Jurisprudence: Law and Economics, Chicago Style' in Samuels, W.J. (ed.) *The Chicago School of Political Economy*, London: Transaction Publishers, 237-258.

Lipietz, A. (1985) *The Enchanted World: Inflation, Credit and the World Crisis*, London: Verso.

Lipietz, A. (1987) *Mirages and Miracles: The Crises of Global Fordism*, London: Verso.

Lipietz, A. (1992) *Towards a New Economic Order: Post-Fordism, Ecology and Democracy*, Oxford: Oxford University Press.

Lipietz, A. (2002) 'Regulationist Political Ecology or Environmental Economics' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 223-229.

Livshitz, R. and Nikitinsky, V. (1977) *An Outline of Soviet Labour Law*, Moscow: Progress Publishers.

Lordoğlu, K. and Özkaplan, N. (2003) *Çalışma İktisadı*, İstanbul: Der Yayınları.

Lordon, F. (2002a) 'Formalising Regulationist Dynamics and Crises' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 174-181.

Lordon, F. (2002b) 'Regulation Theory and Economic Policy' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 129-137.

Lowry, S.T. (1993) 'Bargain and Contract Theory in Law and Economics' in Samuels, W.J. (ed.) *The Chicago School of Political Economy*, London: Transaction Publishers, 215-236.

MacDuffie, J. (1995) 'Workers' Roles in Lean Production: The Implications for Worker Representation' in Babson, S. (ed.) *Lean Work: Empowerment and Exploitation in the Global Auto Industry*, Detroit: Wayne State University, 54-69.

MacGregor, S. (1999) 'Welfare, Neo-Liberalism and New Paternalism: Three Ways for Social Policy in Late Capitalist Societies', *Capital and Class*, 67, 91-118.

Manor, J. (1993) 'Politics and the Neo-Liberals' in Colclough, C. and Manor, J. (eds) *States or Markets? Neo-Liberalism and the Development Policy Debate*, Oxford: Clarendon Press, 306-321.

Marshall, G. (1997) *Repositioning Class: Social Inequality in Industrial Societies*, London: Sage.

Marx, K. (1973) *Grundrisse: Foundations of the Critique of Political Economy*, Harmondsworth: Penguin Books.

Marx, K. (1976a) *Capital*, Volume I, Harmondsworth: Penguin.

Marx, K. (1976b) *Capital*, Volume II, Harmondsworth: Penguin.

Marx, K. (1976c) *Capital*, Volume III, Harmondsworth: Penguin.

McMillan, C. (1997) 'Shifting Technological Paradigms: From the US to Japan' in Boyer, R., and Drache, D. (eds) *States and Markets: The Limits of Globalization*, London: Routledge, 117-135.

Mitchell, R. and Scherer, P. (1993) 'Australia: The Search for Fair Employment Contracts through Tribunals' in Hartog, J. and Theeuwes, J. (eds) *Labour Market*

Contracts and Institutions: A Cross-National Comparison, Amsterdam: North-Holland, 77-115.

Mjoset, L. (2002) 'The Nordic Countries: A Regulation Perspective on Small Countries' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 254-260.

Munck, R. (1995) *Uluslar arası Emek Araştırmaları* (trans. Cenk Aygün), Ankara: Öteki Yayınları.

Munck, R. (1999) 'Labour Dilemmas and Labour Futures' in Munck, R. and Waterman, P. (eds) *Labour Wordwide in the Era of Globalisation: Alternative Union Models in the New World Order*, London: MacMillan, 3-27.

Munck, R. (2002) *Emeğin Yeni Dünyası*: Küresel *Mücadele, Küresel Dayanışma* (trans. Mahmut Tekçe), İstanbul: Kitap Yayınevi.

Munck, R. and Waterman, P. (1999) (eds) *Labour Wordwide in the Era of Globalisation: Alternative Union Models in the New World Order*, London: MacMillan.

Murray, P. (1998) 'Beyond the 'Commerce and Industry' Picture of Capital' in Arthur, J. and Reuten, G. (eds) *The Circulation of Capital: Essays on Volume Two of Marx's Capital*, London: Macmillan Press, 33-66.

Nadel, H. (2002) 'Regulation and Marx' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 28-36.

Narmanlıoğlu, Ü. (2001) *İş Hukuku II: Toplu İş İlişkileri*, İzmir: Dokuz Eylül Yayınları.

