One of the many manifestations of class struggle in the Commonwealth of Pennsylvania’s constitution [1] is found between two clauses, the education clause and the uniformity clause. The education clause guarantees that the state will provide a thorough and efficient education. The uniformity clause guarantees that any taxing body of government at the local or state level must levy each tax in a uniform way. The clash between these clauses is pronounced when it comes to school funding, which in Pennsylvania, like most states in the United States, comes from property taxes. Take the recent case of Valley Forge Towers v. Upper Merion School District [2] as an example. In 2017, parents and officials in the Upper Merion School District sued Valley Forge Towers LLP, a property management company. The school district wanted to appeal the value assessment of new expensive apartment buildings that the company had built. Their argument was that this property should be valued more highly and thus taxed more given its higher relative value in the township’s property market, bringing in more money for the township’s schools. The company argued it shouldn’t have to pay more taxes. The case went before the Pennsylvania Supreme Court, who found in favor of the property management company. The uniformity clause, “which requires that all classes of properties be taxed uniformly” means that “all real estate is a single class. In Pennsylvania, residential and commercial properties must be assessed comparably and taxed at the same rate”. [3] The constitution protected the management company from further taxation. The schools didn’t get the money. I open with this example because it’s a paradigm case for how the French communist philosopher Louis Althusser would understand laws covering education and its provision (what is sometimes called school law): an internally consistent set of propositions that leverage repressive and ideological force to ensure the proper functioning of an apparatus reproducing dominant relations of production in society. The Valley Forge case is a good one to look at, since many laws in Pennsylvania relevant to school funding quite obviously maintain the continuity and wellbeing of private property relations. But what’s distinctive about Althusser’s account is that we should understand all school law in a capitalist social formation, not just laws about school funding, in terms of private property. Althusser’s thinking about education and law stands out for two reasons. First, whereas most accounts of school law fall under a broadly liberal category, Althusser’s—like most Marxists’—emphasizes school law as repressive, ideological, and reproductive of capitalism. Second, what distinguishes Althusser among Marxists generally is his landmark theory of education as an ideological state apparatus (ISA). In this post I revisit this well-known theory, look at Althusser’s understanding of law, and flesh out the formulation above for what an Althusserian account of school law would look like. Schools as ISAs
Althusser was one of the foremost Marxist theorists of education. His work remains a touchstone for those thinking about schools from a class struggle perspective. Yet most of what’s known of Althusser’s thinking on schools comes from the seminal essay “Ideology and Ideological State Apparatuses: Notes towards an Investigation.” [4] This essay was an excerpt of a longer book On the Reproduction of Capitalism. [5] The latter only recently came out in English translation and sheds new light on Althusser’s thinking about education. With longer and expanded sections detailing arguments about different parts of social structure, the book has resources for thinking more deeply about education from a Marxist perspective. In the book, Althusser offers a theory of law which, when combined with his claims about education, yields a concept of school law—a largely undeveloped application of the Marxist framework generally speaking.

Althusser claimed that the school replaced the church as the most effective ideological state apparatus in modern capitalism societies. [6] I’ve spent the last few years reconsidering this claim given the newly translated book from which the ISAs essay was excerpted. Here is a brief overview of findings from that project:

1. Reproduction is the key to production. Without preservation of productive forces and relations of production, ruling classes cannot maintain the continuity of a mode of production. While the preservation of productive forces gets a lot of attention, the preservation of relations of production gets less attention. Althusser takes the view from reproduction for this reason.

2. Relations of production are how people set to work on the means of production. You can identify a relation of production by what workers have their hands on while they make material life (as opposed to the means of production, which is the stuff they have their hands on: infrastructure, capital, land, etc). In capitalist modes of production, there are relations of exploitation where some people exploit others’ labor, expropriating surplus value for profit. The working class and capitalist class are roughly defined by these relations of production: some people have their hands on capital, and others don’t.

