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Constitutionalising and the Spectre of Anarchy

INTRODUCTION

The Guy Fawkes mask became synonymous with Anonymous, the loosely anarchist, decentralised hacker collective, in the early 2000s. This reproduction of David Lloyd's imagining of V, the eponymous hero of Allan Moore's 1981 graphic novel, *V for Vendetta*, was popularised in Lana and Lilly Wachowski's 2005 big-screen version of the story, which starred Natalie Portman and Hugo Weaving. The mask has since become an emblem for anarchism, a sinister and playful reminder of the spectre of anarchist popular culture, ubiquitous in demonstrations, sported by protesters in Hong Kong, Bangkok, Tahrir Square and Wall Street, indeed almost anywhere where aggrieved publics, keen to conceal their identities, come into conflict with authorities.

V for Vendetta is a twist on a 400-year-old tale of treasonous plotting that, like the original conspiracy, has come to symbolise both more and less than it was intended to. In standard British histories, Guy Fawkes, the only member of the gang to be caught red-handed next to thirty-six barrels of gunpowder, is painted as the leader of a group hell-bent on destroying government. Yet his seditious 'Papism', and the fact that he fought for Spain against the Dutch for a period of the Eighty Years War, is now largely forgotten.

Following the grisly execution of eight co-conspirators, Parliament passed an Act of Thanksgiving in 1605, which mandated an annual observance to mark the King's preservation by God. By the time it was repealed in 1859,[1] Guy Fawkes' night was less a sober reminder of the threat of Catholic reaction than it was a celebration of republicanism. A local Surrey newspaper noted that a stranger visiting Guilford on the fifth of November might 'have imagined himself in a country disturbed by anarchy and red republicans'.[2]

[1] UK Parliament 2018.
[2] Cited in Call 2008, 158.

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The story of Guy Fawkes is neither a straightforward story of rebellion nor is it celebrated as such. In the UK today, Guy Fawkes' night has morphed into a family-friendly shindig with toffee apples and beer, and Guido Fawkes is probably best known, at least amongst political observers, as the blogspot set up by the libertarian Paul Stains to 'blow up Westminster' by exposing corruption, sleaze and scandal. Nor, when it is retold as a recuperated tale of disobedience, is it an unambiguous celebration of anarchy. Allan Moore portrayed Guy Fawkes as *V* the anarchist and used the historical conspiracy to consider alternatives to fascism and discuss the hard graft of bringing them about. However, the vague messaging of the Watchowski's movie was by turns criticised for overstepping the boundaries of acceptable politics,[3] and for capitulating to capitalist marketing.[4]

We find the same hesitancy about anarchy in a range of contemporary political, legal and International Relations (IR) theory. In contrast to the anti-anarchist bent of mainstream constitutional theory, the most innovative strands push towards anarchy but stop short of endorsement. It is as if they keep an effigy of anarchism on hand, even while wearing the mask. Our aim in this chapter is to capitalise on this half turn and produce a sociological frame for anarchist constitutional politics. We do this by revealing the affinities, pathways and obstacles to anarchism. Our review suggests that anarchising the constitution is clearly possible: in the remainder of the book we show how it has been done for the last 150 years.

The chapter has three parts. The first part (Historicising an Anarchist Constitutional Politics) presents an overview of the praxis of late twentieth-century alterglobalisation movements to explain why the statist assumptions of traditional or mainstream constitutionalism have been called into question (again). Our contention is that the anarchist constitution we reconstruct is malleable to twenty-first-century radical politics because anarchists and contemporary constitutional political theorists approach the problem of the constitution from *opposite ends of the same historical process*: the rise and fall of the nation state. From our perspective, the contemporary critique of neoliberal globalisation looks like an aftershock, indeed a response to a road not taken.

The second part (The Half Turn to Anarchism) builds the theoretical framework for an anarchist constitutional politics by reviewing the half turns to anarchism in five disciplinary fields. We organise this literature in five

[3] Allan Moore withdrew from the 2005 production of *V for Vendetta*, claiming it had diluted his anarchist rejection of capitalism and Bolshevism that structured his book, in favour of postmodern identity politics. In Moore's reversal of the original tale, Tory fascist authority becomes the licit target for V's attacks. The Wachowski's movie treads a similar path but used the 'war on terror' and the curtailment of freedoms after 9/11 as the frame of reference.

[4] Hardt and Negri wrote of the Watchowski's first blockbuster: 'The Matrix pretended a revolutionary stance, but was essentially a highly successful marketing device, the corporate entity affecting a kind of unity with the consumer class, thereby weakening the entire concept of revolution'. Cited in Call 2008, 165.

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subsections. The first two consider the affinities. We find these in Hardt and Negri's post-Marxism and, respectively, in Gunther Teuber's and Geneièvе Nootens's concepts of 'societal constitutionalism' and 'constituent power beyond the state'. Through these literatures, we gain both an insight into the sociological composition of late modern capitalism (the object of modern constitutionalism) and a theory of the constituent power that must legitimate it (the political subject). Unfortunately, despite their anarchic social ontology and nudging towards anarchism, they recoil from the historical tradition, seeing it as little more than a solvent of politics.

The third and fourth subsections (Anarchy in IR Theory and Neo-Roman Republicanism) find the pathways to the anarchist constitution in anarchism-resistant, but anarchy-obsessed mainstream IR theory and theories of non-domination in neo-Roman republicanism. Anarchy, we argue, is both present and strangely absent in both. Anarchy is theorised by mainstream IR in ways anarchists ought to recognise, though the sovereign is not the individual, but a personified state. Neo Roman republican appeals to freedom as non-domination also resonate with anarchism, but assumes an unnecessary (or arbitrary) form of statist realism, one crafted in opposition to a presumed anarchist idealism. We argue that these ontological and normative commitments to the state obscure the sharper and more important focus on freedom in association, dividing and balancing powers, and a normative defence of sovereign independence, synonymous with anarchism too.

The last subsection (Anarchist Legal and Democratic Theory) examines anarchist legal and democratic theory. Counterintuitively perhaps, and despite important innovations, we find obstacles to anarchist constitutional politics here too. While anarchists have worked hard to develop a theory of law and a critique of modern democracy, the proto-constitutional theory that results lacks a sense of historical precedent and ignores the political philosophy of the concept of anarchy that was so central to that tradition. The result is a choice between anarchism as a future ideal that must be constructed anew today and in perpetuity, or its barren past.

Bringing together the threads of this review, the third main part of the chapter (Global Constitutionalism and the Architecture of the Anarchist Constitution) highlights an anarchistic sensibility in the literature on global constitutionalism. Contemporary theorists of global constitutionalism are concerned with the colonial logics of neoliberal global constitutionalism and rethink the relative merits of constitutional and legal pluralism in a postcolonial context. Global constitutionalism addresses the problem of violence and war by defending state-based or state-like constitutions as social goods that promote plurality against domination yet sheds critical light on the global status quo in notably anarchistic ways. While sovereigntists defend the resulting inter-state anarchy as a condition of freedom of peoples, global constitutionalists attempt to remedy the emergent democratic deficit by transcending the

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state and theorising a global constitutional order in anarchy. This book fleshes out an anarchist contribution to this effort.

To complete the full turn, we conclude this section by outlining a four-part model architecture for the anarchist constitution. As constitutionalists, we argue, anarchists have an acute sociological predisposition to identify domination and injustice, and they invoke the constitution to challenge and balance power. Following the pathways charted by the critical literatures we survey, we show that the anarchist constitution, indeed any constitution, (1) consists of declarations and preambles identifying the collective 'we'; (2) are made up of and specify the polity's key institutions; (3) have rules and embody informal norms; and (4) have a plurality of decision-making procedures adjusted to suit their institutions and tasks.

We close the chapter with a discussion of Hans Kelsen's pure theory of law (Anarchy as *Grundnorm*). Here we propose that anarchy (rather than sovereignty) both *is* and *ought* to be the constitution's basic *grundnorm*. This is this original claim we wish to defend throughout the book. We present this model as a basis for global anarchist constitutional*ising*, a non-dominating critical praxis of building grassroots social power, which rivals constitutional*ism*, the spread of capitalist and statist dominium. Our disruptive contribution to contemporary debate is to show that it is not anarchy that we should fear, but state sovereignty.

HISTORICISING AN ANARCHIST CONSTITUTIONAL POLITICS

For Roderick Long, anarchy is 'simply a generalisation' of the constitutional principle.[5] If the modern nation state is but one way among many of constitutionalising society, then anarchy 'represents the extension, not the negation, of constitutionalism'. Most constitutional theorists present anarchy as 'a situation in which government has been squeezed down to nothingness' rather than 'a situation in which government has been extended to include everybody'.[6] But how and on what basis should government be subdivided? Which is the most appropriate political community? Which institutions should embody it and give it durability, what sort of laws and rules should we agree to and which decision-making processes are most appropriate? There are, understandably, multiple answers to these questions.

As Long argues, the challenges of rethinking anarchism as a constitutional politics, outside the frames of sovereignty and state law, are significant, but then so too are the potential pay-offs. In law, political theory and IR, the study of constitutionalism stretches to include democratic states, authoritarian states, liberal and theocratic states, presidential and monarchical states, nation states, multicultural states and even unions and confederations, and the relations

[5] Long 2016, 142.
[6] Long 2016, 141.

