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‘E pluribus unum.....forum?’ A Marxist approach to the EU’s democratic deficit

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Abstract

This article approaches the issue of the European Union’s (EU) democratic deficit from a Marxist perspective. This issue has been central to the exponential rise of Euroscepticism that influenced processes like Brexit and Grexit (despite the latter’s frustration), as well as the rise of explicitly anti-EU national governments in European countries. This article shows that critiques of the EU’s democratic deficit (even cutting-edge ones, like the one placing emphasis on the notion of the ‘economic constitution’) are inadequate because the debate is already embedded in ideological compromise. Offering a brief exposition of the Marxist approach to the democratic form of the capitalist state, it attempts to show the limitations of critical approaches which overlook the issue of class rule and state power in their calls for democratisation. To do so, the article outlines the structural function and class character of the EU, as well as its role as a (supra-)state formation in the process of capital accumulation. Ultimately, it offers a Janus-faced critique of democratic deficit in Europe, one the one hand arguing that the critique of the EU economic constitution as neoliberal is limited because it fails to account for the scope of reform that the EU allows to respond to the challenges of the process of capital accumulation, while on the other concluding that the solution to the democratic deficit cannot simply be a return to nation-state democracy which is equidistant from actual self-government of the popular strata as its EU counterpart.

Keywords: Public Law; Democracy; democratic deficit; economic constitution; Marxism

1. Introduction

Is economic management an area of decision-making that is better left to experts and technocratic institutions? This question has been at the centre of the European integration project since its inception. In one of the climactic moments of the Eurozone crisis, thousands of Greek citizens rushed to the banks, forming queues at cashpoints in July 2015 as soon as a referendum – that would ostensibly affect Greece’s membership of the EU and/or the Eurozone – was announced. The imposition of capital controls to address the issue of liquidity resulted in scenes unprecedented for a whole generation. The tremendous force of the market had shaped the political response to the crisis until that point, yet, in that moment, the market seemed to dread the constitutionally recognised expression of democratic will. The relationship between economy, democracy and constitutional law was key to the ‘plot’ of this ‘modern Greek tragedy’. As a solution to the crisis the markets had already dictated the restriction of various fundamental rights protected in the Greek constitution, such as the right to collective bargaining and the right to

unionise.¹ The economy, ruled by laws beyond human reach, seemed to determine the validity of constitutional laws and frustrate the will of the people.

The intricate and contradictory relationship between market operation and democratic will is crucial for understanding the issue of the EU's democratic deficit. The mainstream approach to this issue focuses on the lack of development of the EU's representative aspects and democratic processes. It seeks to justify these by stressing the unbalanced process of integration, especially after the Maastricht Treaty, with economic integration being heavily prioritised over its political counterpart.² The aftermath to the global financial crisis has seen the growth of multiple critical approaches to EU law which examine the issue of the democratic deficit with a focus on the EU's 'economic constitution'.³ This is understood as the institutional arrangement for managing economic affairs, as well as the rules that regulate the relationship between citizens and these institutions. According to these approaches, the EU economic constitution to a large extent reflects a distinct political conception of how the economy should be managed. In their view, the EU is inspired by a specific economic constitutionalism according to which economic management is technical rather than political and should better be carried out by independent institutions, whose legitimacy relies on their technocratic expertise.⁴ This conception perceives democratic input on issues of economic management as a threat and factor of instability.⁵

This paper will review these critical approaches to the EU economic constitution in order to unearth their limitations. Despite their fairly accurate analysis of the EU's democratic shortcomings, we claim that this heterodox literature has distinct limitations because it overlooks the class element in its calls for democratisation. In doing so it fails to indicate precisely *why* the EU is hostile to democracy. On the contrary, by adopting a Marxist approach to the EU and understanding it as a capitalist (supra-)state formation this paper will present the causal root of the EU's fear of democracy. A Marxist perspective is here understood as a theoretical approach that examines the socio-economic content of the integration process, focusing on the process of class struggle as it is carried out in the context of a capitalist economic system, that is, a system governed by the law of capital accumulation.⁶

Taking into account the role of state formations in, as well as the state form's responsiveness to the crisis-ridden process of capital accumulation, this paper will approach the question of reforming the EU economic constitution. It will attempt to account for the actual reform taking place at the EU level with the adoption of policies that can hardly be characterised as neoliberal (eg, during the course of the pandemic), by arguing that neoliberalism is not set in stone. The particular politico-economic recipes prescribed by capitalist state formations depend on the contingent requirements of the process of capital accumulation and class struggle. Therefore, a critique of the EU's economic constitution as neoliberal is necessarily limited. The EU economic constitution can be reformed, yet – as this paper shows – such reform cannot be for the benefit of

¹A Koukiadaki and L Kretsos, 'Opening Pandora's Box: The Sovereign Debt Crisis and Labour Market Regulation in Greece' 41 (3) (2012) *Industrial Law Journal* 276–304.

²A Moravcsik, 'In Defence of the "Democratic Deficit": Reassessing Legitimacy in the European Union' 40 (4) (2002) *Journal of Common Market Studies* 603–24; G Majone, 'Europe's "Democratic Deficit": The Question of Standards' 4 (1) (1998) *European Law Journal* 5–28. For a more critical presentation of the democratic deficit debate, see E Nanopoulos and F Vergis, 'The Inherently Undemocratic EU Democracy: Moving beyond the "Democratic Deficit" Debate' in E Nanopoulos and F Vergis (eds), *The Crisis Behind the Eurocrisis: The Eurocrisis as a Multidimensional Systemic Crisis of the EU* (Cambridge University Press 2019) 122–55.

³Indicatively see G Grégoire and X Miny, *The Idea of Economic Constitution in Europe: Genealogy and Overview* (Brill 2022), and A Skordas, G Halmaj and L Mardikian, *Economic Constitutionalism in a Turbulent World* (Edward Elgar 2023).

⁴W Streeck, 'The Crises of Democratic Capitalism' 71 (2011) *New Left Review* 5–29.

⁵M Wilkinson, 'Authoritarian Liberalism as Authoritarian Constitutionalism' in H García and G Frankenberg (eds), *Authoritarian Constitutionalism* (Edward Elgar 2019) 317–37.

⁶B van Apeldorn and L Horn, 'Critical Political Economy', Working Paper Kolleg-Forschergruppe 'The Transformative Power of Europe' 2018.

the working class and popular strata and will not enhance their participation in decision-making processes.

Ultimately, this paper argues, from a Marxist standpoint, that a critique of EU is not complete unless it is critique of capitalism and the capitalist state. Concomitantly, such an approach entails that the EU's democratic deficit cannot be addressed by a mere return to nation-state capitalist democracy. Neither exit nor reform are adequate solutions to the EU's democratic deficit. It is false to discuss the issue of democratic empowerment under the rubric of 'democratic deficit'. Democracy, understood as the actual rule of individuals over the totality of their social affairs can only materialise on the basis of a different system of social relations.

To develop these claims the paper is structured as follows. The second section introduces the issue of the EU's democratic deficit from a mainstream positivist perspective, as well as the critical approach to it based on the notion of economic constitution. The next couple of sections highlight the limitations of this critical approach which overlooks the issue of class rule and state power in its calls for democratisation. Section Three attempts to explain the causal root of the democratic deficit, by pointing the structural function and class character of the EU. In section Four we argue that the critique of the EU economic constitution as neoliberal is limited because it fails to account for the scope of reform that the EU allows to respond to the challenges of the process of capital accumulation. The paper concludes with a brief comment on why the solution to the democratic deficit cannot be simply a return to nation-state democracy.

2. Democratic deficit and economic constitution

A. Democratic deficit

The problem of the democratic deficit, from a formal positivist perspective, concerns the role of representative institutions in the EU decision-making process. It refers to the phenomenon of power-transfer from national legislatures to the Council of Ministers of the EU, as well as from elected assemblies to unelected bureaucratic institutions. This issue is intertwined, in mainstream analysis, with questions about the division of competence between the EU and individual Member States, questions concerning democratic and technocratic legitimacy, as well as the relationship between economic and political integration.⁷ The significance of this problem for the process of European integration can be understood by looking at the institutional changes that took place through consecutive treaty amendments in order to address the deficit by enhancing the representative elements of the Union, by delineating the EU competences⁸ and developing principles like subsidiarity and proportionality.⁹ The latest example is the Lisbon Treaty, which recognises national parliaments in the EU institutional matrix¹⁰ and increases the powers of the European Parliament by establishing the co-decision process as the 'ordinary legislative procedure'.¹¹

In parallel, several academic interventions sought to justify the Union's institutional balance and democratic deficit.¹² In this context, it was argued that concerns about the EU's undemocratic nature were misplaced. According to this view, the EU is not undemocratic –certainly not less democratic than nation-state democracies: its institutions are tightly constrained by constitutional

⁷See A Føllesdal and S Hix, 'Why There Is a Democratic Deficit in the EU: A Response to Majone and Moravcsik' 44 (3) (2006) *Journal of Common Market Studies* 533–62; G Majone, 'Europe's "Democratic Deficit": A Question of Standards' 4 (1) (1998) *European Law Journal* 5–28; J Weiler, 'Does Europe Need a Constitution? Demos, Telos and the German Maastricht Decision' 1 (3) (1995) *European Law Journal* 219–58; and D Wincott, 'Does the European Union Pervert Democracy? Questions of Democracy in New Constitutionalist Thought on the Future of Europe' 4 (4) (1998) *European Law Journal* 411–36.

