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Version: Published Version

Book Section:

Loughlin, Martin (2023) Laski’s materialist analysis of the British Constitution. In: Goldoni, Marco and Wilkinson, Michael A., (eds.) The Cambridge Handbook on the Material Constitution. Cambridge Law Handbooks. Cambridge University Press, Cambridge, UK, 64 - 75. ISBN 9781316519462

https://doi.org/10.1017/9781009023764.005

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Laski's Materialist Analysis of the British Constitution

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Abstract. During the 1920s, Harold Laski worked on producing a comprehensive account of a political philosophy appropriate for the new age of social democracy that was just emerging. During the 1930s, however, his optimistic political outlook waned and with this he modified his position and, in its place, presented a materialist account of British constitutional arrangements. This paper explains this later development of his thought. It examines the unfolding of his argument through his studies of the crisis of parliamentary democracy, the nature of the modern state, and his materialist analysis of the British constitution, and offers critical reflections of the significance of this phase of his work.

Keywords: Harold J. Laski, State, Democracy, British Constitution, Parliament, Materialism

I Introduction

Over the first decade of his academic life, Harold Laski pursued an ambitious intellectual and political project whose objective was to present a compelling account of the principles and practices needed to legitimate the new social order of democracy that was emerging. Beginning with critical analysis of orthodox conceptions of state, sovereignty and authority, this project culminated in the publication in 1925 of *A Grammar of Politics*. This, he stated, 'completes an effort, begun in 1915, to construct a theory of the place of the State in the great society'.[1] By the end of the 1920s, his intellectual achievements were widely admired and his influence on public affairs universally recognised.[2]

During the 1930s, however, the orientation of Laski's work changed. Political developments led him to doubt the efficacy of the pluralism and gradualism he had previously so vigorously advocated and to adhere instead to an economic determinism that saw the state as the executive instrument of the class that controlled the means of production. Accordingly,

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[1] Harold J. Laski, *A Grammar of Politics* (London: Allen & Unwin, 1925), Preface.

[2] See Martin Loughlin, 'The Political Jurisprudence of Harold J. Laski' (2021) 50 *Quaderni fiorentini* 000-000

he developed a materialist analysis of British constitutional arrangements. This paper examines this later development of his thought.

By 1930, Laski recognised that the prospects for continued social progress were receding as across Europe 'a widespread dissent from the principles of constitutionalism' was spreading. The reforms of the nineteenth century, bringing religious equality, universal suffrage, and popular education, had been conceded gradually and without huge sacrifice. But there were now more formidable barriers facing the newly enfranchised who were seeking greater social and economic equality. This type of reform encountered stiff resistance, he argued, because it threatened the entrenched order of property.[3] Throughout the 1920s, he had continued to hope that with determined political will the barriers to realising a democratic society could be overcome. But during the 1930s that optimism quickly evaporated.

By 1932, we find him arguing that nineteenth century reforms had only been made possible by the opening up of capital investment through colonialisation alongside the 'vast expansion of material well-being which scientific discovery effected'. In the twentieth century these material conditions were disappearing, and political conditions were accordingly changing. The growth of administrative government had transferred power to the executive, leading to Parliament becoming 'little more than an organ of registration'. The technicality of legislation had rendered its meaning 'unintelligible to the multitude'. Colonies were 'in revolt against tutelage'. The idea of national economic self-sufficiency was finished. And the Victorian spirit of liberty 'is everywhere at a discount'. Representative democracy, in short, had reached a *cul-de-sac* in political purpose.[4]

The system of representative democracy was not working effectively, he surmised, because no agreement could be reached on the fundamental principles necessary for the common good. A programme of institutional reforms could be listed, but without political will they would just be words on paper. With guidance from Tocqueville, he identified the problem. What holds society together, Tocqueville had argued, 'was not the constitution of the government, but the unalterable laws that constitute society itself'.[5] This insight led Laski

[3] Harold J. Laski, 'The Prospects of Constitutional Government' (1930) 1 Pol. Q. 307-325, 307.
[4] Harold J. Laski, 'The Present Position of Representative Democracy' (1932) 26 Amer. Pol. Sci. Rev 629-641, 629-30, 631.
[5] Alexis de Tocqueville, *Recollections* G. Lawrence trans (New York: Doubleday, 1971), 95.

to conclude that the malaise of representative democracy had arisen because the governing classes were either unwilling or unable to alter the essential characteristics of capitalist society.[6]

Confronted with this realisation, he turned to Marxism as an explanatory tool. Laski was never a Marxist in the sense of someone who accepted 'the vast all-embracing structure known as dialectical materialism'.[7] He could never fully accept Marxist determinism because of his liberal belief in the emancipatory potential of the individual, but what he did take from it was the materialist conception of history.[8] During the 1930s this materialist method came to dominate his work. The implications for his understanding of the character of parliamentary government, the nature of the state and the constitution will be examined later, but what were the reasons for this shift in thought?