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between them all, but only for as long as the basic underpinning institutions are imagined as configurations or combinations of states. Constitutionalism does not, at first glance, seem to extend to anarchism. Law and 'a formalized structure of coercion' or, in Weberian terms, the state's monopoly of violence, appear to be the state's essential ingredients, and this is the opposite of anarchy.[7]

Donald Lutz, the American constitutional theorist, talks about two related, brute facts. One is 'the absolute need for some form of order in any organized society', and the other is 'the inevitable chaos that results when such order is not achieved'.[8] Lutz's evocation of the anarchy that reigns outside the boundaries of the state, or due to its failure, is particularly hostile to anarchism. But the sentiment is typical. Even while admitting that 'the state is not an institution every community should wish to create' and, indeed, that communities can function 'perfectly well without it', the UK constitutional and legal theorist, Nicholas Barber, nevertheless argues that constitutionalism 'relates directly to the institutional structure of the state'.[9]

Similarly, for Richard Bellamy and Jeff King, editors of a recent handbook on the topic, one of the 'innocent-seeming' implications of constitutionalism is that it applies, for good or ill, to 'a country' in which 'rulers and ruled' share certain norms about government power.[10] This approach hooks the constitution to the nation state, assuming clear jurisdictional boundaries, permanent, fixed authority and sociability for effective autonomy and self-government.[11] As proponents of the sorry condition of anarchy, anarchists are rarely, if ever considered constitutional allies, and as infrequently cited to support views of the errors of statelessness.

At the heart of the possibility of constitutionalism, it is argued, is sovereignty. Sovereignty provides the principle, the *ought* of legal and constitutional finality. Scholars of IR disagree about the history of sovereignty and its applicability today, but sovereignty is nevertheless generally regarded as a principle of the state, essential to the state's membership of international society: internally, vis-à-vis territorially bounded populations, and externally, vis-à-vis the mutual recognition of other states.[12] In constitutional theory, sovereignty is presented juridically to temper the apparently unrestrained power of the executive in the Westphalian model. Jean Cohen, for example, labels sovereignty a contested concept. But according to her general definition, sovereignty 'involves a claim to supreme authority and control within a territory signifying the coherence, unity, and independence of a territorially based political

[7] Barber 2018, 11.
[8] Lutz 2009, 26.
[9] Barber 2018, 9, 11.
[10] Bellamy and King 2025, 8.
[11] See also Waldron 1993, 38.
[12] Krasner 1999. For an excellent recent discussion, see also Mihatsch and Mulligan 2025.

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and legal community'.[13] Likewise, in a critique of constitutional pluralism, Martin Loughlin distinguishes power from sovereignty: sovereignty describes the authority of the state, the 'right of the government to be obeyed', not the capacity or power of government to 'control its own material conditions and destiny'.[14]

Sovereignty is all well and good on paper, but it belies the political realities of the past 150 years: the moral, legal and political 'right of government to be obeyed' is routinely challenged, and not just by anarchists. The devastation of the Second World War, nuclear bipolarity, and the onset of the Cold War, forced a new social democratic compromise between labour, the state, and capital.[15] But as the processes of neoliberal globalisation accelerated following the end of the Cold War, this compromise broke down. We live in a period of heightened globalisation and fragmentation, where the state does not command the moral authority to rule. Indeed, the history of the post-Cold War period has been one of waves of challenges to the nation state, both autocratic and liberal democratic.

The convergence of the Arab Spring and the Occupy movement in 2011 was a notable recent flashpoint which provided a trenchant critique of the neoliberal world order and the role of liberal and autocratic states therein. In proposing that 'another world is possible', each dented the perception that grassroots movements only operated antagonistically to corrode the constitutional order, and suggested that a new anarchist alternative had caught the public imagination worldwide.[16]

But there is a longer history of anti-statist constitutionalism.[17] The trends that blew socialism – anarchism included – across the world in the first and second waves of globalisation reveal the complexity of the political processes of empowerment and group formation that compromise constitutional orthodoxies. The first anarchist turn followed the 1848 revolutions in Europe, when anarchists across Europe, the Americas and Asia, were involved in intense debates with liberals, republicans, socialists, nationalists and anti-imperialists about a post-imperial future. The spread of anarchism followed the path of European colonisation, invigorated by industrial capitalism and a self-righteous civilising mission. In a highly mobile period in the development of the modern world order, militants in China, Japan, Korea, Latin America, South Africa, the South Mediterranean and the Horn of Africa engaged with anarchist ideas and,

[13] Cohen 2012, 26.
[14] Loughlin 2014a, 11–12.
[15] See Gindin and Panitch 2012.
[16] The literature on this is extensive. For analysis that links anarchism and the Arab uprisings, see Bamyeh 2013; Abdou 2022.
[17] See Van der Walt and Hirsch 2010; Galián 2020; van der Walt 2007; Willems 2018a; Ramnath 2011. Anarchists supported anti-imperial and anti-colonial movements, as critical friends and revolutionary comrades, in India, the Caribbean and the Philippines. See Anderson 2005; Laursen 2023; Shaffer 2020.

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in turn, took anarchism in new directions. Indeed, such was the prevalence of anarchism in liberation struggles around the world at the turn of the twentieth century, that the Spanish Revolution, with its near two million anarchist protagonists, has now been decentred in transnational movement histories.[18]

When we shift our gaze from state-building towards the movements that tracked and produced this zeitgeist, we find a complex process of constitutional politics, more complex than the picture painted by conventional legal and political theory, and one that is decidedly anti-statist.[19]

With the end of the Cold War, the collapse of Marxist-Leninism as the hegemonic common sense of national liberation struggles, and Soviet funding, the model began to change and tilt towards anarchism. According to the standard historiography, the Zapatista uprising in the Chiapas region of Southern Mexico in 1994 was a watershed moment. Prompted by the loss of indigenous autonomy following the Mexican state's planned capitulation to the new North American Free Trade Agreement, the revolt was remarkable for both its socialism and its refusal of state power as the means to social revolution.[20] Taking stock of the well-known travesties of state socialism worldwide, and coupled with a recognition of the liberal state's capitulation to the interests of capital over the people and the planet, the Zapatistas not only demonstrated the persistence of the aspiration for self-government, but catalysed a new anarchist turn in global social movements.

After the Zapatista uprising in 1994, anarchism undeniably displaced Marxist-Leninism as the main currency of social movement and national liberation politics. The return of anarchism only surprised those who had refused to take seriously the movements that had gone before. The generation of so-called new anarchists started to forge alliances with Indigenous peoples' and rural workers' movements, environmentalists and in women's groups and, as anarchism took hold in multiple social movements and protest camps, antiauthoritarian critiques of neoliberal orthodoxy became the norm.[21] In Seattle in 1999, and at nearly every major multilateral intergovernmental meeting for the next fifteen years, anarchism mobilised tens, sometimes hundreds of thousands on the streets.[22] The black bloc, a tactic born in autonomist anti-fascist movements, was mimicked worldwide.[23] Its aesthetic became a vehicle for organising, a staple of popular culture, much like the V mask. The World Social Forum, the global feminist movement and 'nowtopianism' were all spawned or invigorated by this legacy.[24]

[18] Van der Walt and Hirsch 2010.
[19] Kuhn 2021; Grubacic 2021; Wilson 2023.
[20] Holloway 2002; Day 2005.
[21] Dupuis-Déri and Pillet 2023.
[22] Gerbaudo 2017; Graeber 2002; Graeber 2009a.
[23] Dupuis-Déri 2014.
[24] Maiguashca 2014. Maiguashca, Dean and Keith (2016) have shown that up until very recently, it was impossible to define one's left-wing politics in the UK without at least some reference to

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In the aftermath of the 2008 financial crisis, when the costs of capitalism's failure were foisted on the people failed by it, anarchist-inflected grassroots activism gained momentum once more, this time culminating in a wave of pro-democracy and anti-capitalist organising: the Arab Uprisings,[25] the 15M movement in Spain, and the Occupy Wall Street Movement. As David Graeber argued, the revolution in Rojava, supported intermittently by the US government to combat ISIS, was the most dramatic expression of this movement of movements' demand for self-government, and echoed the 1936 Spanish Republic's fight against multiple fascisms.[26] In western Europe, the impact of the groundswell was felt in populist electoral politics, notably the rise of Syriza in Greece, Podemos in Spain, and the Corbynite remodelling of the British Labour Party.[27]

Battered by a barrage of critique from feminists, anti-racists, post-Marxists and radical ecologists, the old liberal consensus that government serves the political subject as a rights-bearing individual and that history has its 'end' in liberal democracy, or something like the European Union, seemed irretrievably broken.[28] Stoked by the trans- or supra-nationalisation of corporate capital, and a resurgent left, politicians occupying the shifting centre ground of the ideological right increasingly appealed to the nation. Their call resonates with people disadvantaged by the globalisation of capitalism, and advantages entrepreneurial elites, many now openly fascist and neo-Nazi.[29]

While the spread of human rights, democracy and the rule of law is an empirical fact, it is now also a normative problem. The globalisation of the liberal state is not historically unproblematic, let alone a necessary path to the Kantian 'Kingdom of Ends'. The state is no longer the normative fulcrum of politics; it is no longer even unquestionably a methodological starting point for the analysis of politics. As the form of the liberal state has been reproduced and the forces of globalisation have hauled every corner of the globe

the mainstreaming of a common anarchist sensibility. This anarchist turn caused some consternation amongst established voices on the left, who, in an intellectual echo of the response to the uprising in Paris in May 1968, were hesitant to recognise this failure as a failure of Marxist politics and theory, while at the same time keen to show solidarity with the anarchists that had driven the movement in the first place. Anarchism is a valuable impetus to action, but not a valuable theory, it was argued. See, for example, Dean 2013; Panitch, Albo, and Chibber 2013. One historical antecedent can be found in Hobsbawm's reflections on the anarchism of the May 1968 uprising in Paris: 'this was an occasion when only the blind chicken was in a position to find the grain of corn' and 'statistically speaking such moments are bound to be rare' (Hobsbawm 1994).