⁸Art 5 Treaty of the European Union (TEU).

⁹Art 5(3) and 5(4) TEU.

¹⁰Art 12 TEU.

¹¹Art 294 of the Treaty on the Functioning of the European Union (TFEU).

¹²Moravcsik (n 7); Majone (n 7).

checks and balances (narrow mandates, fiscal limits, super-majoritarian and concurrent voting requirements and separation of powers).¹³ Furthermore, the EU is only responsible for regulatory interventions in areas of low electoral salience (central banking, constitutional adjudication, civil prosecution, economic diplomacy and technical administration) which are ‘commonly delegated in national systems, for normatively justifiable reasons’.¹⁴ Many advanced democracies insulate these issues from political contestation. Why should the EU be any different?

These theorists argue that the EU’s legitimacy derives from its institutional ability to offer ‘Pareto-improving’ solutions and from the fact that these institutions are ‘technically able to improve the welfare of the overwhelming majority of citizens in terms of their own felt preferences’.¹⁵ As a result, it is argued that the standards by which the legitimacy of EU integration and the institutions guiding this process is assessed need to be reset.¹⁶ If the EU is judged against nation-state democracies, rather than against an ideal parliamentary democracy, then it is legitimate.¹⁷ Irrespective of the truth of its premises, the argument follows a logical structure so far. Yet these theorists take a further step and argue that the democratic deficit is actually *democratically* justified. According to this argument, ‘the majority of voters and their elected representatives oppose the idea of a European federation, while supporting far-reaching economic integration’; as long as this is the case, depoliticisation of European policy-making is the price to pay in order to preserve national sovereignty largely intact.¹⁸

I argue that this last point constitutes a rather distorted presentation of the process of EU integration, because it presents a much more active role of the people in deciding how this process develops than what has transpired historically. This assumption is countered by critiques which focus on the EU economic constitution and its development. These critiques multiplied in the context of the Eurozone crisis and criticised the political bias of the EU economic constitution, though the notion of authoritarian liberalism. These critiques approach the democratic deficit as a structural element of the EU economic constitution. To a large extent they present a rather accurate and powerful critique of the EU and the process of integration, which nevertheless suffers from limitations that we aim to unearth by adopting a Marxist perspective in the following section. But before we do that let us focus on aspects of this critical analysis.

B. Economic constitution

The notion of the economic constitution refers to ‘key constitutional principles and institutional arrangements which may be relevant to management of the economy’.¹⁹ It also includes a normative dimension, concerning how the relationship between citizens and the economy *should* be regulated. The normative aspect of the ‘economic constitution’ is predominantly associated with the ordoliberal view which requires ‘that government in undertaking economic management should act only to implement the general norms derived from the economic constitution, rather than using discretionary powers’.²⁰

The normative dimension of the economic constitution, thus, gives rise to a notion of economic constitutionalism.²¹ This normative conception is reflected in specific institutional designs, as well

¹³Moravcsik (n 7) 603.

¹⁴*Ibid.*

¹⁵C Lord and P Magnette, ‘E Pluribus Unum? Creative Disagreement about Legitimacy in the EU’ 42(1) (2004) *Journal of Common Market Studies* 183–202, 186.

¹⁶Majone (n 7) 6.

¹⁷Moravcsik (n 7) 603.

¹⁸Majone (n 7) 5.

¹⁹T Prosser, *The Economic Constitution* (Oxford University Press 2014) 8.

²⁰*Ibid.*, 9.

²¹C Joerges, ‘Economic Constitutionalism and “The Political” of “The Economic”’ in G Grégoire and X Miny (eds), *The Idea of Economic Constitution in Europe: Genealogy and Overview* (Brill 2022) 789–820, and Wilkinson (n 5).

as concrete principles of policy-making. It requires an institutional design where non-political and unaccountable institutions (such as central banks or independent monitoring agencies) undertake the task of economic management free from political pressures and democratic mandates. Such institutional arrangements promote the depoliticisation of the economy and de-democratisation of economic decision-making. What is more, this ordoliberal conception of economic constitutionalism translates into concrete principles which this institutional design promotes, such as fiscal discipline, balanced budgets, competitiveness, growth, labour-market flexibility, etc.

The different variations of this model of economic constitutionalism have been critically assessed under the notion of authoritarian liberalism.²² This term has been used to describe the conjunction of political authoritarianism and economic liberalism in opposition to democratic constituent power that was manifested in the context of European integration in the single movement of ordoliberalism and neoliberalism.²³ In this context, it is argued that the authoritarian liberal paradigm is reflected in the EU's juridical nature, its institutional design, as well as its fundamental principles.

Let us elaborate. To begin with, the EU is a deeply juridical organisation. The legal avenue has been the predominant method of furthering the process of integration and establishing an internal market, to the point that the *acquis communautaire*, the rulebook that the Commission and the European Court of Justice (ECJ) wield as an instrument of power, now runs to 90,000 pages.²⁴ This has been described as 'the longest and most formidable written monument of bureaucratic expansion in human history, [...] impenetrable to its citizens, but inescapable for its states'.²⁵ The EU is thus able to realise the ordoliberal idea of economic management based on general norms, rather than political discretion.

Further to the above, it can be argued that the ECJ in establishing the principles of supremacy and direct effect²⁶ set the framework for EU economic constitutionalism. The declaration of a 'new legal order of international law' in *Van Gend En Loos*²⁷ implies that this can now be forcefully imposed and prevail over domestic legal orders and democratic decision-making processes.²⁸ Direct effect and supremacy are the cornerstones of the EU economic constitution. These principles seem to give rights to individuals ('nationals'), but this is misleading as the term embraces 'not only natural persons but also legal persons such as corporations'.²⁹ More accurately put, economic freedoms are conceptualised as basic rights which 'market citizens' can invoke against nation states.³⁰

Cases like *Van Gend en Loos* or *Cassis de Dijon*³¹ seem to simply promote European integration but the way in which they do so is by no means ideologically neutral. In reality the EU economic constitution entrenches certain substantive policies, thereby elevating them to a 'constitutional plane above the contestation of everyday politics and sheltering those who enforce them from

²²Indicatively see A J Menéndez (ed), 'Special Section: Herman Heller's Authoritarian Liberalism' 21 (3) (2015) European Law Journal 285–429; E Nanopoulos and F Vergis, *The Crisis behind the Euro-Crisis* (n 2); HA García and G Frankenberg, *Authoritarian Constitutionalism: Comparative Analysis and Critique* (Edward Elgar 2019). The term 'authoritarian liberalism' was introduced by Herman Heller in 1932 (see H Heller, 'Authoritarian Liberalism?' 21 (3) (2015) European Law Journal 295–301) to critique the authoritarian reforms debated towards the end of the Weimar Republic, such as the one advocated by Carl Schmitt.

²³M Wilkinson, 'Authoritarian Liberalism in Europe: A Common Critique of Neoliberalism and Ordoliberalism' 45 (7–8) (2019) Critical Sociology 1023–34, 1023.

²⁴P Anderson, 'Ever Closer Union?' 43 (2021) London Review of Books 1.

²⁵*Ibid.*

²⁶Case C 26/62 *Van Gend en Loos v Nederlandse Tariefcommissie* ECLI:EU:C:1963:1 and Case 6/64 *Flaminio Costa v ENEL* ECLI:EU:C:1964:66.

²⁷Case C 26/62 *Van Gend en Loos* (n 26).

²⁸D Nicol, *The Constitutional Protection of Capitalism* (Hart Publishing 2010) 97.

²⁹*Ibid.*, 91.

³⁰Joerges (n 21) 798.

³¹Case 120/78 *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein ('Cassis de Dijon')* ECLI:EU:C:1979:42.

accountability'.³² Indeed, it has been argued that the EU economic constitution entrenches 'a predominantly *neoliberal* programme' in that it seriously compromises 'the ability of governments to favour competing considerations over those of free trade'.³³ This is a crucial characteristic of the EU economic constitution. Several cases decided by the ECJ manifest the hierarchisation of principles in the EU economic constitution: the four freedoms, reflecting the dictates of the market, will prevail over contradicting principles.³⁴

Apart from its juridical nature and organisational, as well as substantive, principles, the authoritarian liberal character of EU economic constitutionalism is also apparent in the EU's institutional configuration. It has been argued that its institutional structure reflects a politico-economic conception which assesses the following elements as essential to the proper functioning of the capitalist system: 'a rule-bound economic policy, with protection of markets and property rights constitutionally enshrined against discretionary political interference; independent regulatory authorities; central banks, firmly protected from electoral pressures; and international institutions, such as the European Commission or the European Court of Justice, that do not have to worry about popular re-election'.³⁵ Indeed, the process of integration has been promoted to a large extent and at different stages predominantly by independent, unaccountable institutions, free from democratic pressure to institutionalise the common market.

