

# Is Democracy Possible? A Dialectical Materialist Approach

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## I. Introduction

“It is easier,” wrote Mark Fisher in his 2009 book *Capitalist Realism*, “to imagine the end of the world than it is to imagine the end of capitalism”.<sup>1</sup> Sixteen years and several metastasising crises later, the fatalistic idea that *there is no alternative* still has considerable sway. All we can do in response to the multiple crises around us is cross our fingers and hope for a technical fix; or for a more sensible, more competent, less failure-prone government to swoop into power and save the day.<sup>2</sup> In this contribution, I wish to put the case for a more vibrant imaginative landscape – to, as Fisher put it, “destroy the appearance of a ‘natural order’” and “reveal what is presented as necessary and inevitable to be a mere contingency”.<sup>3</sup> To properly answer the question, *is democracy possible?* necessitates two things: a rejection of capitalist “realism” and, at the same time, the avoidance of wistful and utopian flights of intellectual fancy. Successfully navigating between those two poles requires a suitable legal method (an elusive term to which I will return in Section Six) and, in particular, a method that empowers us to move seamlessly from legal critique to realistic and considered action. I shall argue that the method of dialectical materialism, properly understood and shorn of its mechanistic and teleological connotations, provides us with a conceptual apparatus for thinking about the possibility (indeed necessity) of democracy. When applied to the study of law in general, and constitutional law specifically, it allows us to see things that other methods tend to obscure or exclude; and it gives us at least the outlines of the tactics and strategy necessary to win a democratic future – in other words, it is an indispensable method of constitutional critique *and* of constitutional praxis.

The utility of this argument rests, in part, on my being able to demonstrate that researching law and constitutionalism (especially in our present, parlous conjuncture) through the theoretical lens of dialectical materialism carries advantages over more widely practiced analytical approaches. The most important thing, I shall argue, is to grasp the importance of processes, structures and relations between components of the social whole, and to appreciate the historicity and contingency of things, including law and constitutions, that appear static, apolitical and ahistorical. Taken at its strongest, analytical *systems theory*

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<sup>1</sup> Mark Fisher, *Capitalist Realism: Is There No Alternative?* (Zero Books 2009) 2.

<sup>2</sup> Martin Wolf, for example, provides a rich and detailed account of capitalism’s divorce from democracy, but can do little else but prescribe some technical palliatives to take the edge off elite failure. See Martin Wolf, *The Crisis of Democratic Capitalism* (Allen Lane 2023); for a critique see Jonathan Hopkin, ‘Power to the People’ (2023) 516 *The Literary Review* 25.

<sup>3</sup> Mark Fisher (n 1) 17.

can usefully grasp some of those things by focusing our attention on the complex and shifting ways in which individual phenomena – law, politics, economics and so on – relate to each other as part of a broader system. From there, technocratic reforms can be proposed to individual elements of the social system for the betterment of the whole. But where systems theory takes qualitatively fixed elements of a closed system as its reference points, dialectical materialism takes the revolutionary step of seeing those individual phenomena as contingent things qualitatively shaped by the totality itself. More precisely, it allows us to see how the reigning mode of production – capitalism, in a word – shapes (and is in turn shaped by) the qualitative nature of individual phenomena. As Richard Levins put it, analytical systems theory, with its complex mathematical models and its assumption that parts of the system may be taken as given is, for all its potential usefulness, a form of “large-scale reductionism”. Dialectical materialism, on the other hand, takes the parts of the system as “points where properties of the whole are concentrated”.<sup>4</sup> Law and constitutions, I am about to argue, should be seen in that light.

The following argument proceeds through several linked stages. Part One will provide an outline of the crisis of democracy and situate it within the broader agglomeration of crises with which we are afflicted. It will introduce the commonly used term *polycrisis* to capture some aspects of this entanglement. Part Two will explain, at a quite general and philosophical level, the method of dialectical materialism. In so doing, it will be necessary to dispel some common misconceptions and to identify some of the pitfalls to be avoided. Part Three will show how dialectical materialism helps us to get at the root causes of the democratic crisis and to see its proper place as the keystone of the broader polycrisis. Part Four will examine the critical strand of dialectical materialism and sketch-out its application to liberal democratic constitutionalism. Part Five will turn to the normative strand of dialectical materialism and how it might help to guide movements for meaningful democracy. The article will close with some brief reflections on the concept of legal methodology, and whether it is right to place dialectical materialism under that banner. I hope, in the end, to persuade the reader that meaningful democracy is not only possible but absolutely necessary if we are to address the polycrisis that envelops it; and that thinking dialectically can illuminate both the past (what has gone wrong) and the future (the difficult, perhaps unedifying, but ultimately unavoidable path to putting it right).

## II. Democratic Crisis and Polycrisis

If democracy is understood in formal terms as a set of institutions – representative parliaments; periodic, competitive and uncoerced elections; universal suffrage; formal equality; freedom of expression; a formally free press; and so on – <sup>5</sup> then at least from a Western perspective, democracy is a really existing but really endangered part of our present-day social and political fabric. Viewed from this angle, the question *is democracy possible?* becomes a matter (albeit an urgent one) of thinking about how to save something that we already have from being overwhelmed by the rising authoritarian tide. On this account of democracy, Erdogan in Turkey, Trump in the USA, Netanyahu in Israel, Orban in

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<sup>4</sup> Richard Levins, ‘Dialectics and Systems Theory’ (1998) 62(3) *Science & Society* 375.

<sup>5</sup> This approximates what the democratic theorist Robert Dahl called “polyarchy”. See Robert Dahl, ‘Polyarchy, Pluralism, and Scale’ (1984) 7(4) *Scandinavian Political Studies* 225.

Hungary, and the roster of likeminded authoritarian populists either in power or on the cusp of winning it, have used democracy as a vehicle to power and, having achieved it, are in the process of dismantling democracy bit-by-bit.<sup>6</sup> As the dismantling proceeds apace, we end up with a spectrum of degenerate hybrid regimes that combine the formal trappings of democracy with elements of autocracy.<sup>7</sup> This is one way of understanding the democratic crisis, and it captures some important truths about our current predicament.

But does the question *is democracy possible?* change if we shift our perspective and move beyond this low intensity version of democracy?<sup>8</sup> What if, in addition to the minimal formal requirements of democracy, it is taken to imply something substantive – something approximating the central concern of modern democratic theory *tout court* – namely the question whether “ordinary citizens exert a relatively high degree of control over leaders”?<sup>9</sup> If Aristotle was right that the best constitutions run through “the middle citizens”, those with neither too many possessions nor too few,<sup>10</sup> then the United States of America, famous for its pro-middle-class ethos and its rigorous, entrenched, republican system of government ought to be a good litmus test for the health of this slightly more demanding standard of democracy. Yet empirical research tells us quite clearly that the USA’s middle-class only has political power and influence when its opinions happen to coincide with those of the rich.<sup>11</sup> As Branko Milanovic points out, the country of “We the People” in fact qualifies as an *oligarchy* per Aristotle’s definition (“the sovereign power of the constitution is in the hands of those with possessions”)<sup>12</sup> notwithstanding constitutional protestations to the contrary. On this account, the question *is democracy possible?* takes on additional meaning, and its temporal horizons recede further into the past. No longer just a question of defending existing democracy from the authoritarian populist threat, it becomes a matter of thinking about how a minority of wealthy persons – call it the ruling class – managed in the fairly recent past to usurp democracy. One way of approaching this question is to compare different ways of organising capitalism. For example, Peter Mair, in his 2013 book *Ruling the Void*, already regarded Western party democracy as an age that had come and gone (its death pre-dating the election of Donald Trump) and traced out the essentially *neoliberal* mechanisms that were its immediate cause of death.<sup>13</sup> Other ways of

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<sup>6</sup> For an account of the mechanisms used to this end see, for example, Steven Levitsky and Daniel Ziblatt, *How Democracies Die: What History Reveals About our Future* (Viking 2018). On the Turkish example, see Ece Temelkuran, *How to Lose a Country: The 7 Steps from Democracy to Dictatorship* (Fourth Estate 2019).

<sup>7</sup> See Alexander Schmotz, ‘Hybrid Regimes’ in Wolfgang Merkel, Raj Kollmorgen and Hans-Jürgen Wagener (eds), *The Handbook of Political, Social, and Economic Transformation* (OUP 2019).

<sup>8</sup> The term “low-intensity democracy” was popularised in the literature by Susan Marks. See Susan Marks, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (OUP 2000).

<sup>9</sup> Robert Dahl, *A Preface to Democratic Theory: Expanded Edition* (University of Chicago Press 2006) 3. The ancients were rather more exacting than this: Aristotle thought a true democracy existed wherever “the sovereign power of the constitution...is in the hands of those who have no stock of possessions and are without means.” Aristotle, *The Politics* (Penguin 1992) 191.

<sup>10</sup> Aristotle (n 9) 267.

<sup>11</sup> Branko Milanovic, *Capitalism, Alone: The Future of the System That Rules the World* (Harvard University Press 2019) 56.

<sup>12</sup> Aristotle (n 9) 191.

<sup>13</sup> Peter Mair, *Ruling the Void: The Hollowing of Western Democracy* (Verso 2013).

doing capitalism – say, for example, the era of post-war “embedded liberalism” –<sup>14</sup> did not give rise to such anti-democratic tendencies, or at least not to the same degree. Politics back then had a certain level of control over economics and kept a lid on capitalism’s destructive tendencies. But we took a wrong-turn somewhere around the 1980s, unscrewed capitalism’s lid, lost control of its contradictions, and ended up in today’s parlous condition.

Yet another perspective on the question *is democracy possible?* presents itself if we dig a little deeper still and question the commonly held assumption that democracy is only supposed to extend to the political life of the state, and not to civil society. If, for example, we assume that ordinary citizens ought to exert a relatively high degree of control over how and in what quantities the raw necessities of life get produced and distributed, and that workers ought to have democratic control over their workplaces, then the democratic deficit begins to look even wider and its duration much longer. And if, as Noam Chomsky argued (quoting John Dewey), political life is “the shadow cast on society by big business”<sup>15</sup> then we end up with a web of imbrications between political democratic crisis and democracy-free economic life. This approach to democracy leads us back even further than the previous one. It calls into question the hegemonic mode of production itself, not just its present organisational form.

