

Class Conflict, Democracy, and Revolution by Consent: Harold J. Laski on Marx and the Transformation of the Law

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ABSTRACT

This paper enquires into the relationship between democracy, law, and revolution in the Marxist works of Harold J. Laski (1893-1950). It is a helpful study to sketch the way in which British Socialists interpreted Marxian categories in the early twentieth century. Laski's theses on legal pluralism, the opposition of 'revolution' and 'counter-revolution', and the incompatibility between capitalism and democracy will be discussed by emphasising their interaction with his notion of 'revolution by consent'. I will also show that Laski's conception of law and revolution might shed light on his interpretation of the relationship between the economic structure and the politico-legal superstructure, and particularly on his thesis of the reciprocal influence of those two layers of society as giving crucial importance to democratic methods. These conclusions, in the end, might be profitably compared with some conventional readings of Marx's ideas about revolution, in order to examine and discuss their interpretive validity and stress their implications concerning the transformation of legal systems.

Keywords: *legal philosophy; history of political thought; Harold Laski; revolution; Marxism*

1. Introduction: revolution and the juridical in Laski's Marxist pivot

The importance of the theme of revolution in twentieth century political philosophy is undisputed, considering that radical mutations in political systems are crucial in understanding the operations and essence of politics.¹ This topic, however, is also

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1. Apart from such eminent interpreters of Marx and Engels as Lenin and Gramsci, the problem of revolution was famously delved into by prominent political scholars during the twentieth century, producing crucial works like those of Arendt and Schmitt. See e.g. VI Lenin, *The State and Revolution*, translated & edited by Robert Service (Penguin Books, 1993); Antonio Gramsci, *Prison Notebooks: Volume I*, translated by Joseph A Buttigieg & Antonio Callari, ed by Joseph A Buttigieg (Columbia University Press, 1992) First Notebook §44 at 136-37; Antonio Gramsci, *Prison Notebooks: Volume III*, translated by Joseph A Buttigieg & Antonio Callari, ed by Joseph A Buttigieg (Columbia University Press, 1992) Eighth Notebook § 236 at 378; Hannah Arendt, *On Revolution* (Penguin Books, 2006); Carl Schmitt, *The Theory of the Partisan: A Commentary/Remark on the Concept of the Political*, translated by Alfred Clement Goodson (Michigan State University Press, 2004). Another relevant perspective on revolution and political power is that proposed by Antonio Negri, *Insurgencies: Constituent Power and the Modern State*, translated by Maurizia Boscagli (University of Minnesota Press, 1999).

relevant to legal theory, since any theory of revolution may shed light on the *genetic and transformative process of law itself*, which is but the social process by means of which a specific order of meaning is produced, established, modified, and, ultimately, removed.² Revolution, in fact, has often been neglected by scholars engaged with the problems of law and the legal order, for it appears nothing other than a phenomenon of complete absence of the juridical. As the law is either what revolutionary acts demolish or, symmetrically, their normative outcome, legal science and legal theory tend to depict a *negative* relation between those two terms, thus displaying a logical opposition of the concept of revolution to that of legal order.³ A different—let us say *positive*—interpretation of such relation may be attempted by regarding the juridical not as the result of a transformative process, but *as the process itself*. Such a perspective seems, in fact, capable of shaking the tight connection between socio-political phenomena—including revolution—and the point of view of a specific legal order, by the understanding of law in its historicity.⁴

In this vein, the interlacement of revolution and law seems paramount in Marxist literature, as the problem of “*revolutionary practice*” (*umwälzende Praxis*) entails a reflection on the generative process of existing normative orders and a practical problem as to its destiny.⁵ The prominence of Marxist philosophy affected the British Socialist context no less than other political environments; the British movement, however, has been traditionally reluctant to engage in revolutionary practice and particularly fond of social-reform tactics.⁶ An interesting configuration of the relationship between law and revolution in Britain can be found in the works of English political theorist and socialist intellectual Harold J. Laski (1893-1950), who interpreted Marxism in such a way that it could form (or seem to form) a theoretical framework to promote the political operations of the Labour Party. Laski, in fact, was not only an academic and part of the British intellectual *milieu* during the interwar years, but also well-versed in

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2. This problem—which is intrinsically interlaced with that of constituent power—was specifically tackled by some of the most relevant intellectuals in the Italian legal science, particularly by Santi Romano, *Frammenti di un dizionario giuridico*, ed by Mariano Croce & Marco Goldoni (Quodlibet, 2019) at 261-74; Costantino Mortati, *La Teoria del potere costituente*, ed by Marco Goldoni (Quodlibet, 2020).
 3. As Romano noted, any revolution is irrefutably “illegal” (*antigiuridica*) whenever observed from the point of view of the legal order which that revolution aims to dismantle. Romano, *supra* note 2 at 264 [translated by author].
 4. This thesis was significantly supported—at least in my reading—by Harold J Berman, *Law & Revolution: The Formation of the Western Legal Tradition* (Harvard University Press, 1983).
 5. Karl Marx, “Theses on Feuerbach” in Karl Marx & Friedrich Engels, *The German Ideology: Part One*, ed by C J Arthur (Lawrence & Wishart, 1974) 121 at 121 [emphasis in original]. This is the famous phrase from the third *Thesis* on Feuerbach.
 6. As Pierson argues, in fact, this is deemed to be the main reason behind the difficulties Marxism had to face when intellectual groups like Hyndman’s Social Democratic Federation (1881) endeavoured to transplant it into English politics. See Stanley Pierson, *Marxism and the Origins of British Socialism: The Struggle for a New Consciousness* (Cornell University Press, 1973) at 62. Circumstances such as those led Hyndman himself to revise his doctrine and opt for a ‘gradualist’ approach: see H M Hyndman, *The Historical Basis of Socialism in England* (Kegan Paul, Trench, 1883).

political activism among the ranks of Labour.⁷ As we shall see, Marxism played a central role in Laski's search for a political theory able to adequately support the claims of Labour and the self-comprehension of its historical mission.

In carrying on this intellectual operation, however, Laski put forward a peculiar reading of Marxian concepts and, therefore, Marxist philosophy: such peculiarities, in all likelihood, have to do with his Labour partisanship and stem, in general, from the generally British non-revolutionary and non-conflictual frame of mind. It is not by chance that Laski almost never used the word 'dialectic' in his writings, which clearly suggests that in Laski's reading, Marxist thought is to be found transformed and divested of most of its original features. This work will analyse Laski's interpretation of Marxism, starting from the problem of revolution that interweaves his conception of law and the state, this way allowing an understanding of the implications of his reading of class conflict, democracy, and the withering away of the state-order. In particular, it will be shown how Laski's deployment of Marxian categories epitomises the positive relationship between law and revolution, as the juridical is, in Laskian terms, both the object and the means by which the revolutionary process takes place. To this end, I will sketch Laski's theory of revolution by stressing, on the one hand, its connection with his pluralistic theory of law and, on the other hand, its overlap with his thesis of incompatibility between capitalism and democracy.

2. "The One" and "the Many": Harold Laski as a Socialist, Pluralist, and anti-Idealist

Laski's reading of Marx and Marxism is best dealt with in connection with the rest of his work, which explains both his approach to dialectic thought and his peculiar conception of law. A quick sketch of Laski's early writings, therefore, is priorly necessary in order to see how his legal theory reacts to his Marxist pivot, which owes much to the British intellectual movements that had a deep influence on his political thought. In fact, it is well-known that England experienced a rich debate in political philosophy between the 1870s and the 1940s, involving idealism, historicist pluralism, and a number of variants of Socialism.⁸

7. As a matter of fact, Laski's political and intellectual journey was enquired and reconstructed by many scholars who drew attention to his legacy in British politics, political science, and political theory. See especially Kingsley Martin, *Harold Laski (1893–1950): A Biographical Memoir* (Viking Press, 1953); Granville Eastwood, *Harold Laski* (Mowbrays, 1977); Isaac Kramnick & Barry Sheerman, *Harold Laski: A Life on the Left* (Hamish Hamilton, 1993); Michael Newman, *Harold Laski: A Political Biography* (Macmillan, 1993).