The European Central Bank (ECB) is the exemplary institution of this conception, manifesting the tendency to move 'the governance of the political economy to a level where democracy cannot follow, and to institutions constitutionally designed to be exempt from political contestation'.³⁶ While other central banks have to face a government and a public at the same territorial and political level, the ECB is 'the most independent central bank in the world, and its monetary regime the most depoliticised', because of its 'purely technical and monetary function'.³⁷ However, the character of the Economic and Monetary Union (EMU) and the role of the ECB in this are not purely technical but pre-eminently political, as the policies to deal with the Eurozone crisis showed. In the Eurozone context, where other forms of capital devaluation (such as currency depreciation) are precluded by the EMU, the favoured solution to the crisis was a policy of internal devaluation, ie, reduction of labour costs and imposition of higher rates of exploitation.³⁸

Furthermore, the ECJ's pioneering role in establishing the constitutional framework that facilitated the creation of the internal market is well documented.³⁹ The ECJ was not an arbiter but the driving force of integration.⁴⁰ The decisions of national constitutional courts are subject to alteration or abrogation by elected legislatures and are, thus, reversible. This is not the case with the ECJ's decisions which are irreversible, short of an amendment of the treaties which requires the unanimous agreement of all Member States.⁴¹ In the words of Koen Lenaerts, the current president

³²Nicol (n 28) 83.

³³*Ibid.*, 97, my emphasis.

³⁴P Syrpis, *EU Intervention in Domestic Labour Law* (Oxford University Press 2007) 51.

³⁵Streeck (n 4).

³⁶W Streeck, 'Heller, Schmitt and the Euro' 21 (3) (2015) *European Law Journal* 361–79, 365.

³⁷*Ibid.*, 369.

³⁸See C Lapavistas et al, 'Eurozone Crisis: Beggar Thyself and Thy Neighbour' 12 (4) (2010) *Journal of Balkan and Near Eastern Studies* 321–73, 322 and G Carchedi, *For Another Europe: A Class Analysis of European Economic Integration* (Verso 2010) 138.

³⁹See Anderson (n 24), where he traces the development of the ECJ and its role in establishing an 'ever closer union'. Anderson begins with a review of the political background of several of the judges at the early stages of the ECJ, based on research carried out by historian Vera Fritz, which reveals a disturbingly high volume of judges and advocates involved in the ECJ's early years who had held organic positions or been affiliated with fascist and Nazi regimes. See V Fritz, *Juges et avocats généraux de la Cour de Justice de l'Union européenne (1952–1972): Une approche biographique de l'histoire d'une révolution juridique* (Vittorio Klostermann 2018).

⁴⁰D Grimm, *The Constitution of European Democracy* (Oxford University Press 2017).

⁴¹*Ibid.* See also T Horsley, *The Court of Justice of the European Union as an Institutional Actor: Judicial Lawmaking and Its Limits* (Cambridge University Press 2018).

of the Court: 'There is simply no nucleus of sovereignty that the member states can invoke, as such, against the Community'.⁴² The point can thus be made that the ECJ, as a driving force behind the establishment of an economic constitution which allowed the dictates of the market to be enforced against any contradicting aspect of domestic law, wielding an unforeseen amount of power, free from control by any national or supranational institution, forms an integral part of the institutional design that actualises the ideal of an authoritarian economic constitutionalism.

C. Limitations of the 'economic constitution' critique

This is a powerful critique of the EU's democratic deficit. Despite its merits, central among which is the introduction of a critical politico-economic approach to the democratic deficit, I argue that this critique is still compromised and fails to provide a comprehensive explanation of the structure of the EU and its democratic deficit. The problem is that this critique is carried out from a Keynesian perspective, which sees the EU as merely an institutional manifestation of a neoliberal attack on the 'standard model of democracy'. This section will focus on this perspective in order to highlight its weaknesses and limitations.

This critique of the EU assumes the existence of a 'standard model of democracy'. This refers to the 'democratic welfare-state capitalism of the three post-war decades', which was characterised by 'reasonably free elections, government by established mass parties, ideally one of the Right and one of the Left, and strong trade unions and employer associations under a firmly institutionalized collective bargaining regime, with legal rights to strike and, sometimes, lock-out'.⁴³ This view praises the distributional qualities of this standard model from a Keynesian perspective. According to it, standard post-war democracy 'functioned as an engine of economic and social progress which, by redistributing parts of the proceeds of the capitalist market economy downward, provided for rising standards of living among ordinary people and thereby procured legitimacy for a capitalist market economy, while stimulating economic growth by securing a sufficient level of aggregate demand'.⁴⁴

According to one of the major exponents of this critique, this 'period of uninterrupted economic growth still dominates our ideas and expectations of what modern capitalism [and – we would also add – modern democracy] is, or could and should be'.⁴⁵ In this context, the democratic deficit of the EU is assessed as the shift of the arena of distributional conflict 'upwards and away from the world of collective action of citizens towards ever more remote decision sites'.⁴⁶ Similarly, the EU state project is described as one 'shaped by scalar strategies that aim at sealing off popular forces from decision-making processes by flexibly altering the scalar nodal points of policy elaboration so as to take the line of least resistance'.⁴⁷

I argue that this is a purely descriptive and quite one-sided exposition of the role of democratic institutions in Western capitalist countries – or, as Wolfgang Streeck puts it, countries belonging to the Organisation for Economic Co-operation and Development.⁴⁸ Indeed, even this geographic restriction is not entirely accurate since several Southern European countries were governed by authoritarian regimes for much of the period under discussion.⁴⁹ To call this a 'standard' model of democracy reveals serious methodological flaws. This 'standard model of democracy' was the

⁴²K Lenaerts, 'Constitutionalism and the Many Faces of Federalism' 38 (1990) *American Journal of Comparative Law* 205–63.

⁴³W Streeck, *How Will Capitalism End? Essays on a Failing System* (Verso 2016) 4, 21.

⁴⁴*Ibid.*, 21.

⁴⁵*Ibid.*, 73.

⁴⁶*Ibid.*, 20.

⁴⁷S Sandbeck and E Schneider, 'From the Sovereign Debt Crisis to Authoritarian Statism: Contradictions of the European State Project' 19 (6) (2014) *New Political Economy* 847–71, 865.

⁴⁸Streeck (n 43) 21.

⁴⁹See N Poulantzas, *The Crisis of the Dictatorships: Portugal, Spain, Greece* (Verso 1976).

historically contingent result of primarily two processes: (i) the process of capital accumulation in north Atlantic countries, and (ii) the process of class struggle as it developed in these countries after the second world war. These processes are ignored by Streeck and thinkers working within the Keynesian framework because they lack the analytical tools to configure their operation. This is instead what a Marxist analysis offers – as I show in the following section.

Critiques of the EU economic constitution rely on analytical frameworks which conflate the processes of class struggle and capital accumulation under the catchphrase ‘neoliberalism’ and end up with no more than a linear exegesis of the democratic deficit. According to it, the standard model of post-war democratic capitalism was replaced by neoliberalism which led to the erosion of democracy through an upward shift of conflict arenas. This assessment, based on Keynesian economics,⁵⁰ entails that the democratic task is reduced to the search for a ‘democratic’ state (national, supranational or a combination of the two) whose redistributive characteristics would ensure enough ‘aggregate demand’ to escape capitalist contradictions.

Yet, to approach democracy merely as an ‘arena of distributional conflict’ reveals a one-sided focus on relations of distribution. This is to be expected from thinkers operating within the Keynesian framework but leads to other shortcomings. In his analysis, Streeck mentions the issue of profits and the fact that profit-dependent classes opted in the 1970s for the alternative of globalised production,⁵¹ but he fails to explain why these classes opted for globalised production and offshoring, as well as neoliberal policies. A comprehensive answer to these questions needs to take into account and, indeed, focus on changes in the sphere of production, as well as challenges in the process of capital accumulation and developments in the process of class struggle. Keynesian analysis lacks the analytical tools to explain these processes and focusses exclusively on neoliberalism, instead of capitalism.

The analytical neglect of the process of class struggle leads to exaggerated claims such as the ‘destruction of collective agency in the course of capitalist development’⁵² and the pessimistic rejection of the possibility of democracy existing without capitalism.⁵³ Indeed, Wolfgang Streeck goes so far as to conclude that capitalism can only collapse as a result of an endogenous dynamic of self-destruction.⁵⁴ If democracy without capitalism is unrealistic, the main task of democratic politics is to defend what is left of the institutions through which markets can be brought back under the control of society.⁵⁵ In this context, Streeck proposes several Keynesian solutions to the EU predicament, from scrapping the Economic and Monetary Union that would allow currency devaluation to operate as a ‘democratic tool’ to a European Bretton Woods.⁵⁶

The goal of democratic struggle is thus reduced to a model of democratic capitalism as means to boost aggregate demand. Consequently, the critique of the democratic deficit in reality stands for the critique of the difficulty to pursue Keynesian policies – which are conceived as solutions to capitalism’s dead-ends – in the EU context. There are two problems with this approach. First, Marxist theory (and historical reality) has disproven that Keynesian policies of state induced stimulus programs can overcome capitalist contradictions or restore the brief balance between capitalism and democracy.⁵⁷ Second, as the following sections show, the EU may indeed allow the adoption of Keynesian policies at the EU level.

⁵⁰See G Pilling, *The Crisis of Keynesian Economics* (Routledge 2015).

⁵¹Streeck (n 43) 21–2.

⁵²*Ibid.*, 12.

⁵³W Streeck, *Buying Time: The Delayed Crisis of Democratic Capitalism* (Verso 2014) 193.

⁵⁴Streeck (n 43) 13.

⁵⁵Streeck (n 53) 193.

⁵⁶*Ibid.*, 199–202.