At the risk of over-simplification, we can summarise the above three approaches as follows: democracy on the verge of being lost; democracy once gained but now lost; and democracy as a good idea not yet achieved (or only achieved in very partial and one-sided form). We can refer to these three understandings of democracy as *levels of abstraction* (a technique to which I will return in Part Two). At the first level of abstraction (formal democracy) there is a genuine crisis, where crisis is understood as a relatively *sudden*, detrimental event that has its *fons et origo* in deeper structures.<sup>16</sup> At the second and third levels of abstraction we have secular tendencies rather than crisis (one mapping onto neoliberalism, the other capitalism *tout court*), but I want to argue that they hold the key to understanding the first and to understanding the broader *polycrisis* to which we now turn.

The crisis of democracy is one of multiple devastating crises that weigh on the world. It is not for nothing that the *Bulletin of the Atomic Scientists* has set the Doomsday Clock at 89 seconds to midnight.<sup>17</sup> Humankind faces the prospect of ecological catastrophe, nuclear war, zoonotic spillover, and economic meltdown (to name just a few) at the very moment when its democratic structures seem least able to cope with them. The term *polycrisis* was resurrected and popularised by the economic historian Adam Tooze to capture these entanglements and to articulate the ways in which disparate crises interact with each other to make “the whole even more overwhelming than the sum of the parts”.<sup>18</sup> According to Michael Lawrence et al, a global polycrisis like ours may be defined as “the causal

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<sup>14</sup> John Ruggie, ‘International regimes, transactions, and change: embedded liberalism in the postwar economic order’ (1982) 36(2) International Organization 379.

<sup>15</sup> Noam Chomsky, *Masters of Mankind* (Penguin 2015) 140.

<sup>16</sup> I owe this formulation of crisis to Ståle Holgersen, *Against the Crisis: Economy and Ecology in a Burning World* (Verso 2024) 5. My three levels of abstraction also owe something to Holgersen’s use of the dialectical materialist method.

<sup>17</sup> Bulletin of the Atomic Scientists, ‘Closer than ever: It is now 89 seconds to midnight’ <<https://thebulletin.org/doomsday-clock/2025-statement/>> accessed 3 September 2025.

<sup>18</sup> Adam Tooze, ‘Welcome to the world of the polycrisis’, *Financial Times* (10 October 2022).

entanglement of crises in multiple global systems in ways that significantly degrade humanity's prospects".<sup>19</sup> The authors go on to delineate, in analytical systems theory fashion, some of the causal interactions between nominally separate global systems and refer to "domino effects"<sup>20</sup> and "feedback loops"<sup>21</sup> between these distinct but related phenomena. This analytical (as opposed to dialectical) approach to the polycrisis yields policy prescriptions that, to their credit, caution against a myopic focus on isolated crises in favour of a system-wide approach.<sup>22</sup> The notion of polycrisis also, importantly, draws attention to the overbearing gravity of the problems. But in what follows, I want to suggest there is a danger that this kind of polycrisis thinking can actually end up suffering from another form of myopia: it trains its analytical lens on causes and effects between distinct and isolated fragments of the global totality without approaching the root cause of their breakdown.<sup>23</sup> Which is where dialectical materialism comes in.

### III. Dialectical Materialism

Dialectical materialism is a combination of two philosophical systems of thought, namely materialism and dialectics. They do not necessarily have to come as a single package. One can believe in the materialist conception of history without the dialectical part (as is the case, for example, in analytical Marxism),<sup>24</sup> and one can adhere to dialectics without the materialist part (as is the case, for example, in Hegel's idealist dialectics). The substantial unification of these two ways of thinking is attributed to Karl Marx<sup>25</sup> and it constitutes, according to at least some accounts, the core of Marxism. Georg Lukács, for example, regarded orthodox Marxism not as a complete set of doctrines to be swallowed whole, nor as a quasi-religious acceptance of everything Karl Marx ever wrote, but as a *method* ripe for development and expansion.<sup>26</sup>

The first strand of the method, materialism, is captured in the pithy phrase "It is not consciousness that determines life, but life that determines consciousness".<sup>27</sup> This, as O'Connell points out, is to invert Descartes's famous *I think, therefore I am*.<sup>28</sup> It does not start from ideas and concepts as the driving motor of history (as important as these things are – especially when favourable material conditions allow them to grip the masses) but from "...men, not in any fantastic isolation and

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<sup>19</sup> Michael Lawrence and others, 'Global Polycrisis: the causal mechanisms of crisis entanglement' (2024) 7 *Global Sustainability* 1, 4.

<sup>20</sup> *ibid* 9.

<sup>21</sup> *ibid* 10.

<sup>22</sup> *ibid* 13.

<sup>23</sup> For a similar critique, see Güney Işıkara, 'Beating around the Bush: Polycrisis, Overlapping Emergencies, and Capitalism' <<https://developingeconomics.org/2022/11/22/ beating-around-the-bush-polycrisis-overlapping-emergencies-and-capitalism/>> accessed 3 September 2025.

<sup>24</sup> In a memorable dismissal of dialectics, GA Cohen referred to analytical Marxism as "non-bullshit Marxism". GA Cohen, *Karl Marx's Theory of History: A Defence* (Princeton University Press 2000) xxv.

<sup>25</sup> Engels must also take a share of the credit. As he wrote in his preface to *Anti-Dühring*, "Marx and I were pretty well the only people to rescue conscious dialectics from German idealist philosophy and apply it in the materialist conception of nature and history". Friedrich Engels, *Anti-Dühring* (Wellred Books 2017) 15.

<sup>26</sup> Georg Lukács, *History and Class Consciousness* (Verso 2023) 1.

<sup>27</sup> Karl Marx and Friedrich Engels, *The German Ideology* (Prometheus Books 1998) 42.

<sup>28</sup> Paul O'Connell, 'Marxism and Public Law' in Paul Daly and Joe Tomlinson (eds), *Researching Public Law in Common Law Systems* (Elgar 2023).

fixity, but in their actual, empirically perceptible process of development under definite conditions”.<sup>29</sup> Society is therefore a product of material nature, of how we relate to each other, and to the environment, in the process of material production. To put it succinctly, “The mental life of society is a function of the forces of production”.<sup>30</sup> The ideas, morals, religion, state, law, and constitution of a feudal society are very different from those of a capitalist society (though there are some overlaps) not simply because our ideas changed out of the mysterious ether and we altered the material world around them, but precisely the opposite – because the material world, the forces of production, developed to a point where the old ideas had to flex or perish; and the driving thrust of that change is delivered in the form of class struggle, “the history of all hitherto existing society”.<sup>31</sup> From a legal point-of-view, this means that we ought to be heavily concerned with the social and economic forces that direct the course of legal development and change,<sup>32</sup> which necessitates something more than an orthodox intramural, positivist approach to law. In fact, we might go even further by focusing not just on the material basis of law’s substantive *content*, but on the material basis of *the very legal form itself*. Evgeny Pashukanis, for example, theorised that law is not an “appendage of human society in the abstract”<sup>33</sup> but something historically contingent – its development as a dominant factor in human social relations (in our day, considering how saturated in law is every political and social conflict, we might even call it *the* dominant factor) depended on the emergence of a society based on commodity exchange.<sup>34</sup> Following that train of thought, the legal form will wither away if capitalism withers away.<sup>35</sup>

At this point, with nothing in-hand other than materialism, it must be conceded that it is very easy to get lost in unhelpful mechanical, determinist, teleological and economistic modes of thought. The crude metaphor of base and superstructure, where capitalism serves as the material base and everything else – law, constitutions, culture, politics, etc. – is an epiphenomenal reflection of it, has snared many a Marxist scholar (and, for that matter, many of Marx’s critics). After all, if constitutions (for example) simply grow from the soil of material capitalist social relations, then was not Ferdinand Lassalle simply following that insight to its logical conclusion when he argued that constitutions are nothing more than “the relation of forces actually existing in the country” transcribed on paper and converted into laws – structural cause and linear superstructural effect?<sup>36</sup> And what of the broader techno-determinist argument, expounded at length by G.A. Cohen, that social change can be explained by reference to the

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<sup>29</sup> Karl Marx and Friedrich Engels, (n 27) 43.

<sup>30</sup> Nikolai Bukharin, *Historical Materialism* (Critical Editions 2021) 47.

<sup>31</sup> Karl Marx and Friedrich Engels, *The Communist Manifesto* (Penguin 2002) 219.

<sup>32</sup> Anthony Chase, *Law & History: The Evolution of the American Legal System* (The New Press 1999) 20.

<sup>33</sup> Evgeny Pashukanis, *The General Theory of Law & Marxism* (Transaction Publishers 2003) 71-72.

<sup>34</sup> For a modern defence of Pashukanis’ “commodity-form” theory of law see China Miéville, *Between Equal Rights: A Marxist Theory of International Law* (Brill 2005) ch 3. For critique see Igor Shoikhebrod, *Revisiting Marx’s Critique of Liberalism: Rethinking Justice, Legality and Rights* (Palgrave Macmillan 2019).

<sup>35</sup> It takes a feat of imagination to see how society might function without law, and nobody has done it better than Ursula Le Guin, *The Dispossessed* (Gollancz 1999).