II Accounting for the Materialist Turn

The significance of Laski's shift is gleaned from the fourth edition of *A Grammar of Politics*, published in 1938. The main text remained unaltered but it was accompanied by a new introductory chapter, the tenor of which was very different from the self-assurance behind his account of the 'new philosophy' of the 'new world' written in 1925. When the book was first published, Laski accepted that democracy could only be realised by promoting an equality of conditions. But he was then confident that such conditions could be met by political reforms and that Britain was capable of evolutionary transition from capitalism to socialism. By the mid-1930s, his mood had changed.

The announcement that 'no theory of the state is ever intelligible save in the context of its time' was a direct comment on his own book. He now argued that the state 'expresses a will to maintain a given system of class relations' and that although democratisation might give those without privileges the power to bring about change, those with the privileges of ownership would actively work to maintain them. This leads to a crisis in understanding which

[6] Laski, 'Representative Democracy', 639.
[7] Ralph Miliband, 'Harold Laski's Socialism' 1995 *Socialist Register* 239-263, 240.
[8] Harold J. Laski, *Communism* (London: Thornton Butterworth, 1927), 90: 'We conclude, then, that the materialist interpretation of history is, as a general doctrine, undeniable. In the context of communism, there is no necessary connection between its theses and the inferences and predictions made by Marx. A necessary connection may, however, be made. The only way to avoid its coming is to prove by social policy that it is unnecessary.'

only the Marxian theory of the state could meet. 'As an index to the problems of our age', Laski asserted, 'it decisively … holds the field'.[9]

Just as there was a crisis in the theory of the state, so too was there is a crisis in legal thought. Kelsen's pure theory of law might provide a cogent account of positive law but 'its substance is an exercise in logic and not in life'. Only the Marxian interpretation could explain the substance of law. A true sociological conception of law must therefore acknowledge that 'legal relations are rooted in class relations'. As such they could not be transcended because their postulates 'are never self-determined, but given to it by the economic system of which it is the expression'. His earlier legal pluralism, he acknowledged, 'did not sufficiently realise the nature of the state as an expression of class-relations'.[10]

In his 1938 account, Laski conceded that his earlier pluralism was merely a stage in the process of accepting the Marxian method. This pluralism, he now recognised, could only be realised when society attained an approximate social and economic equality. Only when a class-society is destroyed can 'both the nature of authority and the law it ordains undergo a fundamental transformation'.[11] What caused Laski to amend his accounts of law and state?

The failure of the General Strike of 1926, followed by the enactment in 1927 of a Trades Disputes Act that made sympathy strikes unlawful, were undoubtedly significant factors. At the time, Laski reaffirmed his position of maintaining a class analysis of the social order while rejecting economic determinism, but his confidence in the ability of parliamentary methods to achieve socialism was already being strained.[12]

The crunch came in 1931. In the 1929 election, Labour was returned as the largest party and formed a minority government. Two years after the stock market crash and under pressure to make cuts, the Labour cabinet refused to include cuts in unemployment benefits in a package to resolve the budget crisis. But rather than resigning as Prime Minister, Ramsay MacDonald split the party by agreeing to form a National government, and in the general

[9] *Grammar*, i, iii, v.
[10] *Grammar*, vii-viii, ix-x, xxii, xi
[11] *Grammar*, xiii.
[12] Laski, *Communism*, 83: 'To accept the materialist conception is not, of course, to say that it explains all historical phenomena. There are passages in Marx's works in which this claim seems to have been made …' Harold J. Laski, *Karl Marx: An Essay* (London: Fabian Society/Allen & Unwin, 1922), 33-34: 'No economic conditions can explain the suicidal nationalism of the Balkans… Historically, too, the part played by religion in the determination of social outlook was, until at least the peace of Westphalia, as important as that played by material conditions… The impulses of men, in fact, are never referable to any single source. The love of power, herd-instinct, rivalry, the desire of display, all these are hardly less vital than the acquisitiveness which explains the strength of material environment.'

election that followed, Labour's representation was reduced from 287 to 52 MPs.[13] These events shattered Laski's belief in the parliamentary road to socialism. He claimed that both the king and MacDonald had acted unconstitutionally, and the crisis strengthened his belief that 'effective authority lies in the hands of a small knot of financiers, responsible … to no one'. It also caused him to question whether evolutionary socialism had 'deceived itself into believing that it can establish itself by peaceful means within the ambit of the capitalist system'.[14]

