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Katharina Pistor\*

# Ideology and Institutions in the Evolution of Capital

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**Abstract:** In *Capital and Ideology*, Thomas Piketty poses the intriguing thesis that ideology, or ideas about how society should be governed, is a powerful determinant for how society will be governed—as long as we take advantage of historical switch points. In this review essay I challenge this thesis by pointing out that many powerful ideas have run aground because of countervailing institutional arrangements. Oftentimes, they are leftovers from earlier times that precede the change and are now strategically employed for reconstituting private wealth. Clearly, ideology and institutions are deeply intertwined. I credit Piketty for putting ideology on the map of institutionalists in history, political sciences, sociology, and law. I therefore call for more research on the interaction of ideas and institutions.

**Keywords:** Piketty, capital, ideology, institutions, power, law, Marx/Engels

With his seminal book *Capital in the 21<sup>st</sup> Century*, Thomas Piketty reinvigorated the debate about capital and capitalism (Piketty 2014). Backed by new empirical data, he made a powerful case that the rate of return on capital tends to exceed average economic growth, thereby leading to inequality. In this earlier book, Piketty also showed that this outcome was far from inevitable. The inequality gap can be mitigated by policy intervention, including taxes, and capital can be destroyed on a massive scale by wars or depressions.

In its sequel, *Capital and Ideology*, Piketty and his team further a long-term engagement with the sources of inequality and the development of strategies to combat it (Piketty 2020). This new book fills a major lacuna left by *Capital in the 21<sup>st</sup> Century*: The role of politics and of ideas. The focus on data, data analysis, and data interpretation in the first book had at times an almost sterile feeling to it and left unanswered the most critical questions in the evolution of capital: How are we to understand the relation between capital and politics over time? And why does it often take a major crisis to reconfigure it and even out inequalities that had grown in the intervening period?

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In *Capital and Ideology*, Piketty builds his arguments once more on a huge array of data, this time including additional data from the Global South. His focus is now less on capital and more on ideology, where ideology is defined as “a priori plausible ideas and discourses describing how society should be structured” (2020, 3). Not so much what is, but what could be, takes center stage, including examples of instances in which the normatively desirable was in fact realized.

Piketty’s main argument is that the principle obstacle to progress is the absence of viable ideologies at critical historical junctures. History, he argues, offers ample opportunities to put new ideas into action. To take advantage of such opportunities, ideas have to be ready at the right time. Ideologies for structuring society should preferably emanate from debates and discourse with multiple stakeholders, not just elite bargains. Still, he lays much of the fault for failing to develop viable new ideologies at the feet of the elites. If they get distracted by infights over details or embrace the ideology of an ownership society (as most of the left in the West did since the 1970s), a promising switch point might go to waste.

The book’s narrative draws a long arc starting from ‘ternary societies’, which offered essential services to the community: Spiritual leadership, military capability, and essential goods, such as food and clothing, and, at least in the West, comprised of the Clergy, the Nobility and the Third Estate, with some variation in other parts of the world. The modern state offered an entirely new mode of social ordering. It is described as an autonomous actor with the wherewithal to re-order economic and social relations, in particular, to re-distribute wealth through taxation and thereby keep a cap on the renewed rise of inequality.

The first major opportunity for the modern state—the emergence of which Piketty depicts as unfolding in two stages, 1500 to 1800, and thereafter—to show its muscle was the French Revolution. Yet, it failed to take advantage of its new powers and instead allowed the ‘ownership society’ to emerge under its wings. Only around the turn of the 20<sup>th</sup> century did the state begin to mobilize its powers by imposing wealth and income taxes, thereby restricting the accumulation of capital. A more comprehensive reordering occurred only in the aftermath of two world wars and a major depression, which jointly had destroyed most of the private wealth, which the ownership society had produced, and demonstrated the socially and politically explosive effects of a highly uneven wealth distribution. Thus, was born the modern welfare state.

History did not end there. The new welfare state did not stick to the path paved by the successful rebound from the destruction wrought by fascism and world wars. Slowly but surely, neoliberal ideologies once more preached the wisdom of ‘the market’ (itself reified as a quasi-autonomous actor) over ideologies that favored state ordering. As a result and aided by tax reductions and deregulation, another

round of rapid private wealth accumulation set in with rising inequality, which, in the early 21<sup>st</sup> century, matched those last seen prior to the French Revolution.

There is a lot to learn from this book. Its breadth and the volume of empirical data from various historical periods and parts of the world is impressive. At the end of this opus, one is left with a rich tableau of impressions and an overall hopeful take on the future, which, according to Piketty is ours for the taking. It is just a matter of ideology. I wished I could share his optimism—and I am not saying this, because I am a pessimist by nature; I am not. Rather, I fear that important aspects are missing from the analysis and that addressing them is critical for the success of his policy agenda and its goals, which I share, such as a more egalitarian society and a more equitable international order that enables all its members (public and private) to thrive and help shape their shared future.