<sup>36</sup> Ferdinand Lassalle, ‘On the Essence of Constitutions’ <<https://www.marxists.org/history/etol/newspape/fi/volo3/no01/lassalle.htm>> accessed 4 September 2025.

clash between productive forces (technology, scientific knowhow, etc.) and productive relations (how people relate to each other and to the forces of production), so that major social change occurs only when the latter become a fetter on the former and must, for that reason, be qualitatively re-made – an argument that quickly leads to the idea that “legal structures rise and fall according as they promote or frustrate forms of economy favoured by productive forces”?<sup>37</sup> Lasalle’s argument fails because, as Kivotidis points out, its mechanical materialism leaves no room for movement and contradiction (such as the contradiction between formal constitutional democracy and substantive oligarchy).<sup>38</sup> Cohen’s argument might capture some of the truth, some of the time, but it misses the vital ways in which law *mediates* and *shapes* capitalist social relations.<sup>39</sup>

Clearly then, materialism can only get us so far. To paraphrase Anthony Chase: if materialism gets us moving, dialectics gives us a compass.<sup>40</sup> Contrary to the above mechanical forms of materialism, the economy, he wrote, must be regarded as a *source* of legal change rather than an *unmediated cause*.<sup>41</sup> Other factors, such as the need for judges and lawyers to preserve law’s integrity, have an important role to play.<sup>42</sup> Thinking dialectically is to problematise materialist conceptions that simply assign causal effect to base economic motives (much as they might predominate) and to instead adopt the point-of-view of the “totality”<sup>43</sup> in an attempt to capture the development of the whole in motion. Where an analytical approach begins with isolated fragments of this totality and examines their outer relations with other isolated fragments (as in the theory of polycrisis explained above), a dialectical approach holds that the isolated fragments are what they are because of the “primacy of history over being”.<sup>44</sup> Isolated parts of the totality are not simply ontologically given things that happen to relate to other things – those things are in fact *constituted by* their relations to other things and constitute those other things in return.<sup>45</sup> We cannot, therefore, give isolated things (laws, constitutions, and so on) “an ontological status independent of the whole”,<sup>46</sup> rather those isolated things are best understood as ensembles of the whole web of social relations in which they stand,<sup>47</sup> and that web of social relations of course

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<sup>37</sup> GA Cohen (n 24) 231.

<sup>38</sup> Dimitrios Kivotidis, *The Dialectics of Democracy: Towards a Socialist Constitutionalism* (Routledge 2024) 23.

<sup>39</sup> Alan Hunt, *Explorations in Law and Society: Towards a Constitutive Theory of Law* (Routledge 1993), ch 8; GA Cohen recognises that law as a superstructure is necessary to *stabilise* or *preserve* capitalism, but that is a different thing from law *shaping* it. GA Cohen (n 24) 231.

<sup>40</sup> Anthony Chase (n 32) 33.

<sup>41</sup> *ibid* 45.

<sup>42</sup> As Engels put it: “In a modern state, law must not only correspond to the general economic position and be its expression, but must also be an expression which is *consistent in itself*, and which does not, owing to inner contradictions, look glaringly inconsistent.” Friedrich Engels, *Letter to Conrad Schmidt in Berlin*, <[https://www.marxists.org/archive/marx/works/1890/letters/90\\_10\\_27.htm](https://www.marxists.org/archive/marx/works/1890/letters/90_10_27.htm)> accessed 5 September 2025.

<sup>43</sup> Georg Lukács (n 26) 27.

<sup>44</sup> Theodor Adorno, *An Introduction to Dialectics* (Polity Press 2017).

<sup>45</sup> Herbert Marcuse, *Reason and Revolution: Hegel and the Rise of Social Theory* (Routledge 1994) 108.

<sup>46</sup> Bertell Ollman, *Dance of the Dialectic: Steps in Marx’s Method* (University of Illinois Press 2003) 156.

<sup>47</sup> *ibid* 37.

has a distinctive character, and gives rise to an identifiable logic, in a society built around capitalism. In philosophical parlance, this is known as the theory of internal relations: the complex, contradictory and changing relations in which a thing stands are internal to what that thing is, despite the fact that it might appear to common-sense as something timeless and stable. Two quick examples will suffice to illustrate the point. First, a machine is what it is: a machine. But once it stands in a particular set of (capitalist) social relations it becomes something else: capital. A person of colour is what they are: a person of colour (a fact which ought to be of no more significance than the colour of his eyes, to quote Bob Marley).<sup>48</sup> But once they stand in a particular set of social relations that necessitate exploitation, hierarchy, imperialism, and so on they are subjected to processes of *racialisation*. In this sense, the shifting concept of race is not a timeless and biologically given category, but something produced and reproduced through the internal logic of the capitalist totality.<sup>49</sup>

The dialectical part of dialectical materialism keeps its hold on the material base of social change but has no truck with mechanical applications of that insight.<sup>50</sup> It adds some important facets to the method that make it much more supple than is commonly assumed. First, although adopting the point-of-view of the totality might mean there can be no autonomous, free-floating science of law, it is of course just as impossible to know anything much about the totality without examining its parts (including law) as it is to know anything much about the parts without examining the totality. It then becomes a matter of how we abstract those parts from the whole. As Bertell Ollman explains, the mental units we use to think about the world (abstractions) can be drawn in all sorts of ways<sup>51</sup> but if we abstract too narrowly, and lose sight of the surrounding processes, flows and relationships necessary to properly understand the part under examination, then we end up with a form of ideology.<sup>52</sup> One common abstraction error in the debates about democracy, for example (and one to which I shall return in Part Six) is to assume the universal validity of methodological individualism: to narrowly conceive persons as isolated individuals with a universal human nature outside of history and devoid of all the social relations that make them what they are. In Part One I applied this method of abstraction to the crisis of democracy in an attempt to bring into view an ever-broader range of its constitutive relations and its capitalist qualities.

Second, our capitalist, class-divided totality is riddled with contradictions, and those contradictions are “the root of all movement and life”.<sup>53</sup> Things that appear static, changeless, and universally valid are in fact outcomes of, and bearers of, historical contradictions; and as Gramsci had it, those contradictory material forces are “at the same time a crystallisation of all past history and the basis of future history: it is both a document and an active and actual propulsive force”.<sup>54</sup> Dialectical materialism can therefore help us to understand the past, the present,

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<sup>48</sup> Who was lyricising Haile Selassie’s 1963 address to the United Nations.

<sup>49</sup> Adam Hanieh, Robert Knox and Rafeef Ziadah, *Resisting Erasure: Capital, Imperialism and Race in Palestine* (Verso 2025) 13.

<sup>50</sup> As Engels wrote of such approaches in his letter to Conrad Schmidt, “What these gentleman all lack is dialectic. They never see anything but here cause and there effect.” Friedrich Engels (n 42).

<sup>51</sup> Bertell Ollman (n 46).

<sup>52</sup> *ibid* 72.

<sup>53</sup> Herbert Marcuse (n 45) 147.

<sup>54</sup> Antonio Gramsci, *Selections from the Prison Notebooks* (Lawrence & Wishart 1998).

and to at least trace the outlines of some possible futures (more on the latter in Part Five).

Third, the part (law, for example) and the capitalist totality are *mutually constitutive* of each other.<sup>55</sup> Legal form and substance might be constituted by a material economic base, but law in turn constitutes and mediates the economic base in very important (and sometimes antagonistic) ways. It enters directly into the economic base by protecting property rights and contract rights,<sup>56</sup> and it legitimises capitalism while disciplining and shaping its subjects.<sup>57</sup> All of which is to say that it facilitates the production and reproduction of the system of which it is part. But at the same time, it has to “display an independence from gross manipulation” and, by upholding its own internal logic of universality, equity, and legal reasoning, it will occasionally be just.<sup>58</sup> Indeed, it would be incapable of performing its constitutive functions if it was merely a like-for-like translation of the economic base.

All of which leaves us with what Nicos Poulantzas called the *relative autonomy* of law and the state.<sup>59</sup> The basic idea that while “socio-economic realities generate a series of juridical realities”<sup>60</sup> those juridical realities, in turn, acquire a degree of autonomy (but not complete autonomy) from the interests of dominant classes and return to *mediate* the capitalist infrastructure. As Poulantzas had it, this theoretical approach allows us to steer a delicate course between two false propositions: on the one hand, law as a mere instrument in the hands of the ruling class; on the other, law as a completely autonomous, free-floating subject that can be wielded by anyone for any purpose.<sup>61</sup>

#### **IV. Democratic Crisis and Polycrisis: A Dialectical Materialist Analysis**

The dialectical materialist method can give us some deeper insights into the present crisis of democracy and its keystone place in the polycrisis. Adapting Ståle Holgersen’s example in his penetrating dialectical materialist investigation of the economic and ecological crises,<sup>62</sup> the key is to identify the mechanisms and contradictions driving the crisis at each level of abstraction set out in Part One. Only then can we grasp the root causes of the crisis and its interconnections with the others.

Beginning with the first level (formal democracy) we see the democratic crisis as it presents itself – radical populists and demagogues seizing public power through the ballot box, primarily by means of virulent racism, and then using their power to cannibalise formal democracy from within. Ending the investigation at this level of abstraction and going no further is liable to give rise to idealist, rather than materialist, explanations and solutions. Perhaps the problem is primarily (if not exclusively) driven by cultural factors? It has been

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<sup>55</sup> David Harvey, *Justice, Nature & the Geography of Difference* (Blackwell 1996) 52.

<sup>56</sup> Alan Hunt (n 39).

<sup>57</sup> Robert Knox, ‘Law, neoliberalism and the constitution of political subjectivity: the case of organised labour’ in Honor Brabazon (ed), *Neoliberal Legality: Understanding the Role of Law in the Neoliberal Project* (Routledge 2016).

<sup>58</sup> EP Thompson, *Whigs and Hunters: The Origin of the Black Act* (Allen Lane 1975) 263.

<sup>59</sup> Nicos Poulantzas, *State, Power, Socialism* (Verso 2014).

<sup>60</sup> James Martin (ed), *The Poulantzas Reader: Marxism, Law and the State* (Verso 2008) 31.