⁵⁷G Carchedi and M Roberts, ‘The Long Roots of the Present Crisis: Keynesians, Austerians, and Marx’s Law’ in G Carchedi and M Roberts (eds), *World in Crisis: A Global Analysis of Marx’s Law of Profitability* (Haymarket 2018) 30–52.

3. A Marxist approach to the EU constitution

A. Capital accumulation, class struggle . . .

In the previous section we reviewed the critical approach to the EU's democratic deficit which focusses on the notion of the EU economic constitution. This critique, which sees the EU constitution as determined by a structural fear of democracy, is fairly accurate but limited. It is limited because it fails: (i) to indicate precisely why the EU is hostile to democracy; (ii) to account for the actual reform taking place and the adoption of policies that can hardly be characterised neoliberal (eg, during the course of the pandemic); and (iii) to explain why the solution to the democratic deficit cannot be simply a return to nation-state capitalist democracy. This section will address the first point and the next section the remaining two points. Our aim is: (i) to explain the causal root for this fear of democracy, by pinpointing the structural function and class character of the EU, and (ii) to argue that there is scope for reforming the EU – hence the critique of a 'neoliberal' EU is necessarily limited – yet this can only happen in response to pressing challenges to the process of capital accumulation.

It is generally accepted, from a Marxist standpoint, that the democratic form is the form of capitalist state most effective in securing the hegemony of the capitalist class over subordinate classes. The day-to-day reproduction of bourgeois rule and capitalist relations relies on the consent of the masses. This consent is secured through the people's belief that they exercise self-government through the state's representative institutions.⁵⁸ Additionally, as Marx showed in his 'Eighteenth Brumaire', and other Marxists in analyses of subsequent historical examples,⁵⁹ the republic is a state form which more effectively mediates contradictions within the ruling class *itself*.⁶⁰ The republican form, based on representation, deliberation in the legislative assembly and a multiplicity of political parties, allows many diverse channels for the mediation of intra-class conflicts between these dominant class factions. This is why Marx describes the parliamentary republic as the unavoidable condition for the common rule of these class factions.⁶¹

However, despite the obvious advantages of the democratic form in securing the reproduction of capitalism, historically the attitude of the bourgeois ruling class towards democratic institutional forms has been ambivalent and in multiple instances openly hostile. Never has a true democratic polity, in the sense of genuine self-government by the entire population, existed in the context of capitalist society. Instead, there is a natural tendency of bourgeois state power to resort to authoritarian forms (or combine such forms with liberal democratic institutions) in situations of crisis. The main reason behind this ambivalent and hostile stance is identified by Karl Marx: 'The fundamental contradiction of [the republican] constitution, however, consists in the following: The classes whose social slavery the constitution is to perpetuate, proletariat, peasantry, petty bourgeoisie, it puts in possession of political power through universal suffrage. And from the class whose old social power it sanctions, the bourgeoisie, it withdraws the political guarantees of this power. It forces the political rule of the bourgeoisie into democratic conditions, which at every moment help the hostile classes to victory and jeopardise the very foundations of bourgeois society'.⁶²

Two points follow directly from the above exposition of Marxist insights to the role of democratic forms in the reproduction of capitalist society. First, that democracy – understood as actual self-government of the people – is impossible in capitalist society. The democratic form in capitalism appears as the bare minimum of representative institutions to sustain the consensus of the masses, as well as the mediation of class and intra-class contradictions. This does not mean

⁵⁸P Anderson, *The Antinomies of Antonio Gramsci* (Verso 2017) 42.

⁵⁹See Poulantzas (n 49).

⁶⁰K Marx, 'The Eighteenth Brumaire of Louis Bonaparte' in K Marx and F Engels (eds), *Collected Works: Volume 11* (Lawrence and Wishart 2010) 119–20.

⁶¹*Ibid*, 165.

⁶²K Marx, 'Class Struggles in France, 1848 to 1850' in K Marx and F Engels (eds), *Collected Works: Volume 10* (Lawrence and Wishart 2010) 79.

that all a Marxist analysis can contribute to the critique of the democratic deficit is an *a fortiori* argument. One of the main characteristics of the Marxian dialectical method is the demand for ‘concrete analysis of the concrete situation’.⁶³ With the analytical tools of class struggle and the labour theory of value, Marxist analysis can concretely examine the processes that led to the institutional arrangement of the EU. Under this prism, a critique from the standpoint of actual democracy allows us to grasp that both the EU and nation-states are state formations whose role in capitalist society needs to be assessed as part of the process of capital accumulation and class struggle.

Second, the exact political form of reproduction of capitalist society (ie, the mixture of consensus and repression, austerity or expansionary fiscal policies) is a contingent result of these processes. According to Marxist theories of the state, the crisis-ridden pattern of capital accumulation necessitates a constant reorganisation of social relations of production and exchange. This process, in its turn, gives rise to new functions and forms of the state, as mentioned above.⁶⁴ Crudely put, the ‘purpose of capital is to accumulate extracted surplus value, and the state is the political form of that purpose’ as it ensures the cohesion, organisation, integration and reproduction of the capitalist economy.⁶⁵ More specifically, the tendency for the rate of profit to fall (TRPF) is the determining historical law, ‘in responding to which the state takes on new functions, and develops appropriate forms through which to carry out those functions’.⁶⁶

To understand the role of state formations in the process of capital accumulation it is key to briefly elaborate on the operation of this law in the monopoly stage of capitalism. Imperialism, the monopoly stage of capitalism, is characterised by the heightening of the totality of capitalist contradictions, central among which is the contradiction between capital and labour.⁶⁷ On a high level of abstraction, it can be argued that in this stage of capitalism the contradiction between productivity and profitability reaches extreme levels. Simply put, the drive to increase productivity in capitalism necessarily leads to a rise in the organic composition of capital, a term used by Karl Marx to describe the process according to which the value of the means of production (machinery, offices and other equipment), over time, increases relative to the value of labour power (the cost of employing a labour force).⁶⁸ However, since value (and profit) is only created by labour power, then the value produced by labour power will, over time, decline relative to the cost of investing in means of production and labour power. Consequently, the rate of profit will tend to fall.⁶⁹ It has to be stressed that this law appears as a tendency because of the operation of various countertendencies. These include the intensification of exploitation of labour power, the depression of wages below the value of labour power, the cheapening of the value of constant capital, foreign trade, etc.⁷⁰

Moreover, it has been argued that falling profitability and capital’s battle to counter this tendency is key to understand many socio-political developments in the twentieth century. A compelling argument has been made that the recurring and regular economic crises and slumps

⁶³See G Lukacs, *Lenin: A Study on the Unity of His Thought* (Verso 2009).

⁶⁴See B Fine and L Harris, ‘State Expenditure in Advanced Capitalism: A Critique’ 98 (1976) *New Left Review* 97–112; and C O’Kane, ‘Towards a New State Theory Debate’ (Legal Form blog 2019) <<https://legalfarm.blog/2019/05/24/towards-a-new-state-theory-debate-chris-okane/>> accessed 14 February 2025.

⁶⁵W Bonefeld, *Critical Theory and the Critique of Political Economy: On Subversion and Negative Reason* (Bloomsbury 2011) 182, 168.

⁶⁶S Clarke, ‘The State Debate’ in S Clarke (ed), *The State Debate* (Macmillan Press 1991) 14.

⁶⁷Indicatively see A Callinicos, *Imperialism and Global Political Economy* (Polity Press 2009); EM Wood, *Empire of Capital* (Verso 2005); D Harvey, *The New Imperialism* (Oxford University Press 2003); JB Foster, *Naked Imperialism: America’s Pursuit of Global Hegemony* (Monthly Review Press 2006); A Cox, *Empire, Industry and Class: The Imperial Nexus of Jute, 1840–1940* (Routledge 2013); A Higginbottom, ‘A Self-Enriching Pact: Imperialism and the Global South’ 5 (1–2) (2018) *Journal of Global Faultlines* 49–57.

⁶⁸K Marx, *Capital: Volume 1* (Penguin 1990) 762–94.

⁶⁹K Marx, *Capital: Volume 3* (Penguin 1992) 317–48.