8. The importance of this debate is well demonstrated by copious literature in political studies, which discusses both the themes of British Idealism and the switch to historicism, pluralism, and socialism. On British Idealism, see e.g. Richard Bellamy, "A Green Revolution? Idealism, Liberalism and the Welfare State" (1984) 5:2 *Bulletin Hegel Society Great Britain* 34; William H Fairbrother, *The Philosophy of Thomas Hill Green* (Cambridge Scholars Press, 2002); Claudio Palazzolo, *Idealismo e liberalismo—la filosofia pratica di Th Hill Green* (SEA, 1983); Melvin Richter, *The Politics of Conscience: T. H. Green and His Age* (Harvard University Press, 1964). On the switch to historicism, pluralism, and socialism, see e.g. Ernest Barker, *Political Thought in England: 1814 to 1914* (Oxford University Press,

As a Socialist, Laski developed his social and political beliefs in close contact with two major groups operating in Great Britain in the early twentieth century: Guild Socialism and the Fabian Society. During his years as a student, he was primarily attracted to the Guildist approach,⁹ which had G.D.H. Cole as its prominent scholar and promoter, and its project of establishing a pluralistic political system arising from the organisation of National Guilds stemming from the Trade Unions.¹⁰ Even after shifting to Fabianism during the 1920s, thus supporting the idea of a decisive controlling authority over the plurality of associations, he never abandoned—as I will show further in this paper—his attitude to pluralism as a truthful approach to social analysis.¹¹

It was English political pluralism, in fact, that particularly affected the early Laskian theoretical perspective on law, which notably stemmed from the problem of legal personality.¹² On this matter, Laski was primarily influenced by F.W. Maitland and J.N. Figgis, who first argued that groups and associations were juridical persons, which means legal subjects, despite the will of the state; from this thesis they then derived the idea of legal power originally belonging to these groups, which could issue norms of the same kind as the legal commands of the state.¹³ Laski, indeed, agreed with this thesis, so that he could use it to contrast the “empty formalism” of the theory which acknowledged reality only in the

1951); Mark Bevir, *The Making of British Socialism* (Princeton University Press, 2011); Stefan Collini, *Liberalism and Sociology: L. T. Hobhouse and Political Argument in England 1880-1914* (Cambridge University Press, 1979); Rainer Eisfeld, *Pluralismus zwischen Liberalismus und Sozialismus* (Kohlhammer, 1972); Paul Q Hirst, ed, *The Pluralist Theory of the State: Selected Writings of G.D.H. Cole, J.N. Figgis, and H.J. Laski* (Routledge, 1989); Cécile Laborde, *Pluralist Thought and the State in Britain and France, 1900-25* (Macmillan Press, 2000); Henry Meyer Magid, *English Political Pluralism: The Problem of Freedom and Organisation* (AMS Press, 1966); Pierson, *supra* note 6.

9. See Kramnick & Sheerman, *supra* note 7 at 71-72.
10. Cf Arthur Joseph Penty, *The Restoration of the Guild System* (Swan Sonnenschein, 1906) at 28; GDH Cole, *Guild Socialism: Re-stated* (Leonard Parsons, 1920) at 84-85.
11. See Bernard Zylstra, *From Pluralism to Collectivism: The Development of Harold Laski's Political Thought* (Van Gorcum, 1968) at 95-102; Claudio Palazzolo, *La libertà alla prova. Stato e società in Laski* (ETS, 1979) at 111-19.
12. The early twentieth-century debate about legal personality is well known, as it emerged through a number of judicial cases involving associations with no formal attribution of personality by the state. On one side of the battlefield stood those who professed that groups were endowed with personality as long as the state would grant it (concession theory, or fictitious personality); whereas on the opposite side, a number of authors—such as Gierke, Maitland, and Figgis—promoted the idea that associations had their personality by virtue of the fact of organization, regardless of the state's will (real personality thesis). On this matter, see Leicester C Webb, “Corporate Personality and Political Pluralism” in *Legal Personality and Political Pluralism*, ed by Leicester C Webb (Melbourne University Press, 1958) 45; David Runciman, *Pluralism and the Personality of the State* (Cambridge University Press, 1997).
13. See Frederic William Maitland, “Translator's Introduction” in Otto Gierke, *Political Theories of the Middle Age* (Cambridge University Press, 1900) vii at xxvi; John Neville Figgis, *Churches in the Modern State* (Longmans, Green, 1913) at 70-71. Delving into Maitland's and Figgis' theories of personality and legal pluralism, and their relationship with Laski, goes far beyond the scope of this paper. For this reason, I would recommend reading David Nicholls, *The Pluralist State* (Macmillan, 1975); Victor M Muñoz-Fraticelli, “The Problem of Pluralist Authority” (2014) 62:3 *Political Studies* 556. I have dealt with this subject in Pier Giuseppe Puggioni, “I gruppi sociali fra politica e diritto. Problemi giuridici nel pluralismo di F. Maitland, J. Figgis e H. Laski” (2021) 51:2 *Materiali per una storia della cultura giuridica* 515.

personality of the state.¹⁴ However, he soon came to recognise the essentialism in the pluralist conception of real personality, which seemed to him unable to realise that corporate personality was just an “idea” that united group-members on the basis of their “*acceptance*” of the group-purpose.¹⁵ Such a version of pluralism appears, moreover, consistent with Laski’s theory of legal power based on allegiance, as well as with his idea of revolution by consent.¹⁶

Laski’s appreciation of the English pluralists ought to be regarded in the light of his rejection of the monistic theory of the state, which he believed was supported by British Idealism.¹⁷ He accordingly displayed harsh criticism toward the tradition of the nineteenth century British Idealists who were responsible for the reception of Hegelian philosophy in Great Britain, although he drew many of his ideas about liberty and rights from T.H. Green and B. Bosanquet.¹⁸ The pluralistic theory that Laski proposed in his early writings was, in fact, constructed to oppose Hegelianism, which in his reading was the leading philosophical perspective to affirm the unity of the state, supporting, by consequence, its monopoly over the legal and social order.¹⁹ His pluralism, claiming to come from the assumption of “the Many,” was meant to produce a radical change in political analysis from the Hegelian perspective, which assumed “the One” to come “before the Many.”²⁰

In so doing, however, Laski also refuted Hegelian dialectic, both in its metaphysical principles and its methods of analysis, which prevented him from reading the course of history by seeking to encompass events in a total order of meaning. The consequences of his choice of field were, in a sense, bound to affect his construction of pluralism as a competition of groups for the allegiance of the masses, as well as his notion of revolution and class-conflict, which is—as will be shown in the following sections—mostly idiosyncratic if compared to the traditional Hegelian-Marxist analysis.²¹

14. Harold J Laski, “The Personality of Associations” in *The Foundations of Sovereignty and Other Essays* (Harcourt Brace, 1921) 139 at 144.

15. Harold J Laski, “Morris Cohen’s Approach to Legal Philosophy” (1947) 15:3 U Chicago L Rev 575 at 580 [emphasis added]. As a matter of fact, Laski revised his theory of personality in the 1920s: see Harold J Laski, *A Grammar of Politics*, 4th ed (George Allen & Unwin, 1938) at 32.

16. For both, see Section 3 of this paper.

17. See Harold J Laski, “The Personality of the State” (1915) 101 The Nation 115 at 115; Harold J Laski, *Studies in the Problem of Sovereignty* (Yale University Press, 1917) at 3 [Laski, *Problem of Sovereignty*].

18. I have previously dealt with the relationship between British idealism and Laski’s theory of rights: see Pier G Puggioni, “Consent, Sovereignty, and Pluralism: Harold Laski’s Doctrine of Allegiance in British Legal Philosophy” (2022) 35:4 Ratio Juris 345 at 348-50. See also Peter Lamb, “Laski on Rights and the Problem of Liberal Democratic Theory” (1999) 19:1 Politics 15 [Lamb, “Laski on Rights”].

19. The opening essay of Laski’s first book significantly begins with the following statement: “Hegelianwise, we can not avoid the temptation that bids us make our State a unity. It is to be all- absorptive. All groups within itself are to be but the ministrants to its life; their reality is the outcome of its sovereignty, since without it they could have no existence.” Laski, *Problem of Sovereignty*, *supra* note 17 at 1.

20. *Ibid* at 5.

21. Whereas the early Laski developed a philosophy of history broadly hinging on William James’s pragmatism and “radical empiricism,” this way supporting the idea of a variety of relations in concrete experience that could never be absorbed or included in a whole, the

3. Competing orders: law and revolution in Laski

Laski first approached the topic of revolution in the early 1930s, as soon as he realised that the Fabian strategy he had supported thus far could not pave the way to any substantial change in the structure of society, and could, as a matter of fact, ultimately *perpetuate* “a regime of privilege in a different and, indeed, less desirable form than the old.”²² At that time, Laski thought instead that the key to interpreting historical transformations and the role of Socialism in Britain could be found in Marx’s theory (whose economic and social assumptions he had harshly criticised in the previous decade).²³ Rediscovering Marx drove Laski to conceive historical materialism as an indispensable tool for political and legal theory,

Hegelian approach would lead the analysis of historical phenomena the opposite way. William James, *Essays in Radical Empiricism: A Pluralistic Universe* (Longmans Green & Co, 1943) at 41. See also *ibid* at 321; Jo-Anne C Pemberton, “James and the Early Laski” (1998) 19:2 *History Political Thought* 264. From a dialectical point of view, in fact, it is shown that the meaning of social struggles, like the “great revolutions” or the master-servant relationship, becomes intelligible by reference to a total meaning of action, which is ‘reason’. GWF Hegel, *Lectures on the Philosophy of World History. Introduction: Reason in History*, translated by HB Nisbet (Cambridge University Press, 1975) at 41; see also GWF Hegel, *Phenomenology of Spirit*, translated by AV Miller (Oxford University Press, 1977) at 111–19. On Hegel and revolution, as well as the most recent research, see Richard Bourke, *Hegel’s World Revolutions* (Princeton University Press, 2023); Terence Renaud, “Hegel and the Revolutions Revisited” (2016) 13:2 *Modern Intellectual History* 525; Alain Badiou, “Hegel’s Master and Slave” (2017) 4:1 *Crisis & Critique* 35; Richard Bourke, “Hegel and the French Revolution” (2023) 49:4 *History European Ideas* 757; Jonathan Bowman, “Hegel’s master-slave dialectic and the Haiti revolt (1791-1804): Transatlantic print chronicles of race in an age of colonial market exchange” (2023) *Philosophy Soc Criticism* 1.