<sup>61</sup> *Ibid.*

<sup>62</sup> Ståle Holgersen (n 16).

argued, for example, that modern progressive identity politics has given rise to a backlash among older generations.<sup>63</sup> And if that is the full extent of the case, then we need to change the reigning ideas through better formal education, and we need stronger constitutional checks and balances. In the UK context, a well-designed codified constitution would be an obvious bulwark against this threat.<sup>64</sup>

At the second level (more substantive democracy) the hegemonic configuration of capitalism heaves into view. It was the era of neoliberal globalisation that got us here so, we have to ask, how has that way of doing capitalism given rise to the democratic crisis? There is quite a lot going on at this level, so one can only hope to sketch-out *some* of the mechanisms at work; and they are not far to find. Indeed, the neoliberal roots of the crisis are by now so mainstream among the elite that the chief economics commentator at the *Financial Times*, Martin Wolf, confidently acknowledges the explanatory value of neoliberalism's rampant inequality and mass economic disappointment in the rise of racism, exclusionary nationalism and populism.<sup>65</sup> That analysis does not lead Wolf to question the necessity of capitalism as a mode of production – in fact, he insists that capitalism and democracy are locked in a troubled but ultimately *necessary* marriage – but other scholars have excavated the inherently antagonistic relationship between neoliberalism and democracy, and shown that its damaging impact in that regard is in fact a feature, not a bug. Historically speaking, the very genesis of neoliberalism lies in its intellectual architects' opposition to post-war, New Deal style social-democracy – a period when the masses were seen to be interfering too much in the smooth operation of market mechanisms and economic freedoms.<sup>66</sup> Its triumph over the older model of capitalism (sometimes referred to as the Golden Age of Capitalism) was made possible by a particular set of material circumstances, including the demise of the communist threat,<sup>67</sup> rising capital mobility,<sup>68</sup> the unresolved contradictions of social-democracy and the associated crisis of capital accumulation in the 1970s.<sup>69</sup> Capital needed a new form of organisation to resolve the crisis and its standoff with organised labour; and neoliberal ideas were both suitable for the task and ready-to-hand.

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<sup>63</sup> Ronald F. Inglehart and Pippa Norris, 'Trump, Brexit, and the Rise of Populism: Economic Have-Nots and Cultural Backlash' (2016) <<https://www.hks.harvard.edu/publications/trump-brexit-and-rise-populism-economic-have-nots-and-cultural-backlash>> accessed 9 September 2025.

<sup>64</sup> For a strong argument to that effect see Andrew Blick, 'Populism and the UK Constitution' <<https://consoc.org.uk/publications/populism-and-the-uk-constitution/>> accessed 9 September 2025.

<sup>65</sup> Martin Wolf (n 2).

<sup>66</sup> Gary Gerstle, *The Rise and Fall of the Neoliberal Order: America and the World in the Free Market Era* (Oxford 2022).

<sup>67</sup> Gerstle notes that the fear of communism, and the need to keep it at bay domestically, prompted buy-in for the New Deal across the establishment political parties and thereby secured its hegemony. *Ibid* 29.

<sup>68</sup> The end of the Bretton Woods system is often highlighted as a crucial turning point. See Yanis Varoufakis, *The Global Minotaur: America, the True Origins of the Financial Crisis and the Future of the World Economy* (Zed Books 2011) 94.

<sup>69</sup> As David Harvey put it: "To have a stable share of an increasing pie is one thing. But when growth collapsed in the 1970s, when real interest rates went negative and paltry dividends and profits were the norm, then upper classes everywhere felt threatened." David Harvey, *A Brief History of Neoliberalism* (Oxford 2005) 15. Some of this was the result of an unresolved conflict, or contradiction, between organised labour and capital. See Grace Blakeley, *Stolen: How to Save the World from Financialisation* (Repeater 2019), 45-51.

Once established as the hegemonic form of capitalism through the Washington Consensus,<sup>70</sup> neoliberal globalisation has in practice been hostile to democracy but *not* to the state itself. The reigning idea has been, to quote Noam Chomsky, that the state must consign the needy, grasping and interfering public to “a spectator role, not participating in the arena of decisionmaking, which must exclude these ‘ignorant and meddling outsiders’”.<sup>71</sup> Measured by that standard, it has been an overwhelming success story. As Peter Mair underscores, political competition became “an opposition of form rather than of content”,<sup>72</sup> the political elite withdrew from the public, and the public withdrew from the political elite. The citizenry’s job was to ratify; not to govern. In the meantime, the state carried on its role of central planning but mostly discarded the notion that any of that planning should benefit the masses, whose wishes and preferences were more-or-less irrelevant. Instead, the state’s main roles were to construct free markets, to intervene in them, and to coerce the rest of the unhappy population both ideologically and physically.<sup>73</sup> But how does that happen in spite of formal constitutional guarantees of democracy and universal suffrage? Is it a simple, idealist case of elite failure – a bad generation of political leaders with a bad set of ideas? Or is there a dialectical materialist explanation for the neoliberal hollowing of democracy?

The neoliberal hollowing of democracy has been, I submit, the outcome of the dialectic of neoliberal globalisation. Put simply: in order to achieve the goal of free markets and unencumbered capital accumulation, the intellectual architects of neoliberalism saw that it was necessary to overcome democratic interference within the state not by abolishing formal democracy (which would obviously have been unacceptable), but by leaving it in place while simultaneously shifting the locus of material power *upwards* to the global level and *downwards* to the sub-state level. More than that, successful neoliberal *globalisation* relied upon its opposite, neoliberal *fragmentation*. Without one, the other could not long survive. On one end of this dialectic, globalisation, we see the encasement (to use Quinn Slobodian’s term) of the global market in international institutions and international laws with little to no democratic oversight or authorship.<sup>74</sup> The results have been felt everywhere. From a Western perspective, domestic autonomy was limited, states’ ability to control the economy was neutered, and, as a result of this depoliticisation of the economy, political parties were forced into barely distinguishable policy positions.<sup>75</sup> In the Global South, where the lack of democratic control over economic policy has been particularly harmful, the system looks a lot like a new form of imperialism, this time in the guise of international law and institutions.<sup>76</sup> At the other end of the dialectic, fragmentation, the nation-state is disciplined and notions of the social state “blackmail[ed] out of existence” by perforating sovereign states into parts and

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<sup>70</sup> Noam Chomsky, *Profit Over People: Neoliberalism and Global Order* (Seven Stories Press 1999) 19-25.

<sup>71</sup> *Ibid* 98.

<sup>72</sup> Peter Mair (n 13) 68.

<sup>73</sup> Grace Blakeley, *Vulture Capitalism: Corporate Crimes, Backdoor Bailouts and the Death of Freedom* (Bloomsbury 2024) 185.

<sup>74</sup> See Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Harvard 2018).

<sup>75</sup> Peter Mair (n 13).

<sup>76</sup> B.S. Chimni, ‘International Institutions Today: An Imperial Global State in the Making’ (2004) 15 EJIL 1.

zones.<sup>77</sup> The more states, the more sub-state entities – in a word, the more *fragmentation* of whatever kind – the less power each one has against the global forces of capital. Fleet of foot, it can shop on the marketplace of politics, play them off against each other and against their divided populations, and discipline the ones that allow the masses to interfere too much in the operation of free markets. A small number of big democratic sovereign states, or a global form of democracy, would inject democratic politics into the economy and undermine the global end of the dialectic. It is not only that the inegalitarian outcomes of neoliberalism happen, as an unwelcome byproduct, to fuel authoritarian uprisings; it is also the case that the hegemony of the neoliberal project (and the associated oligarchisation of formal democracies) rests on this dialectic of globalisation and fragmentation – a dialectic that was well understood by its secular priesthood as one that would insulate the economy from democratic demands. As Milton Friedman had it, “a democratic society, once established, destroys a free economy”.<sup>78</sup> It is one or it is the other.

And this is where racism and nationalism come into the picture – surely the two things at the forefront of the global turn to authoritarianism. The above analysis of neoliberalism helps us to sketch a materialist account of their contemporary form of appearance. To start once again with the history of neoliberal ideas, the turn to racist authoritarianism promoted the likes of Donald Trump and Nigel Farage is not necessarily a complete departure from the neoliberal playbook but can, in fact, be understood as a *mutation* in some of its parts. The architects of neoliberalism were never so naïve as to think that it was possible to simply unleash the forces of global capital accumulation and rein-in democracy without being attentive to the broader institutional requirements and the need for some form of community belonging. On the latter, if the state was going to withdraw from the scene, if capitalism was going to be disembedded from notions of the welfare state, then some form of moral code was needed to prevent hyper-individualistic market society from collapsing into utter degeneracy and moral relativism. For some neoliberal thinkers (not all, it has to be emphasised), who were worried that environmentalism, feminism, anti-racism and similar communal movements amounted to a lot of special pleading and market interference (the old enemy, socialism, in a new guise),<sup>79</sup> the answer lay in a “neo-Victorian” moral code<sup>80</sup> that tapped into ever-present ideas about natural, biologically given racial and gender hierarchies. Social-Darwinism of this kind, especially when promoted by the state, suits the radically inegalitarian ethos of neoliberalism. It is another potent form of *fragmentation*. As the influential thinker Murray Rothbard<sup>81</sup> put it, “Biology stands like a rock in the face of egalitarian fantasies”.<sup>82</sup>

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<sup>77</sup> Quinn Slobodian, *Crack-Up Capitalism: Market Radicals and the Dream of a World Without Democracy* (Penguin 2024) 7.

<sup>78</sup> *Ibid* 15.

<sup>79</sup> Quinn Slobodian, *Hayek’s Bastards: Race, Gold, IQ, and the Capitalism of the Far Right* (Zone Books 2025) 11.

<sup>80</sup> Gary Gerstle (n 67) 132.

<sup>81</sup> Argentina’s president Milei, to give one example, has been heavily influenced by Rothbard. Daniel Torres Checa, ‘Who is the Real Javier Milei?’ <<https://www.journalofdemocracy.org/online-exclusive/who-is-the-real-javier-milei>> accessed 11 September 2025.

<sup>82</sup> Quinn Slobodian (n 79) 42.