⁷⁰*Ibid.*, 338–48.

in output, investment, and employment in modern economies are due to the falling profitability of capital.⁷¹ Recently, it was further argued that the exponential growth of the banking and finance sector should be regarded as a countertendency to this law, because this sector enables industrial firms to increase the speed of turnover of their capital, therefore crucially affecting their profitability.⁷² Regarding the issues under examination, it is argued that the TRPF is key to explaining the processes of globalisation and neoliberalism in a more comprehensive manner than Keynesian analyses. Analysing data from Western countries (with a more explicit focus on the USA), Carchedi and Roberts note that from the extreme heights it reached following the massive destruction of capital in the second world war, profitability kept decreasing between 1948 and 1982, until it rose during the era of what is called ‘neoliberalism’ – from 1982 to 1997.⁷³ Their explanation is that capitalism managed to bring into play the counteracting factors to falling profitability, namely greater exploitation of the domestic workforce (falling wage share as a result of neoliberal restructuring) and wider exploitation of the labour force elsewhere (globalisation of production and offshoring).⁷⁴

Additionally, the process of capital accumulation, as determined by the TRPF, directly affects the institutional forms of the state. As mentioned above, there are several countertendencies to this law and several policies that capitalist states can pursue to restore the profitability of capitalist enterprises. These range from expansionist policies and military interventions in foreign territories in search of new markets and resources (as it happened predominantly in the twentieth century when the battle for markets thus became a struggle between developed capitalist nations for territory⁷⁵) to intensified exploitation of domestic workforce, more efficient technologies, speculation in unproductive areas of the economy or increase of unproductive sales expenditures.⁷⁶ The exact characteristics a state formation will assume to respond to challenges in the process of capital accumulation depend on the specific socio-economic and political circumstances. In inter-war Germany the TRPF necessitated a change from the Weimar to the Nazi state form,⁷⁷ whereas in the post-war period the rejuvenation of capitalism that followed the massive destruction of capital’s less efficient units during the war, as well as the transition from the military economies of the war period to the post-war civilian economies, was carried out under the welfare state form.⁷⁸

The development of the EU needs to be understood in this context. According to Carchedi, profitability is the reason why capitals move across national frontiers: ‘in their constant quest for the highest rates of profit, the most dynamic capitals seek access to (a) foreign inputs, labour power and financial capital, (b) foreign commodity markets and (c) foreign direct and indirect investment opportunities’.⁷⁹ The EU satisfies all the above requirements, constituting an unprecedented experiment in creating a common international market where dominant European monopolies would be able to find conditions for optimal capital accumulation and profit maximisation. It should not be forgotten that the major impetus for further integration came after the first major capitalist crisis after the war, in the 1970s. Similarly, we may take note of more recent challenges to the process of capital accumulation (starting with the 2008 financial

⁷¹See Carchedi and Roberts (n 57).

⁷²MV Passarella and H Baron, ‘Capital’s Humpback Bridge: “Financialisation” and the Rate of Turnover in Marx’s Economic Theory’ 39 (5) (2015) Cambridge Journal of Economics 1415–41.

⁷³Carchedi and Roberts (n 57).

⁷⁴*Ibid.*

⁷⁵M Desai, ‘Vladimir Ilyich Lenin’ in J Eatwell, M Milgate and P Newman (eds), *Problems of the Planned Economy* (Palgrave Macmillan 1990) 151–4.

⁷⁶Carchedi and Roberts (n 57).

⁷⁷A Sohn-Rethel, *Economy and Class Structure of German Fascism* (Process Press Ltd 1987) 89.

⁷⁸G Carchedi, ‘The Old Is Dying But the New Cannot be Born: On the Exhaustion of Western Capitalism’ in Carchedi and Roberts (n 57).

⁷⁹Carchedi (n 38) 60.

crisis, the climate crisis, etc.) which call for different politico-economic recipes and can explain centrifugal tendencies and phenomena like Brexit.

On that note, we need to stress that the processes of capital accumulation and class struggle are interrelated. The strength of the organised labour movement, in different places and historical periods during the 20th century, found expression in various concessions (labour rights, social and economic rights) and the form of the welfare state. This put significant pressure and barriers to the process of capital accumulation. As these rights and concessions led to an increase of the cost of labour, they contributed to a reduction of the rate of profit. The EU can thus be seen as responding to these challenges through the creation of an institutional environment that allows capitalist enterprises to bypass obstacles to capital accumulation such as regulated labour markets. The EU provided an opportunity for European ruling classes to settle the issue of organised labour's strength by allowing the free movement of capital and the free movement of workers along national frontiers. The former facilitates the search for less regulated labour markets, while the latter provides capitalist enterprises with cheap labour force.

In this context, the impact of the EU on democratic processes can be assessed. This consists primarily in the *further* restriction of any possible influence of subordinate social strata on economic policy. A Marxist analysis forces us to think beyond the dichotomy between national level democracy and supranational level technocracy or authoritarianism. It forces us to ask concrete questions about how collective and class dynamics unfold into each of these levels. To illustrate this point let us remember the context in which the UK joined the EU. Before joining the EU, the role and strength of organised labour and the specific requirements of the process of capital accumulation in the UK had necessitated the adoption of Keynesian politico-economic recipes of state-induced stimuli and full employment. This process reached the point that the fundamentals of free market capitalism were contested by both major British political parties. In 1961, even the Conservative Prime Minister Harold Macmillan accepted that a substantial level of state planning of the economy was necessary.⁸⁰ The dominance of the welfare state model was encountered in other European countries after the war (France and Italy, as well as Greece, Spain and Portugal subsequently). In that context, the accession to the EU facilitated – at different pace for each of these countries – the change into a different model of politico-economic management of the economy.

As we saw above, the EU as a state form responded to difficulties in the process of capital accumulation and intervened in the field of class struggle by shifting the terrain of decision-making and rendering it more hostile to the working class and its allies. Yet, similar processes were – and still are – carried out at the national level. To return to the example used above, the constraints on the welfare model in the UK posed by the European Economic Community membership were rendered moot in 1979 with the formation of ‘a government that was committed to a “small state”, destruction of the trade unions, and indigenous promotion of the Free Market’.⁸¹

B. . . . and the EU constitution

We see how the Marxist analysis of state formations can help explain the structural function of the EU. The EU is the product of capitalist contradictions in the monopoly stage of capitalism. Its creation was necessitated by structural problems in the process of capital accumulation in Europe, in the context of uneven development. In that sense, it has served to primarily promote the interests of transnational monopolies, by combating radicalism and allowing the political representatives of the ruling classes' interests to escape the political pressures and social struggle of subordinate social strata, as well as by mediating intra-capitalist contradictions and enhancing the comparative position of EU monopolies against third-country enterprises.

⁸⁰WP Cockshott, A Cottrell and J P Dapprich, *Economic Planning in an Age of Climate Crisis* (Self publication 2022) 87.

⁸¹*Ibid.*, 89.

Take for instance the constitutional value of freedom of establishment, which far outweighs all other Union or domestic legal principles. This can be understood in the context of capitalist unevenness and competition within the EU, where capitals seek the most favourable conditions to maximise their profits. Seen under this light, the constitutionalisation of the objectives to ‘establish an internal market’ and achieve ‘economic growth’ and a ‘competitive market economy’ in Article 3(3) of the Treaty of the European Union (TEU) enables the reproduction of conditions favourable to the profitability of European enterprises, by performing a threefold function: (i) entrenching this and relevant principles and prioritising them against other objectives; (ii) depoliticising them and raising them above political contestation at national level; and consequently (iii) significantly empowering transnational monopoly corporations as the effect of these objectives spills over to areas of policy-making that do not fall directly within the scope of EU competence.

In EU policy, the aims of ‘growth’ and ‘competitiveness’ are directly linked to reforms in the labour market intended to intensify the exploitation of labour power (through the introduction of the principle of ‘labour-market flexibility’) and therefore respond to the tendency of the rate of profit to fall. The EU Commission’s 1993 White Paper on ‘Growth, Competitiveness, and Employment’⁸² asserts that sustained economic growth can only be achieved through ‘changes in economic and social policies and changes in the employment environment as expressed in the structure of labour market, taxation and social security incentives’.⁸³ Lack of flexibility in labour-regulation is identified in the White Paper as the root cause of ‘what are relatively high labour costs, which have risen at a much greater rate in the Community than among our principal trading partners’.⁸⁴ Additionally, high labour costs are cited as a contributory factor to the loss of competitive angle of EU economies.⁸⁵ According to this narrative, no enterprise will invest unless it is reassured that an ‘agreeable investing environment’ is created and sustained, as well as that production costs are reduced. Therefore, the growth and competitiveness of EU economies relies on the principle of flexibility being introduced in domestic regulation of the labour market and labour relations.

Marxist analysis allows us to understand specifically what necessitates the introduction of this principle, as well as its indirect constitutional entrenchment. From a Marxist perspective, profit and the rate of profit ultimately depend on the extraction of surplus value which is itself the product of surplus labour, ie, labour carried out beyond the time socially necessary to produce a commodity.⁸⁶ Profitability depends on the regulation of industrial relations and the mediation of the balance of forces between capital and labour in favour of the former.⁸⁷ Consequently, the most efficient way to reduce the cost of labour is through a sustained policy of restricting the legislative protection of workers in a variety of ways, such as: removing provisions which protect employees against collective dismissals; changing the level at which collective bargaining takes place and moving it closer to the enterprise level, thereby reducing the collective power of workers; placing restrictions on industrial action, etc.

Cases like *Viking*, *Laval*⁸⁸ and *AGET Iraklis*⁸⁹ prove that the EU is designed not only to reflect a distinct political (neoliberal) view of how the economy should operate but, more importantly, to

⁸²European Council, *Commission White Paper on Growth, Competitiveness, and Employment* (COM (93) 700), (1993).

⁸³*Ibid.*

⁸⁴*Ibid.*, 123.

⁸⁵*Ibid.*, 124.

⁸⁶Marx (n 68) 320–39.

⁸⁷*Ibid.*, 340–417.

⁸⁸Case C-341/05 *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet* ECLI:EU:C:2007:809 and Case C-438/05 *International Transport Workers’ Federation v Viking Line* ECLI:EU:C:2007:772. In both cases the ECJ held that the right to take industrial action is recognised in EU law and constitutes an integral part of its general principles. Yet, this effectively meant it can only be exercised in a manner compatible with this law. In other words, the exercise of this right is conditional upon satisfying the proportionality test and will be fettered as long as it unjustifiably restricts the four fundamental freedoms of the market.