## 1 Analytical Opportunities Foregone

*Capital and Ideology* is based on the insight that societal organization has evolved in most countries around three major modes: ternary, ownership, and participatory—with colonial and slave owning societies arguably representing extreme forms of proprietary societies. Each societal organization can be matched to an ideology. Piketty distinguishes six main categories of ideologies: proprietary, social-democratic, communist, trifunctional, slaveist (*esclavagiste*), and colonialist ideologies.

Ternary and ownership societies have been fully realized in history, while the prospects of fully participatory societies remain to this day unfulfilled. Attempts to realize such a society by way of Communist revolution or the social democratic compromise during the golden age of the welfare state have ultimately failed: Communism because of its suppression of participation and individual opportunity, and social democracy because the progressive elites abandoned the project, preferring to instead entrench, if not enrich, themselves (see Chapter 15).

Throughout the book, the relevant unit of analysis is ‘society’, a concept that is used interchangeably with ‘nation’. Choosing this unit of analysis blinds Piketty to processes inside and across different societies and creates the impression that solutions can and should be found at one of only two levels: national, or international.

Nations, writes Piketty, “form their visions for the ideal political or property regime or just legal, fiscal, or educational system from their own experience” (2020, 11). They rarely learn from other countries and often have only “relatively crude or imprecise notions of the institutional arrangements that exist in other

societies (or even within the same country or in neighboring countries)” (ibid). This statement is problematic for several reasons. It ignores the imposition of European solutions, including large parts of their legal systems, on their colonies and the continuing dissemination of so-called ‘best practices’ by the World Bank and other aid organizations in the developing world, often oblivious to local institutions and practices. In this process, the recipient countries were forced to learn quite a bit about how other countries govern themselves, even or perhaps especially when they received only piecemeal reforms—those that benefited the rulers more than the ruled. On the other extreme, it also fails to appreciate the amount of learning inside the EU. Every legislative project involves intensive comparative research with participants from most member states (although it would not be hard to show that some leave a larger footprint on the end result than others). Moreover, as a regulator over a vast market that many companies from around the globe wish to access, the EU has positioned itself as one of, if not the, leading global regulator (Bradford 2020). Lastly, it underestimates the transposition of ideas and practices through channels other than politics, including lawmaking and regulation, namely through commerce. Polanyi famously argued that the expanding long distance trade challenged local and socially embedded exchange relations, subordinating them eventually to the market principle (Polanyi 1944). In doing so, it also transformed local practices of trade and commerce.

By pitching the analysis at the level of nations or the international order, Piketty foregoes several analytical opportunities: The opportunity to analyze (multiple) trajectories of institutional change within and across societies; the opportunity to investigate the interaction of state and private power, including institutional arrangements that facilitate wealth creation by some even when this runs contrary to the dominant ideology within a single nation; and the opportunity to dive deeper into the relation between ideology and institutions, a topic that has been neglected by students of institutions and of ideology alike. I will address each of these missed opportunities in turn.

## 2 Institutions and Institutional Change

In order to further my argument about the possibility of multiple trajectories of institutional change within and across countries, it is important to first clarify the concept of institutions. Piketty uses this term rather loosely, at least in the English translation. He talks about “institutions defined by specific forms of property and specific fiscal and educational regimes” (9), without explaining why property rights themselves are not institutions. Later, he identifies “village, rural communi-

ties, castle, fortress, church, temple, monastery” as “key institutions” of ternary societies (53). He also uses the term for “universities, museums, hospitals, and charitable organizations” (91).

This matches everyday language, in which private, public, and other organizations, such as universities, courts, tax authorities, and so forth, are often referred to as ‘institutions’. However, this makes it difficult to distinguish between the rules on one hand, and on the other the actors, the two foundational tenets in the vast literature on *institutions* across numerous disciplines, traceable back to the 1920s (referred to as the ‘old’ institutionalists), but which have more recently reemerged in the 1990s as the ‘new institutional economics’ (NIE). These literatures draw a distinction between what on one hand Commons calls the “working rules of society” (Commons 1934, 6) or which North has also labeled the “rules of the game” (North 1990, 3), and on the other hand, *actors*, including individuals, corporations, labor unions, universities, and other organizations. No doubt, the distinction between rules and actors, or institutions and organizations is not watertight. Complex organizations have their own internal ‘rules of the game’. Yet, conflating rules with actors creates problems of its own. In effect, it eliminates from the analysis a critical arena where individual actors contest the existing rules of the game through their own actions alone or in collaboration with others, where new practices and ideas are formed, and where old institutions are repurposed and new ones emerge.