[25] A long history of constitutional politics in the Middle East is discussed in Thompson 2013.

[26] Graeber 2014b. We explore the potential lessons of this movement in a little more detail in the book's conclusion.

[27] Graeber 2014.

[28] Fukuyama argued that the future would reflect the innovations of the EU: the 'common marketization of the world' (Fukuyama 1989).

[29] See Abrahamsen et al. 2024.

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into its orbit, the question of where the demos lies, which rules peoples should be subject to, and how they might be contested is the direct focus of a literature that coheres around the problem of global constitutionalism, and debates around the meaning and virtues of global constitutionalism proceed in this historical context.

The critique set out by Steven Gill and Claire Cutler captured the full extent of the constitutional malaise.[30] Together with the contributors to their seminal volume, they argue that the spread of human rights, democracy and the rule of law follows and often acts as the catalyst for the expansion of US power worldwide. Attuned to social movement protest, they draw attention to the consolidation of the power of capital, the separation of government from governance, the prioritisation of the latter particularly at the global level, and the detachment of democratic publics from the levers of power that might curb these processes.[31] Neoliberalism, and the privatisation and commodification of life, the suppression of labour, and environmental degradation, become 'locked in' by the institutionalisation of global governance and its attendant democratic deficit, making the contestation of property regimes, for example, Indigenous land rights, and the articulation of localised communal interests more challenging, if not impossible.[32] Their verdict is that 'any research programme on this question would need to note […] that it is very difficult to contest the structural power of capital',[33] that constitutionalists must recognise that constitutional*ism* is the problem of global politics, and that it is not at all clear that it can be the solution too.

Rejecting the idea that the problems can be fixed by correcting the global electorate's repeated bad choices, Roberto Gargarella arrives at the same conclusion:

> The old institutions are now a significant part of the problem. Because of their antidemocratic profile; for what they promise and cannot give; by the type and strength of the limits that they impose on us; due to their restrictive nature. The fact is that they have become a tight-fitting suit that starts to split at all the seams, unable to contain the variety and intensity of our expectations and demands. Our constitutional democracies, in this sense, are structurally incapable of serving their best purpose – and that would still be the case if times were good and they were led by 'virtuous', altruistic people (angels).[34]

The enormity of the constitutional challenge puts Gargarella in mind of Lenin, not an obvious choice for advocates of liberal constitutionalism, but a fitting role model for those willing to throw convention overboard. The question,

[30] Gill and Cutler 2014.

[31] Gill and Cutler 2014, 5. There is a huge literature on this topic. See also Hameiri and Jones, especially Hameiri and Jones 2016.

[32] Gill and Cutler 2014, 11.

[33] Gill and Cutler 2014, 15.

[34] Gargarella 2022, 309. For a discussion of these terms in Latin American constitutionalism see Santos, Araújo, and Aragón Andrade 2023.

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Gargarella explains, is 'what can we do' with 'an institutional system that seems old […] inefficient […] unfair and unjustified'? What can be done 'to change a system that has taken root so deeply that it has remained almost unchanged and unmodified for more than two hundred years?'[35]

It would be preposterous to claim that anarchism holds all the answers. But the elision of anarchism from the discussion of aspirational or transformative constitutionalism arbitrarily restricts the field of analysis. It is worth remembering that the question Lenin posed, 'what is to be done?' was borrowed from Nikolay Chernyshevksy, the philosopher who inspired a generation of nihilists and libertarians, notably the future anarchists Peter Kropotkin and Emma Goldman. When he invokes Lenin, Gargarella is not even inadvertently signalling a return to anarchism. But he is encouraging constitutionalists to follow Krouse – 'D. I. Sturber' – and ditch both the existing archive and our threadbare constitutional garb.

This half turn is common across the literature, but the question, for us, is why is 'anarchy' so difficult to countenance as a solution? Why does constitutional theory continue to hold onto the modern nation state as the ideal of politics despite so much evidence of its genocidal birth and *modus operandi*? Long finds the explanation in the spectre of anarchy. While 'people generally recognise that states can come in a variety of different political structures', he notes, 'it is implicitly assumed *anarchies are all alike* in structural terms'. Conventional wisdom teaches that a failure of one type of state 'proves nothing against another', but that a failure of one anarchy 'counts against all', even though the 'fact of mere statelessness is compatible with a variety of different institutional and cultural arrangements, and one would expect differences in such arrangements to have a significant impact on a stateless society's viability'.[36]

As Long argues, the 'choice between government and anarchy' is 'not a choice between having a constitution and not having one'. It 'is a choice between two different constitutions'.[37] In the 'The Half Turn to Anarchism' section, we show that the spectre of anarchy that haunts so much post-sovereign political theory belies the increasingly anarchistic tenor of much of the normative argument. Modern constitutional theory is turning in some way towards anarchy.

THE HALF TURN TO ANARCHISM

The prevalence of a cartoon caricature of anarchism bequeathed by Lenin is only one reason why anarchism remains on the margins of contemporary constitutional debates; the scale of the challenge of global power that anarchist theory must confront is hard to underestimate. Thankfully, there are three clear half turns in the humanities and social sciences that help us confront it.

[35] Gargarella 2022, 315.
[36] Long 2016, 140.
[37] Long 2016, 141.

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We begin our review with an account of the affinities, examining three literatures: Michael Hardt and Antonio Negri's highly influential anarchistic, but anti-anarchist account of global politics; the post-anarchist literatures that followed this reframing of nineteenth-century anarchism as a class-bound dogma antithetical to the articulation of anarchy as a poststructural destituent politics; and accounts of constituent power inspired by the retheorisation of the global and the social that poststructuralism spotlights. Anarchistic in tenor, these set out the problem of constituent power and constitutional pluralism, but recoil from the anarchist drive of that logic.

We follow this with a discussion of the pathways to an anarchist constitutional theory. We identify literature in IR theory, specifically the focus on regimes of order in anarchy, and in neo-Roman republicanism, notably republicanism's critique of 'regimes of domination'.[38] In both cases, we strip off the anti-anarchist mask and rescue the straw-stuffed effigies from the fire.

The fifth and final set of literature identifies the obstacles to the anarchist constitution in anarchist legal theory and the democratic turn in contemporary anarchism. Interestingly, anarchy as a concept drops out of this literature, as does the historical anarchist tradition, leaving us with an anti-elitist politics that lacks a political philosophy of power, and has little sense that a reconciliation with constitutional theory is possible.

Hardt and Negri and Post-anarchism

Hardt and Negri's work, from *Empire* to *Commonwealth* and *Multitude* to *Assembly*, from diagnosis to prescription, undoubtedly constitutes a milestone for the praxis of the twenty-first-century radical left. Published between 2000 and 2017, their work tracks a post-Marxist turn in international praxis. Capitalising on the anti-statism of Seattle in 1999, and the postmodern anarchist punk of the Wachowski's film *The Matrix* (1999), while leaning on Foucault, Derrida and Deleuze and Guattari, they pin the future of radical politics to the radical commoning of public and private goods, the development of post-sovereign forms of polity that also eschew the party form of mass mobilisation. Yet sadly, they press the dissimilarity of anarchism in post-sovereign thought and explicitly distance themselves from the currents of ideas that have shaped twentieth and twenty-first-century grassroots social movements.[39] Nevertheless, this half turn adds to the urgency and scale of the problem of power in world politics.

Hardt and Negri diagnose the problems of world order in the extension of US imperial power worldwide. Unlike the empires of the past, they argue, the US has been able to convince a global citizenry and their states to adopt, mimic

[38] Gordon 2008, 33.

[39] Hardt et al. 2002; Hardt and Negri 2019; Hardt and Negri 2009; Hardt and Negri 2006; Hardt and Negri 2000.

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and internalise the liberal norms of rights-bearing individuality, consumerism and the spread of the rule of law; norms that occlude and make natural the capitalist underpinnings of society. Majoritarian representative democracy, globalised in the aftermath of the Second World War, they conclude, has constrained the multitude within the bounds of business as usual, while post-sovereign governmentalism has ushered in an age of biopolitics, where politics is exercised on and through the body, and where resistance is a rejection of sovereignty in favour of rhizomes and epistemic fluidity, enabling the challenging and reformulation of standard accounts of political subjectivity.[40]

Calling on the multitude to resist traditional forms of political identity and the hyper technocracy of modernity, Hardt and Negri make a clear case for the re-institutionalisation of global power from the bottom up in their final call to 'assembly'. This is a call for 'non-sovereign institutions', a 'plural ontology of cooperative coalitions' and a new 'entrepreneurial' 'democratic leadership'.[41] The affinities with anarchism are clear to anarchists, but few others can see it, least of all Hardt and Negri themselves.