Nielsen, K. (1994a) 'Learning to Manage the Supply-Side: Flexibility and Stability in Denmark' in Jessop, B., Kastendiek, H., Nielsen, K. and Pederson, O. V. (eds) *The Politics of Flexibility: Restructuring State and Industry in Britain, Germany and Scandinavia*, Aldershot: Edward Elgar, 282-314.

Nielsen, K. (1994b) 'Towards a Flexible Future: Theories and Politics' in Jessop, B., Kastendiek, H., Nielsen, K. and Pederson, O. V. (eds) *The Politics of Flexibility: Restructuring State and Industry in Britain, Germany and Scandinavia*, Aldershot: Edward Elgar, 3-33.

Offe, C. (1985) *Disorganised Capitalism*, Cambridge: M.I.T. Press.

Ohashi, I. and Tachibanaki, T. (1998) 'Introduction' in Ohashi, I. and Tachibanaki, T. (eds) *Internal Labour Markets, Incentives ad Employment*, London: Macmillan Press, 1-18.

Ohmae, K. (1990) *The Borderless World*, Londra: Collins.

Onaran, Ö. (2000) 'The Effects of Structural Adjustment Policies on Labor Market and Income Distribution in Turkey', unpublished DPhil Thesis, İstanbul Technical University.

OECD (1999) *Main Economic Indicators*, Organisation for Economic Co-orperation and Development.

Osieke, E. (1985) *Constitutional Law and Practice in the International Labour Organisation*, Boston: Dordrecht.

Öniş, Ziya. (1998) State and Market: *The political Economy of Turkey in Comparative Perspective*, Istanbul, University of Bogazici.

Özbay, F. (1998) (ed.) *Küresel Pazar Açısından Kadın Emeği ve İstihdamındaki Değişimler: Türkiye Örneği*, T.C. Devlet Bakanlığı Kadının Statüsü ve Sorunları Genel Müdürlüğü, Ankara.

Özbudun, Ergun. (2000) *Contemporary Turkish Politics: Challenges to Democratic Consolidation*, Boulder: Lynne Rienner Publishers.

Özkaplan, N. (1994) Sendikalar ve Ekonomik Etkileri, İstanbul: Kavram Yayınları.

Özşuca, Şerife (2003) *Esneklik ve Güvenlik İkileminde Türkiye Emek Piyasası*, Ankara, İmaj Yayıncılık.

Özveri, M. (2002) 'Yargı Yoluyla Toplu İş Sözleşmelerinin Değiştirilmesi' in *Ekonomik Krizin İş Hukuku Uygulamasına Etkisi*, İstanbul: İstanbul Barr Associaton, 207-256.

Paque, K. H. (1993) 'Germany: Living with Tight Corporatism' in Hartog, J. and Theeuwes, J. (eds) *Labour Market Contracts and Institutions: A Cross-National Comparison*, Amsterdam: North-Holland, 209-233.

Patroni, V. (1998) 'The Politics of Labour Legislation Reform in Mexico' *Capital and Class*, 65, 107-132.

Peker, M. (1996) 'Internal Migration and the Marginal Sector' in Kahveci, E., Sugur, N. and Nichols, T. (eds) *Work and Occupation in Modern Turkey*, London: Mansell, 7-38.

Petit, H. (2002) 'From Cumulative Growth to Regulation Theory' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 168-174.

Petrella, R. (1997) 'Globalization and Internationalization: The Dynamics of the Emerging World Order' in Boyer, R., and Drache, D. (eds) *States and Markets: The Limits of Globalization*, London: Routledge, 62-83.

Picciotto, S. (1991) 'The Internationalisation of Capital and the International State System' in Clarke, S. (ed) *The State Debate*, New York: St. Martin's Press, 214-224.

Piore, M. and Sabel, C. (1984) *The Second Industrial Divide: Possibilities of Prosperity*, Basic Books.

Poulantzas, N. (1973) *Political Power and Social Classes*, London: New Left Books.

Poulantzas, N. (1974) *Fascism and Dictatorship*, London: New Left Books

Poulantzas, N. (1976) *Classes in Contemporary Capitalism*, London: New Left Books.

Poulantzas, N. (1978) *State, Power, Socialism*, New York: Verso.