⁸⁹Case C-201/15 *AGET Iraklis v Ypourgos Ergasias, Koinonikis Asfalisis kai Koinonikis Allilengyis* ECLI:EU:C:2016:972. The case concerned the compatibility of domestic legislation which made it harder for companies to proceed with collective

accommodate the primary goal of ensuring the profitability of capital and responding to its crises. These cases evidence the entrenchment of a distinct set of politico-economic principles that reflect the dictates of the market. They have been characterised as examples of market constitutionalism; signifying a process of ‘undoing of the constitutional form under the pressure of total market thinking’.⁹⁰ They originate in capital’s need to maximise profit through labour exploitation and this explains the need to protect them through institutions insulated from political pressure and, therefore, removed from the social struggle that takes place at the national level.

It is pertinent here to return to the issue of the democratic deficit. From a Marxist perspective, the focus is not on the power relations between the different EU law-making institutions. It is rather on the privileged access of distinct interest groups to the Commission’s proposals. For Guglielmo Carchedi, ‘insufficient democracy in decision making within the EU goes much further than the relation between the Parliament, on the one hand, and the Council and the Commission, on the other, concerning the acceptance, modification and rejection of European directives and regulations’.⁹¹ The co-decision process takes place once a proposal has already been written, crystallised and submitted for consideration by the institutions. In this proposal ‘the boundaries of the discussion are already set, that is, some interests are already represented while other have been excluded a priori’.⁹²

The question which is even more important from a Marxist perspective then is: which social groups influence the content of legislation submitted by the Commission and manage to have their interests reflected in the Commission’s proposals to the detriment of other groups?⁹³ On this basis the EU decision-making process is to be seen as a process of negotiation between two sets of actors. On the one hand there are the EU institutions; and on the other ‘those lobbies, basically representing national capitals’ interests, powerful enough to influence both politicians and Eurocrats within the European institutions’.⁹⁴ Approached in this manner, the complex EU law-making process starts with the prioritisation of some interests, to the detriment of other interests, in the Commission’s proposals; and it ends with the negotiation between the Commission, the Council and the Parliament (a negotiation in which the same lobbies weigh heavily) as to the final form taken by that legislation.⁹⁵

Under this prism, amending the Treaties and giving extended powers to Parliament is far from filling the democratic deficit, since the notion of democratic deficit itself is insufficient and already embedded in ideological compromise. The democratic deficit is not a design fault. Precluding actual democratic rule of the popular strata while sustaining a minimum degree of representative institutions to ensure consensus-building and social legitimacy is an inherent and structural characteristic of the EU economic constitution – indeed it is a structural precondition for the reproduction of capitalism. This is the case since the beginning of the European project. Certain

redundancies with Articles 49 TFEU (freedom of establishment) and 63 TFEU (free movement of capital). The Advocate General’s opinion on this case is instructive on how labour legislation needs to submit to the dictates of the market as these are expressed in the EU’s fundamental freedoms. According to him, in order for the workers to be protected against unemployment, any protection against collective dismissals has to be forfeited because only a flexible labour-market can foster economic growth.

⁹⁰In his recent work, Emiliós Christodoulidis uses the cases of *Laval* and *Viking* as examples of market constitutionalism, which signifies a process of ‘undoing of the constitutional form under the pressure of total market thinking’. See E Christodoulidis, *The Redress of Law: Globalisation, Constitutionalism and Market Capture* (Cambridge University Press 2022).

⁹¹Carchedi (n 38) 29.

⁹²*Ibid.*

⁹³*Ibid.*

⁹⁴*Ibid.*

⁹⁵See S Mulcahy, ‘Lobbying in Europe: Hidden Influence, Privileged Access’ (Transparency International EU 2015), <<https://www.transparency.org/en/publications/lobbying-in-europe>> accessed 14 February 2025, which suggests that a select number of voices with better resourcing and contacts enjoy privileged access to decision-makers and have come to dominate political decision-making.

interests are prioritised to begin with. It should not be forgotten that the interests of large corporations, organised in many cases in transnational groups, have shaped in a predominant manner the process of EU integration in most of its stages.⁹⁶

Nevertheless, it is essential to note that EU institutions do not reflect one-sidedly the interests of big capital. Similar to national institutions, EU institutions are the arena in which different interests clash.⁹⁷ Consequently, they also perform a mediating role. As Carchedi puts it, they ‘broker different and often contrasting interests and mould them into a common position acceptable to everybody, but ultimately functional for the retention by oligopoly capital of its leading role’.⁹⁸ This mediating function has the additional effect of obfuscating the capitalist nature of these institutions, therefore, performing an important function of containing social (class) strife.⁹⁹

The EU is undemocratic because it is designed to allow for less intervention of the subordinate social strata in political decision-making. So, it is not the economic constitution (‘ordoliberal’, ‘neoliberal’ or ‘authoritarian liberal’) which determines the democratic deficit, but the process of capital accumulation. The EU provides a terrain which is more hostile for the class struggle of the working class and its allies. The level of decision-making makes it much harder for subordinate social classes to coordinate and develop a struggle that leads to institutional reform.¹⁰⁰ As a result, any politico-economic change as well as any institutional change is more due to intra-class contradictions within fractions of Europe’s ruling classes than due to popular class struggle. Yet, these changes – even if they constitute a change from neoliberal to ‘welfare’ democratic policies – have nothing to do with democracy properly understood. The following section discusses recent calls for democratisation of the EU. These calls are neither the result of popular struggle nor serving the aim of popular participation. They rather seem to be due and responding to new challenges to the process of capital accumulation.

4. ‘Democratic reform’ of the EU . . .

The mediating role of the EU, as a capitalist (supra-)state formation, is crucial to understand the issue of potential reform of its economic constitution. Contrary to heterodox critiques, a Marxist analysis stresses that the institutional structure of the EU (as any other state structure) can accommodate different principles of politico-economic management, as long as these are not threatening the reproduction of capitalist economy. The EU (supra-)state formation ensures that class struggle in European countries is carried out against an institutional background which forecloses any possibility of radically challenging the main pillars of capitalist society. Neoliberal policies can be – and indeed have been – contested at EU level too. Yet this happens only to the extent allowed and required by crises of profitability, and only as long as the pillars of capitalist society are reproduced. As we saw above, the EU economic constitution rather than an actualisation of an idea is the product of concrete historical processes that were put in motion by the contradictions of capitalist society.

It follows that a critique of the EU economic constitution as neoliberal (ordoliberal or authoritarian liberal) is limited. Indeed, the EU does not represent an actualisation of the neoliberal ideal. It has been argued that Hayekians dislike the EU’s market-mitigating features (like the Common Agricultural Policy, regional development funds, social policy rules), as well the

⁹⁶Carchedi (n 38) 31–2.

⁹⁷*Ibid.*, 34.

⁹⁸*Ibid.*

⁹⁹Equally important for grasping the process of EU integration is the existence of intra-capitalist contradictions. See Sandbeck and Schneider (n 47).

¹⁰⁰See Maria Tzanakopoulou’s contribution to this symposium; M Tzanakopoulou, ‘Classes and Individuals in the European Union: Marxist and Cosmopolitan Approaches’, <<https://eprints.bbk.ac.uk/id/eprint/55044/>> accessed 25 April 2025.

Single Market and Eurozone for being too restrictive.¹⁰¹ Recent changes in the EU model of governance have been characterised as an ‘ordoliberalisation of Europe’, or as a process of ‘adding Polanyian muscles in Hayekian Brussels’.¹⁰² What is more, the politico-economic response to the two major crises of the last fifteen years, ie, the global financial crisis and the pandemic, has given rise to convincing arguments that neoliberalism has been replaced by a ‘New Macroeconomic Consensus’ which combines ‘new Keynesianism’ (which recognises the possibility of short-term imbalances due to rigidities in some markets) with elements of neoliberalism (rational expectations, long-term market equilibrium).¹⁰³ According to this New Macroeconomic Consensus ‘there is a need for a more strategic economic role for the state as opposed to the traditional Keynesian interventionist state and the Neoliberal dogma of the state’s complete withdrawal from the economy’.¹⁰⁴ Institutional measures, such as the establishment of the European Financial Stability Facility and the European Stability Mechanism in the context of the Eurozone crisis, as well as the instrument for temporary Support to mitigate Unemployment Risks in an Emergency (SURE)¹⁰⁵ during the pandemic, serve to illustrate this point.

Furthermore, new and potential challenges to the process of capital accumulation might give (and in some cases have already given) rise to further calls for reform which can hardly be described as neoliberal. This is how we should approach recent calls to democratise the model of European economic governance. It has been argued that the pandemic was a ‘wake-up call’ for the EU, which finally realised the deleterious effects of the eurozone economic policies it had been pursuing since the 1990s.¹⁰⁶ Additionally, recent policies for sustainability transitions in the EU are seen as foreshadowing a more prominent role of the state in coordinating the economy.¹⁰⁷ Pressing challenges, such as the climate crisis and the transition to a green economy, the regulation of post-pandemic sovereign debt, as well as the effects of the fourth industrial revolution, require interventions at EU level which will most probably necessitate further reform.