Ideology explains the resistance to anarchism. As David Bates argues, Hardt and Negri are conflicted Leninists, who predicate their rejection of anarchism, not on textual analysis, but in deference to a Leninist hegemony on the intellectual left.[42] For them, the vision of revolution as a continual rupture with the normalised practices of the present, without the state, is only possible because we are in a unique historical moment, and the ideology that can grasp this must therefore also be unprecedented.[43] Anarchism is not up to the task. Negri once wrote, that '[I]t is a pity that the anarchist conception has never been attentive to the issue of homology with the state […] so that it produces in its concept of insurrection and in that of the abolition of the state a revolutionary imprint that is fiercely empty of alternative proposals and full of resentment'.[44] This is quite a claim, and common in broad swathes of the left, even in anarchist circles. It is also false.

The originality of Hardt and Negri's call to *Assembly* rests on two foundations. The first is the notion that anarchism has never had a positive politics and is an ideology of and for the past, and the second that anarchist inflected movements have been nothing but weak insurrections. Contrasting directionless 'leaderlessness' with their notion of 'entrepreneurial leadership',[45] they argue that the attempt to represent the multitude in General Assemblies, the primary institutions of Occupy encampments, failed because they manufactured

[40] For a discussion of the Proudhonist antecedents to Foucault's argument, see Prichard 2022, 34–35.
[41] Hardt and Negri 2019, 5.
[42] Bates 2012, 227–279.
[43] Hardt and Negri 2009, 361–362.
[44] Hardt and Negri 2009, 279.
[45] Hardt and Negri 2019. *passim*.

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consensus by sublimating the specificity of interests on which new coalitions could be built.[46] Our analysis in Chapter 6 broadly supports this empirical claim but uses an anarchist theoretical lens, rather than reject it. Hardt and Negri argue in reverse. For them, weak practice implies weak theory – they see no point in trying to engage with anarchism. Indeed, while *Assembly* is short on details, it pits 'organising', 'institutions' and 'discipline' – the appeal to Leninism – against 'anarchism'. Negri declares: 'We always have to create institutions! But creating institutions also means creating forms of cities, because an institution is not a metaphysical representation or an ideal archetype!'[47] The implication is, of course, that anarchism neither does this nor imagines other constitutional conglomerations.

If global imperial (bio)power is the problem, the critical response has been to retheorise democracy. Here too, anarchism is rejected by the post-Marxists. Ironically, however, the neglect of anarchism in radical democratic theory is largely explained by a general tendency to read historical anarchist theory through (post-)Marxist lenses. For example, Jacques Rancière, perhaps the best-known post-Marxist philosopher to give qualified backing to the anarchising of radical democratic theory, simultaneously recognises and rejects the association with the past. As he put it, '[t]here is certainly a link between my conception of anarchy and the anti-authoritarian tradition of historical anarchism. An-archy in general is the doctrine of the illegitimacy of domination and the practice of bringing into play the capacity of the greatest number'. But in conversation with Todd May, Benjamin Noys and Saul Newman in 2008 he added:

> The anarchist tradition had a tendency to localise oppression in the State by identifying politics and the State, and opposed this to liberty incarnated in society in the social group of producers. Historical anarchism freely relied on the opposition between production and exchange and the parasitism of forms of the State. This vision is quite close to the Marxist opposition between economic and social reality and politics as appearance.[48]

None of his discussants question the conflation of anarchism with Marxism or the apparently blanket rejection of nineteenth-century anti-capitalism: the hallmark of postanarchism is the claim that 'classical' anarchism's proximity with classical Marxism is its Achilles heel.[49]

[46] Hardt and Negri 2019, 237–238. As Van De Sande 2013 has argued, their account of transformation as 'imminent' or internal to movements, rather than led by a party external to it is remarkably anarchist.

[47] Cited in Obrist 2010.

[48] May, Noys, and Newman 2008. Rancière also argues that 'The power of the people itself is anarchic in principle, for it is the affirmation of the power of anyone, of those who have no title to it. It is thus the affirmation of the ultimate illegitimacy of domination. Such power can never be institutionalized' (see also, Rancière 2006a; May 2008).

[49] Saul Newman called on Hardt and Negri to reconsider the stated distance between anarchism and their work. Like Allain Badiou, whose post-statist political theory is akin to anarchism,

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Indeed, one of the outstanding traits of poststructuralist anarchist thought that itself piggybacks on this post-Marxist turn is its estrangement from historical anarchist traditions. Ahistorical analysis of nineteenth-century anarchism, and the uncritical acceptance of the post-Marxist criticisms of nineteenth-century anarchist (and Marxist) theory, fuels the pejorative designation of 'classical anarchism'. The classical anarchist tradition, it is argued, associates power almost exclusively with the material instruments of the state, links the prospect of change with insurrectionary class mobilisation and misunderstands the intersectional nature of power or the nature of pluralism and fluidity. This reductive pigeonholing glosses not only the complexity of socialist movement organising but also the distinctive philosophical underpinnings of both the historical anarchist and Marxist traditions.[50]

Constituent Power and Societal Constitutionalism

The effects of poststructuralist and post-anarchist thinking can be found in the way anarchism is deployed in contemporary constitutional theory too. Both approaches sit beneath Geneviève Nootens' analysis of 'destituent power', a concept she borrows from Giorgio Agamben.[51] As Nootens argues, the 'core promise' of constitutional law is to make 'the governed active participants in ruling and in the shaping of regimes'.[52] This is the notion of constituent power. Sometimes traced to early modern thought, the concept became a mainstay of constitutional law in the eighteenth century, largely under the influence of Rousseau and the Abbé Sieyès. Sieyès idea, Martin Loughlin explains, was that the 'law of the constitution' was 'fundamental with respect to the institutions of government' and that no 'type of delegated power can alter the conditions of its own delegation'. By drafting the constitution in the name of 'the people', constitutionalists made the people both 'subject (the author) and the object (the governed) of the laws'.[53]

Geneviève Nootens's call for a 'constituent power without a state', a constitutional politics beyond sovereignty, removes constitutional theory from the orbit of legal positivism, where Loughlin puts it. But her unwillingness to contemplate a non-state polity ultimately prevents her from finding an alternative in the generative grassroots.[54] In a sympathetic discussion of Saul Newman's

their disavowal of anarchism is not predicated on an engagement with it (Newman 2010.). For an interesting inversion of this argument, which posits that the lack of workerist politics and attention to political economy is precisely why we should return to the classical Marxist tradition, see Choat 2016.

[50] For a useful primer, see Rousselle and Evren 2011. One of the minor aims of this book is to rehabilitate that 'classical' 'tradition'. For a critical view, see Kinna and Prichard 2009.

[51] Agamben 2014.

[52] Nootens 2015, 138. Cf. Van De Sande 2013; Van De Sande 2020; Van de Sande 2024.

[53] Loughlin 2014a, 221; Loughlin 2022, 79.

[54] Nootens 2022a.

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work, she argues that the function of *pouvoir irritant* is wholly negative. At best, it lacks 'the possibility or promise of the foundation of a whole new and comprehensive order', relinquishes constituent power's 'radical sense of agency' and the idea of 'purposeful institutional design', that 'institutions are for us to build and rebuild'. At worst, it collapses state sovereignty into representative democracy to propose 'a general rejection of all forms of institutionalized politics'. For Nootens, destituent power, and the anarchism that inspired it, is a theoretical and practical dead end.[55]

The void that Nootens exposes in post-sovereign constitutional theory also appears in societal constitutionalism, a strand of legal and constitutional theory that takes the complexity of 'civil constitutions' in diverse social systems as a starting point to rethink democratic politics. Gunther Teubner, perhaps the best-known exponent, explores the evolution of 'civil constitutions' as they inevitably evolve, fracture and pluralise alongside and through the complex division of labour and the functional differentiation of complex societies. Finding that the development of new self-regarding groups, whether industrial or civic, regional or cultural, leads to the creation of new constitutions, and continually fractures sovereignty within, he also recognises the generative power of transnational organisations, grassroots movements, trade unions and Non-Governmental Organisation (NGOs) to dislocate sovereignty from without.[56] Decoupling constitutionalism from the state and embracing multiplicity, he distinguishes 'the political', or the realm of reflection, conflict and decision, from politics, or the realm of conventional institutionalised collective decision-making.[57] If the latter has any normative value, then so too must the legal and constitutional pluralism that follows. If we are to avoid the return of fascism, he argues, we must resist the state's tendency to incorporate and hierarchise all social groups within its ambit.[58]

This clear drift to anarchism worries theorists of constituent power. In her analysis of Teubner's work, Nootens argues that the multiple, self-referential constituent processes societal constitutionalism embraces effectively strip constituent power of its radical democratic promise, because it fails to centralise and to universalise within the territorially demarcated boundaries of a state. The impasse she finds in Newman's work reappears: there is no substantive, single 'political authorship' or authorising agent, nor any mechanism for enforcing collective decisions.[59]

In treating constituent power as a 'permanent irritant' to constituted power, societal constitutionalists like Teubner fall back on Marxism to rethink authorship in 'fragmented constitutionalism', seeing this as a latent 'communicative

[55] Nootens 2022a, 133.
[56] Teubner 2018.
[57] Teubner 2012, 3, 83.
[58] Teubner 2012, 21–23.
[59] Nootens 2022a, 23.