22. Harold J Laski, *The State in Theory and Practice* (George Allen & Unwin) at 322 [Laski, *Theory and Practice*]. See also Palazzolo, *supra* note 11 at 221. According to the Fabians, the program of social reforms should pursue the policy of ‘gradualness’, which included, for instance, providing compensation for the owning class in order to appease them whenever dispossessed of their private property by a Socialist government. See e.g. G Bernard Shaw, “Transition” in G Bernard Shaw, ed, *Fabian Essays in Socialism*, 2d ed (Ball, 1911) 157 at 175-76; Laski, *A Grammar of Politics*, *supra* note 15 at 533. The Fabian Society, however, needed to seek for new philosophic foundations, which it could achieve, as Laski argued in the 1930’s, by “relearning the significance of Marx.” Harold J Laski, “The Fabian Way” (1934) 41:1 *Current History* 33 at 38.
23. In his essays on Karl Marx and Communism, Laski opposed Marx’s economic theory as to the concept of ‘value’: see Harold J Laski, *Karl Marx: An Essay* (Allen & Unwin, 1922) at 27-29 [Laski, *Karl Marx*]. Marx’s theory seemed—at least in Laski’s reading—not to take the connection between utility and need, as well as the concept of marginal costs, into account; whereas Marx, as is known, starts the theory of *Capital* with the crucial distinction between ‘exchange value’ and ‘use value’, concerning specifically the aptitude of a certain thing to “satisf[y] human wants of some sort or another.” Karl Marx, *Capital: A Critical Analysis of Capitalist Production*, translated by Samuel Moore & Edward Aveling, ed by Frederick Engels (Appleton & Co, 1889) at 1 [Marx, *Capital*]. On the political side, Laski rejected Marxism at least in the interpretation of it as a “strictly determinist” theory. Peter Lamb, *Harold Laski: Problems of Democracy, the Sovereign State, and International Society* (Macmillan, 2004) at 28; see also Martin Loughlin, “Laski’s Materialist Analysis of the British Constitution” in Marco Goldoni & Michael A Wilkinson, eds, *The Cambridge Handbook on the Material Constitution* (Cambridge University Press, 2023) 64 at 65. As we shall see, Laski remained a sceptic throughout his life about the convenience of violent revolution, as he doubted, mostly in his early writings, that this kind of event could bring about any enduring social order: see Laski, *Karl Marx*, *supra* note 23 at 37; Harold J Laski, *Communism* (Thornton Butterworth, 1927) at 166.

insofar as it could enable any “social philosopher” to see beyond the veil of mysticism which covers “the nature and function of the State,” “legal institutions,” and the “development of philosophical systems.”²⁴

Now Laski pinpointed two faces of Marxist philosophy: He appreciated its relevance as a “philosophy of history,” whereas he rejected it as a “social tactic” or “strategy,”²⁵ as it seemed to be excessively dependent on violence and proletarian dictatorship.²⁶ Whilst the latter aspect will be discussed in the following sections, it seems appropriate to focus immediately on the former, so far as the problem of revolution can be understood with respect to Laski’s approach to Marx’s philosophy of history. It is in the link between Marxian categories and the concept of historical change that one comes across Laski’s notion of ‘revolution’. This concept is tightly connected to that of “relations of production,” which represent, for Laski, “the relations involved in the way in which men earn their living,” and are, therefore, the main category upon which the interpretation of politics, law, and history should be grounded.²⁷

Interestingly, Laski did not provide any specific definition of ‘revolution’, although it can be deduced from the meaning Laski attributes to the opposite movement or practice: counter-revolution.²⁸ The specific “purpose” of counter-revolution is “to preserve a system of productive relations now inconsistent with increasing material welfare,”²⁹ which compels its promoters to “adapt capitalist society to the conditions of modern technology, of a world-market, of a division of labour which has made the collectivist organization of social relationships inevitable.”³⁰ By contrast, *revolution* implies a *fundamental change* in those relations of production and, particularly, a “new conception of property,”³¹ which aims, according to Laski, to “release new and immense sources of production.”³² Therefore, since revolution is a process that brings about the transformation of the mode of production, any other mutation that leaves economic relations

24. HJ Laski, “A Key to Communism”, Book Review of *Marxism and Modern Thought* by NI Bukharin (1935) 10:230 *New Statesman & Nation* 102 at 102.

25. Harold J Laski, “The Value and Defects of the Marxist Philosophy” (1928) 29:1 *Current History* 23 at 23 [Laski, “Value and Defects”].

26. *Ibid.* See also Laski, *Communism*, *supra* note 23 at 188

27. Harold J Laski, “Political Theory and the Social Sciences” in Institute of Sociology, ed, *The Social Sciences. Their Relations in Theory and in Teaching* (Le Play House Press, 1936) 115 at 120 [Laski, “Political Theory”]. The obvious reference to Marx’s *Zur Kritik der politischen Ökonomie* (1859) seems, however, to underlie Laski’s misinterpretation of the ‘genetic’ relationship between structure (*Struktur*) and superstructure (*Überbau*), which will be discussed in Section 4.

28. Even the term ‘counter-revolution’ derives from Laski’s reading of Marx and Engels, for he references Karl Marx & Friedrich Engels, *Germany: Revolution and Counter-Revolution* (George Allen & Unwin, 1896): see Harold J Laski, “Introduction to The Communist Manifesto” (1999) 27:1/4 *Social Scientist* 49 at 110.

29. Harold J Laski, *Reflections on the Revolution of Our Time* (George Allen & Unwin, 1943) at 182 [Laski, *Reflections*].

30. *Ibid* at 252.

31. Harold J Laski, “The Decline of Liberalism” (LT Hobhouse Memorial Trust Lecture No 10 delivered at Canterbury Hall, London School of Economics, 24 May 1940), (Oxford University Press, 1940) at 22.

32. Harold J Laski, *Where Do We Go From Here?: An Essay in Interpretation* (Penguin Books, 1940) at 127.

intact cannot be deemed ‘revolutionary’.³³ In this respect, Laski appears close to Marx’s linkage of “real revolution” with the collision between the forces of production and the existing “productive forms” in that society.³⁴

This theory of revolution constantly interlaces with Laski’s idea of law, which is a key concept to understand his political theory insofar as he conceived political obligation—i.e., the problem of due obedience to political groups and associations—and juridical obligation as working through one and the same mechanism.³⁵ In fact, both the legitimacy of political authority and the validity of law are grounded, for Laski, on the “allegiance,”³⁶ or “consent,”³⁷ of the individual: This means that individuals are bound to obey a determinate social order insofar as they recognise that their obedience is due. “The roots of valid law,” he states explicitly, “are, and can only be, within the individual conscience.”³⁸

Two observations seem particularly noteworthy about Laski’s notion of obligation. First, this principle of recognition, which Laski calls a “reservoir of individualism” and “Athanasius-element,”³⁹ leads the theory of obligation either to a fallacy, by deriving normativity from empirical facts, or to a tautology, as it concludes that the law is perceived obligatory only by those who believe themselves to be obligated.⁴⁰ Secondly—though no less importantly—by arguing that any group is potentially able to collect individual allegiances, Laski’s analysis implicates a “pluralistic theory of law,” as every “association,” whether the state or another, becomes a *legal order* whenever its authority is recognised by a large part of the mass of individuals.⁴¹

33. In this sense, moreover, Laski stressed that the difference between ‘revolution’ and ‘social reform’ lies in the fact that only the revolutionary movement seeks to break “structure of a class-society,” which social reform “must retain.” Harold J Laski, “On the Strategy of Socialism” (1936) 5 *Left Book News* 93 at 93.

34. Karl Marx, *The Class Struggles in France: 1848 to 1850* (Progress, 1972) at 126 [emphasis removed]. For Marx, indeed, any revolution which is only “political” and not “radical” is but a “partial” one “that leaves the pillars of the edifice standing.” Karl Marx, *Critique of Hegel’s Philosophy of Right*, translated by Annette Jolin & Joseph O’Malley (Cambridge University Press, 1972) at 139 [Marx, *Critique*.] See also Alberto Burgio, *Il sogno di una cosa. Per Marx* (Derive Approdi, 2018) at 457–58.

35. Elsewhere I discussed some implications of Laski’s thought as to legal philosophy, by attempting a contextualisation of the Laskian theory of juridical obligation in the development of British jurisprudence: see Puggioni, *supra* note 18 at 353–57.

36. Laski, *Problem of Sovereignty*, *supra* note 17 at 15.

37. Harold J Laski, *Authority in the Modern State* (Yale University Press, 1919) at 30 [Laski, *Modern State*].

38. Laski, *Theory and Practice*, *supra* note 22 at 82.

39. Laski, *Modern State*, *supra* note 37 at 30, 314. See also Laski, *A Grammar of Politics*, *supra* note 15 at 248. Laski’s referring to the “Athanasius-element” alludes, in all likelihood, to the celebrated story of Pope Athanasius of Alexandria, also known as Athanasius *contra mundum* (“against the whole world”), who struggled to defend the thesis of Christ’s full deity, by opposing the spread of Arianism in Christian dogmatic theology. See C S Lewis, “Introduction” in Athanasius, *On the Incarnation* (St Vladimir’s Orthodox, 1953) 3; JND Kelly, *Early Christian Doctrines* (Adam & Charles Black, 1958) 240–47.

40. “The law may resolve,” Laski claims, in a “decision” taking place “separately in the mind of each member of the state.” Harold J Laski, “Historical Introduction” in Junius Brutus, *A Defence of Liberty Against Tyrants* (Peter Smith, 1963) 1 at 56.