The 1931 crisis was the most important single event in his 'swing to the left',[15] but it was strengthened by other factors. In a later statement of his beliefs he explained that the 'experience of Russia, the advent of Fascism in central and south-eastern Europe, the attitude of the owning class in Spain and France and the United States to all serious attempts at social reform, the general strike of 1926 and the betrayal of 1931 in England, the new imperialisms of Japan and Italy, have all convinced me that, in large outline, there is no answer to the philosophy of Marx'.[16] And in his 1938 introduction to *Grammar*, he stated that the 'union of economic oligarchy and political democracy worked well enough so long as capitalism was in its phase of expansion', but at the end of the First World War capitalism entered into a period of contraction. In the expansionary phase, it could make concessions, but during contraction resistance mounted. The state could present itself as a regime of toleration and pluralism only on the implicit condition that these values 'did not threaten the economic foundations of the regime itself'.[17]

III The Crisis of Parliamentary Democracy

Laski's first task was to address the implications of these developments on the standing of parliamentary democracy. This he did in *Democracy in Crisis*, published in 1933 and based on lectures he had given in the United States.

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[13] See Robert Skidelsky, *Politicians and the Slump: The Labour Government 1929-1931* (London: Macmillan, 1994)

[14] Harold J. Laski, *The Crisis and the Constitution: 1931 and After* (London: Hogarth Press, 1932), 34, 49, 9.

[15] Neil Riddell, *Labour in Crisis: The Second Labour Government 1929-1931* (Manchester: Manchester University Press, 1999), 213: 'For Harold Laski, the 1931 crisis was the catalyst for his swing to the left, both ideologically and in factional terms'.

[16] Harold J. Laski, 'I Believe' in W.H. Auden et al., *I Believe: The Personal Philosophies of Twenty Three Eminent Men and Women of Our Time* (London: Allen & Unwin, 1940), 163-168, 168.

[17] *Grammar*, xiv, xxiv.

His first lecture, on 'the illusion of security', advanced the thesis that the present generation has 'lost its scheme of values'. Conditions in advanced societies undoubtedly differed from those that brought about the Russian revolution: 'our administrative mechanism is not in decay', 'our middle class … remains strong', the armed forces 'have shown no signs of serious disloyalty to the civil government', and 'strike after strike … has been met and broken without exceptional loss'. Nevertheless, the general state of affairs was one of disillusion: 'certainty has been replaced by cynicism', 'the war dealt a mortal blow at religious belief', and the victory of individualism and triumph of the acquisitive society is a merely Pyrrhic one since we have learned 'the arts of production' but have 'no clue to the problem of justice in distribution'.[18] The evolving British parliamentary system had avoided revolutionary overthrow because it could consolidate in a period of continuous economic expansion and at a time when the two main parliamentary parties were agreed on political fundamentals. But having ended the Victorian compromise, the rise of the Labour party has brought about a crisis, as it sought to achieve a social revolution through the redistribution of economic power.

The political crisis was taken up in his second lecture on the 'decay of representative institutions'. Laski explained that legislatures are in an unsatisfactory condition because they are overwhelmed with work, controlled by parties, and have ceded initiative to governments. Two traditional institutions in particular need of fundamental reform were highlighted: the monarchy and the judiciary. Although the monarchy appeared to be a merely decorative part of the constitution, this was deceptive. Since a king implies a court and a court implies an aristocracy, 'all its effective social relationships are a denial of the hypothesis of equality'. And although law requires impartiality, there can be no true equality before the law without social and economic equality. This is unattainable 'so long as the assumptions of capitalist philosophy dominate the practice of the courts'.[19]

Fundamental reform, Laski maintained, requires either a period of dictatorship or a gradual change in which expectations are slowly altered. The dilemma is that parliamentary democracy precludes the former but when the main levers of leadership (access to education, the professions, the media) remain under capitalist control, the electorate will not be allowed 'to stumble into socialism by the accident of a verdict at the polls'. From this he concluded that a Labour government must bring about 'a radical transformation of parliamentary

[18] Harold J. Laski, *Democracy in Crisis* (London: Allen & Unwin, 1933), 16, 14, 16-17, 19.
[19] *Democracy in Crisis*, 125, 129, 133.

government', requiring them to adopt new procedures, 'take vast powers, and legislate under them by ordinance and decree'.[20]

Radical though that argument may be, in the next lecture, on 'authority and discipline in capitalist democracy', Laski contended that 'no mere changes in political machinery are adequate to the proportions of the problem'. Since institutions have value only by virtue of the spirit that energises them, the question is whether socialism can transform their meaning. Having previously thought that socialism could reach a compromise with capitalist democracy, he now admitted that a 'society can no more make peace between the motives of private profit and public service than it can continue half-slave and half-free'. The critical question was whether such fundamental reforms could be achieved without violence. Laski acknowledged the primacy of reason as a method of resolving social differences but doubted the prospect of finding the conditions of maintaining that temperament. Critics might see in democratic socialism the destruction of liberty, but this was because, for them, liberty is a function of possession of property. It is a name 'of noble sound and squalid result'.[21] Liberty can only have value on the basis of equality.