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energy',[60] using Ernst Bloch's utopian 'not yet' and Jacques Derrida's 'yet to come' to describe the process.[61] The point is to provide a 'guarantee of multiplicity' to counter the 'regimentation, bureaucratisation, alienation and, ultimately, the authoritarianism to which modernity tends'.[62] The constitution manages 'mutual collisions', enabling groups to 'autonomise' identity and declare themselves 'a "we"' by developing procedures, competences and organisational rules.[63] If, as Nootens argues, this sounds like anarchism, anarchism is not Teubner's point of reference.

Anarchy in IR Theory

International Relations has been labelled 'the political discourse of anarchy',[64] and while the specifics of this claim might be disputed, few would disagree with the general claim, that, for better or worse, the concept of anarchy has been at the heart of the discipline's evolution for almost a hundred years.[65] Treating states as persons, realism, neorealist, liberal and constructivist IR theorists use anarchy, the absence of a world sovereign, as the starting point for modelling state behaviours. As Kenneth Waltz put it, in arguably the seminal text of mainstream IR, the problem for IR is to work out the ramifications, limits and possibilities of the 'anarchist ideal [of statelessness] applied to international relations'.[66]

One might assume that since anarchism is the idealisation and theorisation of politics in statelessness, it would be more common as a reference point in IR. But until recently, it was entirely absent, surplus to requirements in a discipline geared mainly towards the interests of the state.[67] E. H. Carr's realism, which morphed from weak Marxism to Stalinism, was actively hostile to the anarchists and anarchist theory.[68] But Carr was an outlier only for being one of the few to make these anti-anarchist arguments explicitly.

[60] Golia and Teubner 2021a, 11, 23.
[61] Golia and Teubner 2021a, 30.
[62] Golia and Teubner 2021a, 9. Cf. Buber 1949, 35, 39.
[63] Golia and Teubner 2021a, 28. For a discussion of Proudhon's influence on Laski's pluralism and legal theory, see Prichard 2011. For a fuller discussion of the English pluralists, see, for example, Morefield 2005; Bevir 2012.
[64] Schmidt 1998.
[65] Jack Donnelly is deeply troubled by this and has called on IR to jettison its use of the concept. See Donnelly 2015.
[66] Cited in Prichard 2024, 412.
[67] See Prichard 2013a. For a discussion of the anarchist origins of the concept of anarchy, which failed to inspire IR theorists, see Alker 1996. For a recent discussion, see Havercroft and Prichard 2017. There is more anarchist-inflected literature than can be surveyed here, and to do so would distract us from our present purposes, which is to show the half turn in our more established debates, rather than the full turn in the anarchist ones. See forexample, Frost 2009; Falk 2010; Falk 1978; Weiss 1975; Prichard 2010b; Kazmi 2012; Rossdale 2010.
[68] Carr 1962, 148–152. See also, Carr 1950; Carr 1937.

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Broadly speaking, IR theorists have argued that 'the international' is an ontologically distinct domain of human interaction, to which the laws of normal politics do not apply, and those of nature reapply. And yet almost all IR theorists dispute the construction of anarchy as lawlessness. It is generally agreed that 'clubs are trumps', but realists and neorealists, like Hobbes and others before them, point out that balances of power order the system and anarchic relations between nations are tolerable but not between individuals.[69] The English School points to diplomatic practices, civilisational cultures and treaty law as the nutrients of order in anarchy, but these are practices beyond the purview of the hoi poli. Liberals, on the other hand, focused on the relative salience of multilateral institutions and the norms of global capitalism in ordering anarchy. Constructivists argue that anarchy is no barrier to mutual recognition and that it is distinctly cultured by the mutually constituted identities and interests of those who participate in them, despite statelessness.[70]

It is also well known in IR and IR theory that regimes stabilise order in anarchy. Krasner's famous definition of regimes as 'principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue area',[71] is crucial to our framework of analysis too. In the absence of a global sovereign, non-sovereign regimes emerge to stabilise relationships between individuals and groups. These are relatively enduring and do not rely on a monopoly of violence. Quite the opposite: international regimes rely on the dispersal of violence capacities and the mutual pacification of a complex balance of power.

Positing anarchy as the opposite of regimes has long been jettisoned in mainstream IR theory, but the full anarchist implication of the argument is generally not seen. Krasner is again an exception. In a review of James C. Scott's *The Art of Not Being Governed*, he agrees with Scott's view that 'Hobbes was wrong'[72] – life *inside* the state has often been more 'nasty, brutish and short' than outside it. But Krasner quickly distances himself from Scott through a fulsome defence of the benefits that have accrued to peoples inside states. The *global anarchy* which is a necessary precondition of the freedom of peoples, just drops out.

In short, mainstream IR theory contains a proto-anarchist theory of order and justice in anarchy, but its social ontology is deeply statist and elitist. Ironically, nearly all critical IR theory accept the mainstream definition of anarchy and reject it in precisely these anti-elitist and egalitarian terms. It is impossible to survey these debates here, since the evolution of post-Cold War IR is in large part a response to these mainstream claims about anarchy, but the rejection of liberalism and statism, not to mention the crude power politics

[69] For a discussion see Bull 1981.
[70] This literature is vast. For a primer, see Prichard 2025.
[71] Krasner 1982, 185.
[72] Krasner 2011, 82.

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of realism, has been centrally tied to the rejection of anarchy.[73] The association of anarchy with 'realist' anarchy, and a widespread refusal to read the anarchists, is unfortunate.[74]

Tragically, the lack of a positive conception of anarchy, and near complete lack of familiarity with any anarchist thinking on this topic, pushes critical IR theory into an intellectual *cul de sac*. Critical IR theorists, who, like Hardt and Negri, reject mainstream IR as sovereigntist,[75] struggle to get beyond the critique of empire, and the defence of the democratic multitude, and ultimately fall back into the arms of the states they blame for the calamities they face.[76] The spectre of anarchism haunts critical IR theory, and the discipline rushes to burn the effigy.

Neo-Roman Republicanism

The most significant anarchist adjacent innovation in contemporary political theory and political philosophy can be found in the revival of republican theories of freedom as non-domination. Crafted as a direct counter to conventional liberal political theory, new republicans benchmark the legitimacy of the state against its non-arbitrary actions.[77] In practice, this means state activities, indeed any normative activity between two parties, must be mediated by a commonly agreed, (third party) 'constitutional provision', which is usually guaranteed by the state. In contrast to the classical liberal belief that liberty is the absence of constraints and non-interference, Phillip Pettit, the most prominent advocate of neo-Roman republican political philosophy,[78] argues that we are free when we are not dominated, or dependent on the *arbitrary* will of another person, or institution.[79] Constitutions specify the terms of our mutual and reciprocal freedoms in association, and remove the arbitrariness of political action. But this, he argues repeatedly, can only be achieved in states.

As we have argued elsewhere, this position has distinctly anarchist undertones.[80] The sociological sensibility in anarchist theory and practice is centrally derived from its identification of, and challenge to, the multiple and

[73] See, for example, George 1995.

[74] Andrew Linklater's call to revisit anarchist debates on anarchy and the state, in light of 'the transformation of political community' and new theories of power, failed to resonate widely. See Linklater 1998. 1998, 196. For a discussion of the proximity of anarchism and critical IR theory, see Prichard 2007; Prichard 2010b.

[75] Hardt and Negri 2000, 141–142.

[76] For a classic discussion, see Walker 1993.

[77] On the dispute about negative liberty his response to left libertarian critique see Carter 2008; Kramer 2008; Pettit 2008.

[78] Pettit's contributions have defined this resurgence in thinking about freedom. See, for example, Pettit 1997; Pettit 1996; Pettit 2023. For commentary and developments, see Laborde and Maynor 2008; White, Nabulsi, and Leipold 2020.

[79] See also, Friedman 2008; Gourevitch 2015a; Bohman 2007; Leipold 2024; White 2025.

[80] For a full discussion, see Kinna and Prichard 2019.

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intersecting 'regimes of domination' that structure social life, including, critically, the state.[81] But Pettit's objection to anarchism extends from his view, which apparently is fatal to anarchism, that we can only be free in community, not outside of it. Associating 'anarchism' with a rights-based, deontological liberalism, he classifies both as *in exrtremis* anti-statist.[82] Relatedly, he conceptualises 'anarchy' as the consequence: it refers to 'an inherently wayward people'.[83] In his most recent work, he uses 'idealist' anarchism as a foil for 'realist' republican theory.