The subdiscipline of historical institutionalism in particular has shown that—contrary to North’s assertion that institutions are path dependent— institutional change is a continuous and, for the most part, incremental process, which over time can have quite substantial cumulative effects on social behavior as well as outcomes.<sup>1</sup> Such change often evolves around well-positioned public or private change agents (or norm entrepreneurs) who exploit gaps in existing rules, extend their reach, or use existing institutions to resist top-down reforms that threaten their vested interests (Mahoney/Thelen 2010). This also suggests that ideologies about how society ought to be governed, the very topic of Piketty’s book, are formed not just, perhaps not even primarily, in the halls of legislatures, but in the interactions among multiple actors from various walks of life who push the boundaries of existing rules of the game for private gain or social purposes, as the case may be.

In Piketty’s account, the modern state appears as the primary, at times even the only, change agent. It sets the rules of the game, changes them at will and in this fashion directs the behavior of individuals, groups, and society at large, as well as the outcomes. The rise of the modern state, he argues, has freed us from organizing

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<sup>1</sup> On the various strands of ‘institutionalisms’, see Thelen/Steinmo 1992.

society along essential services as ternary societies have done. Instead, it has become possible to refashion society in accordance with shared ideologies and their normative aspirations. In doing so, he seems to embrace modernization theory without ever mentioning it, a theory that associates social progress and wellbeing with the modern state, its power to tax, and with a well-tuned bureaucracy that can make the most of the state's resources.

Focusing on 'the state' as the primacy change agent assumes a single set of binding rules or at least that social conventions and practices evolve in lockstep, that they emerge and change together. It also assumes that these rules and practices can be changed effectively in a top down fashion. It is within this framing that Piketty's argument that our collective failure to mobilize the state for the greater good is first and foremost a failure of ideology. "The real obstacle", Piketty writes, "is neither legal nor institutional; it is primarily political and ideological" (916). This argument is persuasive only if one agrees with the underlying assumptions about how states or modern societies operate.

I do not fault Piketty so much for paying little attention to the NIE, spearheaded by Douglass North and Oliver Williamson and thereafter followed by generations of law and economics scholars. This school of thought has emphasized property rights as the central institution for economic growth and development and has arguably idealized the 'ownership society' while neglecting the problem of inequality and almost entirely punting on the question of ideology. Still, this alone is not an argument against the study of institutions, the formal and informal rules that constrain behavior. In my view, more persuasive answers to these questions can be found in the work of institutionalists in neighboring institutional disciplines, in sociology, history, and even law. To be fair, Piketty refers to Polanyi and his notion of economic exchange that is embedded in society in contrast to policies that subordinated society to the market principle (471). However, he does not examine literatures that have shown in detail how economic and political systems have been shaped by institutions. The sociologist Greta Krippner, for example, has shown, how the US's embrace of financial solutions for social problems has engendered the evolution of a massive credit system while simultaneously undermining the ability of politics to solve social problems, because these politics were now also constrained by powerful private actors who benefited from the turn to the debtor society (Krippner 2011). Further, the political scientist Kathleen Thelen has, jointly with a changing roster of collaborators, identified patterns of incremental change that in their cumulative effect can leave lasting effects. Thelen and Streeck, for example, developed a typology of institutional change that includes processes of institutional displacement, layering, and drift (Streeck/Thelen 2005). Displacement stands for the idea that competing institutional arrangements may gradually displace existing ones; layering acknowledges the fact that institutions reflect dif-

ferent layers of meaning that interact with other institutional practices, allowing for gradual adaptation of institutions over time; drift stands for the possibility that an institution may be allowed to go into disuse by failing to update to changing circumstances. Importantly, these processes of gradual change do not happen *just so*; oftentimes they result from strategic actions of well-placed (and well-paid) actors, including lawyers.

Studying processes of institutional change in this fashion would have greatly enriched Piketty's analysis. It might have helped, for example, to explain the focus of the French post-revolutionaries on pre-revolutionary property rights; the use of antitrust law in the US to weaken labor unions and their ability to mobilize the workforce across sectors; or the gradual weakening of codetermination in Germany by allowing firms to incorporate in foreign jurisdictions even as they do business in Germany where codetermination remains on the books as mandatory requirement for companies of a certain size that are incorporated under German law. At a more general level, recognizing processes of institutional change might hold lessons for why even after major switch-points, including dramatic events such as revolutions, world wars, or depressions, levels of inequality associated with ownership societies often re-emerge quickly and robustly, namely by refashioning old institutions and recombining them with new ones for this very purpose.

Piketty's focus on the state at times resembles the metaphor of the hammer and the nail only in reverse. Because taxes can help reduce inequality (the nail), the state should use this hammer. His focus is on re-distribution, but he leaves largely unexplained the drivers of pre-distribution. Institutions, I would maintain, are key for understanding pre-distribution. Given Piketty's own conclusion that pre-distribution is critical for explaining inequality, greater attention to institutions would have been warranted. He reveals in a footnote that his aversion to pre-distribution is the fear that it might undermine re-distribution by way of taxation (529, fn. 71). But this is not a persuasive argument: If the goal is greater equality, we should not be guided by our preferred means (i.e. taxation), but by the best outcome.