In his final lecture, Laski assessed the merits of 'the revolutionary claim', the argument that nothing can be gained in seeking to realise socialism by constitutional means since the capitalist class 'is likely to defend with violence the injustice for which it is responsible'. Acknowledging its force, he emphasised its pitfalls. First, revolution is an art: 'nothing is gained by embarking upon it except under conditions which maximise the prospects of success', and the 'environment in which Lenin was successful is of extreme rarity in history'. Secondly, revolutions lead invariably to dictatorship, the conditions of which vary. The proletarian dictatorship imposed in Russia was founded on the specific conditions of a collapsed autocracy. In Britain, by contrast, where there is 'a large middle class habituated to domination and privilege', the dictatorship – like that in fascist Italy – would be that of the middle class. Laski recognized, thirdly, that revolution is 'infinite tragedy, since, in its very nature, it means pain and suffering and the tragic confusion of means and ends'. And, finally, it is 'the enemy of Reason and Freedom – the twin goddesses whose triumph gives what of beauty there is in the ultimate texture of men's lives'.[22]

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[20] *Democracy in Crisis*, 77, 87.
[21] *Democracy in Crisis*, 149, 164, 189, 207.
[22] *Democracy in Crisis*, 233, 234, 236, 256-7, 266.

The crisis of parliamentary democracy thus arises from the fact that although capitalism and democracy arrived at the same point in history through a common need to destroy hereditary aristocracy, they could no longer work together. The dilemma facing a capitalist society is that the logic of universal suffrage leads to a continuous expansion of welfare which not only reduces the contrast between rich and poor but also undermines capitalism's profit-making motive. The challenge is great indeed, but having rejected the revolutionary option, Laski accepted there was no serious alternative to promoting radical reforms through constitutional methods.

IV The Nature of the Modern State

In *Democracy in Crisis*, Laski resiled from his earlier pluralism. He also abandoned his earlier critique of state sovereignty, now presenting the state as the supreme coercive organization of society. It is to this institution that Laski next turned. The aim of his 1935 work, *The State in Theory and Practice*, was 'to discover the nature of the modern state'.[23] He pursued the inquiry by offering answers to three questions. What should be the basic purpose of the state? To what extent is that purpose actually being served? And in the light of actual practice, what is to be done?

Laski first defined his key terms. By society is meant 'a group of human beings living together for the satisfaction of their mutual wants' and a state is 'a society of this kind which is integrated by possessing a coercive authority legally supreme over any individual or group which is part of that society'. The supreme coercive power exercised by the state is called sovereignty and once the idea of sovereign state is accepted 'law can be no other thing than the will of the state'.[24] These definitions are the basis for the critique that followed.

Law, Laski argued, must be founded on something more than coercive power because otherwise law cannot provide an adequate justification for demanding obedience. Idealist political philosophers maintain that the basis for obedience is that only within the state can our real will be expressed. The spirit informing this idealist argument, Laski asserted, is equality: 'It is to protect equality that law, to be law, must always be general' and 'it is to protect equality … that a civil religion is established, that men may be trained passionately to safeguard

[23] Harold J. Laski, *The State in Theory and Practice* (London: Allen & Unwin, 1935), 9.
[24] *The State in Theory and Practice*, 20-21, 31.

the spirit of the constitution'. The problem with idealism is that it tends to confuse the ideal purposes of the state with the actual policies of the government. He avoids this conflation, arguing that the state's legitimacy depends on the extent to which it is able to satisfy the equality claims of its citizens. Law must therefore find its 'title to consent' in the individual citizen's judgment.[25]

In answer to the second question, on whether the state's purpose is actually being served, Laski argued that although it is natural to infer that the state seeks to realise the common good, in reality it cannot transcend particular interests. The modern struggle for control of the state has always been between economic classes and this is a struggle in which the state itself is never neutral. This has left the disadvantaged class doubting the validity of the existing order, demanding change, and developing hostility to the dominant ideology. But since the will of the state is enforced through its government and the will of the government is 'determined by the character of the class-relations in society', this will also determines 'the end for which law and order are preserved'.[26]

This brings us to Laski's last question: if the unity in the state is actually based not on consent but on coercion and if its essential feature is not common welfare but its power to compel the acceptance of class-relationships, what is to be done? There is, he states, no reason to suppose that 'we can transform the foundations of bourgeois society without heavy fighting'. To assume otherwise 'is an illusion born of special historical circumstances … now fading before our eyes'. Capitalist democracy 'had conferred political power upon the masses; but it was on the saving condition that political power should not be utilised to cut at the root of capitalist postulates'. And today class relations 'have become incompatible with the maintenance of social peace'.[27] Returning to the issue that closes *Democracy in Crisis*, Laski here comes much closer to abandoning faith in the prospect of reform through constitutional methods.