3. In On the Reproduction of Capitalism, Althusser revisits basics of Marxist theory, covering the base-superstructure model as laid out in Marx’s “Preface” to A Contribution to the Critique of Political Economy.” [7] (Legal Form’s recent series on this model is an extensive and readable look at this feature of Marxism. [8]) In Althusser’s rendering, there are two superstructures that provide cover for dominant relations of production: a repressive state apparatus (RSA) which, as Althusser defines it, ensures the proper functioning of relations of production through violence be it physical or otherwise, and ideological state apparatuses (ISA) that instruct competencies (know-how and submission) for enacting the relations of production, thereby reproducing them. The latter operates by ideology rather than violence, though both superstructures exert each force to some degree. The RSA is a more rigidly coherent apparatus while the ISAs are diffuse.

4. Masses of children go to school for long periods of time, giving the state access to a teachable population for a significant portion of their formative years. Given the concentration of consequential practices at schools in modern societies (from compulsory attendance to curriculum across disciplines to disciplinary practices to pedagogical interventions and beyond) the school replaced the church as the dominant ISA in modern capitalist social formations. Schools provide ample opportunities to manufacture consent.

5. To use Althusser’s own words, ISAs are a site and stake of struggle where the working class can “turn the weapon of ideology against the classes in power.” [9] In this, he follows a neo-Gramscian tradition in thinking about societies as social formations defined by a constantly shifting balance of forces. While ruling classes use them to reproduce their favored relations of production through

https://legalform.blog/2020/02/13/backer-althusser-school-law/
curricula that advance official messages about history, literacy, numeracy, and competency, or policies that underfund schools that serve the working class, subordinate groups can and do use them to shift the balance. Social structure is contingent. A clear example in schools are the events of May 1968, which inspired Althusser to write the book. Students organized direct actions and marches that sent shock waves throughout the entire social formation. Schools can play an important role in stabilizing/destabilizing social formations, perhaps in some cases more so than political parties and parliaments. While difficult and rare, by dint of class struggle, resistance is possible, inevitable, and effective. Schools can deliver massive warnings to ruling classes. ISAs are a Battlefield where ruling classes establish their hegemony, but can be made to tremble.

The school system as we know it was not always in place. Rather schools as institutions that children must attend legally was a response to significant increases in immigrant populations from the 1830s to the 1850s, combined with the intensification of the new industrial phase of capitalist production. In The Irony of Early School Reform, Marxist historian of education Michael B. Katz uses the liberal New England education reformer Horace Mann as an example:

“[Mann] was born in 1796, the year John Adams was elected president; throughout his youth and young manhood about two-thirds of the population of Massachusetts lived in rural communities of less than three thousand people scattered throughout the state. When he was fourteen years old, Massachusetts contained less than half a million people . . . . Throughout the state and nation most people assumed that the Massachusetts economy would continue to rest on commerce and agriculture. But Mann saw all this change. During the 1840s . . . the population leaped by more than 30 percent; by the year following his death, 1860, Massachusetts had nearly a million and a quarter inhabitants. Mann watched the hordes of immigrants pouring into the commonwealth.” [10]

Then the economy transformed. The production of cotton in factories replaced agriculture, the latter of whose valued halved within a ten year period. [11] The new immigrants took low-paying and dangerous jobs in the new factories: “In Horace Mann’s lifetime Massachusetts had acquired a proletariat.” [12] Powerful ruling class fractions saw the need for institutions that could get these populations with the program generally, but specifically that of machine-based manufacturing and distribution. Schools were one of several ways ruling class fractions could intervene in the changing social formation to their benefit (though, of course, as the field of critical education and Marxist cultural historians following E. P. Thompson have shown, to mixed results).

Yet school law is a specific part of schooling. In order to understand Althusser’s thinking about it, we can turn to his writing on law, which is less widely known. This account is of interest to Marxists generally, in that it is a canonical Marxist theorist’s basic thinking about law in a recently translated text. For our purposes, the account provides a key ingredient when considering Althusser’s thinking about school law.