### 3 Towards an Institutional Analysis of Power

An institutional approach might also shed light on where political power is located and who has access to it. Much of the NIE literature draws a bright line between markets and the state, characterizing the state as a single unitary actor that is supposed to function as a 'neutral arbiter' while leaving most of the actions to private parties (North 1990). Ironically, Piketty's depiction of the state as an autonomous



actor is not so much different—only that he wants this actor to use taxes for redistribution, not just to stand ready as neutral arbiter to enforce private property rights and contracts. While it is a truism that the modern state has centralized the means of coercion, it does not follow that the exercise of this power is with the state and its agencies alone. Think of the legal system as an institutionalized means of coercion, granting access to its resources to public and private actors alike. Who has access to the means of coercion and on what conditions is crucial for the creation of wealth and inequality. It may even thwart the state's own attempt at redistributing *ex post*.

The role of the modern state cannot be reduced to maintaining peace internally and externally or to taxing private parties on its territory. It also engendered new forms of economic ordering by granting private actors' access to coercion so that they may organize their relations with each other while in contracts, property relations, business organizations and so forth under a credible threat of coercion. The arena for this mostly horizontal ordering is private, not public law. Most of private law is optional or enabling rather than mandatory and as such is highly malleable without losing the precious power to enforce it in a court of law.

The ownership society, in other words, is not just an ideological construct about the primacy of property rights, that is, the product of a proprietary ideology. Rather, it has been institutionalized and entrenched in private law, often backed by constitutional principles about property rights' inviolability. And, contrary to widely held beliefs, property rights are not static. Given the abstract depiction of property rights and the inherent incompleteness of law, private parties have ample room to portray claims as similar enough to existing rights that have already been recognized as property rights and thus to benefit from the state's privileging of these rights. The described process resembles institutional layering, the granting of new meaning to existing practices, and it is how private asset holders have been able to expand the scope of their legally protected rights with the help of sophisticated lawyers. No doubt, an ideological commitment to private property rights furthers the bias in favor of recognizing new claims by some as proprietary interests, while denying others, including communities that practice collective property rights, similar protection (Pistor 2019, ch. 8). However, it is the recognition that is legally binding, not the ideology as such, which in turn cements these claims as rights that are difficult to dislodge *ex post*.

While a proprietary ideology may have played an important part in the emergence of the ownership society, another shift in ideology alone would be insufficient to alter a system in which beliefs have been fortified by institutions, including constitutional protections, bilateral investment treaties, and so forth, that are designed to constrain state actions and subject them to claim for expropriation damage. Institutions may be malleable, but they are less malleable than ideologies—and it

is not hard to see why: to coordinate collective expectations they must be relatively stable over time. Moreover, institutional practices themselves form and entrench ideas surrounding their own practices about their desirability and importance and, by extension, the violation that would be done to those whose rights might be curtailed, quite apart from the fear of turmoil and uncertainty should new rules be introduced that might destabilize the existing order. These ideas might feed back into state action, but they can also be used to mobilize against it—in the political process, but also in court actions or in negotiations with regulators. As revolving doors make it easier for public agents to enter the private sphere and vice versa, these ideologies formed in elite circles that link the private and the public shed doubts on the assumption that the state is an autonomous actor (Vauchez/France 2021).

Piketty has relatively little patience for such a detailed inquiry. In his discussion of the failures of the French Revolution to address the problem of inequality head on, he dismisses the wrangling about which of the many property forms that had been inherited from the ancient regime should be protected within the new and radically simplified notion of property (Blaufarb 2016; Welkoborsky 1976). He fails to recognize that more was at stake than simply tinkering with details of history, linguistics or form. To the emerging bourgeoisie, *the* central question was whether assets they had secured in the past would be recognized and protected as property rights, and, perhaps even more importantly, whether assets its members hoped to acquire from the church or the old nobility would attain similar status. The state that had emerged from the revolution no longer protected a long list of privileges the nobility or the clergy had secured for themselves qua belonging to one of these privileged estates. Instead, the new property rights regime was defined quite purposefully in abstract terms irrespective of the identity or status of the owner (Weber 1980). As the new political order was being placed on a new legal footing, the framing of rights that qualified as property rights under the new legal order moved to the center of contestation. This approach ignored the highly uneven distribution of assets at the time, but this was an essential feature of, not a bug in the system.

Piketty asks if it were truly not possible to create conditions for a just order if only existing inequalities could have been considered in the design of the new regime (109). Of course, there would have been other options. Yet, the relevant power wielders at the time favored a legal order that created the appearance of neutrality and the generality of norms, put the state on the hold to protect these rights, and left themselves enough room for reading a changing roster of economic interests into these rights. The historical and linguistic debates about reclassifying property rights conceal the material interests behind them. Referencing natural law as the source of these rights served a critical legitimization function and fortified

the claim that individuals had rights against the state, the state itself could not take from them (Weber 1980, 497).