41. Harold J Laski, “Law and the State” in Harold J Laski, *Studies in Law and Politics* (George Allen & Unwin, 1932) 237 at 274, 273.

Despite its being discussed in prominent literature, Laski's legal pluralism does not seem—either logically or practically—a *priori* inconsistent with a Marxian frame of reference.⁴² While reflecting on the interaction between private property and humanness, Marx himself argued that “*human reality*” is as “highly varied as the *determinations* of *human essence* and *activities*.”⁴³ The significance of human reality (and, therefore, human relationships) which exist in capitalist society is but one of many possible determinations of humanness.⁴⁴ Therefore, Marx seems to argue, human beings can be “human” in several ways, depending on what kind of order determines their essence and activity. However, this view is hardly compatible with Laski's individualism, which assumes that every single subject is capable of determining for themselves the order to which they belong, rather than being determined by that order.⁴⁵

Such friction notwithstanding, Laski's attempted adoption of Marxian vocabulary and concepts seems to leave room for pluralism, which may in turn lend a helping hand to better understand Laski's own approach to Marxist political and legal theory. According to Laski, in fact, the law in capitalist society is essentially an instrument of class domination, as is the state;⁴⁶ however, the structure of both

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42. Among the most notable readers of Laski was Herbert Deane, who maintained the thesis of the incompatibility between pluralism and Marxism: see Herbert A Deane, *The Political Ideas of Harold J. Laski*, 2d ed (Archon Books, 1972) at 96; Enzo Sciacca, “Alcune osservazioni sul pensiero di H. Laski” (1961) 38 *Rivista internazionale di filosofia del diritto* 708 at 714-15; Palazzolo, *supra* note 11 at 112. Laski's ‘transition’ from pluralism to state-interventionism and Marxism was, on the other hand, approached with more indulgence by Zylstra, *supra* note 11 at 58-93, whilst other scholars saw substantial continuity in Laski's political reflection: see WH Greenleaf, “Laski and British Socialism” (1981) 2:3 *History Political Thought* 573; Lorenzo Pacinotti, “Revolution by Consent. Un'ipotesi di lettura del Laski giurista” (2024) 53:2 *Quaderni fiorentini per la storia del pensiero giuridico moderno* 547 at 591.
43. Karl Marx, “Third Manuscript” in Karl Marx & Friedrich Engels: *Collected Works Volume 3*, translated by Martin Milligan & Dirk J Struik (2010, Lawrence & Wishart) 290 at 300 [emphasis in original]. This is Marx's own footnote-observation on his *Third Manuscript*.
44. As, in fact, has been noted: “A mode of production embodies both a particular *programme* of production (a way of producing on the basis of a particular technology and productive division of labour) and ‘a specific, historically occurring set of social relations through which labour is deployed to wrest energy from nature by means of tools, skills, organization and knowledge’ at a given phase of their development, and through which the socially produced surplus is circulated, distributed and used for accumulation or some other purpose.” Eric Hobsbawm, “Marx and History” (1984) 0:143 *New Left Review* 39 at 46 [emphasis in original].
45. Actually, Laski proves himself aware that social groups, such as unions and churches, tend to exert prominent influence over the life and mind of the individual: see e.g. Laski, *Authority in the Modern State*, *supra* note 37 at 65. However, he did believe that men were ultimately able to grant and withdraw their consent as concerns any kind of group-authority: see Palazzolo, *supra* note 11 at 63. According to Muñoz-Fraticelli, the individualistic premise of Laski's pluralistic theory of law “denies the authority of the state for reasons that equally deny the authority of associations, effectively endorsing philosophical anarchism and rendering pluralism superfluous.” Muñoz-Fraticelli, *supra* note 13 at 570. This interpretation, however, seems to ignore the fluidity of Laski's notion of allegiance, which implies that the influence of each group on the individual can vary in degree and extent, in this way modifying the spectrum of accepted legal authorities. Individual acceptance, in fact, depends on the individual's will, which is partially determined by groups in order to preserve their authority. This problem, however, will be better discussed in the final section along with its most relevant implications (see Section 6, below).
46. In this respect, therefore, Laski was closer to Lenin's conception of the state as an organ of class domination, rather than the conception of it as a “parasitic organism.” Lenin, *supra* note

of these institutions, by virtue of the pre-eminence of liberal-capitalist material interests, is not their necessary form.⁴⁷ The state—though the same might be said of the law—is for Laski “too much an historic category not to change its nature with the advent of new needs,” which means that the legal and political order can take a number of configurations.⁴⁸

From this perspective, the opposition of revolution and counter-revolution can be interpreted as a *competition* of conflicting orders, fighting to affirm their principles over each other. Laski argued, in fact, that the “competition of ideals for survival” involves the struggle between different and incompatible “claims of right which seek for realization” and are “‘implicated’ in the class-relation.”⁴⁹ The classes’ attempt to *readjust* those relations “by conquest of the state,” therefore, brings about the struggle to enforce new claims of right or, so to speak, some kind of order previously unknown.⁵⁰ In this sense, Laski’s pluralistic approach to revolution looks somewhat similar to Santi Romano’s legal conception of revolutionary action (*rivoluzione*), which although pronounced illegal (*antigiuridico*) by the law of the state, is by itself “an ordered movement regulated by its own law (*movimento ordinato e regolato dal suo proprio diritto*).”⁵¹ Revolution implies the removal of such order and the establishment of a new one, which competes with the former for the “allegiance of the masses.”⁵²

With this in mind, it can be observed that the interaction between pluralism and Marxism in Laski’s thought leads into one of the most relevant questions in Marxist legal philosophy, i.e., that of the disappearance or permanence of any form of legal regulation in the classless society. In fact, Marx attacked the supremacy of “*equal right*” as “in principle” and “in practice” nothing but “*bourgeois right*,” although he did not speak about the inexistence of any form of

1 at 9, 27. See also Richard N Hunt, *The Political Ideas of Marx and Engels*, vol 1 (Macmillan, 1975) at 124-31; Richard N Hunt, *The Political Ideas of Marx and Engels*, vol 2 (Macmillan, 1984) at 3-6, although his idea that state-institutions may be used to transform the relations of production inevitably implies that their activity can be, to a certain extent, autonomous of class interests. It may be argued, after all, that the Marxist theory of the state considers both the dependence of the organ on the dynamics of class domination and its partial independence of the ruling class: see William Clare Roberts, *Marx’s Inferno: The Political Theory of ‘Capital’* (Princeton University Press, 2016) at 213-14.

47. Laski argued unambiguously that the institutions of the state “are shaped to the purposes of those ends,” namely “the affirmation of the right of the property-owner to be protected against arbitrary interference in the enjoyment of his property.” Harold J Laski, *Parliamentary Government in England: A Commentary*, 8th ed (George Allen & Unwin, 1968) at 20-21. He also maintained that “it is the interest of the capitalist which gives shape and colour to legal doctrine.” Harold J Laski, *Democracy in Crisis*, 2d ed (The University of North Carolina Press, 1935) at 139.
48. Harold J Laski, “The Pluralistic State” in Harold J Laski, *The Foundations of Sovereignty and Other Essays* (Routledge, 1997) 232 at 248.
49. Laski, *Theory and Practice*, *supra* note 22 at 120.
50. *Ibid* at 120. In this view it seems by no means inappropriate to interpret Laski’s clash of revolution and counter-revolution as a conflict between “democratic rights” and “capitalist rights.” Lamb, *supra* note 18 at 18-19.
51. Romano, *supra* note 2 at 265 [translated by author].
52. Harold J Laski, “The Position and Prospects of Communism” (1932) 11:1 *Foreign Affairs* 93 at 102 [Laski, “Position and Prospects”].

‘right’ at all in the Communist society.⁵³ This problem, however, will be better dealt with respecting Laski’s interpretation of the withering-away theory in Section 5.

4. The reciprocity between the economic base and legal superstructure

The relevance of law in Laski’s theory of revolution lies not only in its being the ‘object’ of revolution—namely, the order that *is changed* through such a process; the legal device is also necessary (though not sufficient by itself) for the revolutionary process to take place. Revolution, for Laski, may occur either “by violence” or “by consent,” although in any case it should be able to rewrite material—or economic—relations only *through* the “re-definition” of legal relations.⁵⁴ This particular argument deserves a closer look in connection with the problem of the interaction between base and superstructure, which Laski did not approach by using Marx’s vocabulary, even though he patently tried to take on his categorisation.

To some extent, however, Laski seems to misinterpret Marxism—possibly on purpose, as it will be shown at the end—precisely on the relationship between *Struktur* and *Überbau*. According to Laski, in fact, the politico-legal sphere represented by the state is constituted to the end of *protecting* the relations of productions: “if we assume that the relations of production are fundamental . . . therefore the actions of the state will, at any given time, be used to maintain and promote [their] implications, legal and other.”⁵⁵ In looking at the role of the political and the juridical in this way, Laski’s theory simplifies and perhaps trivialises Marx, who conceived the relationship between the “economic structure of society” and the “legal and political superstructures” with more complexity than Laski suggests—that, in fact, it is not a relationship of “protection” by the latter to the benefit of the former: it is instead a *determination* relationship, where *Überbau* generates from *Struktur*, and only in this sense gives stability to the underlying material relations.⁵⁶

Productive relations determine the content and matter of legal and political relations, which in turn constitute productive relations by giving them specific

53. Karl Marx, *Critique of the Gotha Programme* (Dodo Press, 2009) at 9 [emphasis in original] [Marx, *Gotha Programme*]. In the same vein, Laski put forward a tenacious critique of the liberal-bourgeois notion of ‘equality’, as he was convinced that the concrete development of legal power in any social reality could not neglect substantive equality as the basis of consent: see Harold J Laski, “A Plea for Equality” in Harold J Laski, *The Dangers of Obedience and Other Essays* (Harper & Brothers, 1930) 207 at 230. Such a feature makes this conception of law and consent particularly akin to the modern conception of the foundation of power, which drew from classic Greek and Roman philosophy the theme of the acceptance of authority and linked it to the idea of equality among individuals: cf Alexander Passerin d’Entreves, *The Notion of the State: An Introduction to Political Theory* (Oxford University Press, 1967) at 197-99.