In On the Reproduction of Capitalism, Althusser begins his account of law by stating generally that law is formal, systematic, and largely governs the exchange of commodities and issues related to that exchange. Law is formal because it stands apart from moral, ethical or other perspectival condemnation: the law is the law, whether one agrees with it or not. Law is systematic because it exists as a consistent and comprehensive set of propositions that refer to one another through rules and precedent. [13] This systematic independence from approval or condemnation makes the law formal in a universal way, since its dicta are empty of specific content. [14] Law only makes sense when “applied to” particular cases. Law in modern societies influenced by imperial Europe, based as they are on property rights, “governs
commodity exchange” and issues relating to that exchange. [15] Therefore, for Althusser, we can understand the law in a social formation with a capitalist mode of production with the statement “[a]ll are subject to the law and everything is a commodity.” [16]

Having developed the distinction between repression and ideology, or, at the very least, that there is a difference between the repressive force an RSA exerts and the reproductive force that ISAs exert, he claims the law “rests upon” [17] both repression and ideology. Laws rest upon repression because, first, there’s no civil code without a penal code. Everyone subject to the law agrees, at least tacitly, to submit to sanctions if they break the law. There wouldn’t be law without the threat of violent consequences against those who don’t follow it. The law needs constraints and police to work. Yet law is not entirely the threat of violence. Its mere presence acts as a “preventative” [18], whereby citizens learn to respect the laws in a way that goes beyond mere fear of violence from police, court, and prison system. They also follow laws because they see the light: justice, simple decency, and moral conscience demands that people follow the law. Laws don’t only threaten violence but also call for a kind of person who is law-abiding, a good citizen. In most cases, Althusser observes, “things go without a hitch” [19]: people follow the law because they just know and feel it’s the right thing to do. Rather than by repression, in that case, the law functions by ideology.

What does the law do, exactly? We know that the base-superstructure model is a topographic representation that arrays realities into certain positions. The superstructures exert a downward-facing force that stabilizes the base and overall structure. The laws therefore “ensure” the capitalist relations of exploitation. It regulates and sanctions precise economic practices [20], and “expresses’ the relations of production” [21] by outlining the “formal conditions regulating the interplay, or the very functioning of, the relations of production” [22]. Laws are “designed to ensure the functioning [but not the reproduction of] the relations of production.” [23] We can see this in the difference between ownership and appropriation. Someone can occupy a piece of land and use it for their own purposes, for instance. However, until they sign a contract whose language derives from a government’s laws, that piece of land isn’t their property.

Property is the legal category that designates ownership, when laws and governments (with the backing of police, courts and prisons) ensure that someone in particular is permitted the use of land. If, in a given social formation, the government’s repressive force is weak, people might then occupy privately-owned spaces and appropriate all kinds of things without threat of violence from law enforcement or anxiety about deviating from the decent, moral subjectivity of a law-abiding citizen. However, when the repressive force of a government apparatus is strong, laws determine how and when and who makes use of what when it comes to tackling nature and making material life. The repressive state apparatus, via the laws, intervenes to ensure that relations of production hold in a certain way. Althusser claims in general that law “articulates the superstructure upon and within the base.” [24]

You might think of Kafka’s story “In the Penal Colony,” whose first sentence is “It’s a peculiar apparatus.” [25] While that device emblazoned laws into the skin of prisoners, we can think of a larger apparatus that inscribes limits within and upon the modes of production in a social formation. When purchasing my home, for instance, the language in the contracts I filled out derived from municipal, state, and federal laws. Those laws were articulated upon and within the mode of production, ensuring the proper functioning of residential real estate sales. [26]