Resch, R. P. (1998) *Althusser and the Renewal of Marxist Social Theory*, Berkeley: University of California Press.

Reuten, G. (1998) 'The Status of Marx's Reproduction Schemes: Conventional or Dialectical Logic?' in Arthur, J. and Reuten, G. (eds) *The Circulation of Capital: Essays on Volume Two of Marx's Capital*, London: Macmillan Press, 187-230.

Reuten, G. and Williams, M. (1989) *Value-Form and the State: The Tendencies of Accumulation and the Determination of Economic Policy in Capitalist Society*, London: Routledge.

Reynaud, B. (2002) 'Diversity and Rules in Wage Determination' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 87-94.

Richards, D.G. (1997) 'The Political Economy of Neo-Liberal Reform in Latin America: A Critical Appraisal' *Capital and Class*, 61, 19-43.

Riethof, M. (1999) 'Labour Involvement in National and Regional Transformation Processes: The Case of Chile' *Third World Quarterly*, 20, 1049-1059.

Robles, A. C. (1994) *French Theories of Regulation and Conceptions of the International Division of Labour*, New York: St. Martin's Press.

Şahin, Ç. (2000) *Kapitalizm ve Yoksulluk*, İstanbul: Çiviyazıları.

Saillard, Y. (2002) 'Globalisation, Localisation and Sector-Based Specialisation: What is the Future of National Regulation?' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 181-183.

Samuels, W.J. (1993a) 'The Chicago School of Political Economy: A Constructive Critique' in Samuels, W.J. (ed.) *The Chicago School of Political Economy*, London: Transaction Publishers, 1-19.

Samuels, W.J. (1993b) 'Chicago Doctrine as Explanation and Justification' in Samuels, W.J. (ed.) *The Chicago School of Political Economy*, London: Transaction Publishers, 363-397.

Sapir, J. (2002) ' Crisis and Transition in the Soviet Union and Russia' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 274-280.

Sasajima, Y. (1993) 'The Japanese Labour Market: Its Institutions and Performance' in Hartog, J. and Theeuwes, J. (eds) *Labour Market Contracts and Institutions: A Cross-National Comparison*, Amsterdam: North-Holland, 151-185.

Sayer, A. (1984) *Method in Social Science: A Realist Approach*, London: Routledge.

Sayer, A. (1985) 'New Developments in Manufacturing and their Spatial Implications', *Working Paper, No. 49*, Urban and Regional Studies, Brighton, University of Sussex.

Sayer, A. (1989) 'Post-Fordism in Question', *International Journal of Urban and Regional Research*, 13, 666-693.

Sayer, A. (1995) *Radical Political Economy: A Critique*, Oxford: Blackwell.

Sayer, A. and Walker, R. (1992) *The New Social Economy: Reworking the Division of Labour*, Oxford: Blackwell.

Sayer, D. (1979) *Marx's Method: Ideology, Science, and Critique in 'Capital'*, Hassocks: Harvester.

Schabedoth, H. J. (1994) 'Neo-Conservatism and Modernization Policy in West Germany' in Jessop, B., Kastendiek, H., Nielsen, K. and Pederson, O. V. (eds) *The Politics of Flexibility: Restructuring State and Industry in Britain, Germany and Scandinavia*, Aldershot: Edward Elgar, 219-233.

Scharpf, F.W. (1996) 'Negative and Positive Integration in the Political Economy of European Welfare States', in G. Marks *et al.* (eds.) *Govermance in the European Union*, London.: Sage Publications.

Selçuk, F. Ü. (2002) *Örgütsüzlerin Örgütlenmesi: Enformal Sektörde İşçi Örgütleri*, Ankara: Atölye Yayınları.

Simon, R. (1988) *Gramsci's Political Thought*, London: Lawrence&Wishart.

Smith, A. (1776) *An Enquiry into the Nature and Cause of the Wealth of Nations*, Harmondsworth: Penguin.

Sönmez, S. (1998) *Dünya Ekonomisinde Dönüşüm*, Ankara: İmge Kitabevi.

Strath, B. (1996) *The Organisation of Labour Markets: Modernity, Culture and Governance in Germany, Sweden, Britain and Japan*, London: Routledge.

Sur, M. (2000) 'Karşılaştırmalı Hukukta Alt İşveren' in *Çalışma Hayatında Esneklik ve İş Hukukuna Etkileri*, İstanbul: İstanbul Barr Associaton, 197-210.