> The view of the state – specifically, the modern state – that is offered here is realist, then, in two distinct senses. It is historically realist in assuming that the state will endure through the foreseeable future, contrasting on that front with the idealism of traditional anarchists like Peter Kropotkin (1902). It is normatively realist in arguing that although the state need not satisfy a moral ideal like that of justice, it should satisfy a political ideal [...of] an approximate balance of power between rulers and ruled.[84]

Yet the idealism Pettit objects to is the realism of those who, like Proudhon, refused to accept the finality of the historical contingencies that enabled republican revolutionaries to remodel autocratic states and present them as history's 'end'. In developing accounts of freedom as non-domination, the anarchists, as we will show in Chapter 2, conceptualised anarchy as a normative constitutional principle, and examined how groups constituted themselves as self-governing 'sovereign' entities.[85] While some republicans are willing to entertain the convergence with anarchism, most do not.[86] Anarchism is barely mentioned in the multiple responses Pettit invites to the question: which institutions do best by liberty? The answer found in the historical anarchist tradition is those which keep the texture of anarchy open; those that enable 'progress' by permitting the free flow of intellectual and material forces. The assumption of the sovereign state skews our imagination by coupling social dynamism with different versions of ideological '*absolutism*'.[87]

Anarchist Legal and Democratic Theory

The full turn we seek to recover from the history of ideas can be described as a form of societal constitutionalism, but one rooted in an anarchist-inflected realist account of anarchy, akin to the account of regimes in the international anarchy

[81] Gordon 2008, 33.
[82] Pettit 1997, 99.
[83] Pettit 1997, 210.
[84] Pettit 2023, 3.
[85] There is a small body of literature exploring the anarchist roots of modern republicanism and the republican roots of modern anarchism: see Vincent 1984a; Vernon 1986; Adams 2019; Rallo 2023; Kinna and Prichard 2019; Smith 2019.
[86] See, for example, White 2019.
[87] Proudhon [1853], *OC*, vol. XX, 18. For a translation, see Proudhon 2012.

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and aligned with a conception of freedom as non-domination. It is one that takes power and power balancing seriously, has a critical account of democracy, a theory of law and the constitution. This is not well represented in most *contemporary* anarchist literatures, though some scholars discuss anarchist constitutional politics as a practice of anarchist engagement with the state.[88] To conclude this third part of the chapter, we identify the barriers that anarchist legal theory,[89] and the 'democratic turn' of contemporary anarchism present.

Anarchist legal theory consists of three broad strands. The first has a strategic and organisational focus. It considers how anarchists navigate democratic electoral systems as advocates of direct action, develop rules while also challenging law, whether in the squatter movement or wider social movements, and also the pitfalls of ignoring rules and rule-making.[90] A second branch develops anarchist legal theory as a logical outgrowth of the anarchistic tendencies with post-Marxist accounts of law.[91] Some of this work is also ethnographic, detailing empirically the ways anarchists create alternative spaces to live ostensibly without the law and escape networks of domination. Neither engages with historical anarchist accounts of law, or with the place of law as one part of a wider anarchist constitutional politics. In different ways, each trains anarchy narrowly on the study of anarchist practice, not on the articulation of a conception of self-government open to everyone.

The third, most comprehensive and recognisably anarchist contribution to anarchist legal theory, is Gary Chartier's *Anarchy and Legal Order*.[92] Chartier's defence of a stateless legal order draws methodologically on the natural law tradition and ideal theory. Chartier defends an account of anarchy as a 'social order rooted in peaceful voluntary cooperation, and so without a state'.[93] Inspired in part by the work of Lysander Spooner, Benjamin Tucker, Voltairine de Cleyre, and Dyer D. Lum – leading figures in nineteenth-century US anarchism – it is antistatist, socialist[94] and convergent with republicanism.[95] Yet Chartier's idealist methodology shapes an engagement with anarchist

[88] Franks 2020. Franks here equates constitutional politics with electoral strategies and democracy more generally, which is a key element of the discussion in future chapters, but does not engage directly with constitutionalism either as a concept or in the way in which we do here. See also Condit 2019.

[89] We do not explore the libertarian legal theory common in the US in this book. For a provocative analysis, which eschews left anarchism completely, see Barden and Murphy 2010.

[90] See, for example, Finchett-Maddock 2013; Finchett-Maddock 2010; Tamblyn 2019; Holterman and Van Maarseveen 1984.

[91] Newman and La Torre 2024a; Loizidou 2023.

[92] Chartier 2014.

[93] Chartier 2014, 1, 407.

[94] Chartier 2014, xiii.

[95] As Chartier puts it, 'Anarchism is also perfectly capable, I believe, of capturing important values treasured by the civic republican tradition. Certainly, this is true if civic republicans are understood to value meaningful opportunities to shape communal institutions and attitudes, since anarchism offers just such opportunities' (Chartier 2014, 409).

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thought that is strictly philosophical, and it spawns a conception of anarchy that is equally abstract, indeed one that frames anarchy as the other to the state. The lack of sociological perspective creates the constitutional hurdle. Short of persuading fellow citizens that anarchy is feasible – aping Tucker's plan of campaign – Chartier's concept seems out of kilter with the realities of power, domination and war. If the first two strands lean towards ideology, Chartier's tilts towards utopianism.[96]

In contrast to the half turn we find towards anarchy in contemporary political theory, we find another drift from it in the contemporary anarchist embrace of democracy. Indeed, some of the main currents of twentieth-century anarchism breathe new life into an anticonstitutional critique. Articulating an 'expansive' participatory and consensual view of democracy against the aggregative processes of 'standard liberal democracy',[97] contemporary anarchists conflate existing institutional process with elitism to turn democracy into a proxy for anarchy and delink both from the constitution.[98]

The late twentieth-century democratic turn in anarchism sprang from a revision of historical anarchism, rather than its rejection. In 1968, Murray Bookchin, the most prominent and influential anarchist of his generation, adopted the idea of the revolutionary 'popular assembly' to retheorise anarchism. Assembly, he argued, entailed community, and revolution was the process through which both assembly and community were 'created as *modes of struggle* against the existing society'.[99] To refine the idea, he revived the concept of the commune to differentiate anarchist commitments to pluralism and self-government from Marxist demands for uniformity and policy compliance. In the aftermath of the 1871 Paris Commune, anarchists including Peter Kropotkin, Gustav Landauer and Rudolf Rocker, theorised the commune as a new articulation of a grassroots, decentralised federalist response to centralisation. Historicising the commune, Bookchin traced the history of the iconic Paris Communes of 1793 and 1871 to the Greek *polis* and forward to the workers' soviets. Communalism, he argued, was the practice of libertarian municipalism, a democratic confederal alternative to the state. The effect of this revision was to constitute anarchism as a system of direct, participatory democratic self-government,[100] underpinned and directed towards social ecology: organicism, holism and a respect for the 'wholeness' or 'oneness' of life.[101]

[96] Two other recent works that edge towards an anarchistic legal theory, but do so without a full engagement with the classical canon, are Newman and La Torre 2024; Loizidou 2023.

[97] The terms are taken from Warren 1992.

[98] Gargarella delinks the democratic deficit from institutional corruption, but to defend constitutional principles against further internal attack. Gargarella 2022, 3.

[99] Bookchin 2004a, 104.

[100] Bookchin 2007, 101.

[101] Bookchin 2004a, 38–39. As John Clark argues, modern communalism emphasises the interconnectedness of the individual and society and the impossibility of detaching personal from collective liberation. Clark 2022.

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Bookchin's interventions, while innovative, helped consign the historical or classical tradition of anarchism, and its material past, to further obscurity.

In David Graeber's equally influential analysis, anarchy *is* democracy: an anti-representational politics that rejects the current constitution of government and disallows the seizure of power.[102] Narrating a history of self-government and resistance from the eighteenth century, he contrasted the Founding Father's concept of good government to 'communal self-governance'.[103] For Graeber, the success of the former heralded the smothering of the latter. The reassertion of democracy was accordingly an attack on everything constitutionalism had cemented: elitism, representative government, and systemic economic inequality. Cutting a path away from the *polis*, he linked democracy to horizontal organisation, leaderlessness and consensus decision-making. Unearthing it in the Occupy Wall Street movement in which he was embedded, Graeber emphasised what Bookchin called the 'journey' to freedom, or a prefigurative politics, where means are ends in the making.[104] The historical anarchist tradition plays little or no part in his thinking. Indeed, it is almost as if the credibility of contemporary anarchism rests on its dissociation from the canon of anarchist thought. Promoting practice over theory, he reinforced the idea that there is little or nothing of value in the archive.

Our revival of anarchist history reframes anti-elitism as a constitutional problem rather than one that democracy retheorised through and anarchist lens, can resolve. We diverge from these democratic framings by asserting the sovereignty of individuals and the plurality of association over the sovereignty of the people and the state. Democracy is de-centred in these accounts. As Proudhon argued:

> Unless democracy is a fraud, and the sovereignty of the People a joke, it must be admitted that each citizen […] each municipal, district or provincial council […] is the only natural and legitimate representative of the Sovereign, and that therefore each locality should act directly and by itself in administering the interests which it includes, and should exercise full sovereignty in relation to them. The People is nothing but the organic union of wills that are individually free, that can and should voluntarily work together, but abdicate never.[105]

For Proudhon and others who followed him, the anarchist constitution was the prerequisite, the prior normative project that enables democracy, not the other way around (as we will show).

In summary then, when anarchist tropes are everywhere in the social sciences, the recoil from the historical anarchist tradition seems especially perverse. Theories of anarchy as democracy, of anarchy as ontology, of anarchy

[102] Graeber 2014, 187. For a left movement-facing populist analysis, see Grattan 2016.
[103] Grattan 2016, 155.
[104] Bookchin 2004a, 104.
[105] Proudhon [1851], *OC*, vol. X, 292. Trans. Robinson, Proudhon 1989a, 276.

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as politics, proceed in complete ignorance of the earlier constitutional debates, simultaneously opening and closing the space for the revival of the anarchist constitutional politics we aim to recover.