This way of thinking, once on the extremist edges of neoliberal theorising, has found fertile soil in the material conditions planted since the 2008 financial crisis and the subsequent rounds of punishing austerity. In brief, the downward mobility and status anxiety of the middle classes, combined with non-functional democratic mechanisms and pressure valves, combined again with the isolating and sociophobic dogma of neoliberalism (there is no such thing as society, everybody else is out to get you and steal your share), has resulted in the life-rafts of nationalism, racial superiority, and gender hierarchy becoming overcrowded. What these things offer is not economic redemption, but consolation – a share in something that seems to guarantee one’s superior spot in a stable hierarchy when all else is crumbling.<sup>83</sup> They also personalise the affliction by offering, as Richard Seymour puts it, “a concrete and personal foe, an enemy who, unlike the abstract forces that actually rule us, can be killed in combat”.<sup>84</sup> The problem might start as a middle-class phenomenon, but it filters down to those at the even sharper end of neoliberalism: the working class.<sup>85</sup>

Which leaves us with the third level of abstraction: substantive democracy stretched over the economy rather than just politics. This is the level at which the mode of production itself enters the picture, not just its hegemonic form of organisation; and it is here that we find the constitutive features of capitalism itself – features and contradictions that prevail through its various historical forms. Two points in particular are worth highlighting here. First, the putative separation between the (formally democratic) political sphere and the economic sphere grew from the material base of capitalism. As Ellen Meiksins Wood has shown, one of capitalism’s specificities is its redefinition of the political and its differentiation of political functions.<sup>86</sup> Under earlier modes of production, such as feudalism, the extraction of economic surplus from the toiling masses was performed via extra-economic methods – the serf was subordinated to a master who directly wielded *political* power. Under capitalism, by contrast, the power of exploitation rests not directly on the worker’s political subordination (the worker has an equal vote along with every other qualifying citizen) but on webs of legally enforceable contractual relations between “free” producers. The compulsion to provide surplus value comes from economic, not directly political, compulsion. A helpful way of understanding this is to regard it as the *privatisation of political power*: “...functions formerly associated with a coercive political power – centralized or ‘parcelized’ – are now firmly lodged in the private sphere...relieved of obligations to fulfil larger social purposes”.<sup>87</sup> And since those important political functions have been safely encased in the economic sphere, free from democratic interference, the expropriators can afford to relinquish direct control over a nominally separate political sphere.

Second, the separation of the undemocratic economic sphere from the formally democratic political sphere is only ever permitted to go so far. As a system, capitalism demands ceaseless capital accumulation and endless growth. When that cannot be found – when the wheels get bogged down, the rate of profit manifests its tendency to fall, and crisis ensues – it must turn to a range of *fixes*,

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<sup>83</sup> Richard Seymour, *Disaster Nationalism: The Downfall of Liberal Civilization* (Verso 2024).

<sup>84</sup> *ibid* 76.

<sup>85</sup> *ibid*.

<sup>86</sup> Ellen Meiksins Wood, *Democracy Against Capitalism: Renewing Historical Materialism* (Verso 2016).

<sup>87</sup> *ibid* 44.

all of which require the assistance of the state. Those fixes can be spatial, as in the global dispossession achieved via imperialism;<sup>88</sup> and they can be temporal, as in the ready availability of debt. In the same vein, the shift to neoliberal hegemony, achieved with the support of powerful states, can be viewed as another one of capitalism's fixes, resolving as it did some of the contradictions of social democratic capitalism and restoring healthy profits. Social democracy too was a fix, and one that (at least to a limited degree) politicised and democratised the economy in the interests of the masses. But it was a fix that grew from very different material conditions which no longer hold: the aforementioned threat of communism, the strength and power of organised labour, and the aftermath of two catastrophic world wars (to name a few). That period of narrowing inequality and enhanced democracy was a *sui generis* aberration from the norm of yawning inequalities of wealth and power,<sup>89</sup> inequalities that inevitably lay waste to the formally democratic political sphere. Moreover, we ought to remember that the "great compression" of inequality in the West was experienced in dominated parts of the world, the objects of capitalism's spatial fix, as a "great squeeze".<sup>90</sup> The plunder and riches extracted from the rest of the world made it possible to bribe labour leaders and fashion a *labour aristocracy* out of them, which in turn facilitated the spatial fix of imperialism.<sup>91</sup>

From here, if we retrace our steps backwards, it becomes clear that there is a root cause of the crisis of democracy. It is to be found in the dynamics and contradictions of the capitalist mode of production, or the "crisis tendencies inherent in capitalism" as Ståle Holgersen refers to them.<sup>92</sup> And we can do the same thing with other crucial aspects of the polycrisis. To give just one brief example, capitalism's ceaseless drive for growth has led to an "ecological rift" between humankind and nature – it simply cannot countenance a rational regulation of nature in line with the needs of this generation and future generations. It can only see nature, along with human labour, as a source of profit and endlessly expanding reproduction.<sup>93</sup> This rift with nature is currently organised on the basis of massive fossil fuel consumption – not because it is scientifically necessary to use such fuels to power human industry and civilization, but because new forces of production, in this case renewable sources of energy, simply cannot drive profits at an even remotely comparable rate, and in fact represent a threat to existing and incredibly lucrative pools of capital.<sup>94</sup> As a result, we are witnessing climate breakdown and ecological crisis.

What I am getting at here is that the polycrisis is more than just a "causal entanglement of crises in multiple global systems" with a series of feedback loops

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<sup>88</sup> David Harvey, *The New Imperialism* (Oxford 2003).

<sup>89</sup> Walter Scheidel shows how growing inequality is the norm, save for periods of intervention by one of four violent ruptures: mass mobilisation warfare, state failure, potent pandemics, and revolution. Walter Scheidel, *The Great Leveler: Violence and the History of Inequality from the Stone Age to the Twenty-First Century* (Princeton 2017).

<sup>90</sup> Darrin M. McMahon, *Equality: The History of an Elusive Idea* (Ithaca 2024) 16.

<sup>91</sup> V.I. Lenin, *Imperialism, the Highest Stage of Capitalism* (Leftist Public Domain Project 2021) 7.

<sup>92</sup> Ståle Holgersen (n 16) 85.

<sup>93</sup> John Bellamy Foster, Brett Clark and Richard York, *The Ecological Rift: Capitalism's War on the Earth* (Monthly Review Press 2010).

<sup>94</sup> Andreas Malm & Wim Carton, *Overshoot: How the World Surrendered to Climate Breakdown* (Verso 2024).

and domino effects.<sup>95</sup> It is in fact a series of crises generated by the inner contradictions of capitalism and its hegemonic form of organisation, neoliberalism. The major crises afflicting us have a common root. And this is very important when it comes to properly grasping the importance of the question *is democracy possible?* because democracy – or rather the lack of it – is what characterises that root cause. Ellen Meiksins Wood, for example, argued that the best way to understand the dialectical materialist method is not as a mechanical system whereby history is propelled by the contradiction between forces and relations of production, but as a much more supple way of understanding history as the “increasing separation of direct producers from the means of their own labour, subsistence, and reproduction”.<sup>96</sup> On that basis, she argued, the resolution of the problem lies in a kind of socialism understood not as a top-down manipulation of the masses by an elite group of vanguards, but as a system with “the highest democratic aspirations”.<sup>97</sup> Democracy must penetrate both economic and political life, the precise inverse of neoliberal prescriptions, if we are to extract the problem at its roots. It might sound hyperbolic but, given the extremely high stakes, if the above arguments are sound then the question *is democracy possible?* could easily be re-framed: *is human civilization possible?*

### **V. Law, Constitutionalism, and Democratic Crisis: A Critical Appraisal**

We are now in a position to apply the insights generated by the dialectical materialist method to the study of constitutionalism in our age of polycrisis. Are liberal democratic constitutions purely *tidal walls* trying (in a leaky fashion) to hold back the rising swell of authoritarianism; or are they somehow imbricated and tied up in the mechanisms, detailed above, that are propelling that rising swell? What is to be done with constitutionalism in the face of the global forces detailed in the previous sections? These are important questions that I want to at least begin to address; but first, it is necessary to briefly explain what I mean by “constitutionalism”.

One analytically fruitful way of understanding the concept of constitutionalism is to draw a distinction between *constitutionalism* and more general terms like *constitutional government* or *constitutional democracy*. As Martin Loughlin sees it, there is a crucial distinction between these concepts: *constitutionalism* is a very specific philosophy of governing that subjects the exercise of democracy to a set of legal restraints imposed by a special constitutional text.<sup>98</sup> This has much in common with Ran Hirschl’s concept of *Juristocracy* – a conscious strategy of judicial empowerment often “undertaken by threatened political elites seeking to preserve or enhance their hegemony by insulating policymaking from popular political pressures...”.<sup>99</sup> It is not to be conflated with *constitutional democracy*, a system in which (to put it succinctly) democratic contestation is prized over the judicial resolution of constitutional indeterminacy and conflict.<sup>100</sup> On Loughlin’s account, the term “political constitutionalism”, which is often used to describe

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<sup>95</sup> Michael Lawrence and others (n 19).

<sup>96</sup> Ellen Meiksins Wood (n 86) 141.

<sup>97</sup> *ibid.*

<sup>98</sup> Martin Loughlin, *Against Constitutionalism* (Harvard 2022) 1.

<sup>99</sup> Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Harvard 2004) 99.

<sup>100</sup> Martin Loughlin (n 98) ch 7.

the UK's eccentric constitutional arrangements, is therefore a misnomer because its emphasis on parliamentary sovereignty and political accountability is actually antithetical to the basic tenets of constitutionalism.<sup>101</sup> This approach has much to commend it, and the next section will dwell on the importance of developing radical forms of constitutional democracy, but the following critique needs to be broad enough to capture the UK constitution, which is, after all, increasingly legal in nature even in the absence of a codified constitution.<sup>102</sup> Its formal emphasis on parliamentary politics over law does not immunise it from the broader problems of constitutionalism. So, although it might come at the cost of a sliver of analytical finesse, the following analysis will adopt a wider meaning of constitutionalism and assume that the UK has its own brand of it, albeit with important points of distinction.

Approaching the problem of constitutionalism and democratic crisis from within the framework of dialectical materialism takes us in some different directions from mainstream, orthodox investigations. If constitutions are somehow sourced from the material base of capitalism, and if they in turn constitute, shape and mediate that material base, then it stands to reason that we cannot understand them only as *bulwarks* against capitalism's excesses. They cannot be understood as autonomous products of the rational human mind or as outcomes of a posited social contract, but as things that in a real, material sense have capitalist qualities. We therefore need to ask how they are built around and reinforce, not only restrain, capitalism's extant logic. What role do they play in the broader totality of social and legal relations?