Süzek, S. (1998) 'İşverenin Yönetim Hakkı ve Sınırları', in *Prof. Dr. Metin Kutal'a Armağan*, Ankara: TÜHİS, 225-233.

Sweezy, P. (1992) 'Monopoly Capital After 25 Years' in Davis, B. (ed.) *The Economic Surplus in Advanced Economies*, Aldershot: Edward Elgar, 16-20.

Swingewood, A. (1975) *Marx and Modern Social Theory*, London: Macmillan Press.

Swingewood, A. (1998) *Sosyolojik Düşüncenin Kısa Tarihi* (trans. Osman Akınhay), Ankara: Bilim ve Sanat.

Şardan, S. (2004) 'Yeni İş Kanunu ile Birlikte İş Sağlığı ve Güvenliği Konusuna Getirilen Değişiklikler', *Çimento İşveren Dergisi*, 18(1), 6-11.

Şen, S. (2002) *Taşeronluk(Alt İşverenlik) ve Endüstriyel İlişkilere Etkileri*, İstanbul, Selüloz-İş Sendikası Eğitim Yayınları, No. 14

Şenses, F. (1989) *'Turkey's Labour Market Policies in the 1980s Against the Background of her Stabilisation Program'*, Middle East Technical University Economic Research Center, Working Paper, No. ERC/1989-10, Ankara.

Şenses, F. (1990) '*Alternative Trade and Industrialisation Strategies and Employment in the Turkish Manufacturing Sector'*, Middle East Technical University Economic Research Center, Working Paper, No. ERC/1990-1, Ankara.

Şenses, F. (1996) '*Structural Adjustment Policies and Employment in Turkey'* Middle East Technical University Economic Research Center, Working Paper, No. ERC/1996-1, Ankara.

Talas, C. (1992) *Türkiye'nin Açıklamalı Sosyal Politika Tarihi*, İstanbul: Bilgi Yayınevi.

Tanör, B. (1991) *İki Anayasa: 1961-1982*, İstanbul: Beta Yayınları.

Tanrıverdi, H. (1992) *Çalışma Hayatının Uluslararası Standartları ve Türkiye Gerçeği*, Ankara: Hizmet-İş Yayınları.

Tekinalp, G. and Tekinalp, Ü. (1997) *Avrupa Birliği Hukuku*, İstanbul: Beta Yayınları.

Teulings, C. and Hartog, J. (1998) 'Wages and Labour Market Institutions in International Comparison' in Ohashi, I. and Tachibanaki, T. (eds) *Internal Labour Markets, Incentives ad Employment*, London: Macmillan Press, 19-48.

Texier, J. (1979) 'Gramsci, Theoretician of the Superstructures' in Mouffe, C. (ed.) *Gramsci and Marxist Theory*, London: Routledge & Kegan Paul, 48-79.

Theret, B. (2002) 'The State, Public Finance and Regulation' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 122-129.

TİSK (1997), *Küresel Eğilimler ve Çalışma Hayatı*, İstanbul.

TİSK, (1995) *Türk Çalışma Hayatının Sorunları ve Çözüm Önerileri Toplantısı*, İstanbul.

TİSK, (1999a) *Çalışma Hayatında Esneklik*, İstanbul.

TİSK, (1999b) *Çalışma Hayatında Esneklik Semineri*, İstanbul.

Tomaney, J. (1994) 'A New Paradigm of Work Organisation and Technology?' in Amin, A. (ed.) *Post-Fordism: A Reader*, Oxford and Cambridge: Blackwell, 157-195.

Toye, J. (1993) 'Is There a New Political Economy of Development?' in Colclough, C. and Manor, J. (eds) *States or Markets? Neo-Liberalism and the Development Policy Debate*, Oxford: Clarendon Press, 321-339.

Treu, T. Geroldi, G. and Maiello, M. (1993) 'Italy: Labour Relations' in Hartog, J. and Theeuwes, J. (eds) *Labour Market Contracts and Institutions: A Cross-National Comparison*, Amsterdam: North-Holland, 323-351.

Tuncay, A. C. (2003) 'İş Güvencesi Yasası Neler Getiriyor', *Çimento İşveren Dergisi*, 17(1), 3-18.