That school law inscribes the superstructure upon the base is clear in the case of compulsory education laws. Liberalism is all about using the rhetoric of liberty to cover for private property relations, and schools are part of that project when it comes to their legal precedents. In A Bill for the More General Diffusion of Knowledge Thomas Jefferson wrote for instance that “the most effectual means of preventing
tyranny is ‘to illuminate, as far as practicable, the minds of the people.” [27] This same passage is cited in an oft-used textbook on school law. After citing Jefferson, the authors transition immediately to the thought that “mass education is not only best and surest means of preservation of liberty, but it is also essential to the economic and social welfare of the people.” [28] They cite liberal reformer Horace Mann: “The greatest of all political economy is to change a consumer into a producer; and the next greatest is to increase the producing power—an end to be directly attained by increasing his intelligence.” [29] Liberty and production are said in the same breath, and the authors are clear that “on these grounds the legislatures and the courts have justified universal education for all the people. To accomplish this, compulsory school attendance laws have been enacted throughout the nation”. [30]

Laws are therefore a boundary case in the superstructures. They exert both repression and ideology in somewhat equal parts. In some instances Althusser writes about law as being hand in hand with law enforcement, clearly part of the repressive state apparatus, while sometimes he mentions them as their own ideological state apparatus. To the extent that they code or configure the directives of practices exerting repressive force such as the physically and not-physically violent actions of the government, administration, prison, police, and military, law is part of that repressive apparatus. But to the extent that laws call forth the law-abiding citizen, or, as Althusser would say, interpellate the law-abiding citizen, laws exert a reproductive force because they reproduce dominant submission-competencies in the social formation. “The vast majority of legal persons observe the terms of the contracts they sign, and they do indeed do so without the intervention of, and even without preventative threats from, the specialized repressive state apparatus.” [31] Therefore, “as a general rule, in the vast majority of cases, there is no need for state violence to intervene.” [32]

Keeping with the compulsory education example, most such laws are based on a rationale known as parens patriae “which means that the state is the father or guardian for minors.” [33] One court explained that the state’s father-like duty comes from its duty to “protect and provide for the comfort and well-being of such for its citizens.” [34] The parens patriae rational extends patriarchal family ideology for repressive purposes, all to secure—as Horace Mann articulated—the strength of production in the country. Compulsory education laws inscribe the superstructures upon and within the young people of the territory’s base, intervening in their upbringing (like a father in a family) to secure their liberty-as-productive capacity.

Althusser on School Law

Given that schools are ideological state apparatuses that reproduce dominant relations of production, and law articulates the superstructure upon and within the base, an Althusserian understanding of school law would look something like the following.

First, we could say that school law ensures the proper functioning of an apparatus that reproduces the relations of production, the scholastic apparatus. In this formulation, we simply combine the definitions of RSA and ISA from the point of view of law. The RSA ensures the proper functioning of relations of production. ISAs reproduce the relations of production. Therefore, school law ensures the proper functioning of the scholastic apparatus. School law is thus inscribed upon an ISA. A peculiarity of this
formulation is that it implies a transitive relationship between the law and the base: school law ensures the proper functioning of the scholastic apparatus, which reproduces relations of production. That one-step removal from the base might go against the concept that law is inscribed upon and within the base.

Yet just as the relations of production need the state to exert repressive force to keep them in place, the state needs production to keep going materially. Everything in society relies on productive force to exist at all, including the practices enacted in ISAs like schools. So we can formulate another possibility: the extent to which schools require certain production practices to function, school law regulates and sanctions those practices. In this case we rely on the regulation and sanctioning premises of Althusser’s concept of law, keeping a more or less direct relationship with production. Curriculum must be written, printed, and distributed. Teachers must be trained, hired, managed, and fired. Students must be brought and kept in schools. Unions must be kept in check or protected. The schools themselves must be funded and administered. School law, in this sense, sanctions and regulates all the various practices of production required to complete the work of the apparatus.

The benefit of this second formulation is that it pinpoints the actual practices required for running schools and is a concrete application of the more abstract notion that school law is inscribed upon and within the base. But that notion is Althusser’s main contribution to the theory of law and we shouldn’t skirt the abstraction when thinking about what his theory of school law is. The conceptual knot is at the word “inscription”. What does it mean for superstructures to be inscribed upon and within the base? We’ve seen examples throughout the post about school law, from funding to parens patriae. In each of the cases, ruling class fractions intervene to maintain and protect private property relations population and territory. These fractions intervene to keep the exploitative relations of production in place through educational institutions, and the intervention itself requires production to exist. To make the intervention, the ruling class has to pay for the education and then administer it. School law’s repressive and ideological forces go towards this overall intervention.