The founders of neoliberalism understood this important aspect of constitutionalism perfectly well. Hayek, for example, agreed with a lot of liberal theorising that democracy is not an "ultimate or absolute value and must be judged by what it will achieve"<sup>103</sup> – in other words, his own particular conception of neoliberal *justice* ought to guide and restrict the operation of democracy at the expense of a conception of its inherent *legitimacy* as a method of decisionmaking<sup>104</sup> (which he regarded as a form of dogmatism) – and forcefully defended a suite of legal restrictions designed to contain and obstruct democratic urges for distributive justice.<sup>105</sup> Prominent among those legal restrictions was constitutionalism as it originated in the United States,<sup>106</sup> which its founders had consciously designed to "protect the minority of the opulent against the majority".<sup>107</sup> Indeed, no less a figure than Adam Smith carefully explained – in

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<sup>101</sup> *ibid.*

<sup>102</sup> Gary Wilson, *Constitutional Reform and Brexit* (Routledge 2023). For example, the supposedly "weak" form of judicial review introduced by the Human Rights Act 1998 is actually, in practice, more like a strong form of review. See Aileen Kavanagh, 'What's so weak about "weak-form review"? The case of the UK Human Rights Act 1998' (2015) 13 I-CON 1008.

<sup>103</sup> FA Hayek, *The Constitution of Liberty* (Routledge 1960) 92.

<sup>104</sup> For critical discussion see Tom Hickey, 'Legitimacy—not Justice—and the Case for Judicial Review' (2022) 42 Oxford Journal of Legal Studies 893.

<sup>105</sup> "...those who pursue distributive justice will in practice find themselves obstructed at every move by the rule of law." FA Hayek (n 103) 203.

<sup>106</sup> *ibid* ch 12.

<sup>107</sup> James Madison, 'Term of the Senate' (26 June 1787) <<https://founders.archives.gov/documents/Madison/01-10-02-0044>> accessed 15 September 2025.

quite straightforwardly materialist terms – that the very *raison d'être* of government was to “secure wealth, and to defend the rich from the poor”.<sup>108</sup>

What these liberal thinkers are hinting at is what constitutional scholars have called *the material constitution* – the idea that the development, change, and operation of constitutionalism cannot be fully comprehended by focusing solely on the formal operation of constitutional law as a closed discipline; rather those things are embedded in a material web of social relations which the scholar must try to capture.<sup>109</sup> This means that formal constitutional texts are conditioned by (and in turn condition) underlying class struggle *and* that formal constitutional texts do not exhaust the reality of the constitutional order.<sup>110</sup> Constitutional form will sometimes, but not always, capture that underlying material reality. To give one example, in *form* the UK constitution lacks checks and balances insofar as Parliament is sovereign and may enact any law it pleases, even a law that interferes with the wealth and power of the ruling class. But in *material constitutional reality*, as Harold Laski pointed out, there are very strong checks and balances imposed by material economic rationality.<sup>111</sup> The economic consequences of such a law would be so materially powerful, especially for the those at the bottom of the class hierarchy, that they constitute a strong check and balance on Parliament’s lawmaking authority. The same can be true in reverse: formal constitutions can claim to accurately represent *material constitutional reality* but actually fail to do so. For example, new rights can be formally inscribed without ever having purchase in the material world.<sup>112</sup> In both cases, by being exclusively concerned with the closed juridical sphere we end up with a form of blinding ideology – in the one case by obscuring reality and in the other by misrepresenting it.

Focusing on the material constitution encourages us to avoid the tempting argument that the crisis-ridden world we see around us is purely the result of mass lawbreaking. It is *partly* about that, but in a deeper sense, as China Miéville memorably put it, “the chaotic and bloody world around us *is the rule of law*”<sup>113</sup> working on the material world as it is supposed to work. To flesh-out that insight we ought to begin with the broader totality of legal relations before landing on constitutionalism and its contribution to the democratic crisis. On that broader legal totality, and implicitly drawing on the method detailed above, Martti Koskenniemi explains that routine complaints about the unenforceability and weak material purchase of Public International Law’s *jus ad bellum*, its international human rights frameworks, and its famously skewed application of International Criminal Law, while obviously true, can only get us so far. What these critiques lack, in Koskenniemi’s view, is a deeper level of abstraction; an appreciation of what he calls “the legal infrastructure of global capitalism” – the

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<sup>108</sup> Adam Smith, *Lectures on Jurisprudence* (Liberty Fund 2011) 348.

<sup>109</sup> Marco Goldoni and Michael Wilkinson, ‘The Material Constitution’ (2018) 81 MLR 567.

<sup>110</sup> Marco Goldoni and Michael Wilkinson, ‘The Tradition of the Material Constitution in Western Marxism’ in Marco Goldoni and Michael Wilkinson (eds), *The Cambridge Handbook on the Material Constitution* (CUP 2023) 27.

<sup>111</sup> Martin Loughlin, ‘Laski’s Materialist Analysis of the British Constitution’ in Goldoni and Wilkinson (n 110) 71.

<sup>112</sup> As Pashukanis had it, “if a law or decree has merely been promulgated without any corresponding relation having arisen in practice, then an attempt to create a law has indeed been made, but without success.” Evgeny Pashukanis (n 33) 88.

<sup>113</sup> China Miéville (n 34) 319.

complex and contradictory web of laws “public and private, domestic and international, that regulate practically all aspects of social life by distributing rights and duties, powers and vulnerabilities to groups across the world”.<sup>114</sup> There are some obvious candidates for inclusion in this infrastructure: international investment law, bilateral investment treaties, global property rights, the law of international financial institutions and so on; all of which escape complaints about norm-violation and unenforceability because they carry very real and very powerful material force. In short, this legal infrastructure “reproduce[s] the banal reality of an unjust world outside the spectacle of war and sovereign conflict”.<sup>115</sup> The inequalities of wealth and power that have done so much to produce the polycrisis are *facilitated*, not merely *constrained* by law. Contrary to common diagnoses then, the rise of authoritarians like Trump, occurring as it has through the operation of neoliberal capitalist contradictions, “was initiated, coordinated and brought to fruition by law”.<sup>116</sup> To coin a phrase, liberal legalism gave birth to its own gravediggers.

As tempting as it is to blame private lawyers for everything, public lawyers too deserve a share of responsibility because the form and substance of domestic constitutionalism is anything but politically neutral. It is what it is because of its place in the broader legal totality. From a historical point-of-view we ought to start by recognising that the very genesis of constitutionalism in the United States of America was an aristocratic backlash (or, as Michael Klarman has it in his detailed work of history, a full-blown *coup*)<sup>117</sup> against latent revolutionary democratic tendencies which were then seen by threatened elites as a troubling portent. As later generations of subaltern groups saw perfectly well, for all its concern about “checking and balancing” the power of (narrowly) enfranchised majorities it did very little to check or balance economic elites from accruing vast wealth and then using it to overrun politics. In fact, by throwing up obstacles and structural impediments to radical change, constitutionalism did more than just leave inequality unchecked – it facilitated it and protected it from bottom-up democratic pressures.<sup>118</sup> All of which is to say that the system had from the outset, and continues to have, very definite class characteristics.

Modern constitutionalism as it has unfolded from that initial anti-democratic starting point does a number of things to facilitate the broader process of capitalist reproduction and to restrain substantive democracy (and, by extension, to perpetuate the democratic crisis). First, even *without* hard and legally binding constitutional checks and balances – as is the case, for example, in the UK constitution which emphasises parliamentary sovereignty and *political* checks and balances – constitutionalism contains within it what Perry Anderson calls “the principal ideological linchpin of Western capitalism”,<sup>119</sup> namely the representative parliamentary form of democracy. Though obviously an important and valuable gain achieved over centuries of struggle, parliamentarism is (among

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<sup>114</sup> Martti Koskenniemi, ‘The Laws That Rule Us: The Legal Infrastructure of Global Capitalism’ (2025) 154 *New Left Review*.

<sup>115</sup> *ibid.*

<sup>116</sup> *ibid.*

<sup>117</sup> Michael J. Klarman, *The Framers’ Coup: The Making of the United States Constitution* (OUP 2016).

<sup>118</sup> Aziz Rana, *The Constitutional Bind: How Americans Came to Idolize a Document that Fails Them* (University of Chicago Press 2024).

<sup>119</sup> Perry Anderson, *The Antinomies of Antonio Gramsci* (Verso 2020) 64.

other things) a powerful tool of ruling-class hegemony insofar as it facilitates class rule by *consent* rather than *coercion* – and this is a crucial point for, as David Hume rightly noted, if force is on the side of the overwhelming majority “It is...on opinion only that government is founded”.<sup>120</sup> In pre-modern times that consent could be achieved by appeals to religion or to some other unifying factor, but in the age of formal secular democracy it has to be done by papering over the cracks of class division and the vastly unequal distribution of economic and political power and then reflecting “the fictive unity of the nation back to the masses as if it were their own self-government”.<sup>121</sup> Self-determination becomes the unifying factor. We have little to complain about, the story goes, because we have been in charge all along; and if we do not like the way things are then we can file into the polling booths, select a different government, and change course. Many courses are dead ends because they would lead to a severe economic backlash, but after all no democracy can overcome God-given natural limits. The underlying consequence of this is, as Rosa Luxemburg put it, to produce in the face of these strict limits “an indiscriminating and obedient voting animal”.<sup>122</sup> This is a damaging ideological story for lots of reasons. Most pertinently in our age of polycrisis, it *naturalises* a low-intensity version of democracy in which the masses delegate power to an organ, the state, that is alienated from them<sup>123</sup> and it forecloses other, more substantive ways of conceptualising democracy. If this is the only realistic way of understanding it, and it has led us to today’s oppressive conjuncture, then perhaps (some might be led to believe) democracy is not the best way of organising society. Or perhaps it needs to be shaken up and re-cast in a more exclusionary form. But the problem is *not* an excess of democracy. The problem is the limited and controlled way in which it is operationalised under today’s contingent and highly restrictive socio-economic conditions.