Tunçomağ, K. (1971) *Türk İş Hukuku*, İstanbul: Beta Yayınları.

Tunçomağ, K. and Centel, T. (2003) *İş Hukukunun Esasları*, İstanbul: Beta Yayınları.

Turner, L. (1992) *Democracy at Work: Changing World Markets and the Future of Labor Unions,* Ithaca, New York: Cornell University Press.

TÜRK-İŞ (1998) *Türk-İş Yıllığı'97*, Ankara: TÜRK-İŞ Araştırma Merkezi.

TÜSİAD (1997) *Türk Sosyal Güvenlik Sisteminde Yeniden Yapılanma*, TÜSİAD Yayın no: T/97-10/217, İstanbul.

TÜSİAD (2002) *İşgücü Piyasalarının Etkisinin Artırılmasında Özel İstihdam Kurumlarının Esnek Çalışma Biçiminin Rolü*, İstanbul: TÜSİAD.

Ulucan, D. (2002) 'Toplu Türk İş Hukuku'nda Esneklik ve Uygulama Sorunları' in *Çalışma Hayatında Esneklik ve İş Hukukuna Etkileri,* İstanbul: İstanbul Barr Associaton, 299-312.

Unger, R. (1976) *Law in Modern Society: Toward a Criticism of Social Theory*, New York: Free Press.

Vidal, J. F. (2002) 'International Regimes' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 108-115.

Vielle, P. (1988) 'The State of the Periphery and Its Heritage' *Economy and Society*, 17, 52-89.

Villeval, M. C. (2002) 'Regulation Theory among Theory of Institutions' in Boyer, R. and Saillard, Y. (eds) *Regulation Theory: The State of the Art*, London and New York: Routledge, 291-299.

Voloşinov, V.N. (2001) *Marksizm ve Dil Felsefesi* (trans. Mehmet Küçük), İstanbul: Ayrıntı Yayınları.

Wallerstein, I. (1979) *The Capitalist World-Economy*, Cambridge: Cambridge University Press.

Wallerstein, I. (1984) *The Politics of the World Economy*, Cambridge: Cambridge University Press.

Wallerstein, I. (2003) 'Dünya-Sistemleri Kavramına Karşı Dünya-Sistemi Kavramı: Bir Eleştri' in Frank, A.G., and Gills, B.K. (eds) (trans. Esin Soğancılar) *Dünya Sistemi: Beş Yüzyıllık mı, Beş Binyıllık mı?*, Ankara: İmge, 527-534.

Walters, W. (1994) 'The Discovery of 'Unemployment': New Forms for the Government of Poverty', *Economy and Society*, 23, 265-290.

Waterman, P. (1999) 'The New Social Unionism: A New Union Model For a New World Order' in Munck, R. and Waterman, P. (eds) *Labour Wordwide in the Era of Globalisation: Alternative Union Models in the New World Order*, London: MacMillan, 247-265.

Waterman, P. (2001) *Globalization, Social Movements and the New Internationalisms*, London: Continuum.

Weatherill, S. and Beaumont, P. (1995) *EC Law*, Penguin Books.

Western, B. (1997) '*Between Class and Market: Postwar Unionization in the Capitalist Democracies*' New Jersey: Princeton University Press.

Wilkinson, D. (2003) 'Uygarlıklar, Çekirdekler, Dünya Ekonomileri ve Ekümenler' in Frank, A.G., and Gills, B.K. (eds) (trans. Esin Soğancılar) *Dünya Sistemi: Beş Yüzyıllık mı, Beş Binyıllık mı?,* Ankara: İmge, 411-456.

Williams, A. (1993) 'New Zealand: From Legal Regulation to Legal Deregulation: 1968-1992' in Hartog, J. and Theeuwes, J. (eds) *Labour Market Contracts and Institutions: A Cross-National Comparison*, Amsterdam: North-Holland, 115-151.

Wood, E. M. (1995) *Democracy Against Capitalism: Renewing Historical Materialism*, Cambridge: Cambridge Press.

Woodiwiss, A. (1987a) 'The Discourses of Production (Part I): Law, Industrial Relations and the Theory of Ideology', *Economy and Society*, 16(3), 275-316.

Woodiwiss, A. (1987b) 'The Discourses of Production (Part II): The Contract of Employment and the Emergence of Democratic Capitalist Law in Britain and the United States', *Economy and Society*, 16(4), 441-526.