Laski concluded his book on the state on a highly ambivalent note. His argument runs as follows: (i) in order to realise the true ends of the state it is necessary to change the existing system of class relations, (ii) 'it is the duty of the citizen to exhaust the means placed at his disposal by the constitution of the state before resorting to revolution', (iii) 'the nature of

[25] *The State in Theory and Practice*, 62, 69, 76, 95.
[26] *The State in Theory and Practice*, 198, 199.
[27] *The State in Theory and Practice*, 271, 272, 274.

capitalist society weighs the scales unduly against him', (iv) nevertheless 'the gains which are inherent in the technique of constitutionalism are profounder, even though they are more slow, than those which are implicit in the revolutionary alternative', and (v) that since 'changes in the class-structure of society have rarely been made without revolutionary means' those who make preparation for it 'have a case that has not been answered by the proponents of peaceful change'.[28] *The State in Theory and Practice* is Laski's most pessimistic work. It closes with the prediction that it is unlikely Britain can be transformed through violent revolution and equally unlikely that radical reform can be effected through constitutional means.

V The Material Constitution

The impact of Laski's analysis of the crisis of democracy and the nature of the modern state on his materialist understanding of the British constitution is clarified in his 1938 book, *Parliamentary Government in England*.[29] The book follows the conventional format of examining sequentially the main institutional arrangements of the British system: the party system, the House of Lords, the House of Commons, the Cabinet, the Civil Service, the Judiciary and the Monarchy. But his objective was not to explain the basic machinery of British government: it was to expose the underpinning ideology enabling that machinery to work. This led him to critically examine the limits to the British constitution's feted flexibility. If the ambition of Bagehot's classic analysis of the constitution had been to explain its workings to a mid-Victorian liberal audience, 'the upper ten thousand', Laski's was to offer a socialist analysis for the newly-enfranchised citizens of Britain's parliamentary democracy, the multitude.

His account of the workings of these institutions is similarly conventional. What is innovative is its basic thesis, which runs as follows. The British constitution may have been 'the deposit of a grim civil war', but for a period of two hundred and fifty years, when other states have been reshaped by violent revolutions, all of its fundamental changes have since been effected by peaceful compromise. This achievement was not due to 'some special British genius for the difficult art of self-government' but because certain pre-requisites enabled contending political factions to reach settled agreement on fundamentals. These fundamentals bolster the basic principles of capitalism and it was this settlement, emerging from the

[28] *The State in Theory and Practice*, 213, 214-5.
[29] Harold J. Laski, *Parliamentary Government in England* (London: Allen & Unwin, 1938).

protection of property rights and reinforced by successes in war and empire-building, that enabled Arthur Balfour in 1928 to claim that 'our whole political machinery presupposes a people so fundamentally at one that they can safely afford to bicker; and so sure of their own moderation that they are not dangerously disturbed by the never-ending din of political conflict'.[30]

It was this underlying sense of unity that enabled Ministries to be formed and overthrown with relative equanimity.[31] And it was the growing wealth that flowed from this settlement that permitted concessions to social reform. These developments led many British socialists to regard the state as 'a neutral force which responded objectively to the will of an electoral majority'. But although the evolving political constitution placed governmental power at the disposal of the party that commanded a majority in the House of Commons, Laski emphasised that the pivotal positions in the judiciary, the civil service, the defence forces, and the police remain commandeered by members of the governing class, whose 'rules and habits … are those which do not disturb the social order they dominate'.[32]

The critical question was whether these constitutional arrangements could still work when one of the two major parliamentary parties advocated radical reform of the economic foundations of society. The question, in other words, was whether the constitution 'not seen abstractly, but in terms of the social order, of which it is the protective envelope, is elastic enough to admit changes which seek its basic transformation'.[33] In its form, the constitution provides 'all the necessary avenues to achieve this transformation peacefully' but in its material reality 'every political democracy that is based on the principle of inequality in matters of social