For instance, calls for new institutional arrangements that would empower the ECB, while democratising its operational framework, can be understood under this prism. These calls propose the expansion of the ECB’s scope of objectives to include targets more compatible with a Keynesian framework of economic policy: ‘full employment on a par with fighting inflation’, ‘creating green bonds for the environment, or even providing ‘helicopter money’ to offer direct support to households in need’.¹⁰⁸ This expanded role and responsibility would be accompanied with a ‘democratisation’ of its structure. Proposals include a ‘Great Macroeconomic Dialogue’ between the EU institutions, ie, a yearly conference between the ECB and other institutions to outline the grand economic strategies for each coming year;¹⁰⁹ and the creation of a new institution – provisionally called European Credit Commission – dependent on the European

¹⁰¹M Matthijs and C Parsons, ‘Polanyian Means to Hayekian Ends? The “Ordo-liberalism on Steroids” Economic Governance Philosophy of the EU’ (European Union Studies Association, Miami, May 2022). See also James Buchanan’s criticism that the vision of a Union in which ‘the whole economy is subject to uniform regulation’ belies a ‘basic failure to understand the nature of competitive federalism’; JM Buchanan, ‘Federalism as an Ideal Political Order and an Objective for Constitutional Reform’ 25 (2) (1995) *Publius* 19–27, 25.

¹⁰²See Matthijs and Parsons (n 101).

¹⁰³S Mavroudeas, ‘The Economic and Political Consequences of the COVID-19 Pandemic’ 10 (4) (2020) *International Critical Thought* 559–65.

¹⁰⁴*Ibid.*

¹⁰⁵See Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak, OJ L 159/1.

¹⁰⁶V Schmidt, *Decentralising and Democratising While Reforming European Economic Governance* (Social Europe 2021) <<https://www.socialeurope.eu/decentralising-and-democratising-while-reforming-european-economic-governance>> accessed 14 February 2025.

¹⁰⁷I Kampourakis, ‘The Market as an Instrument of Planning in Sustainability Capitalism’ 2 (3) (2023) *European Law Open* 511–42.

¹⁰⁸See Schmidt (n 106) as well as E Monnet, *Central Banks, Welfare State and Democracy* (in Greek) (Polis 2022).

¹⁰⁹Schmidt (n 106).

Parliament which would be responsible for impact assessment of monetary policies, as well as for submitting proposals to the ECB to ensure compatibility of its policies with general EU socio-economic policy.¹¹⁰

We argue that these calls to democratise the EU model of economic governance are the product of a necessary expansion of the EU's scope of activity and responsibility, as a result of the new challenges that the process of capital accumulation poses. The EU, as a (supra-)state formation, needs to fulfil the contradictory tasks of ensuring profitability while achieving social legitimacy.¹¹¹ There are indeed several theoretical views which defend the possibility of the EU being reformed in a more democratic direction. For instance, there are thinkers advocating for some form of European democratic constitutionalism. According to such views, the democratic deficits of European governance can be corrected through institutional reforms, such as incorporating 'civil-society organisations and interest groups in EU policy making',¹¹² or a greater 'involvement of the national polities in co-operative normative arrangements'.¹¹³

There are other thinkers and political groups which believe in the possibility of democratically reforming the EU only as a result of a European populist movement. For Etienne Balibar a European populism may be necessary for the rebirth of Europe's democracy.¹¹⁴ More recently, the populist discourse was adopted by the 'Democracy in Europe Movement 2025' (DiEM25).¹¹⁵ DiEM25's intent is to move 'from a Europe of 'We the Governments' and 'We the technocrats', to a Europe of 'We, the peoples of Europe'.¹¹⁶ In the context of Brexit it was argued that the EU provides for the most appropriate terrain for a struggle for a 'twenty-first century' socialism to take place.¹¹⁷ According to this view, the 'left' needs to turn resolutely to Europe and fight, through a pan-European movement built on 'transnational party lists, shared political manifestos and common protest initiatives' for its transformation into a 'European socialist federation' based on 'non-territorial citizenship, European-wide public ownership, extensive popular control of the economy, a new digital common, direct democracy, a federal parliament with revocable public offices and a non-technocratic, accountable, administrative apparatus based on strong principles of subsidiarity'.¹¹⁸

It is crucial to understand that the EU is not solidly and unchangeably neoliberal. Indeed, political struggle is carried out at EU level which contests this politico-economic paradigm – or at least what remains of it – and the strict ordoliberal rules of the EU economic constitution. What is more, recent research has shown that the progression of Europe on the neoliberal road did not come about randomly; it was the outcome of a decade-long power struggle whose outcome was 'the defeat of a labour-oriented social Europe and the decision to gear European integration

¹¹⁰Monnet (n 108) 13.

¹¹¹B J Silver, *Forces of Labor: Workers' Movements and Globalization since 1870* (Cambridge University Press 2003) 17–20.

¹¹²K Lindgren and T Persson, *Participatory Governance in the EU: Enhancing or Endangering Democracy and Efficiency?* (Palgrave Macmillan 2011).

¹¹³Joerges (n 21) 814.

¹¹⁴E Balibar, 'Europe: Final Crisis? Some Theses' 13 (2) (2010) *Theory and Event*, <<https://muse.jhu.edu/pub/1/article/384016>> accessed 25 April 2025.

¹¹⁵P Panayotu, 'Towards a Transnational Populism: A Chance for European Democracy (?) The Case of DiEM25' (Working Papers No. 5 POPULISMUS 2017) <<http://www.populismus.gr/wp-content/uploads/2017/01/panayotu-final-upload.pdf>> accessed 14 February 2025. It has been argued that this populist discourse, which has now appeared at a supranational level, captures 'the 'proto-populism' of certain (antiausterity) social movements' and gradually transforms it into a party populism engaging with representation and representative institutions at a much deeper level'. See Y Stavrakakis, G Katsambekis, A Kioupiolis, N Nikisianis and T Siomos, 'Populism, Anti-Populism and Crisis' 17 (2018) *Contemporary Political Theory* 4–27, 19.

¹¹⁶DiEM25, 'A Manifesto for Democratizing Europe (Long Version)' (DiEM25 2016), <https://diem25.org/wp-content/uploads/2016/02/diem25_english_long.pdf> accessed 14 February 2025.

¹¹⁷L Ypi, 'There Is No Left-Wing Case for Brexit: 21st Century Socialism Requires Transnational Organization' (*LSE Blog* 2018) <<https://blogs.lse.ac.uk/politicsandpolicy/no-left-wing-case-for-brexit/>> accessed 14 February 2025.

¹¹⁸*Ibid.*

towards increasing market-oriented liberalization, fiscal austerity, competition, and labour ‘flexibility’.¹¹⁹ It may thus be argued that the struggle for a ‘new’ social Europe can be ignited and lead the process for democratic reform.

We may accept that the historical progression of Europe towards neoliberalism was the outcome of a power struggle. We accept that the EU is not unchangeably neoliberal but may be subject to reform according to the dictates of the market and the constant and changing demands of the process of capital accumulation. However, it is naïve to argue that the EU can be reformed in a democratic manner to an extent not previously encountered in nation-states. Not because the EU cannot be a terrain of class struggle. On the contrary, a Marxist approach stresses that the EU may mediate and reflect intra-class and even class contradictions and conflicts. Yet, this process is carried out on a terrain that is hostile to and foreclosing of any alternative that radically contests the pillars of capitalist production. Indeed, the EU has castigated and renounced earlier historical attempts at transcending capitalism as the ‘absolute evil’ and associates them solely with totalitarian practices.¹²⁰ Yet, it is precisely these strategic aims and policies, which set the socialisation of the means of production as the ultimate precondition for democratising the economy, that cannot remain outside any critique of the EU from the standpoint of democracy.

Critique of the EU and its democratic deficit is not complete unless it becomes a critique of capitalism. The above calls for democratic reform or transformation of the EU do not challenge the pillars of capitalist society. The ‘socialism’ they invoke can only be understood as a series of measures intended to save capitalism from its contradictions.¹²¹ Indeed, Marxist analysis allows us to distinguish between two conflicting conceptions of socialism: the ‘social-democratic’ and the Marxist. The former conceives of socialism as an ‘improved version of capitalism’ or a ‘mixed economy’.¹²² It is based on an instrumentalist view of the state, as well as a formalist conception of democracy.¹²³ As integral aspect of the reformist evolutionary strategy of social democracy, this is a view of socialism which responds to capitalist contradictions by accommodating and reproducing them. On the contrary, the Marxist conception of socialism refers to the process of social emancipation, ie, the abolition of capitalist relations of exploitation and oppression.

In that sense, we may argue that – despite the *prima facie* resemblance – François Mitterrand’s phrase ‘l’Europe sera socialiste ou ne sera pas’¹²⁴ stands opposed to VI Lenin’s insightful remark, made more than a century ago, that ‘a United States of Europe, under capitalism, is either

¹¹⁹A Andry, *Social Europe: The Road Not Taken* (Oxford University Press 2022) 16.

¹²⁰The methodologically flawed identification of Nazi Germany with the Soviet Union, under the problematic concept of totalitarianism, is adopted and well-ingrained in EU political documentation. See, for instance, the European Parliament resolution of 2 April, 2009 on European conscience and totalitarianism (P6_TA(2009)0213), the European Commission Statement of 23 August 2017 on the Europe-wide Day of Remembrance for the victims of all totalitarian and authoritarian regimes (STATEMENT/17/2722), as well as the Declaration of the European Parliament which proclaimed August 23rd as European Day of Remembrance for Victims of Stalinism and Nazism (P6_TA(2008)0439).