54. Laski, *Democracy in Crisis*, *supra* note 47 at 193, 218.

55. Laski, “Political Theory”, *supra* note 27 at 120.

56. Karl Marx, *A Contribution to the Critique of Political Economy*, translated by NI Stone (International Library, 1904) at 11, 10 [Marx, *Critique of Political Economy*].

shape and enforcement. Legal relations, therefore, both originate from materiality and provide normative constitution for it. The argument of the reciprocal determination of structure and superstructure is one of the most prominent in Marxist literature.⁵⁷ Along these lines, Antonio Gramsci famously promoted the idea of a “necessary reciprocity between structure and superstructures,” whose continuous interaction formed a “historical bloc.”⁵⁸ During the 1960s, issues such as these were tackled in a different way by Louis Althusser and his analysis of *contradiction*. In a renowned work of his, Althusser argued that fractures in social unity derive from an “accumulation of contradictions,” which depend not only on productive relations, but also on “superstructures, instances which derive from it, but have their own consistency and effectivity.”⁵⁹

Upon closer inspection, Laski may be situated along this line of thought, as he assumed that revolution could succeed only when its supporters were able to modify the legal order. This conviction is crystal-clear when he claims that, even though “the social superstructure is rooted in . . . economic foundations,” so that the former depends on the latter, nonetheless “any given system of economic relationships will require political and social forms to develop all that is inherent in it.”⁶⁰ This means that the “social forms” constituted by law will in turn influence their material basis: “the law” Laski specified, “will *define* the property-relations that correspond to its implications,” in order to give shape to—and perpetuate—their historical substance.⁶¹ “Revolution is the capture of the state by those who

57. See e.g. Hugh Collins, *Marxism and Law* (Oxford University Press, 1982) at 77-93; Eugenio Rippepe, *Alla ricerca della concezione marxista del diritto. Con un'appendice in tema di crisi nel e del marxismo* (Giappichelli, 1987) at 209-76.

58. Gramsci, *Prison Notebooks: Volume III*, *supra* note 1, Eighth Notebook, § 182 at 340. According to Gramsci, the ensemble of the superstructures “reflects the ensemble of the social relations of production” (*ibid*), and yet they represent the “form” covering the economic “content,” as those “material forces would be historically inconceivable without form” (*ibid*, Seventh Notebook, § 21 at 172). This is acknowledged as one of the most controversial and debated points in Gramsci’s thought: see RM Cox, “Gramsci, Hegemony and International Relations: An Essay in Method” in James Martin, ed, *Antonio Gramsci: Critical Assessments of Leading Political Philosophers, Volume 4* (Routledge, 2001) 357 at 363-65; Panagiotis Sotiris, “Gramsci and the Challenges for the Left: The Historical Bloc as a Strategic Concept” (2018) 82:1 *Science & Society* 94. Interestingly, Laski’s thought and intellectual itinerary has been associated to Gramsci’s as to the conviction that the critique of bourgeois ideology is necessary to promote the interests of the working class: see Peter Lamb, “Employing Gramsci in Support of Laski on the Problem of British Idealism” (2012) 14:3 *British J Politics & Intl Relations* 477; see also Krannick & Sheerman, *supra* note 7 at 550.

59. Louis Althusser, *For Marx*, translated by Ben Brewster (Verso, 2005) at 99-100, where he deployed the concept of “overdetermination” [*surdétermination*] (*ibid* at 101). See Steven B Smith “Althusser and the Overdetermined Self” (1984) 46:4 *Rev Politics* 516; Andrew Levine, *A Future For Marxism: Althusser, the Analytical Turn and the Revival of Socialist Theory* (Pluto Press, 2003) at 110; Warren Montag, “The Threat of the Outside: Althusser’s Reflection on Law” in Laurent de Sutter, ed, *Althusser and Law* (Routledge, 2013) 15 at 17; Geoff Pfeifer, *The New Materialism. Althusser, Badiou, and Žižek* (Routledge, 2015) at 45.

60. Laski, *Theory and Practice*, *supra* note 22 at 109.

61. *Ibid* [emphasis added]. This peculiar relationship between materiality and law, as Laski seemingly conceived it, has been addressed as an “interweaving reciprocity between all the different factors of any culture- pattern.” Zylstra, *supra* note 11 at 138. Zylstra, however, points out the “primacy of the economic factor” in Laski (*ibid*). I believe, on the contrary, that the

cannot find the satisfaction of their demands within the legal postulates maintained by the state at any given time,” and such *capture* of the state-power is aimed at the “re-definition of its legal postulates in order to effect a response” to those demands that the supporters of revolution deem satisfactory.⁶² Revolution, from this point of view, is the process of transforming the relations of production by means of revising what Marx regarded as their “legal expression,” namely the “property relations.”⁶³

Moving from this conclusion, it seems easy to grasp the subtlety of the difference between counter-revolution and reaction, which Laski set in opposition to revolution: counter-revolutionaries, as shown above, aim to preserve the relations of production, but pursue this end by trying to “adapt capitalist society to the conditions of modern technology,” whereas reactionaries and conservatives indulge essentially in “nostalgia for ancient forms” and “tradition.”⁶⁴ For Laski, therefore, counter-revolution shares the means but not the ends of revolution, as it seeks to maintain the existing material relations by modifying superstructures, whilst reaction is the attempt to preserve both the economic structure and the superstructure.

5. Democracy, revolution by consent, and the withering away of the state

Laski’s thesis that legal and political institutions are the instruments by which revolution can succeed leads to the problem of the method to effect revolution. This problem is twofold, as it concerns both the question of *what kind of institutions* should be used to perform revolutionary actions, and—most importantly—the problem of *how* those institutions ought to be brought into play to reach that end. We need to deal with the latter problem first, as it relates to the taxonomy of revolution by force and revolution by consent.

As mentioned above, Laski considered *ex hypothesi* both the possibility of ‘violent’ revolution and that of a consensual or ‘constitutional’ one, which appear to have equal theoretical dignity in his conception: they both serve as a change in productive relations.⁶⁵ When effected by force, however, revolution shows at least one relevant flaw: it would solely produce a government of the proletariat whose habits would be “fatal to the emergence of the regime Marx had ultimately in view,” as it would ultimately “identify its own private good with the public

individualistic conception of materialistic dialectics led Laski to the conviction that the subject is constantly able to overthrow the relations of production by operating over superstructural elements, such as the law, ideology, and habits. In the same vein, see Jeanne Morefield, “Harold Laski on the Habits of Imperialism” (2009) 155 *Proceedings of the British Academy* 213.

62. Laski, “Political Theory”, *supra* note 27 at 121.

63. Marx, *Critique of Political Economy*, *supra* note 56 at 12.

64. Laski, *Reflections*, *supra* note 29 at 252.

65. In this respect, Laski mentioned the Russian Revolution, to give an example of violent revolution, and the Glorious Revolution in Britain as an instance of ‘constitutional’ revolution: see Laski, *Democracy in Crisis*, *supra* note 47 at 112. See also Laski, *Theory and Practice*, *supra* note 22 at 281.

welfare” and, in the long run, only provoke middle-class resistance.⁶⁶ Indeed, according to Laski: “Every argument . . . which justifies a communist revolution justifies also a Fascist revolution.”⁶⁷ Therefore, the only way out of this violent spiral seems to require “alternative means” by which Socialist ideals might finally come to realization.⁶⁸

The alternative promoted by Laski was that of constitutional revolution, as the instruments provided by a “constitutional tradition . . . will often prevail over factors which make for violence.”⁶⁹ In fact, he claimed that only when a system of government, or—which is equivalent—a legal order, is accepted “by persuasion” rather than “by force” may its victories be “enduring.”⁷⁰ This idea paves the way to the thesis of *revolution by consent*, which moves from the assumption—Laski, indeed, *assumes* this fact with little demonstration—that “loyalty won by the give and take of freedom is more likely to be lasting as a foundation” than that won by “fear.”⁷¹ Revolution, therefore, when attained by consent, will most probably lay permanent and durable foundations for the new order, because it implies the attempt to obtain *active consent*—the free and uncoerced allegiance—of the individuals involved.⁷² This, of course, would entail for the working class the need to “win the support of the large and powerful middle class,” even though (and Laski is aware of it) such a social group will tend to “fight rather than accept the measures of its opponents.”⁷³

The strategy of consent is a crucial stage in Laski’s reasoning about democracy, which is unmistakably described as the main institutional system by which revolution should come to pass.⁷⁴ Democracy, in Laski’s thought, is the means Socialism and Labour need to adhere to in their pursuit of a new set of productive relations, and for this reason is *incompatible* with capitalism in the long run.⁷⁵ To

66. Laski, *Karl Marx*, *supra* note 23 at 42.

67. Laski, *Communism*, *supra* note 23 at 173.

68. *Ibid* at 182.