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[30] *Parliamentary Government in England* 13, 18. The Balfour quotation from Arthur J. Balfour, 'Introduction' to Walter Bagehot, *The English Constitution* (Oxford: Oxford University Press, 1928), xxiv.
[31] *Parliamentary Government in England*, 94: 'Since 1689 … neither [party] has ever moved so far from each other upon any vital question as to bring an ultimate disharmony into view. Each has always remained convinced that the private ownership of the means of production could not legitimately be called into question. The men who directed the destinies of both circles came, broadly, from the same social environments; they spoke the same language; they moved in the same circles; they depended upon the same common stock of ideas. They thought in the same way because they lived in the same way. Members of either wing could cross to the other without any alteration of fundamental doctrine. A Tory democrat like Disraeli could be more advanced in matters of social legislation than a Liberal like Gladstone or a Radical like John Bright. A Conservative aristocrat like Lord Cecil could have more cosmopolitan conceptions of foreign policy than a Radical "man of the people" like Mr. Lloyd George. A Liberal like Sir Herbert Samuel could take the same view of the problems of Indian self-government as a high Tory like Sir Samuel Hoare.'
[32] *Parliamentary Government in England*, 19, 23.
[33] *Parliamentary Government in England*, 24.

and economic constitution encounters a difficulty here from which Great Britain is no more free than any other country'.[34]

Having expounded his thesis, Laski sought to vindicate it through an examination of constitutional practice. All of his proposed reforms had previously been canvassed in the *Grammar,* but his objective now was to explain the workings of these constitutional arrangements from this materialist perspective.

Laski began with the party system. Despite its lack of legal recognition, the system is a vital component of the constitution and is expressed through the division between government and opposition. The 'mimic warfare' it generates has many advantages, not least in ensuring the control of the Commons by the Cabinet. But its most striking feature is that 'it maintains (or has so far maintained) the peace'. Continuity of policy had been possible because since 1689 'disputes between political parties tended … to conceal their unity of essential purpose and emphasize their inessential differences'. In reality, a single party has been in continuous control of the state and though it might have been divided into two wings its quarrels were essentially family quarrels. This is the great change that occurs with the coming of democracy and the emergence of the Labour party. A political democracy 'seeks, by its own inner impulses, to become a social and economic democracy' and embarking on that trajectory it 'finds the road barred by the capitalist foundations upon which the political democracy is built'.[35]

This material reality of the constitution, he explained, was hidden even from the Labour Party 'because it has accepted traditional economics and the traditional theory of the State'. Labour too readily accepted the state as a neutral institution available to any party obtaining a parliamentary majority, failing to appreciate that 'the neutrality of the State between Liberals and Conservatives was because both had the same fundamental ends in view'. Whichever party was in power, both upheld the principles and policies of a capitalist society.[36]

This was the challenge of the parliamentary road to socialism. The institutional barriers were immense. The House of Lords, as the second chamber of a political democracy, was 'an indefensible anachronism … responsible to no one but themselves'. Expressing a fusion of

[34] *Parliamentary Government in England*, 26, 35, 48.
[35] *Parliamentary Government in England*, 72, 90, 89.
[36] *Parliamentary Government in England*, 186.

aristocracy and wealth, its delaying power was simply 'a bulwark against the will of the masses'.[37] The great extension of governmental business required the minister 'to leave to his officials all but the largest decisions on major policy' and although the abolition of patronage resulted in a civil service with high standards of competence and conduct, its leaders still came from the traditional governing class: 'they go to the same schools and universities … belong to the same clubs … [and] the assumptions upon which their ideas rest are the same as those of the men who own the instruments of production in our society'. This is why civil servants could maintain neutrality and why 'the measures they have recommended have proved equally acceptable to Cabinets of either party'.[38] The judiciary acted as the guardian of a common law tradition which 'has been predominantly shaped by the need to serve the wants of a business civilization' and whose individualism is unsuited to a collectivist age.[39] And the monarchy 'has been sold to the democracy as a symbol of itself'.[40]

In *Parliamentary Government*, Laski departed radically from classical commentaries on the glory of the British constitution. From Montesquieu and Burke to Dicey and Bagehot the standard refrain had been that its virtue was its ability to maintain flexibility in its governing apparatus while continuing to protect life, liberty and property from governmental interference. In one sense, Laski does not disagree. But in explaining how this flexible constitution was settled by those material interests its fixed policy was to protect, he raised profound questions for those who sought political equality as a stage in realising social and economic equality. For those seeking to advance the common good, the institutions that made British parliamentary government such a success story had become major obstacles to continuing innovation.