GLOBAL CONSTITUTIONALISM AND THE ARCHITECTURE OF THE ANARCHIST CONSTITUTION

The preceding analysis has used the idea of a half-turn towards anarchism to indicate where the connections with the constitutional tradition we wish to recover lies. Collectively, they clarify the key challenges any account of the future reconstitution of the global order must address: domination (arbitrary or otherwise), balances of power, laws and rules, the people and its definition, democracy, war, imperialism and internationalism, and of course, anarchy as both a normative and empirical category of analysis. In this last part of the chapter, we follow global constitutionalists in stretching the conventional frame of constitutionalism and benchmark our anarchist conception against a Kelsonian pure theory of law.

Following Martin Loughlin, a leading critic of global constitutionalism, the constitution can be construed as an instrument to curb arbitrary power, where each polity evolves its own constitution (or muddles through, as in the UK), in contexts shaped by diverse social forces. In the 'Age of Constitutions', Loughlin argues, these included nationalism, industrialism, liberalism, the rise of organised labour and 'the persistence of the Old Regime', to borrow Arno Mayer's phrase.[106] Constitutional historians also typically distinguish liberal and republican variants, emphasising the primacy of law in the former and the concept of 'good order' and the balance of powers in the latter.[107] But in whatever ways constitutions are generated and whatever their complexion, constitutionalism is typically associated with principles of independence, political union, and liberty, on both sides of the Atlantic, even where these aspirations have been trounced.

Constitutional historians argue that liberal and republican constitutionalism coalesced around two ideas: the ancient, negative conception of the constitution as a restraint on power and the positive idea that it empowered a 'spirit of freedom'.[108] As Loughlin notes, their 'overriding purpose' was to 'protect and promote individual liberty by ensuring that the coercive powers of government are strictly confined'.[109] This constraint was deemed essential to the promotion of 'freedom, justice, and democracy'.[110]

To meet these aims, constitutions characteristically divide and enable power and outline the regulative limits of political participation. Constitutions

[106] Loughlin 2022, 9–10. Mayer 2010.
[107] Castiglione 1996, 426.
[108] Castiglione 1996, 417, 434.
[109] Loughlin 2022, 40.
[110] Loughlin 2022, 38.

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throughout recorded history determine who should be empowered, which collectives matter and who initiates and enforces the rules, what sorts of decision-making procedures are appropriate to different levels of government and the terms of the transcendent telos of the norms of the polity. In Giovanni Sartori's formulation, constitutionalism is defined by this '*telos*': the introduction of 'fundamental law', a 'set of principles' and 'correlative institutional arrangement' to 'restrict arbitrary power' and 'ensure "limited government"'.[111]

Whereas Loughlin scoffs at proposals to globalise constitutionalism, global constitutionalists imagine how the concept he describes applies in a fractured, belligerent and ecologically spent, globalised world order. As Anthony Lang Jr. and Antje Wiener, two of the editors of the journal *Global Constitutionalism*, argue, globalisation, decolonisation, the emergence of a post-sovereign world order, and accelerating environmental collapse, demand fresh approaches to constitutional politics and new visions of constitutionalism.[112] The task is to defend, extend or re-think constitutional values by recognising the unfurling of new processes and reviewing the constitutional, legal and political institutions best suited to delivering the promise of freedom and well-being for all.

In their inclusive framing, global constitutionalism is an interdisciplinary field that 'explores a [...] balanced and bottom-up perspective on constitutional quality in the global realm'. Springing from law, IR and political theory in the mid 2000s, global constitutionalism is methodologically ambivalent to statism, alert to the analysis of the constitutional drivers of domination and conceptually rich.[113] It is also non-partisan and encouraging of theoretical innovation and imagination, or what Jean Cohen calls 'feasible utopianism'.[114]

Theorists of global constitutionalism like Garret Wallace Brown distinguish *constitutionalism*, 'a theory of constitutionalization' designed to shape or improve 'the foundations and practices of global constitutionalism more generally', from *constitutionalisation*, an 'exercise in "mapping" and "explaining" various processes of global "constitutionalism beyond the state"'.[115] In contrast, we use the term constitutional*ising* to analyse processes that drive, underpin and are shaped by constitutionalism. Following James Tully, one of the towering figures in the field, we distinguish the constitution's dominant, universalised expression in western-style constitutional democracy from the broader practice in diverse political orders.[116] But whereas Tully delineates movements within constitutionalism to track progressive shifts, we use

[111] Sartori 1962, 855.
[112] Lang Jr. and Wiener 2017b, 1.
[113] Lang Jr. and Wiener 2017, 2.
[114] Cohen 2011, 129.
[115] Brown 2012, 202.
[116] Tully 2008b, 465. The constitution of ancient China is an example. See Su 2018.

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constitutionalising to signal the anarchists' rejection of statist conventions and focus on societal processes that promote constitutionalisation beyond it.

Building on this schematic synopsis, and drawing back to convention, we propose a modification of Bellamy and King's working definition. Stripping out the statist bias produces a template adaptable to anarchist perspectives. Bellamy and King argue that a constitution is the collection of norms that are recognised and applied in a society, and that specify (i) the persons or institutions empowered to make decisions; (ii) the most basic substantive norms that distribute, guide and regulate the scope and exercise of that power; and (iii) the conditions under which rules are made and applied.[117]

To develop a thicker anarchist conception, we identify four elements in the constitution, all designed to challenge and balance power in anarchy. To complete the analysis, we show how Hans Kelsen's concept of the *grundnorm*, the *sine qua non* of legal autonomy, supports the anarchist constitution.

The first element is the crafting of declarative statements, those preambles and authoritative documents, that establish the communal body politic: 'we the people', and its telos. This 'we' is always counterposed and balanced externally, and often internally, against other collectives, meaning constitutions are routinely plural and overlapping, impossible to conceptualise without a sense of the other, the external, the 'non-we'. People have split loyalties that they rank because they are members of multiple groups. Secondly, mass constituencies do not exhaust the constituent power of an anarchist theory of constitutionalising. Following Teubner, we consider the plural 'we' as any group constitutionalised through simple bylaws, house rules, ground rules, or codes of conduct, whether in church groups, football clubs, supporters' groups, towns, cities, universities or corporations. These are all moral and legal actors with collective dignity, that are constitutionalising as a matter of fact (their relative normative merits are open to debate). All of these have their own *teloi*, and their contradictions emerge from the fact that those that populate them often are members of two or more of these groups, sometimes leading to split loyalties, other times not. By de-centring the state, and globalising our scope, we can theorise the interconnections of groups through the development of regimes in anarchy, in ways akin to Krasner's theory. But the sheer pluralism of these 'natural groups' as Proudhon called them, constitutes a real, permanent, empirical and unavoidable, internally and externally contradictory anarchy; appeals to sovereign authority while wielding a nominal monopoly of violence simply occlude this.[118]

Second, like regimes, constitutions are collections of rules and informal norms that regulate the ways that people should act towards one another.[119] These are often complex written codes with clauses, sub-clauses and annexes.

[117] Adapted from Bellamy and King 2025, 8.
[118] For a counterargument, see Loughlin 2014b.
[119] The literature on this topic in IR alone is huge. See, for example, Orchard and Wiener 2024.

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But they are also frequently unspoken rules, often resulting in normative and functional hierarchies, but also regulating social agency without the need for violence or the state, but disregarding neither. These rules express the virtues and values of the community, as well as the things no one talks about, and set out what is permissible, and prohibited, for the 'we' to be reasonably cohesive, coherent and durable. The normative architecture of the group, its cultural habits and rituals, shape the constitution and are shaped by it. But the rules have no objective moral status.[120] Determining whether a people, constitution or set of rules is good or bad demands a political and normative theory of the sort that will be developed in the pages to follow.

Third, constitutions consist of and regulate institutions. Institutions are emergent, relatively durable practices and normative frameworks that coordinate collective action, realise collective ends, and ensure relatively predictable coordination of group activity. Institutions, formal and informal, almost always have a collective identity of their own, internal to the group, and express a subdivision of social power. But they are also dynamic, partial bearers of the rules that create and regulate them.[121] These institutions might conflict with one another; indeed, the presence of a constitution is no guarantee of peace, which is why all constitutional theory must address the problem of war and social conflict.

Finally, constitutions explicitly and implicitly endorse different methods of decision-making. These are tailored to the type of decision being taken, which groups are entitled to take them, and the institutions charged with that role, the rules governing the management of that process, and the underlying normative commitments to that balance of power. Decision-making procedures are therefore necessarily plural, presuppose conflict, and range from the technocratic to consensual, from majoritarian, to rule by law, expert opinion, to more implicit and habitual ways of collectively agreeing a position. Establishing clear decision-making procedures allows the whole and parts of the constitutional political order to revise or amend rules and laws, the structure of the constitution and the nature of the demos itself (or at least gives that opportunity).

Each of these four aspects presupposes an inevitable *inequality* and the possession and exercise of power. Indeed, it is only because the parts are *not* equal, that inequality is ever-present, that there is a need for the compact or agreement at all. Constitutions rarely equalise material relationships, rather they rebalance ascribed status or relations in ways that ought to be mutually

[120] Our approach to rules and norms broadly echoes the conception outlined by H. L. A. Hart. See Hart 1982. For discussions that link Hart to anarchism and to IR theory, see Allain 2014; Crowe 2020.