69. Harold J Laski, “The Prospects of Constitutional Government” (1930) 1:3 *Political Q* 307 at 310.

70. Harold J Laski, “Lenin and Mussolini” (1923) 2:1 *Foreign Affairs* 43 at 52.

71. Harold J Laski, *The Secret Battalion: An Examination of the Communist Attitude to the Labour Party* (Labour Party, 1946) at 18.

72. See Harold J Laski, “Revolution by Consent” (1941) 152 *The Nation* 349 at 350.

73. Harold J Laski, *The Dilemma of Our Times*, ed by RT Clark (George Allen & Unwin, 1952) at 110. In Laski’s early view, Marx was not able to envision any chances for peaceful revolution, and deemed violent overthrow inevitable, even though he “had certain doubts of England.” Laski, *Karl Marx*, *supra* note 23 at 37. However, that ‘doubt’ of Marx’s is not irrelevant to the issues that Laski dealt with, as the actual possibilities of peaceful revolution depend on the existence of political, legal and, in general, superstructural conditions that may allow the proletariat to move its claims and ultimately break productive relationship: see Karl Marx, “The Hague Congress” in Karl Marx & Friedrich Engels, *On Britain*, 2d ed (Foreign Languages Publishing House, 1962) 493 at 494.

74. Laski, indeed, seems to conceive revolution by consent and democratic institutions as complicated, for the former would need democratic procedures to be put into effect and, on the other hand, consensual revolution is the only tactic apt to preserve the latter and permit “the affirmation of democratic principles over a wider area and with greater strength.” Laski, *Reflections*, *supra* note 29 at 161.

75. It seems relevant to note a few similarities that, at least to some extent, connect Laski’s thought to Eduard Bernstein’s revisionism with respect to the relationship between democracy and

demonstrate this incompatibility thesis, Laski first identified two faces of the democratic principle: *political democracy*, on the one hand, is the older meaning, and refers to the shape and functioning of a system of government based on equal rights to vote;⁷⁶ *social democracy*, on the other hand, implies striving for substantive, material, or economic equality, which requires affirmative governmental intervention and a “share in power” for the lower classes.⁷⁷

According to Laski’s historical account, capitalism could rise and enact its own legal order by leaning on the claims of political democracy, which gave birth to capitalist democracy.⁷⁸ However, the virtuous combination of capitalism and democracy started cracking as soon as the emerging working classes found that they could use democratic procedures to satisfy their own needs.⁷⁹ When it became clear that Socialism was jeopardising the foundations of the existing order, capitalist bourgeoisie resorted to the ‘outlaw’, i.e., fascist movements, to attempt a counter-revolution and save capitalism—even at the cost of erasing democracy.⁸⁰ Democracy, therefore, is for Laski part of that conflict where orders run a race to win the allegiance of the multitude, and finds its political meaning in the dialectic of revolution and counter-revolution.⁸¹

Laski’s thesis that social democracy is the key to classless society leaves the door open for at least two objections to his theory of revolution. The first objection concerns the relationship between democracy and the Marxist thesis of the withering away of the state.⁸² In fact, Laski’s praise for the democratic method

revolution. As is known, in fact, Bernstein never hid his faith in the possibility that revolution might be attained with peaceful means, which led him to exalt the potentialities of democracy and a pluralistic design of local government in the revolutionary process: see Christian Gneuss, “The Precursor: Eduard Bernstein” in L. Labedz, ed, *Revisionism: Essays on the History of Marxist Ideas* (Frederick A Praeger, 1962) 31. Moreover, the Bernsteinian idea that revolution is the product of a ‘program’—rather than a spontaneous development of the laws of history—seems particularly akin to Laski’s voluntaristic approach (on Laski’s voluntarism, see further in this section).

76. See Harold J Laski, “Democracy” in Edwin RA Seligman, ed, *Encyclopaedia of the Social Sciences: Volume 5* (Macmillan, 1931) at 76.

77. *Ibid* at 84. See also Laski, *Democracy in Crisis*, *supra* note 47 at 196-97; Harold J Laski, *Democracy at the Cross-roads* (NCLC Publishing Society, London, 1934) at 8-9; Harold J Laski, “What is Vital in Democracy” (1935) 24 *Survey* at 204; Harold J Laski, “The Challenge of Our Times” (1939) 8:4 *American Scholar* 387 at 397; Harold J Laski, “What is Democracy?” in Lord Lindsay et al, *What is Democracy?* (National Peace Council London, 1946) 11 at 11-12. This topic, which is relevant in Laski’s works of the 1930s and 1940s, has been recently analysed by José Luis Monereo Pérez, “Democracia social y económica en la metamorfosis del Estado moderno: Harold J. Laski” (2021) 11:1 *Lex Social. Revista jurídica de los Derechos Sociales* 298.

78. See especially Laski, *Democracy in Crisis*, *supra* note 47 at 53; Harold J Laski, *The Rise of European Liberalism* (Aakar Books, 2005) at 191.

79. See Laski, *supra* note 32 at 19.

80. Laski defined ‘fascism’ as a “result of monopoly-capitalism in decay.” Laski, *Reflections*, *supra* note 29 at 88. See also Laski, *Theory and Practice*, *supra* note 22 at 195; Laski, “The Challenge of Our Times”, *supra* note 77 at 393. On Laski’s conception of fascism, see Deane, *supra* note 42 at 160-61; Zylstra, *supra* note 11 at 147-48; Newman, *supra* note 7 at 157; Lamb, *supra* note 23 at 35-36.

81. See Laski, “Position and Prospects”, *supra* note 52 at 102.

82. See especially Marx, dealing with the problem of “what transformation” the state shall “undergo in communist society.” Marx, *Gotha Programme*, *supra* note 53 at 23; Karl Marx & Friedrich Engels, *The Communist Manifesto* (Appleton-Century-Crofts, 1955) at

assumes that democracy should survive the occurrence of revolution, which means that a system of power might still be at work in its aftermath. The reason for this thesis clearly lies in Laski's reading of Marxist political theory, according to which:

The State which withers away does not leave men in a relationship of primitive discreteness. It is the capitalist State as the organ of exploitation that disappears, and, with it, the habits engendered by the capitalist State. The regulations which take their place are built upon consent instead of force; and since, to the communist, force and the State are synonymous, he feels justified in speaking of its obsolescence.⁸³

Laski, therefore, conceived the withering away of the state as the end of one kind of political and legal institution, whereas another system of law and power—however different from the previous one—seems to him the obvious or natural consequence of revolution.⁸⁴ As the capitalist state is, for Laski, an essentially coercive institution which claims sovereignty over individuals and other groups,⁸⁵ the 'regulations' that follow its end should be performed *by consent*.⁸⁶

The idea of preserving democracy as a method of government is, at least apparently, in contradiction with the Marxist traditional approach. It was not only Marx himself who refused to admit that parliamentary revolution could be deemed a proper 'revolution'.⁸⁷ Other renowned scholars of historical materialism, such as Lenin and Lukács, also ruled out the possibility that the existing

32; Friedrich Engels, *Anti-Dühring: Dialectics of Nature* (Lawrence & Wishart, 1987) at 268 [Engels, *Anti-Dühring*], where the expression "withering away" or "dying out" (*Absterben*), referring to the state, famously appeared for the first time. See also Lenin, *supra* note 1 at 80-81; Gramsci, *Prison Notebooks: Volume III, supra* note 1, Sixth Notebook, § 88 at 75-76. See also Solomon F Bloom, "The 'Withering Away' of the State" (1946) 7:1 *J History of Ideas* 113; Richard Adamiak, "The 'Withering Away' of the State: A Reconsideration" (1970) 32:1 *J Politics* at 3.

83. Laski, *Communism, supra* note 23 at 166.

84. Laski's theory of the withering away of the state influenced, at least in part, that of Italian philosopher Galvano della Volpe, who theorised the end of the state as a sort of transformation rather than proper disappearance, and reflected on the relationship between liberty, equality and the state citing Laski himself. See Galvano della Volpe, *Rousseau e Marx, e altri saggi di critica materialistica*, 2d ed (Editori Riuniti, 1974) at 56-57; Danilo Zolo, *La teoria comunista dell'estinzione dello stato* (De Donato Editore, 1974) at 44-49.

85. See Laski, *Theory and Practice, supra* note 22 at 21.

86. For this reason, I disagree with Zylstra's interpretation of Laski's withering away of the law as a "sublimation of the juridical," which is nothing but "a repression of the place of law in human society," since "[a]s an expression of the class-conflict, law is of necessity coercion." Zylstra, *supra* note 11 at 163. Laski, indeed, never ascribed coercion to the concept of law, but rather to that of the state, and specifically that of the capitalist state. Therefore, even if a Socialist revolution eliminated class-struggle and the need for coercion, this does not mean that the law as an instrument of organisation would be useless.