Woodiwiss, A. (1990) *Social Theory After Postmodernism: Rethinking Production, Law and Class*, Wincester: Pluto Press.

Woodiwiss, A. (1992) *Law, Labour and Society in Japan: From Repression to Reluctant Recognition*, London & New York: Routledge.

Woodiwiss, A. (1998) *Globalisation, Human Rights and Labour Law in Pacific Asia*, Cambridge: Cambridge University Press.

Woodiwiss, A. (2003) *Making Human Rights Work Globally*, London: Glasshouse Press.

World Bank (1997) *World Development Report 1997: The State in a Changing World*, Washington: Oxford University Press.

Wright, E. O. (1989) 'Rethinking, Once Again, the Concept of Class Structure' in Wright, E. O. (ed.) *The Debate on Classes*, London: Verso, 269-348.

Yalman, G. (1997) 'Burgeoisie and the State, Changing Forms of Interest Representationn within the Context of Economic Crisis and Structural Adjustment, Turkey during the 1980`s' Unpublished Dphil Thesis, University of Manchester, Manchester.

Yalman, G, (2002) 'The Turkish State and Bourgeoisie in Historical Perspective: A Relativist Paradigm or a Panoply of Hegemonic Strategies?' in Balkan and Sarvan (eds) *The Politics of Permanent Crisis: Class, Ideology and State in Turkey*, New York: Nova Science Publishers, 21-54.

Yalman, G. (2003) 'Neoliberal Hegemonya ve Siyasal İktisat: Latin Amerika Dersleri' in Köse, A. H. , Şenses, F. and Yeldan, E. (eds) *İktisat Üzerine Yazılar I: Küresel Düzen: Birikim, Devlet ve Sınıflar*, İstanbul: İletişim Yayınları, 453-475.

Yamakawa, R. (2001) 'Labour Law Reform in Japan: A Response to Recent Socio-Economic Changes', *The American Journal of Comparative Law*, 49, 627-652.

Yavan, Z. (1999) *Structural and Non-Structural Aspects of Unemployment: A Nairees Estimation for Turkey,* İstanbul: TÜSİAD.

Yeldan, E. (1995) 'Surplus Creation and Extraction under Structural Adjustment: Turkey: 1980-1992', *Review of Radical Political Economics*, 26(2), 38-72.

Yeldan, E. (2001) *Küreselleşme Sürecinde Türkiye: Bölüşüm, Birikim ve Büyüme,* İstanbul: İletişim Yayınları.

Yeldan, E. (2003) 'Neo-Liberalizmin İdeolojik Bir Söylemi olarak Küreselleşme' in Köse, A. H. , Şenses, F. and Yeldan, E. (eds) *İktisat Üzerine Yazılar I: Küresel Düzen: Birikim, Devlet ve Sınıflar*, İstanbul: İletişim Yayınları, 427-453.

Yıldızoğlu, E. (2003) 'Hegemonyadan İmparatorluğa' in Köse, A. H. , Şenses, F. and Yeldan, E. (eds) *İktisat Üzerine Yazılar I: Küresel Düzen: Birikim, Devlet ve Sınıflar*, İstanbul: İletişim Yayınları, 539-569.

Yılmaz, A. (2002) *Kapitalist Devleti Anlamak*, İstanbul: Aykırı.

Yücesan, G. (1997) 'Establishing Hegemony in the Workplace in the Turkish Auto Industry: Notes on the Workers' Side of the Story', *Actes Du Gerpisa*, 21, 49-63.

Yücesan, G. (1998) 'The Changing Nature of Capitalist Labour Process: A Study of Factories and Workers in Turkish Manufacturing Industry', Unpublished D.Phil. Thesis, Institute of Development Studies, University of Sussex.

Yüksel, R. and Yıldız, S. (2002) 'İş Güvencesi Yasa Tasarısı: Emeğin Çalışma Hakkının Korunması mı? Sermayenin Rekabet Avantajını Kaybetmesi mi?' *Uludağ Üniversitesi İktisadi ve İdari bilimler Dergisi*, 21(1) , 48-75.

Yun, A. H. (1997) 'Industrial Restructuring and the Reconstitution of Class relations in Singapore', *Capital and Class*, 62, 79-120.

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