VI The Material Constitution Revisited

Laski's last book was published posthumously as *Reflections on the Constitution*. Based on the Simons Lectures delivered at the University of Manchester in 1950, it reviewed the performance of political institutions in an age of 'turbulence and confusion'. Adopting a very different tone to that of *Parliamentary Government in England* written thirteen years earlier, the

[37] *Parliamentary Government in England*, 111, 130.
[38] *Parliamentary Government in England*, 309, 316, 317.
[39] *Parliamentary Government in England*, 363, 370.
[40] *Parliamentary Government in England*, 392.

book is something of a puzzle. Not only is his account of the institutions of government thoroughly orthodox; it also diverges from the radical criticisms of the earlier work. Indeed, the only allusion to the earlier book was his suggestion that, if there is a threat to the system, 'it seems to me to lie in the use of great financial and industrial power to prevent the will of the electorate being made effective by the government of its choice'. But even this was tempered by his claims that there is 'no reason to suppose that the status of the House of Commons has deteriorated in the last 50 years' and that 'I see no decline in its greatness, nor any ultimate danger that it should be by-passed in its fundamental purposes'. He further asserted that the 'growth of cabinet power has not meant the reduction of the House of Commons to what may be termed colonial status'.[41]

What explains such complacency and the change from his fears for parliamentary government expressed in 1938? One commonly touted explanation is that the experience of the war and the delivery of the post-war Labour government's programme changed his views of possibilities in unexpected ways. In the social and economic conditions of the post-war period, the great gulf between the major parties he foresaw and which he believed would lead not only to the sabotage of Labour's nationalisation and welfare programme but even to the breakdown of parliamentary government, did not materialise. Major differences between the parties remained, but there was also a much greater degree of cross-party support on such issues as the Beveridge Report, the National Health Service, the Butler Education Act, and the White Paper on Employment than Laski might have expected. Neither was there much evidence that the capitalist class had managed to subvert the significant change in property relations brought about by these and related reforms.

Yet another explanation for dissonance between the texts is simply that Laski had misread the constitutional crisis of the period. Laski had convinced himself that the Labour party was a militant force determined to use Parliament to overthrow the citadel of capitalism. This led him to believe that, should this programme be frustrated by the establishment, direct revolutionary conflict was likely to follow. As Robert Mackenzie commented, this 'surely was almost pathetic romanticizing on Laski's part'. Laski had exaggerated the ideological gap between the two parties: 'Labour was less militant than Professor Laski hoped; the Conservatives, for whatever motive, have been nothing like as reactionary as he feared'. In

[41] Harold J. Laski, *Reflections on the Constitution* (Manchester: Manchester University Press, 1951), 2, 104, 34, 103, 107.

reality, Mackenzie concluded, 'both parties when in power have had to operate in a set of circumstances which have drawn them very close together indeed'.[42]

Laski remained thoroughly ambivalent about the post-war achievements. In his last recorded notes, he recognised that the 'history of law has been, very largely, the history of an importation into freedom of contract of limitations and conditions which are less and less the result of agreements of the parties to the contract, and more and more the result of the intervention of society which uses the authority of the state-power to deprive the owner of property of the economic sovereignty his possession of which seemed "natural".' But he went on to argue that although this may have improved the lot of the agricultural worker it 'has not involved any serious change in the relations of production in agriculture'; although the national health service, social welfare and education reforms 'are all of them big and impressive gains' nonetheless 'it must be remembered that there still remain two systems of education in Great Britain, one for the rich and one for the poor'. And although a 'brave effort' had been made to deal with the housing problem, 'there is nothing yet which permits us to say that a still predominantly capitalist society can solve the housing problem'.[43]

This type of argument led Laski to characterise those aiming to 'transform capitalist democracy into socialist democracy by peaceful means' as 'radical bourgeois'. They differ in degree but not in kind from the 'conservative bourgeois' in that they 'assume that as the relations of production change in a political democracy the values of the class which has hitherto owned the instruments of production will change also' and so far 'all the evidence is against this assumption'.[44] Analysis here is replaced by labelling. Abandoning hard historical realism, Laski ends up employing a kind of argument that signifies retreat from any serious examination of the issues confronting post-war society.

VII Conclusion

Harold Laski was a remarkably astute constitutional analyst of the inter-war period. The range of his learning was immense, his eye for detail outstanding, and he had a talent for coining

[42] R.T. Mackenzie, 'Laski and the Social Bases of the Constitution' (1952) 3 *Brit. J. of Sociology* 260-263, 262, 263.
[43] Harold J. Laski, *The Dilemma of Our Times: An Historical Essay* (London: Allen & Unwin, 1952), 79-80, 105. 105. (This is a draft of a proposed updated version of his work, *Faith, Reason and Civilization* (1944); it remained incomplete but was prepared posthumously for publication by R.T. Clark).
[44] *The Dilemma of Our Times*, 65, 66.

biting epigrams that exposed the hypocrisy of so much writing about the British constitution. Laying bare many of the orthodox assumptions about the subject, he revealed how the modern settlement depended on the entrenched order of property and directly addressed the challenges facing political movements seeking radical social change through inherited parliamentary arrangements. In these respects, his was a penetrating critique of the modern constitution.