Real change, according to Piketty, came only when the state mobilized its taxing power to reduce inequality at the beginning of the twentieth century. “Justice”, Piketty writes, “can be rendered in a more satisfactory and impartial way in the framework of a universal public service organized by the central state than in seigneurial courts or a system based on the venality of charges and offices” (115). This may well be true given the elite bias built into the system of seigneurial courts and venal offices. But it assumes that the modern state fully controls the powers vested in it, when in fact it has farmed out part of these powers to private actors: to asset owners by vesting with them subjective rights and their attorneys who defend these rights, with courts relegated to sanction their actions, and even this only on demand, that is, if and when one private party challenged another.

In the decades immediately following the Revolution, the state did not just passively stand by while private actors amassed wealth for themselves, re-creating inequalities on par with levels that had existed prior to the Revolution. Access to the centralized means of coercion, which had been institutionalized as law, was the handmaiden for private wealth creation. This is how predistribution of wealth occurs, both then and now. Taxation is an important means for re-distribution *ex post*, but the roots for inequality lie in *pre*-distribution. And it is an open question, whether absent greater constraints on pre-distribution, re-distribution can ever be effective given the imbalance of rights and power that predistribution helps create.

To reiterate, the modern state is not a unitary actor; neither is it autonomous of economic and social powers that owe their position in society and *vis-à-vis* the state to their privileged access to its centralized means of coercion. The state may and often does turn around and restrict some private activities or tax the returns from such activities. However, after having given away the goose that lays the golden eggs, taking away some eggs will always be contentious—all the more so after private parties have learned how to fatten it, that is, how to harness the power of the law for furthering their own, private ends.

The case studies in *Capital and Ideology* drawn from the Global South might have opened a window for analyzing the close interaction between property rights and state power. Take the case of India, which was gradually absorbed into the British empire—first by a privately owned company chartered by the Crown, the English East India company. As Piketty recounts, both the English and the Dutch East India companies were more than private corporations, but what he does not say is that they manifest how closely state and private interests are often aligned and how institutions, such as corporate law and property rights, help entrench this relation.

The corporate form, which had earlier been used for public foundations in Roman times, the church to protect its assets and its identity as an independent actor vis-à-vis the state, but also for the state itself, was now repurposed for what today we would call a ‘public-private partnership’: the monopolization of the trading route to Asia and the subordination of her people for the glory of the Crown on one hand, and the profits for the merchants and investors who invested their material wealth into the venture, on the other. No doubt, at times there were tensions between profit maximization and state interests, but overall this was a win-win for both sides (Dari-Matiacci et al. 2016; Gelderblom 2009).

Piketty notices that ownership relations were important for the ability of the colonizers to raise taxes, but he hardly mentions that property reforms were implemented in order to enable the expansion of credits and thereby boost tax revenue (Kranton/V 1999). In short, property rights reforms are possible under the right circumstances, but they are rarely undertaken out of concerns for justice as compared to securing state revenue or maintaining security. In India, British colonizers designed the tax system to maximize return relative to their administrative capacity, which changed over time. They relied first almost exclusively on taxing large land owners, the *zamindari*. Only once they had a firmer administrative grasp on the subcontinent did they also directly tax peasants who tilled the land. This also meant that the colonial administration recognized and protected the peasants’ property rights—subject only to the demands of creditors, including the Crown itself (Roy/Swamy 2016). Interestingly, this has had long lasting effects on the relative productivity of the land with land in the hands of peasants showing higher productivity than land owned by the *zamindari* (Banerjee/2005)

In his own account of Indian history (304), Piketty spends more time analyzing census data that depict a complex social stratification of peoples who speak different languages, belong to different religions, and live by the social rules of a caste system. These social experiences of belonging it seems, formed the ideologies of Indian elites as they embarked on the path to independence. But it is difficult to rule out the possibility that the conservative attitude towards land reforms post-independence, which Piketty criticizes, can be attributed, at least in part, to the experience with often painful land reforms the colonial powers had imposed for the purposes of tax extractions and the fear that any attempt at land reforms might trigger unrest.

This conservatism with respect to land reform notwithstanding, India is one of the very few countries that altered the status of property rights in its constitution ex post—another fact that goes unmentioned in a book that claims a unidirectional evolution from ternary to ownership to participatory societies. In 1978, property rights were demoted from a ‘fundamental’ to a simple constitutional right. The reason was that far reaching reform programs designed to help the poor were

repeatedly struck down by the Supreme Court as a violation of the fundamental right to property that had been enshrined in the constitution. This demotion, however, turned out to be a double-edged sword. After India embarked on a more neoliberal course in the 1990s, the relative weak protection of property rights was used *against* small holders for whose benefits the earlier reforms had been enacted. The state regularly evoked the ‘Land Acquisition Act’ of 1894—a left over from colonial rule—to expropriate peasants and hand precious land over to private developers in the name of economic development and prosperity.<sup>2</sup>

The point of this brief sketch is to illustrate the complexity and changing nature of the relation between property rights, the institutional foundation of the ‘ownership society’, state power, and yes, ideology. This relation is characterized by deep interdependencies and causal relations running in different directions almost everywhere we look. Understanding these interdependencies will be critical to identify not only *when* but *where* change might be possible within a given system, and thereby ensure longer lasting change.