The so-called human rights revolution is, perhaps surprisingly, another way in which modern constitutionalism facilitates the reproduction of capitalism. Coming of age as they did during the same period as neoliberalism and promising an alternative utopia after socialism and decolonisation,<sup>124</sup> human rights have functioned in practice as what Jess Whyte calls a “moral framework for a global capitalist market”.<sup>125</sup> In some cases, in fact, important human rights frameworks – such as the European Convention on Human Rights, which is incorporated by the Human Rights Act into the UK constitution – were explicitly designed to impose restraints on elected social democratic governments and their excessively egalitarian social policies.<sup>126</sup> Quite apart from their rigorous protections of private property in the means of production (which, as Marx pointed out, has a condition for its realisation, namely the non-existence of any property for the immense majority of society)<sup>127</sup> human rights have a marked tendency to *depoliticise* social conflict and, through a series of legal abstractions, to re-cast them in terms of

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<sup>120</sup> David Hume, *Selected Essays* (OUP 2008) 24.

<sup>121</sup> Perry Anderson (n 119) 64.

<sup>122</sup> Peter Hudis and others (eds), *The Complete Works of Rosa Luxemburg: Volume III, Political Writings 1* (Verso 2019).

<sup>123</sup> On “naturalisation” as an ideological strategy see Susan Marks (n 8) ch 3.

<sup>124</sup> Samuel Moyn, *Human Rights and the Uses of History* (Verso 2014) ch 5.

<sup>125</sup> Jess Whyte, *The Morals of the Market: Human Rights and the Rise of Neoliberalism* (Verso 2019) 22.

<sup>126</sup> Marco Duranti, *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention* (OUP 2017).

<sup>127</sup> Karl Marx and Friedrich Engels (n 31) 237.

individuated and bureaucratic legal language.<sup>128</sup> Where democratic, participatory and communal forms of collective struggle against injustice, such as trade union action and political organising, might be threatening to the ruling class because of their potential to foster class-consciousness and counter-power, individual human rights litigation produces its own, less threatening form of subjectivity.<sup>129</sup> And precisely because of their vaunted claim to float above politics, they are signally unable to identify and name, let alone deal with, the material root causes of human rights violations.<sup>130</sup> For all of their undoubted value and importance then, human rights serve to channel inevitable conflict into manageable legal forms – a crucially important function under a neoliberal global order.

None of which is to say that constitutionalised human rights are completely worthless. A moralised neoliberalism is clearly better than the alternative; and civil and political rights such as freedom of expression and assembly (as attenuated as they are when the means of communication are in the hands of wealthy elites)<sup>131</sup> are vital defences. More than that, we must never lose sight of the contradictions, and the human rights framework throws up lots of them. *Politicised* movements from below can seize upon those contradictions and make use of them. Paul O’Connell, for example, notes that rights can slip their legally institutionalised moorings and become potent rhetorical weapons in the hands of social movements.<sup>132</sup> It can easily be argued that certain socio-economic rights (such as the right to food and housing) are fundamentally incompatible with a neoliberal global order, even as judges and lawyers attempt to empty those rights of any material, real-world force by converting them into procedural entitlements and by accepting, rather than challenging, the limits imposed upon them by capitalist logic.<sup>133</sup> All of which points in the direction of an important fact: if constitutional structures are riddled with contradictions – if they are, as Poulantzas put it, full of cracks –<sup>134</sup> then how ought we to engage with them in such a way as to transform the underlying system and, in the process, deepen and widen democracy?

## VI. Socialist Constitutionalism

Dialectical materialism is not just a method of understanding the world – it is also a guide to changing it. Not, as mechanical materialism might have it, by suggesting that we can predict the course of the future through a series of iron laws of history, but through understanding what Bertell Ollman calls “the internal relation between actuality and potentiality”.<sup>135</sup> The basic idea, to quote C.L.R.

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<sup>128</sup> For an example of this in action see Robert Knox, ‘A Marxist Approach to *R.M.T. v. the United Kingdom*’ in Damian Gonzalez-Salzberg and Loveday Hodson (eds), *Research Methods for International Human Rights Law: Beyond the Traditional Paradigm* (Routledge 2019).

<sup>129</sup> Wendy Brown, “‘The Most We Can Hope For...’: Human Rights and the Politics of Fatalism” (2004) 103 SAQ 451.

<sup>130</sup> Susan Marks, ‘Human Rights and Root Causes’ (2011) 74 MLR 57.

<sup>131</sup> See Noam Chomsky, *Manufacturing Consent: The Political Economy of the Mass Media* (Pantheon Books 2002).

<sup>132</sup> Paul O’Connell, ‘Human Rights: contesting the displacement thesis’ (2018) 69 NILQ 19.

<sup>133</sup> Paul O’Connell, ‘The Death of Socio-Economic Rights’ (2011) 74 MLR 532.

<sup>134</sup> Nicos Poulantzas (n 59) 132.

<sup>135</sup> Bertell Ollman (n 46) 159.

James, is that “The two, the actual and the potential, are always inseparably linked; one is always giving way to the other”.<sup>136</sup> Rather than giving free rein to the utopian imagination, dialectical materialism gets us to focus on the contradictions thrown up by the actual material world and the possible futures into which that material world might be made to transform. Two conditions, in their dialectical interaction, are paramount in that transformation: first, the *objective* conditions of change (contradictions generated by the ceaseless accumulation of capital and its development of new technologies, for example) and second the *subjective* conditions of change (the development of class-consciousness). People make their own history with the guidance of their own subjectivity, but not out of whole cloth, rather “under the given and inherited circumstances with which they are directly confronted”.<sup>137</sup>

On the basis of this dialectical understanding of social and political change, scholars have already sketched out a number of possible futures for liberal constitutionalism in our world of polycrisis. In the context of global warming and its catastrophic consequences, it is conceivable that today’s contradictions and crises will eventually unfold into authoritarian and centralised forms of planetary governance, either in a configuration intended to keep capitalism on life support or to dismantle it from above.<sup>138</sup> It is also firmly within the realms of possibility that today’s authoritarian and climate-denying populism will metastasise into full-blown fossil fuel fascism.<sup>139</sup> In fact, in the year 2025, that scenario might be the easiest one to imagine. There is, in short, no *inevitable* socialist constitutionalism waiting to be born, but the objective conditions are in place to make it one of several possible outcomes. Everything rests on whether the subjective conditions can be made to match. As I argued in Part Three, if socialism is about implanting substantive democracy everywhere, then it becomes a valuable alternative (perhaps the *only* serious alternative) to the abovementioned forms of barbarism. And if that is the case, then we need to think seriously about radical alternatives to the failing project of liberal constitutionalism. And while an essay on method is not the place to flesh out a blueprint for a radically democratic form of constitutionalism, it *is* the place to identify how that method can inform normative constitutional thinking. What does the concept of the *material constitution* contribute when we are thinking about constitutional reforms?

On that question, Camila Vergara points us in the right direction: it gets us to engage in a “dialectical analysis of the relation between power and law”.<sup>140</sup> The focus is always trained on the law’s effects in “enabling emancipation and discouraging oppression on the ground”<sup>141</sup> in real, material terms. In other words, instead of focusing solely on clever new human rights and institutional constraints, granted on-high from inside the closed sphere of legality and which may or may not have a positive effect in the material world, dialectical materialism demands that we focus on building the power of the oppressed

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<sup>136</sup> Anna Grimshaw (ed.), *The C.L.R. James Reader* (Blackwell 1992) 129.

<sup>137</sup> Karl Marx, *The Political Writings* (Verso 2019) 480.

<sup>138</sup> Joel Wainright and Geoff Mann, *Climate Leviathan: A Political Theory of Our Planetary Future* (Verso 2020).

<sup>139</sup> Andreas Malm & The Zetkin Collective, *White Skin, Black Fuel* (Verso 2021).

<sup>140</sup> Camila Vergara, *Systemic Corruption: Constitutional Ideas for an Anti-Oligarchic Republic* (Princeton 2020) 102-103.

<sup>141</sup> *ibid* 103.

majority to engage in meaningful self-determination and democracy from below. The rights to food and housing, for example, though valuable in themselves, can only be meaningfully realised *in the material world* by empowering subaltern groups to struggle for control over the circumstances of their own lives. Absent that desideratum, the logic of capitalism will cut those rights down to a residual stump.

Material constitutionalism's emphasis on bottom-up empowerment is directly contrary to some mainstream liberal approaches to constitutionalism and democratic crisis. Such approaches often assume, either openly or implicitly, that bad actors like Trump and Farage are taking advantage of *inherent* human weakness, narrow-mindedness and ignorance and, so it follows, democracy for the masses needs to be tightly constrained by epistemic elites for the greater good.<sup>142</sup> But as Christina Lafont rightly points out, even if we assume that this ignorance is empirically demonstrable, the normative prescription does *not* necessarily follow: it would be just as well to commit to empowering and educating the masses so as to overcome the ignorance.<sup>143</sup> In fact, choosing instead to constrain them with ever more constitutional fences might play right into the hands of populists and their professed hatred for elites.<sup>144</sup> And in any event, as recent history demonstrates, those counter-democratic constitutional constraints can only ever hold so long as they have the strength to withstand the material and ideological power of rising authoritarianism. So, instead of postulating the idealist notion of a universal and fixed human nature manifest in the human behaviour we see around us, we ought to recognise that human nature is malleable and it is shaped by the broader capitalist totality and its reigning ideas. As Marx had it, those ideas weigh "like a nightmare on the minds of the living".<sup>145</sup> Socialist constitutionalism, therefore, takes as one of its main tasks the project of facilitating the self-emancipation of the masses; of bringing to the fore the *subjective conditions* necessary for that to happen.

It might seem a bit rich for a proponent of Marx's method to decry liberal notions of elite constraints on democracy. There is, it is true, a long tradition of socialist constitutional schemers who believed that a free and democratic society must be imposed by a revolutionary vanguard because the masses were unable to do it themselves.<sup>146</sup> But the available evidence suggests that this was not what Marx himself had in mind for the constitutional transition to socialism. As Hal Draper argued, his well-documented support for the radically democratic Paris Commune – which he regarded as "the political form at last discovered under which to work out the economical emancipation of labour" and which, crucially, he saw as a tool for the working class to work out *their own* emancipation – <sup>147</sup> strongly suggests that his much-maligned *dictatorship of the proletariat* was about "inaugurating a political system of democratic control from below".<sup>148</sup> Later generations of Marxist thinkers followed in those radically democratic footsteps,

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<sup>142</sup> For examples of this line of thought see Christina Lafont, *Democracy without Shortcuts: A Participatory Conception of Liberal Democracy* (OUP 2020) ch 3.