We can therefore get a more solid formulation by mixing the abstract and concrete formulations. Notice that the phrasing of the second thesis goes both ways: school law regulates and sanctions economic practices that schools need to function, but school law also enforces school practices required by dominant relations of production. So my argument is that an Althusserian understanding of school law is that it inscribes superstructures upon and within the base by leveraging repressive and ideological force to guarantee, regulate, and sanction school practices and the resources required to enact them.

To conclude, we should remember that schools are not some machine programmed to dominate passive individuals. Many intellectuals and researchers interpreted Althusser’s theory of education as being void of agency and class struggle. Yet the opposite is true. Althusser’s structuralism was always rooted in the dynamic tensions and torsions between classes in capitalist social formations. The theory of school law should be no exception. We can look no further than the recent wildcat teacher strikes in states like Oklahoma and West Virginia to see the impotence of school labor law in the face of worker organizing. The Civil Rights Movement of the 1960s also shows how school law is a site and stake of class struggle. The fight over desegregation taken up by movements and groups such as the NAACP in cases such as Brown v. Board of Education (1954) [35] are examples of how the repressive and ideological forces that school law exerts can be taken up, taken on, and leveraged to benefit workers. Cases such as Sheff v. O’Neil [36], recently settled in favor of desegregation in Connecticut, or the ongoing suit against Pennsylvania state government over school funding are contemporary examples of this. [37]

These cases are debatable of course (Brown v. Board was decided at a key moment in the Cold War to delegitimize the Soviet Union, for example [38]) but, using Althusser’s theory of school law, we can understand them as moments in the class struggle where repressive and ideological forces get directed
and redirected along multiple vectors in the balance of forces. Inscription of the superstructures upon and within the base isn’t one-directional or solely controlled by ruling classes, but rather caught up in the class struggle between groups with equal force at their disposal (though not equal dominance in the structure). In general, the upshot of Althusser’s theory of school law is to understand it as caught up in class struggle: state structures leveraging force to create stability and continuity for the relations of production. Such an understanding is an entirely different paradigm for thinking about school law than traditional liberal frameworks.

David I. Backer (https://twitter.com/davidbacker0) is an assistant professor of education at West Chester University of Pennsylvania. He organizes with Lilac, Philly SocFem, and is a rank and file member of APSCUF.

Notes


[19] Ibid.


[26] Laurent de Sutter, in the introduction to a collection *Althusser and Law*, writes that “to consider law as a superstructural element determining, in the last instance, the organization of the infrastructure proved to be a regrettable example of naivety. Law doesn’t determine anything—except itself. It is only the expression of a certain status of the structure to whose articulation it contributes. Sure, since it articulates elements of the structure and relationships within the structure, this articulation is conditions by the type (bourgeois or other) of operations specific to the law practicing them. But this type of operation is contingent: it depends on the way politics defines its program.” *Althusser and Law*, ed. Laurent de Sutter (Milton Park, Oxon: Routledge, 2013), 8. Unlike most criticism in English, de Sutter is working from the French edition. Like most critiques of Althusser’s theory he appears to make a distinction without a difference, as Althusser argues precisely for the latter claim through his concept of
what de Sutter calls “a regrettable naivety.” Like most critique in English, the collection uses the ISAs essay rather than the full work as its main data set for textual analysis. A presumption of my reading here is that the ISAs essay is an excerpt: a set of notes towards the investigation which was only available in English in 2014. To respond briefly to de Sutter, I’m pretty sure the law determined something other than itself when I bought my house.


[29] Ibid.


[34] Ibid.


BLOG AT WORDPRESS.COM.