## 4 Institutions and Ideology

In *German Ideology*, Karl Marx and Friedrich Engels argue that the division of labor goes hand in hand with different forms of ownership. The central pillar of the materialist conception of history is that

[T]he production of ideas, of conceptions, of consciousness, is at first directly interwoven with the material activity and the material intercourse of men, the language of real life . . . In direct contrast to German philosophy which descends from heaven to earth, here we ascend from earth to heaven. That is to say, we do not set out from what men say, imagine, conceive, nor from men as narrated, thought of, imagined, conceived, in order to arrive at men in the flesh. We set out from real, active men, and on the basis of their real life-process we demonstrate the development of the ideological reflexes and echoes of this life-process. The phantoms formed in the human brain are also, necessarily, sublimates of their material life-process, which is empirically verifiable and bound to material premises. (Marx/Engels 1845)<sup>3</sup>

When contrasted with Marx’s materialist historical approach, Piketty’s resembles that of the German philosophers, a reference to the idealism movement in post-Kantian philosophy. According to Piketty, new ideologies can form under any material conditions. These ideas can shape future state action notwithstanding

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<sup>2</sup> For details, see India’s Supreme Court Decision ‘Sri Radhy Shyam v. State of UP’, CIVIL APPEAL NO.3261 OF 2011.

<sup>3</sup> Part I, A. Idealism and Materialism, Section 4.

deeply entrenched practices, provided that they are sufficiently articulated and accessible when history arrives at another switch point. Marx, instead, called for a radical transformation of the material basis itself, a revolution of ownership relations, as the precondition at least for a new order.

Piketty has been careful to distance himself from Marxism and the system this ideology has inspired: Communism, or perhaps more explicitly from socialism as it was practiced behind the iron curtain until 1989. He favors reforms over revolution. His belief that most systems are amenable to reforms stems from his investigation of historical events that at times propelled reforms, which in turn led to a more egalitarian world. Every country or region experiences switch points from time to time, and according to evidence laid out in the book, at least some of them delivered, leaving him optimistic about future change. Missing in his story, however, is an account of how ideas are generated and how they achieve lasting results.

Marx would most likely have dismissed Piketty's optimism about how state action spurred by the right ideology might change society:

Since the State is the form in which the individuals of a ruling class assert their common interests, and in which the whole civil society of an epoch is epitomized, it follows that the State mediates in the formation of all common institutions and that the institutions receive a political form. Hence the illusion that law is based on the will, and indeed on the will divorced from its real basis—on free will. (ibid)

Marx and Engels might be wrong, but in spite of the enormous amount of data presented in *Capital and Ideology* notwithstanding, Piketty does not prove him wrong. While he is able to show that on numerous occasions switch points were used to redistribute wealth, most reforms seem to have been relatively short lived. Piketty attributes the erosion of the welfare state to the failure of ideology—especially to the new class of Brahmins that emerged in Europe since the 1970s, who captured the progressive project and used it to ensure their own wellbeing rather than that of the less well-off. Marx's materialist take on history offers an alternative and equally persuasive perspective: The comfortable life of the new middle class, the expansion of home ownership and the privatization of old age insurance has contributed to their cognitive turn to wealth accumulation and marshals against change, even if they break out of their cognitive silos, because of the real economic and social loss that this would entail. The critical question then is not whether change might occur, but how and how much. More specifically, how ideologies are formed and through what mechanisms they exert influence in society, and why some ideologies prove to be extremely difficult to dislodge.

A possible answer to this question comes once more from institutions and their impact on ideologies—although few scholars in this field, myself included,

have taken up the topic of ideology explicitly (Walgenbach et al. 2009). Piketty's book should serve as a wake-up call to better integrate the study of ideology within institutionalism. Nonetheless, several insights can be garnered from existing work on institutionalism.

A quite prominent idea is that the evolution of institutions is closely intertwined with authority. Geoffrey Hodgson, one of the leading economists on economic evolution and institutionalism argues that the human has an innate propensity to submit to authority, especially if that authority is backed by the threat of coercion (Hodgson 2009). This enabled the modern state to ensure that individuals turn to state institutions to resolve their grievances and for the state to suppress local customs, including feuds. Others have argued that the emphasis on the state's coercive powers has been overblown. According to Hadfield and Weingast, for example, a system of rules (a common logic, as they call it) can be maintained as long as there is a central authority that verifies, which rules shall be binding (Hadfield/Weingast 2010). The enforcement itself can be left to private actors, who will cooperate in enforcing binding rules because they all benefit from maintaining their order. Left open is where the authority to verify or change rules comes from. Moreover, the historical example they cite, the law speaker in Iceland and other Nordic societies of the middle ages, precedes the development of a market economy, the model they use for cooperative self-enforcement.