87. Marx showed scepticism on "political revolutions," by which one class can, at best, emancipate the others "only at the condition that the whole society shares its situation." Marx, *Critique, supra* note 34 at 140. At the same time, he specifically criticised the tendency of "parliamentary cretinism," which keeps the people held "in an imaginary world" where they are forced to believe that politics can only move "within strictly parliamentary limits." Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte* (Progress Publishers, 1954) at 77. See also Massimiliano Tromba, *Marx's Temporalities*, translated by Peter D Thomas & Sara R Farris (Brill, 2013) at 49.

political and legal order, whether democratic or not, could be maintained after the completion of revolution.⁸⁸ Democracy, be it capitalist or socialist, is part of the state-order and, at least according to the discourse of Marxism, must be destroyed along with the state.⁸⁹ However, a distinction must be drawn between Marx's conception of democracy and his critique of parliamentarianism. In fact, Marx disapproved of the use of parliament as a way of liberating the forces of production precisely because, during the early nineteenth century, elections in most European states were infrequent, and the extension of the right to vote was broadly determined by "the economic interrelations of the voters."⁹⁰ He was convinced, however, that the democratic ideal might be of profitable use in the struggle for the transformation of productive relations, provided that "really democratic institutions" be implemented.⁹¹ Marx's thesis is, in fact, that the "state" should disappear "in the now accepted political sense of the word,"⁹² namely its essentially repressive nature, which means that revolution might establish a 'state' *in another sense*, endowed only with its "legitimate functions" allowing the people to act "for itself by itself."⁹³

The second objection that may be raised against Laski's theory concerns the theme of consent. If revolution can actually result from the voluntary agreement of the parties (i.e., the conflicting classes), then the progress of history and the development of humanity is no longer a matter of forces and objective material conditions, but rather a matter of individual will.⁹⁴ The theory of revolution by consent, therefore, underlies a reading of dialectics which is *purely* voluntaristic and—unlike Lenin's revolutionism, which is also voluntaristic⁹⁵—apparently jars with Marx's scientific look at the objective premises of the crisis of a mode

88. Lenin, in fact, stressed that, despite it being the constitutional form which makes easier the path to proletarian dictatorship, democracy is still "a form of the state" and is bound, for this reason, to "disappear when the state disappears." Lenin, *supra* note 1 at 18, 89. In the same vein, Lukács denounced the "fatal illusions about democracy," namely the pretension, on the part of "the legal party of social traitors," of being able to bring about revolution only with "legal methods" and avoiding the destruction of the legal order. Georg Lukács, *History and Class Consciousness: Studies in Marxist Dialectics* (Pattern Books, 2021) at 250.

89. In truth, the conclusion that Marx believed in the general abolition of the state, as della Volpe observed, is in no way obvious, if we bear in mind that he left practically "unanswered (*senza risposta*)" the question on the transformation that should affect the state in the Communist society. Galvano della Volpe, *Libertà comunista. Saggio di una critica della ragion "pura" pratica*, ed by Michele Prospero (Bordeaux, Rome, 2018) at 91.

90. Karl Marx, "The Conspectus of Bakunin's Book *State and Anarchy*" in *Marx, Engels, Lenin: Anarchism and Anarcho-Syndicalism* (Progress Publishers, 1972) 148 at 150.

91. Karl Marx & Frederick Engels, *On the Paris Commune* (Progress Publishers, 1971) at 74.

92. Marx, *supra* note 90 at 150.

93. Marx & Engels, *supra* note 91 at 73, 130. See also Hal Draper, "Marx and the Dictatorship of the Proletariat" (1962) 1:4 *New Politics* 93; Monty Johnstone, "The Paris Commune and Marx's Conception of the Dictatorship of the Proletariat" (1971) 12:3 *Massachusetts Rev* 447.

94. Such a consequence is, after all, consistent with Laski's primacy of the "Athanasius-element": see generally *supra* note 39.

95. It seems worth noting that Lenin's renowned voluntarist approach to revolution is nonetheless linked to the Marxian assumption that class struggle is determined by objective laws that govern historical processes. The need to find a strategy to destroy the state apparatus results, in fact, from its being "the product and manifestation of the irreconcilability of class contradictions," which is by no means dependent on the will of individuals: it is, on the contrary, the premise of their own willing revolutionary acts. Lenin, *supra* note 1 at 8.

of production, which can hardly be limited to the singular and punctual attitude of individuals.⁹⁶ Laski, nonetheless, is persuaded that the social classes, especially the bourgeoisie or middle class, may consent to their own “rubbing away,” or at least to their “loss of power” (although theoretically they mean the very same thing), and in so doing put an end to class conflict.⁹⁷

6. Concluding remarks: the subject of consciousness and legal transformation

As shown above, Laski’s interpretive attempt is doubtlessly flawed, compared to what might be deemed a correct reading of Marx and the Marxist tradition. However, he undeniably put forward a series of assumptions and conclusions that provide interesting stimuli to discuss the theory of revolution, on one hand, and some of the most relevant interpretations of Marxist dialectics, on the other hand. Laski offered a reading of Marx’s philosophy and Communism as an intellectual and practical striving towards the realisation of freedom. In his last decade, he defined the “essence” of freedom as “the ability to exercise continuous initiative,” requiring “agreement on fundamentals in the society,” without which that initiative might be “restrained or suppressed” by the state.⁹⁸ What sets Marxism apart, accordingly, is therefore the belief in “an organisation which has grown out of acceptance of . . . law from below.”⁹⁹ This is what, for Laski, the “leap” to the “realm of freedom” seems to comprise.¹⁰⁰

96. According to Parkin, one of the leading assumptions of Marxism “is that such solid realities as property relations, bureaucratic authority, or the division of labour impose their own stern discipline upon the social actions of incumbents.” Frank Parkin, *Marxism and Class Theory: A Bourgeois Critique* (Columbia University Press, 1979) at 4. This means that the will of individuals matters far less than the “social role” or “incumbency” imposed on them by the system, such that “if one set of incumbents was entirely replaced by another the system would continue as before, propelled by its own interior logic” (*ibid*). See also Roberto Finelli, “La soggettività complicate di Karl Marx,” in Marco Gatto, ed, *Marx e la critica del presente* (Rosenberg & Sellier, 2020) 15; for a different interpretation, emphasising Marx’s insistence on the labourers will and commitment to perform revolution, see Edward Andrew, “Marx’s Theory of Classes: Science and Ideology” (1975) 8:3 *Can J Political Science* 454.

97. Royal Court of Justice, *The Laski Libel Action. Verbatim Report* (Daily Express, 1946) at 73. During the libel trial against the Newark Advertiser, which had accused him of supporting violent revolution as a Labour strategy in politics, Laski replied to the defendant’s attorney that his theory of revolution did not imply the plan to erase the bourgeoisie, since the idea was rather that of persuading the middle class to agree to their “loss of power” (*ibid*). See also Kenneth Hoover, *Economics as Ideology: Keynes, Laski, Hayek, and the Creation of Contemporary Politics* (Rowman & Littlefield, 2003) at 174-75; Lamb, *supra* note 23 at 43. Laski, however, was probably aware—even if he seemed to ignore it—that given the postulates of his theory, if the middle class agreed to abdicate its pre-eminence, it would eliminate itself as a middle class.

98. Laski, *Reflections*, *supra* note 29 at 336. See also Ram Chandra Gupta, *Harold J Laski: A Critical Analysis of His Political Ideas* (Ram Prasad, 1966) at 14. From a certain perspective, Laski might be argued to promote a theory of liberty as ‘non-domination’, which is after all another name standing for ‘positive’ freedom: see Puggioni, *supra* note 18 at 348-50. For a reading of Marx’s capital as a political theory endorsing this notion of liberty, see Roberts, *supra* note 46 at 244.

99. Laski, *Communism*, *supra* note 23 at 166.

100. Marx, *Capital*, *supra* note 23 at 807. Interestingly, Laski never quoted this phrase, which was notoriously coined by Marx and restated by most prominent Marxist thinkers: see e.g. Engels, *Anti-Dühring*, *supra* note 82 at 270; Gramsci, *Prison Notebooks: Volume III*, *supra* note 1,

The first problem with Laski's conception of post-revolutionary, or classless, society is that, on closer inspection, such society is still class-centred: the only feature that Laski definitely pointed out as to the outcome of revolution is the end of social conflict and, therefore, the ceasing of any need for coercion.¹⁰¹ Social relations, however, might still presuppose a system of production driven by "necessity" and "mundane considerations."¹⁰² For Laski, 'liberty' meant the freedom to participate in—and take over—the existing process of production.¹⁰³ Upon closer inspection, however, such an interpretation shows that there is continuity between the original Marxian theses and Laski: In fact, the realisation of the realm of freedom, in Marx's theory, *presupposes* the realm of necessity, since it assumes the persistence of the sphere of production. Freedom, therefore, is—and can only be—internal, rather than external, to the unextinguished performance of necessity.¹⁰⁴

Laski's theory of revolution by consent seems instead affected by concrete operative problems, as its basic assumption is that the foundations of the political system should be revised peacefully by competing factions. This is supposed to happen within a political, social, and legal discourse which is determined and shaped by the interests of one faction rather than the other. Therefore, whatever debate or negotiation may take place between those classes, it will be inherently one-sided, as those who are invited to lend their consent are the same ones who control the political and legal superstructure. This means that, by rendering allegiance to a negotiated set of principles, the dominant class may, at best, absorb and assimilate the subjected one under its own perspective. However, it seems hard to envision a situation in which, once they have rendered their consent to the new order, the members of the middle class will necessarily refrain from withdrawing it.¹⁰⁵ In this view, Laski's assumption that the outcome of a consensual revolution is more durable than that of a violent one appears both logically and historically disputable. Nevertheless, the argument of revolution by consent

Eighth Notebook § 190 at 344. See also James C Klagge, "Marx's Realms of 'Freedom' and 'Necessity' (1986) 16:4 Can J Philosophy 769.