<sup>143</sup> *ibid.*

<sup>144</sup> Martin Loughlin (n 98).

<sup>145</sup> Karl Marx (n 137) 480.

<sup>146</sup> See Hal Draper, *The Two Souls of Socialism* (Independent Socialist Committee 1966).

<sup>147</sup> Karl Marx (n 137) 896-897.

<sup>148</sup> Hal Draper, *Karl Marx's Theory of Revolution: The "Dictatorship of the Proletariat"* (Monthly Review Press 1986) 274.

perhaps most prominently Rosa Luxemburg, who consistently argued for a “complete spiritual transformation in the masses degraded by centuries of bourgeois class rule” which she thought could only be achieved through “the school of public life itself, the most unlimited, the broadest democracy and public opinion”.<sup>149</sup> Constitutional democracy understood in this way is not about securing good outcomes, nor is it just about formal procedures. It is about substantially educating, re-shaping, and training the masses for self-determination, with the ultimate aim of “converting the state from an organ superimposed on society into one thoroughly subordinate to it”.<sup>150</sup>

Which leaves us with the thorny, practical question of how to engage with existing constitutional structures. There can be no question of following an anarchist route and refusing to engage with them while we try to build bottom-up democratic institutions outside the state. First, those institutions can only be permitted to go so far as long as the state possesses the means and the ability to coerce them. Second, the nature of the polycrisis is such that we simply cannot afford to wait until a radically democratic society has already been built. To put it bluntly, if we have to wait for socialist constitutionalism to arrive then we are doomed – we have to work with the material available to hand. If a radically democratic form of constitutionalism ever comes into being, it will be the outcome of a gradual process of democratic training, practice and empowerment. It is therefore necessary to think carefully about constitutional engagement and reform, and how those things are dialectically related to the broader goal of democratic revolution. And history clearly demonstrates that reform and revolution *are* dialectically related in several ways – one cannot be sustainably achieved without the other; the nature of a reformist strategy will affect the shape (and the very possibility) of any eventual revolutionary change; and the nature of one’s revolutionary ideas will shape the kind (and the very possibility) of reforms one seeks to achieve. For present purposes, the dialectical materialist approach yields the insight that we cannot avoid the struggle for constitutional reforms, but nor can we reform ourselves all the way to a radically democratic future. So long as wealth, power and ownership are concentrated in a few hands there are strict material limits to what mainstream political parties and elected representative parliaments are allowed to propose, let alone to achieve. Some reforms are so antithetical to capitalist logic that even if they overcame formal constitutional checks and balances, the anti-democratic *material* checks and balances outlined in Part Four would cut them off at the knee, no matter how big the mandate of the government that initiated them. For the same reason, attempts to adopt a reformed and codified constitution for the UK would be hemmed in by that very same logic and would therefore only represent, at best, a very partial and temporary defence against authoritarianism. We cannot, to put it differently, “simply lay hold of the readymade state machinery and wield it for [our] own purposes”.<sup>151</sup>

For much-needed reforms to become possible, it will be necessary to embed them in a broader revolutionary democratic strategy. As Andre Gorz explained, to achieve certain reforms it is necessary to modify the existing relation of social

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<sup>149</sup> Peter Hudis and Kevin Anderson (eds), *The Rosa Luxemburg Reader* (Monthly Review Press 2004) 306-307.

<sup>150</sup> Karl Marx (n 137) 1038.

<sup>151</sup> Karl Marx (n 137) 890.

forces; to demonstrate “a capacity to mobilize the working classes against current policies” and – more than that – to demonstrate their preparedness to not only face-down but to *profit* from the ensuing economic and political backlash by pushing further and harder<sup>152</sup> (we have already seen in Part Three how the social-democratic welfare state was largely built on fear of a mobilised and militant working class). Only an active and engaged population with its own democratic centres of material power outside the vaunted halls of Parliament can do that. And it is, dialectically speaking, through such organised struggles for constitutional reforms (alongside other reforms) that radically democratic intentions are made. If radical democracy is the end goal, then the constant and ongoing democratic struggle for reforms is the means: its educational tool. All of which means that parliamentary struggles for constitutional reform have to go hand-in-hand with the construction of centres of bottom-up democratic power or else they will quickly reach a terminal roadblock and be forced into a hasty retreat, as was the case with the post-war welfare state and third-way centrism. Parliaments certainly have an important role to play in all of this but, given their limits, they must not be regarded as the endpoint of constitutional democracy. Without getting into too much detail, we can perhaps imagine networks of bottom-up, participatory workplace democracy and local democracy combined with more top-down, representative parliamentary parties; all operating as what Kivotidis calls “a complex arrangement of cogwheels”.<sup>153</sup>

Questions of constitutional litigation also fall within this framework of reform and revolution. The questions of when, how or even whether to engage with the courts are not, as Lukács explained, amenable to a set of general rules and cannot be answered in abstraction from the surrounding material circumstances.<sup>154</sup> No less a Marxist figure than Lenin was critical of legal fetishism but was also prepared to use the legal form when necessary.<sup>155</sup> But the dialectical materialist approach to reforms warns us that every conscious decision to engage with the depoliticised, abstract, and individualistic process of litigation comes with a potential cost to the broader democratic strategy. As Robert Knox argues, litigation might sometimes be necessary – it might sometimes be the right thing to do – but it can wind up legitimising a system that (as argued in Part Four) is heavily imbricated in the very problems we wish to resolve.<sup>156</sup> So, again, its use ought to be carefully calibrated and embedded in a broader strategy of revolutionary democratic change.

In summary, our present situation demands that we focus our scholarly attention on the question of how to constitutionalise and build bottom-up democratic power, rather than focusing on the importance of reforms purely *qua* technical fixes or palliatives. It also demands of us a clear-eyed focus on the material, not just the legal constraints that both shape and restrain constitutionalism, and how they might be overcome. For democracy to be possible, and for the polycrisis to be brought under control in a civilized way, we must imagine the end of capitalism. To return to Mark Fisher, with whom we started, it needs to be shown

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<sup>152</sup> Andre Gorz, ‘Reform and Revolution’ in Greg Albo and others (eds), *Class, Party, Revolution: A Socialist Register Reader* (Haymarket 2018) 12.

<sup>153</sup> Dimitrios Kivotidis (n 38) 246.

<sup>154</sup> Georg Lukács (n 26) 264.

<sup>155</sup> Evgeny Pashukanis, ‘Lenin and the Problems of Law’ in Piers Beirne and Robert Sharlet (eds), *Pashukanis: Selected Writings on Marxism and Law* (Palgrave 1980).

<sup>156</sup> Robert Knox, ‘Strategy and Tactics’ (2010) 21 *Finnish Yearbook of International Law* 193.

that for all its claims to hard-nosed realism, capitalism, whether advocated openly and accepted implicitly, is in fact “inconsistent or untenable”.<sup>157</sup> It is a contingent feature of human social development for which there is, in fact, a good and necessary *democratic* alternative.

### VII. Conclusion: On Legal Methodology

So far, I have treated dialectical materialism as a potent *method* – one that has enabled us to see the root cause of the democratic crisis and the broader polycrisis, that has given us a theory of constitutionalism shorn of the disciplinary walls of positivism, and that afforded us a glimpse of some possible futures and how we might struggle for a constitutionally democratic one. But is it really right to include it under the rubric of methodology?

For some advocates of dialectical materialism, it cannot possibly be regarded as such. The social ecologist Murray Bookchin, for example, regarded it as “an ongoing protest against the myth of methodology: notably, that the “techniques” for thinking out a process can be separated from the process itself”.<sup>158</sup> Similarly, for Adorno it is more than just a method of thought, rather it is “a specific structure which belongs to things themselves, and which for quite fundamental philosophical reasons must also become the measure of philosophical reflection itself”<sup>159</sup> -- less a methodological recipe imposed by the subject onto the object of reflection, and more “an attempt to let truth reveal itself”.<sup>160</sup> And Engels, quite famously, regarded dialectical materialism not as some kind of genius invention of the human mind but as a thing abstracted from the history of human society and *nature itself*<sup>161</sup>. Perhaps, then, an alternative way of approaching it is to use the language of scholarly *style* rather than method. This is Martti Koskenniemi’s favoured approach, for whom the notion of methodology has too much in common with a shopping-mall style of research, according to which academics pick up whichever brand of method suits their idiosyncrasies (or perhaps the requirements of funding bodies, upon whose approval academic promotion and research allowances depend) and then put it on display.<sup>162</sup>

Without wanting to sound too glib, it all depends on what is meant by “methodology”. For Noam Chomsky, who admits that he does not know what dialectical materialism is supposed to mean,<sup>163</sup> in its best formulations, it seems to be just another way of saying “thinking correctly”.<sup>164</sup> That seems like a good place to close. If methodology is about “thinking correctly”, then it captures precisely what this article has set out to achieve: to get us to think correctly about democracy, constitutionalism, law, and crisis. That task has never been so urgent as it is now.

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<sup>157</sup> Mark Fisher (n 1) 16.

<sup>158</sup> Murray Bookchin, *The Philosophy of Social Ecology: Essays on Dialectical Naturalism* (Black Rose Books 1996) 129.

<sup>159</sup> Theodor Adorno (n 44).

<sup>160</sup> *ibid.*

<sup>161</sup> Friedrich Engels, *Dialectics of Nature* (Well Red Publications 2012).

<sup>162</sup> Martti Koskenniemi, ‘Letter to the Editors of the Symposium’ (1999) 93 AJIL 351.

<sup>163</sup> Max Raskin, ‘Interview with Noam Chomsky’ <<https://www.maxraskin.com/interviews/noam-chomsky>> accessed 19 September 2025

<sup>164</sup> Richard Levins and Richard Lewontin, *The Dialectical Biologist* (Harvard University Press 1985) vii.