Max Weber offers perhaps the most comprehensive answers to the interplay of authority, legitimacy and the mode of social ordering, or *Herrschaftsstruktur*. He distinguishes several authorities, each tied to a different source of legitimacy—*tradition* to patriarchy, *charisma* to religion, ideology, or personality cult, and *legality*, whereby the *Satzung* or charter as the source of the legal order exerts authority (Weber 1980, 822). To sustain a given system of authority, Weber argues, critical constituencies must have a material stake in its maintenance. They must hold *in their own possession* critical means by which the order is sustained, such as money, buildings, or weapons.

Weber also recognized that legal orders are far from monolithic. They are often challenged from within, because powerful groups call for dispensations from general laws, or ask for special privileges and create their own 'particularist' legal orders the state is asked to recognize and even enforce. This account helps explain the multileveled nature of modern legal systems even within a single country. The ability to harness the coercive powers of the state for maintaining, even extending norms that work to one's own advantage, has, as I have argued elsewhere, been critical for the evolution of capital (Pistor 2019). In fact, capital itself is arguably the product of legal coding, of institutions that can transform simple objects, claims or ideas into wealth-generating assets.

In this reading, capital is not a thing (Harvey 2010); it is also more than a social relation between capitalist and labor, as in the account of most Marxists. Capital embodies a set of rights that a holder of specific rights vis-à-vis others *qua the legal order*. Harnessing state power in this fashion both institutionalizes and legitimizes capital even as it produces private gains first and foremost and social benefits only indirectly, if at all. There is an ideational claim built into this argument. The assertion ‘it is legal’ takes a lot of thunder from advocates for a more equitable system and legitimizes inequality at the pre-distribution stage. Once wealth has been created and distributed in this fashion and asset holders have been legitimized as subjective rights that can be traced to (an increasingly pragmatic understanding of) natural law (Menke 2015), it is difficult to reverse course through *ex post* re-distribution by way of taxation or regulation, because these rights have become part of the very legal order that is now mounting the challenge. There may be instances when this worked, but my reading of the evidence laid out in Piketty’s book suggests that this has rarely been successful in the long-term. Short-term achievements of redistribution programs have often been challenged by resourceful actors who have claimed long established rights or found ways to chip away the gains made by deploying new strategies, including opting into different legal systems to protect their wealth or code new capital.

The American legal scholar Charles Reich understood as much when he argued that the transfers often made by social welfare states, ‘government largess’ as he called them, fail to put their beneficiaries on the same footing with old-fashioned owners (Reich 1964). The reason is that government largess is much more contingent on political circumstances than are old-fashioned private property rights. Any change in political winds can mean that the new property will be curtailed or even withheld. The only constraint that most legal systems impose on this reversal is a subjective reliance criterion, which is a far cry from the inviolability of old property rights. In contrast, old property and its Lockean, freedom invoking appeal have been deeply entrenched in both formal law and ideology. In other words, in the absence of institutionalizing government largess as ‘new property rights’, policy changes motivated by new ideologies might be easily reversed. Changing a system of inequality where inequality has become part not only of the social but the legal fabric will therefore require more than fresh ideas about how best to harness the next opportunity for change. It will require the hard work of altering the institutions that create and entrench inequality in the first place and protecting these institutions against early erosion.

This is not an easy task; it is also deeply ideological in that it requires a clear eyed view on what societies wish to accomplish and what activities and actors may seek to repurpose the working rules of society, and social resources, for their own private gain. However, if societies truly wish to challenge themselves on how



they wish to govern themselves then they should rely primarily on redistributing after the game has been played—and won by the other side, i.e. by capital. They should strive to ensure a more equitable system of rules and access to the means of enforcement that back them. For this, a massive redistribution of existing wealth may be less relevant than the reconfiguration of the rules of the game.

The current system has been configured with property rules that can be traced back to the age of feudalism with land as the main source of wealth (Rudden 1994). Land is no longer the primary source of wealth; finance has taken its place and seems to be on a trajectory of crowding out much of the real economy and the real assets that go along with it. Finance, however, is not only fragile; it also has the interesting property that it exists only in law. Every financial asset is an ‘I owe you’ (IOU) that is tradeable only if enforcement can be assured. Changing the rules of the game as to which or whose claims are enforceable where and under what conditions would impact the wealth generating capacity of these assets. In fact, simply announcing a retreat from the current position of socializing most losses associated with financial investments (via central bank intervention) while leaving the gains in private hands, would likely leave a dent on current wealth already. Whether our current political institutions are up for this task, is an open question, but this is also true for re-distribution by way of taxation.