101. Laski put forth the argument that the state in communist society would "undergo a profound transformation," as "the postulates on which it would proceed would not involve the elevation of supreme coercive power to maintaining the economic interests of the property-owning class. Whatever oppositions still existed in the society, this, with all its implications, would have been removed." Laski, *Theory and Practice*, *supra* note 22 at 206-07.
102. Marx, *Capital*, *supra* note 23 at 807. These features, for Marx, imply the persistence of the "realm of necessity" (*ibid.*).
103. This idea is clear in Laski's early writings. See e.g. Laski, *Modern State*, *supra* note 37 at 95; Harold J Laski, "Parliament and Revolution" (1920) 22 *The New Republic* 383 at 384; Lamb, *supra* note 23 at 23. However, Laski's main 'Marxist' writings assume that he aimed at a planned society where freedom is connected to the workers' possibility of sharing in capital: see Laski, *Reflections*, *supra* note 29 at 330-51.
104. The idea that the realm of freedom, which is related to the distribution of surplus value, implicates the continuity of "material production," is also present in Marx. Karl Marx, *Grundrisse: Foundations of the Critique of Political Economy*, translated by Martin Nicolaus (Penguin Books, 1973) at 612. See also Sean Sayers, "Freedom and the Realm of Necessity" in *Marx and Alienation* (Palgrave Macmillan, 2011) 65.
105. Laski assumed, in fact, the ever-existing possibility of withdrawal. See Laski, *Theory and Practice*, *supra* note 22 at 73.

is particularly relevant to interpret the attitude of British Socialism (and mostly Labourism) to Marxism and the theme of revolution, whose principles were adapted and reduced to fit the limitations of parliamentarianism.¹⁰⁶

Moreover, Laski's idea that revolution involves individual consent seems to have significant implications as to the opportunity to rediscuss some traditional interpretations of Marxian dialectics. In particular, it upholds the argument that the Marxist conception of history deems the individual—rather than the class—as the one and only subject of history.¹⁰⁷ This, however, appears hardly compatible with Marx and Engel's famous claim that portrays history, or “the history of all hitherto existing society,” as “the history of *class* struggles.”¹⁰⁸ Moreover, according to Marx and Engels, it is crucial for the class struggle, as it “nears the decisive hour,” that this historical movement be comprehended theoretically “as a whole”: in actuality, it is the *proletariat* as a “revolutionary” class, and not the proletarians as revolutionaries, who moves “the wheel of history.”¹⁰⁹

The problem that Laski's individualistic Marxism touches is, therefore, one of *class consciousness*, and it raises the question of who the *subject* of the historical process is. It is well-known that Marxist theorists often provided divergent answers.¹¹⁰ On one side there are collectivists—or, so to speak, ‘totalists’—such as Lukács, who drew attention to “concrete totality” as the “category that governs reality,” thus emphasising the Hegelian legacy in Marx's thought.¹¹¹ For Lukács, then, class consciousness is a stance that considers the *class* as its object, and yet has the class as its subject, too.¹¹² On the opposite side stand theorists like Althusser, who interpreted Marx's conception by devising dialectic history as “a process without a subject,” implying “the notion of a subject is an ideological notion.”¹¹³

106. It was no coincidence that the Labour Party, as Miliband noted, showed itself more “dogmatic . . . about the parliamentary system” than it did about the ideals and purpose of Socialism. Ralph Miliband, *Parliamentary Socialism: A Study in the Politics of Labour*, 2d ed (Monthly Review Press, 1964) at 13. See also Martin Pugh, *Speak for Britain! A New History of the Labour Party* (The Bodley Head 2010) at 222–23. The triumph of parliamentary politics in British Socialism was not only the consequence of Fabian influence over the Labour Party, but also the outcome of the intense debate in British Socialism, which took place in the late nineteenth century between parliamentarians like Hyndman and anti-parliamentarians like Morris. See Bevir, *supra* note 8.

107. As we have seen above, Laski deems allegiance essentially “an individual problem.” Laski, “Historical Introduction,” *supra* note 40 at 56. See also Magid, *supra* note 8 at 47; Palazzolo, *supra* note 11 at 56–57; Peter Lamb, “Robinson Crusoe, Harold Laski and Plato: A Response to Burns” (2002) 22:1 *Politics* 39 at 41.

108. Marx & Engels, *The Communist Manifesto*, *supra* note 82 at 9 [emphasis added, footnote removed].

109. *Ibid* at 20.

110. Different perspectives and interpretation of class-consciousness in Marx have been analysed and discussed by Levin. See Michael Levin, “Marx and Working-Class Consciousness” (1980) 1:3 *History Political Thought* 499.

111. Lukács, *supra* note 88 at 16.

112. Lukács stated that the acquisition of “total knowledge of reality” on the part of the proletariat never implies “that this knowledge . . . is the inherent or natural possession of the proletariat as a class (let alone of proletarian individuals).” *Ibid* at 34.

113. Louis Althusser, *Politics and History: Montesquieu, Rousseau, Hegel and Marx*, translated by Ben Brewster (NLB, 1972) at 185 [emphasis removed]. Elsewhere, he argued from Engels that

Neither of these interpretive strands seems to allow for a reading like the one promoted by Laski: In fact, the thesis that revolution should cling on to individual will arising from the process of production is in radical contradiction to the idea of the class as a subject. However, if we admit that the category of ‘subject’ is part of the ideology that must be eliminated, then this process can depend even less on individual ‘subjective’ intentions and acts. There might, nevertheless, be room for a conception of the individual as a subject of history in the Marxist discourse. Marx himself, in fact, apparently drew attention to individual positions, even when he believed that it was necessary to consider productive “relations as a whole.”¹¹⁴ One relevant instance, then, needs to be taken into account in this regard: the well-known distinction between “class as against capital” (which identifies the “common situation” that a number of individuals share in the process of production), and “class for itself” (which occurs as soon as that mass of individuals “becomes united” and their interests “become class interests”), depends on an event taking place in the minds of those individuals.¹¹⁵ After all, it is the individual class-members who need to be aware of the objective situation they share, in order for that ‘class’ to be a ‘class for itself’, endowed with class interests and class consciousness. Therefore, even though class consciousness objectively *addresses* the class as a whole, it may be argued that such ‘consciousness’ is subjectively *ascribed* to the individual, who might as well develop and dismiss it, and by doing so contribute to, or alternatively impair, any revolutionary process.

It is rather uncertain whether Laski envisioned this connection between his theory of revolution by consent and the problem of class consciousness, as he only made quick reference to “revolutionary class consciousness,” adding the plain observation that “in the modern time” this situation seems far from plausible.¹¹⁶ Nevertheless, his emphasis on the role of the individual may encourage reflection on how fragile class—or, generally, group—consciousness may be in a political scenario where the existing order tends to separate and particularise individual agents.¹¹⁷

history is the result of forces “without a subject.” Althusser, *supra* note 59 at 121 [emphasis removed]. See Steven B Smith, “Althusser’s Marxism without a Knowing Subject” (1985) 79:3 *Am Political Science Rev* 641 at 650; Giorgio Ridolfi, “La fine dell’assogettamento tramite l’eliminazione del soggetto: la prospettiva ‘antigiuridica’ di Louis Althusser” (2021) 10:1 *Rivista di filosofia del diritto* 111 at 121-23.

114. Karl Marx, *The Poverty of Philosophy: Answer to the “Philosophy of Poverty” by M. Proudhon* (Progress Publishers, 1955) at 96. This is, actually, the third observation against Proudhon. See also Lukács, *supra* note 88 at 9.

115. Marx, *supra* note 114 at 150. Such dichotomy is perhaps best known in the formula proposed by Bukharin, who stressed the distinction between the “class in itself” from the class “for itself.” Nikolai Bukharin, *Historical Materialism: A System of Sociology* (International, 1925) at 292-93. To a certain extent, however, the complete overlap between Marx’s distinction and that of Bukharin may be disputed: see Edward Andrew, “Class in Itself and Class against Capital: Karl Marx and His Classifiers” (1983) 16:3 *Can J Political Science* 577.

116. Laski, “Value and Defects,” *supra* note 25 at 27.

117. This is, after all, the key feature of the bourgeois conception of history according to Lukács, who observed that bourgeois historians tend to believe “that the concrete can be located in the

The impact of these remarks on the legal discourse should be envisioned in its dramatic consequences on the possibility of transforming the legal order. In fact, if we deem revolution the ultimate dynamic form of the law, as was argued in Section 1, it follows that such a particularisation of the subject is bound to impair any chance of transforming the legal order on a radical ground, as it prevents revolutionary change by annihilating class consciousness. This means not only the sanction of a capitalist economic-material system in its current state, but also the utter obstruction of a dialectic movement in the history of law, which means perpetuating the existing legal construction of class relations of domination and hierarchy. From this point of view, therefore, a Marxist reading of the relation of revolution to the law seems useful to understand the deep intertwinement between the position of the subject and the possibility of modifying the politico-legal order in contemporary times.

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empirical individual of history . . . and in his empirically given (and hence psychological or mass-psychological) consciousness. And just when they imagine that they have discovered the most concrete thing of all: *society as a concrete totality*, the system of production at a given point in history and the resulting division of society into classes—they are in fact at the furthest remove from it.” Lukács, *supra* note 88 at 50 [emphasis in original].