[121] There is a huge literature on this topic, and particularly useful, given that much of it proceeds in an anarchistic vein, conceptualising global institutions outside of state sovereignty. See, for example, Ashley 1988a; Linklater 1998.

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acceptable. Furthermore, it is only through the exercise of collective power that the compact can hold, because it is this tension and compression, that internal and external pressure, that keeps the edifice standing. As soon as one side feels their side has been unduly or arbitrarily disadvantaged, the constitutionalising process starts afresh, first with the identification of any arbitrary domination, and then to each of the following four stages. Real equality would render the constitution redundant. Since that is unlikely, a realist theory of the constitution is needed, and that is what the anarchists provided.

ANARCHY AS *GRUNDNORM*

If this basic model appears as conservative as Krouse's proposals, we disturb it by grounding the constitution in anarchy. Hans Kelsen's pure theory of law provides the theoretical route, and a counter to sovereigntists and post-anarchists who rework Carl Schmitt to defend popular empowerment.[122] Kelsen's thought comprises the beginnings of an anarchist constitutional politics, one that invites the full turn to anarchism we present in the rest of the book.

Kelsen's neo-Kantian legal theory bears on our anarchist conception in two ways. First, he shows how a pure theory of law reconciles the 'ought' with the 'is', that is the existence of plural conceptions of legal rule and the need to unify it within a communitarian *ought*. Second, he produces the concept of the *grundnorm*, a basic norm which gives shape to the inevitable indeterminacy and pluralism at the foundation of all law. Kelsen's synopsis of the theory of sovereignty[123] and of justice[124] furnishes the link to anarchy.

Sovereignty, Kelsen argued, is always empirically contingent on two key features of the law, and ultimately subservient to them. First, that the actual bearers of legal personality and moral autonomy are individuals, and states are fictitious persons at best. Second, international law and treaty obligations bear on the state, usually voluntarily, but nevertheless constrain it, and this mutual recognition of states is central to the very possibility of 'domestic' law. One might even argue that legally and ontologically, the international (anarchy) is primary. 'International' law (without sovereignty) is therefore as central to the possibility of the autonomy of peoples as the principle of state sovereignty

[122] Kelsen's thought animated much early IR theory, specifically debates about the normative limits of the nation state and the possibility of law in the international anarchy. Contemporary theorists have attempted to square Kelsen's legal indeterminacy with his ambivalence towards state, to generate a grounding for cosmopolitan global governance, but routinely stumble over Kelsen's legal elitism. Finding the arguments for a global cadre of judges problematic, commentators turn back to states or call for a new global democracy and a world parliament. For a discussion, see Scheuerman 2012 and Rosenboim 2025. Anarchising Kelsen's thought, as we do below, and then deepening this through the historical recovery of the chapters that follow, suggests we can have our cake and eat it if we foreground anarchy rather than democracy.

[123] Kelsen 2007.

[124] Kelsen 1973.

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itself. Kelsen does not say this, but we can quite easily infer that anarchy is the precondition of the possibility of law: law does not supersede or transcend anarchy. Indeterminacy and the lack of a transcendent sovereign are what generate the need for (contingent) rules. As we argue in relation to anarchism below, the mutual recognition of state sovereignty (or of peoples) is both a contingent and a normative ideal: 'if this construction of the relation between international law and state law is chosen, it is well to speak of the *primacy of state law* rather than to use the misleading expression "state sovereignty"'.[125] The latter is like a mirage that appears as we stare across the desert, and the former is merely a convention.

Focusing on law, and its relativity, Kelsen contends, allows us to accept that laws can conflict with one another and still be morally legitimate, and that being open to challenge and change is a basic precondition of their legitimacy. Indeed, it is precisely because their 'teleology' conflict, but nevertheless express a foundational ideal, that defending their relative autonomy by 'upholding the law' through legal professionalism but also activism, makes a legal community a political community too.[126] As he says, the relativity and limit of international law or of state law is 'admittedly a question of politics'.[127] In short, there is no final point of authority.

Does this mean that justice is impossible and that might is always right? Kelsen's answer is no. The 'ought' of politics is a vital element in law too. He juxtaposes the freedom of 'anarchy', understood as an apolitical domain of inter-personal indifference, with the freedom of 'democracy' to make this point.[128] In this 'anarchy', a Lockean state of nature, for example, conflict is unlikely because people do not come into contact with one another. Kelsen argues that it is through community, our sociological default, that justice is worked out, and yet, '[i]t is, when all is said, our feelings, our will, not our understanding, the emotional rather than the rational element of our consciousness, which resolves the conflict'.[129] The 'is' of individuality and the 'ought' of community is constituted through the emergence of a shared set of values. As he puts it: 'A positive value-system is not the arbitrary creation of an isolated individual, but always a product of the mutual influence which individuals exert on each other within a given group – such as family, tribe, clan, caste or calling – and under particular economic conditions'.[130]

For us, the key point is that Kelsen derives a relativist theory of law from a conception of the necessity of political community. But following Kant, he argued, 'the question of what is actually the highest value cannot be rationally

[125] Kelsen 2007, 531. Emphasis added.
[126] Kelsen 2007, 532, 532.
[127] Kelsen 2007, 534.
[128] Kelsen 1973, 4.
[129] Kelsen 1973, 5.
[130] Kelsen 1973, 7.

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answered'.[131] Even Kant's categorical imperative, which Kelsen describes as a modern incarnation of the 'Golden Rule', is radically indeterminate.[132] What is more important than having a final or transcendent point of morality or authority is the development of the social conditions that enable the pursuit of the good but under conditions in which even 'democracy' and 'tolerance' are relative not absolute goods.[133] It is possible to develop systems of law to reflect this, and even anarchists can get involved in this collective process. As Kelsen puts it in the *Pure Theory of Law:* 'even an anarchist, if he were a professor of law, could describe positive law as a system of valid norms, without having to approve of this law'.[134]

The contestation that emerges from differences and indeterminacy requires a normative and communalist solution. Kelsen defined the *grundnorm* as follows:

> The highest rule of law creation, establishing the unity of the entire system, is indeed on hand for the issuance of other legal norms, but it must itself be assumed to be presupposed as a legal norm and not issued in accordance with other legal norms. Its creation must therefore be seen as a material fact outside the legal system.[135]

Our view, shared by so many, but not fully appreciated as central to the classical anarchist tradition, is that anarchy, defined as the absence of a fixed and final point of authority, satisfies this definition. This is the negative conception of the *grundnorm*, which generates and permits the positive, ideological content of the ideal, and we develop this argument over the next six chapters. In short, we argue that the anarchist *grundnorm*, anarchy, has been explicitly and comprehensively theorised from the mid nineteenth century to the present, both formally in philosophical tracts, and informally through collective practice.

CONCLUSION

The spectre of anarchy continues to haunt our political and constitutional imagination, scaring off even the most innovative theorists. Each of those we have surveyed in various ways pushes towards an anarchist politics, but, just as Krouse tinkers with the existing constitution, each stops short of anarchy for fear of unleashing chaos. The popular view of anarchy as the condition that exists either outside the constituted order or, like Guy Fawkes, within and

[131] Kelsen 1973, 8.
[132] Kelsen 1973, 18–19. 'Absolute justice is an irrational ideal. From the point of view of rational knowledge, there are only human interests and thus conflicts of interest. To solve them, there are only two methods available: either to satisfy one interest at the expense of the other, or to engineer a compromise between the two' (Kelsen 1973, 22).
[133] Kelsen 2005, 23.
[134] Kelsen 2005, 218, n.83.
[135] Cited in May 2014, 65.

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against it, is based on a crude caricature. It also misleadingly distracts from the initiatives that anarchists have inspired in more critical positions to advance innovative solutions to collective problems.

Our view is that anarchism, the political philosophy of anarchy, is a normative politics for the exploited, the marginalised and their allies, offering a new diagnostic of the structures of global power, a normative philosophy of mutual aid and free agreements between un-equals and a uniquely localised sphere of revolutionary action. Rather than seek the solutions for the problems of global politics in ever more distant and unaccountable institutions, the anarchists have always sought to 'build the new in the shell of the old' (see Chapter 5), in the grass-roots, changing social relationships in our most immediate environs, from the household or squat, through to the workplace or protest camp, in education, and through disaster relief. In each location, the appeal to anarchism and anarchy, often unarticulated but creatively explored, spurs participants to adopt horizontalist, prefigurative and anti-representational politics and a do-it-yourself/do-it-ourselves (DIY) ethos. In our lexicon, and as we will show, this is *constitutionalising*.

Developing this account in conversation with the literatures we have surveyed in this chapter, we have defended a comprehensive political theory of the constitution, one which widens the ambit of legal and constitutional theory by integrating insights from social theory, IR theory, the history of political thought and anarchist legal theory. By showing how even the most revered legal theorists offer routes to anarchy, we have set out a theory of the constitution as a political practice, one directed at identifying, challenging and balancing power through four principal means: declarative statements identifying 'the people', the complex institutionalisation of the polity, the development of rules and norms to regularise complexity and the development of equally varied decision-making processes pertinent to each of those areas. But before we can fully set out this anarchist alternative, we must traverse the very good reasons anarchists gave for rejecting modern liberal and republican constitutionalism.

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