## 5 Concluding Comments

Piketty should be commended for drawing our attention to the interplay of capital and ideology. As I have argued in this piece, much greater emphasis on ideology should be placed by students of institutions across multiple disciplines, including legal institutionalism (Deakin et al. 2017). I also applaud the data collection efforts he and his team have undertaken—and the commitment to make these data widely available. We have all tremendously benefited from this.

My critique targets neither the topic nor the methodology, but the lack of attention paid to institutions, the working rules of society that form the fabric of social, economic, and political relations. Taking institutions into account is not a retreat; neither is it an act of self-defeating pessimism. Rather it instills a dose of realism into the project of tackling inequality at the national, subnational, and at the global levels.

## References

- Banerjee, A./S. Iyer (2005), The Legacy of Colonial Land Tenure Systems in India, in: *American Economic Review* 95(4), 1190-1213
- Blaufarb, R. (2016), *The Great Demarcation: The French Revolution and the Invention of Modern Property*, Oxford
- Bradford, A. (2020), *The Brussels Effect: How the European Union Rules the World*, Oxford
- Commons, J. R. (1934), *Institutional Economics: Its Place in Political Economy*, New York
- Dari-Matiacci, G./O. Gelderblom/J. Jonker/E. Perotti (2016), The Emergence of the Corporate Form, in: *Journal of Law, Economics and Organization* 33(2), 193-236
- Deakin, S./D. Gindis/D. Hodgson/K. Huang/K. Pistor (2017), Legal Institutionalism: Capitalism and the Constitutive Role of Law, in: *Journal of Comparative Economics* 45(1), 188-200
- Gelderblom, O. (2009), The Organization of Long-Distance Trade in England and the Dutch Republic, 1550-1650, in: O. Gelderblom (ed.), *The Political Economy of the Dutch Republic*, Aldershot, 223-254
- Hadfield, G. K./B. R. Weingast (2010), *What is Law? A Coordination Model of the Characteristics of Legal Order*, unpublished manuscript
- Harvey, D. (2010), *The Enigma of Capital and the Crisis of Capitalism*, Oxford
- Hodgson, G. M. (2009), On the Institutional Foundations of Law: The Insufficiency of Custom and Private Ordering, in: *Journal of Economic Issues* 43(1), 143-166
- Kranton, R./A. V. Swamy (1999), The Hazards of Piecemeal Reform: British Civil Courts and the Credit Market in Colonial India, in: *Journal of Development Economics* 58, 1-24
- Krippner, G. A. (2011), *Capitalizing on Crisis*, Cambridge/MA
- Mahoney, J./K. Thelen (2010), A Theory of Gradual Institutional Change, in: J. Mahoney/K. Thelen (eds.), *Explaining Institutional Change*, Cambridge/MA, 1-37
- Marx, K./F. Engels (1845/1932), *German Ideology*, Moscow
- Menke, C. (2015), *Kritik der Rechte*, Berlin
- North, D. C. (1990), *Institutions, Institutional Change, and Economic Performance*, Cambridge-New York
- Piketty, T. (2014), *Capital in the 21st Century*, Cambridge/MA
- (2020), *Capital and Ideology*, Cambridge/MA
- Pistor, K. (2019), *The Code of Capital: How the Law Creates Wealth and Inequality*, Princeton/NJ
- Polanyi, K. (1944), *The Great Transformation: The Political and Economic Origins of Our Time*, Boston
- Reich, C. A. (1964), The New Property, in: *The Yale Law Journal* 73(5), 733-787
- Roy, T./A. V. Swamy (2016), *Law and the Economy in Colonial India*, Chicago
- Rudden, B. (1994), Things as Things and Things as Wealth, in: *Oxford Journal of Legal Studies* 14(1), 81-97
- Streeck, W./K. Thelen (2005), Introduction: Institutional Change in Advanced Political Economies, in: W. Streeck/K. Thelen (eds.), *Beyond Continuity: Institutional Change in advanced Political Economies*, Oxford, 1-39
- Thelen, K./S. Steinmo (1992), Historical Institutionalism in Comparative Politics, in: S. Steinmo/K. Thelen/F. Longstreth (eds.), *Structuring Politics: Historical Institutionalism in Comparative Analysis*, Cambridge/MA, 1-32
- Vauchez, A./P. France (2021), *The Neoliberal Republic: Corporate Lawyers, Statecraft, and the Making of Public-Private France, Corpus Iuris: The Humanities in Politics and Law*, Ithaca/NY

- Walgenbach, P./R. E. Meyer/K. Sahlin/M. J. Ventresca (2009), *Institutions and Ideology*, Bingley/UK
- Weber, M. (1980), *Wirtschaft und Gesellschaft*, 5 ed., Tübingen
- Welkoborsky, H. (1976), Die Herausbildung des bürgerlichen Eigentumsbegriffs, in: W. Däubler (ed.), *Eigentum und Recht: Die Entwicklung des Eigentumsbegriffs im Kapitalismus*, Darmstadt-Neuwied, 11-74