¹²¹Reference can be made here to Fritz Tarnow’s famous statement at the SPD’s 1931 Congress, on the role of social-democracy in situations of capitalist crisis. ‘Standing on the sickbed of capitalism as doctors who want to heal their patient’, social-democrats should give the medicine despite their wish for the patient’s demise. See S Berman, *The Primacy of Politics: Social Democracy and the Making of Europe’s Twentieth Century* (Cambridge University Press 2006) 110. In a more recent context, see Yanis Varoufakis’s address to Europe’s radical forces not to ‘welcome this crisis of European capitalism as an opportunity to replace it with a better system’, but to rather ‘embark upon a campaign for stabilising European capitalism’. See Y Varoufakis, ‘Yanis Varoufakis: How I became an erratic Marxist’ (*The Guardian* 2015) <<https://www.theguardian.com/news/2015/feb/18/yanis-varoufakis-how-i-became-an-erratic-marxist>> accessed 14 February 2025.

¹²²See for instance S Moyn, ‘Thomas Piketty and the Future of Legal Scholarship’ (*Harvard Law Review Forum* 2014), <<https://harvardlawreview.org/2014/12/thomas-piketty-and-the-future-of-legal-scholarship/>> accessed 14 February 2025; and S Paul, ‘On Socialising the Constitution of Economic Coordination’ (*LPE Blog* 2020) <<https://lpeproject.org/blog/on-socializing-the-constitution-of-economic-coordination/>> accessed 14 February 2025.

¹²³See A Millerand, ‘French Reformist Socialism’ reprinted in RCK Ensor, *Modern Socialism* (Harper and Brothers 1904), quote on 64; and E Bernstein, *The Preconditions of Socialism* (Cambridge University Press 1993) 12.

¹²⁴F Mitterrand, ‘L’Europe sera socialiste ou ne sera pas’ 36 (1978) *La Nouvelle Revue socialiste* 13.

impossible or reactionary'.¹²⁵ Mitterand's 'socialism' referred to a social-democratic Europe that strives for the fulfilment of goals enshrined in the Treaties, such as a 'social market economy', 'full employment and social progress', ie, Keynesian goals that do not undermine the pillars of capitalist production. Lenin, on the other hand, dismissed the possibility of a republican United States of Europe based on his analysis of imperialism, the monopoly stage of capitalism. Lenin emphasised that, already in his time, capital had become international and monopolist. As a result, the world had been 'carved up by a handful of Great Powers, ie, powers successful in the great plunder and oppression of nations'.¹²⁶ On this basis, he accepted that a United States of Europe was only possible as an agreement between the European capitalists 'for the purpose of jointly suppressing socialism in Europe, of jointly protecting colonial booty *against* Japan and America'.¹²⁷

Lenin's analysis assumes even greater significance in the current conjuncture, when political democracy is achieved and universal suffrage is a constitutional reality, yet economic conditions are still characterised by intensified exploitation of the toiling classes, extreme inequalities, and a general deterioration of the living and working conditions, while the subordinate social strata seem unable to resist the waves of austerity and authoritarianism and effect any meaningful change at the political level despite being formally 'sovereign'. Lenin's remark is based on the Marxist analysis of the state and Marx's conclusion that the capitalist state needs to be 'smashed'.¹²⁸ The latter refers not necessarily to a destructive process, but more importantly to the creative aspects of revolutionary social change and the novel and appropriate institutional forms that would promote the collective empowerment of the toiling classes.¹²⁹

From a Marxist perspective, the fight for democracy in the 21st century can only be a fight for a socialist democracy, ie, the fight for a social condition that abolishes the root of decay, exploitation, and inequality, and enables the flourishing of individuals, as necessary preconditions for the actual self-determination of the people. In Tony Smith's work on socialist constitutionalism we find a detailed discussion of the forms and principles of such a socialist democracy.¹³⁰ According to Smith, a socialist constitutionalism includes a much more expansive understanding of the notion of freedom, compared to liberal constitutionalism. This notion of 'freedom' does not merely refer to the 'formal freedom to act without external interference so strongly emphasised in the republican constitutions of modern capitalism'.¹³¹ It rather conveys that 'socialism does not aim at a state of well-being paternalistically bestowed on passive recipients'.¹³² Instead 'every individual must have a freedom to develop on the basis of their own actions'.¹³³

This Marxist notion of freedom presupposes the existence of institutional forms for collective evaluation, planning and decision-making, which are 'created, continually renewed, and periodically modified through the collective actions of the members of the socialist society'.¹³⁴ The democratic principles of electivity and revocability are relevant in this respect, as is the constitutional principle of functional constituencies, according to which the workplace is the primary locus and nucleus of collective decision-making. According to Smith, all sites where collective decision-making takes place (eg, workers collectives, community

¹²⁵V I Lenin, 'On the Slogan for a United States of Europe' in V I Lenin, *Collected Works: Volume 21* (Progress Publishers 1976) 339–43, 340.

¹²⁶*Ibid.*, 340.

¹²⁷*Ibid.*, 341.

¹²⁸K Marx, 'The Civil War in France' in K Marx and F Engels, *Collected Works: Volume 22* (Lawrence and Wishart 2010) 328.

¹²⁹See L Colletti, 'Power and Democracy in Socialist Society' 56 (1969) *New Left Review* 19–26.

¹³⁰T Smith, *A Socialism for the Twenty-first Century: Towards the 'Full and Free Development of Every Individual'* (forthcoming 2025).

¹³¹*Ibid.*

¹³²*Ibid.*

¹³³*Ibid.*

¹³⁴*Ibid.*

associations, public forums) are part of an extended commons.¹³⁵ Furthermore, the socialist notion of ‘freedom’ necessarily affects and reflects developments in the sphere of production, since the production and allocation of social wealth in general, and the social surplus in particular, is the issue of collective decision-making par excellence. According to Marx, the realm of freedom begins only where labour determined by necessity and mundane considerations ceases.¹³⁶ A socialist democracy, therefore, presupposes the development of working and living conditions that would enable mass and well-informed participation of the members of the toiling classes in decision-making processes – yet, such a development comes in direct contrast with the pillars of capitalist production.

5. . . . or exit?

It follows from the above that the EU economic constitution may be subject to reform, but this reform will not benefit the members of the popular strata. From a Marxist perspective it is accepted that the process of reproduction of capitalism may necessitate the adoption of a different model of economic constitutionalism, based on different (neo-)Keynesian principles and social-democratic policies. These are presented as ‘democratic’ reform of the institutions. A ‘new social compromise’ will aim to – and may indeed – increase social legitimacy, to the extent allowed by profitability requirements, yet this has nothing to do with socialism, understood as social ownership of the means of production, or democracy, understood as actual power of the people and citizens’ input in decision-making processes.

The institutional framework for a ‘new social Europe’, built on a different politico-economic paradigm, is already there. After all, Article 3(3) TEU speaks of a ‘social market economy’, and ‘full employment and social progress’. Nonetheless, even if fundamental reform towards a new ‘social welfare’ and ‘democratic’ EU were to take place, this would exist under the Damoclean sword of the expanded reproduction of capital. The inevitability of crisis in capitalism would eventually lead – as it has in several historical instances, like the case of the Weimar Republic or the constitutions of the European South in the recent crisis – to the abolition of legal guarantees to decent working and living conditions. Proposals for reforming the EU pay a blind eye to the fact that rights and constitutional protection guarantee nothing, as ‘even the most solid constitutional norms can melt into air when confronted with capital interests’.¹³⁷ Economic democracy, understood as genuine management of the economy by the producers themselves, is not possible within the confines of capitalist society; it can only be made possible in a society which struggles for the socialisation of the means of production, distribution and exchange.¹³⁸

We argued above that the critique of the EU and its democratic deficit is not complete unless it becomes a critique of capitalism. This necessarily includes a critique of the capitalist nation-state. Does the above analysis imply that the process of breaking up the Union is the only possible route for enhancing democratic processes in Europe? Do centrifugal tendencies show the way forward? Yes and no. It is safe to argue, based on the brief preceding examination of the Marxist approach to the capitalist state, that the answer to the above questions can only be negative if the return to the nation-state is not followed by a relentless critique of and struggle against capitalism and the capitalist state’s role in reproducing it. In post-Brexit UK, where independent fiscal institutions like the Office for Budget Responsibility have the power to influence governmental policy to the point of government resignation,¹³⁹ where democratic rights and civil liberties are restricted with

¹³⁵*Ibid.*

¹³⁶Marx (n 69) 807.

¹³⁷I Katsaroumpas, ‘De-Constitutionalising Collective Labour Rights: The Case of Greece’ 47 (4) (2018) *Industrial Law Journal* 465–503, 465.

¹³⁸K Ewing, ‘Socialism and the Constitution’ 73 (1) (2020) *Current Legal Problems* 27–58, 31.

¹³⁹B Clift, ‘Trussonomics and the OBR’ (UK in a Changing Europe 2022) <<https://ukandeu.ac.uk/trussonomics-and-the-obr/>> accessed 14 February 2025.

waves of authoritarian legislation,¹⁴⁰ where the economic constitution is driven by market imperatives,¹⁴¹ this is arguably not the case.

In other words, from a Marxist perspective, to move from neoliberalism to economic democracy it is not sufficient to either reform the EU or exit the EU. A Janus-faced critique of the capitalist nation-state and supra-nation state formations is necessary instead.

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¹⁴⁰See Police, Crime, Sentencing and Courts Act 2022 and Public Order Act 2022.

¹⁴¹See Trade Union Act 2016 and Strikes (Minimum Service Levels) Act 2023.