But Laski was also a political activist and his growing frustration with the labour movement's failure to deliver transformative change and bring about a socialist society led him into a type of economic determinism that seemed increasingly dogmatic and formulaic, and which ultimately dulled his analytical insights. 'No theory of the state is ever intelligible', he had declared, 'save in the context of its time'. In the 1930s, this led him to amend the theory of the state he had advanced in the 1920s. But despite the fact that so many of his dire predictions never materialised, he was incapable of further revisions during his last years.

One reason is that he still believed that the march of history was on his side. In his 1943 *Reflections on the Revolution of Our Time* he acknowledged that, being in a period of reaction from its ideology, it was difficult to judge the Russian Revolution. But he went on to assert that we should recognise it as 'the first stage in a fundamental transformation of the social principles of Western civilization'. Maintaining that we must 'build an equal society in the next generation or we must abandon the democratic experiment', he argued that the fight must be won not just against reactionaries but also against counter revolutionaries. The counter-revolutionaries most surely recognised the impossibility of returning to the world of laissez-faire and an aristocracy of birth, but their aim 'is 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'.[45]

The counter-revolutionary movement he had in mind here was fascism. But in the post-war period, things turned out rather differently. Fascism was defeated, as later was the experiment of the Soviet Union. Managed capitalism organised through a regulatory welfare state became the western model. Towards the end of the twentieth century, however, it was increasingly apparent that we were facing a different type of counter-revolution, that of neo-liberalism. Neo-liberalism marked a radical shift from social democracy, managed capitalism,

[45] Harold J. Laski, *Reflections on the Revolution of Our Time* (London: Allen & Unwin, 1943), 42, 203, 252.

or what Laski called a radical bourgeois politics. Its extending influence might lead us to further reflections on the material bases of constitutional orders, though with a rather different inflection to Laski's.

Laski's world is no longer ours. But does his materialist method still have something to offer? The fundamental problem of Laski's constitutional analysis is that he presented the two conceptions of constitution – the ideal and the material – as a chasm, one being romantic and the other real. Yet, far from being polar opposites, they most surely express a tension that is inherent in the nature of the modern state. The two aspects do not express, as Laski seems to believe, the ideal version he presented in the 1920s and the material emphasised in the 1930s. Laski conceives them almost as the normal and the pathological. But as so many scholars have demonstrated, the two aspects inhere in the very idea of the state.[46] There is, as Pierre Bourdieu noted, a fundamental ambiguity about the state: 'The state is a Janus about which it is impossible to state a positive property without simultaneously stating a negative property, a Hegelian property without a Marxist property, a progressive property without a regressive or oppressive property'.[47]

The flaw in Laski's analysis – and perhaps in all theories founded on the idea of 'the material constitution' – is its tendency to one-sidedness. For the Laski of the 1930s, the state is presented as a mechanism which bourgeois capitalists, conscious of their own class interests, have devised and continue to operate for their own ends. There are elements of truth in this, but as an analysis of the state and its constitution it leads ultimately to a reductive account of excessive abstraction and simplification. Bourdieu had suggested that the two-sided character of the state 'is troubling for those who like to think that everything will turn out rosy'.[48] It is equally troubling for those who, like Laski, veer between an inflated ideal and a depressed hyper-reality. The nature of the state can be adequately explained only once the autonomy of the political is taken seriously, and this requires recognising that the political is concerned with a set of human relations that is not reducible to class conflict or socio-economic tensions.

Unless the political is accepted as a distinct domain in which this tension between ideal and reality, state and government, sovereignty and sovereign, is played out, then one cannot explain the hypocrisy of using legality as a cloak for exploitation. If there is no symbolic

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[46] See Martin Loughlin, *Foundations of Public Law* (Oxford: Oxford University Press, 2010), 163-4.
[47] Pierre Bourdieu, *On the State: Lectures at the Collège de France, 1989-1992* D Fernbach trans. (Cambridge: Polity, 2014), 98.
[48] Bourdieu, *On the State*, 98

representation, there is no concept of state; there is only despotic power. The materialist critique highlights the gulf between ideal and reality, but by treating the political as a superstructural phenomenon determined by productive relations rather than being itself a constitutive element of human experience, it fails to offer an adequate account of the operation of power dynamics in contemporary society.