



Lex Ruinae: Crisis Jurisprudence in the age of Systemic Collapse

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Received: 25 November 2025 / Accepted: 30 November 2025 / Published online: 16 December 2025
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Abstract

My objective in this piece is to use the Roman legal fiction of Lex Ruinae, which, simultaneously refers to the law of ruins and ruinous law, to try to understand the relationship between law and what we might call the contemporary poly- / perma-crisis. In this regard, the overall thesis of the piece is that we might understand the legal dimensions of the crisis that seems to be spatially expansive, in the sense that it takes on planetary scale, and temporally extensive, in respect of seeming to stretch out into an endless critical future, through a theory of *spasm*. Here, the ruinous law of late capitalism seeks to force ever more progress, modernity, and profitability, but prevailing global economic conditions mean that further development is impossible and, in this way, exert a kind of contractive counter-force upon the global system that expresses itself in a tendency towards collapse and ruin. On the basis of this thesis, my argument is that rather than continue to live through the ruinous law of the code of capital, we should engage in what I am calling *crisis jurisprudence* to think about how we might live in the age of ruins and what a law of ruins might involve. Following a discussion of Lex Ruinae in the context of Roman crisis, and the struggle between Cicero, Caesar, and Antony over the purpose of law, I develop my discussion through an exploration the modern crisis of sovereignty, decision, and power, before showing how the economic version of imperium that has developed over the course of the second half of the 20th and early 21st century has led to the point of global poly- / perma-crisis, where there is nowhere else to go but a world of ruin. Thus, we confront the problem of Lex Ruinae.

Keywords Law · Crisis · Ruin · Globalisation · Capitalism · Sovereignty · Exceptionalism · Power · Justice · Sustainability

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1 *Lex Ruinae*, the Law of Ruins, and Ruinous Law

The purpose of this article is to explore the contemporary poly- or perma-crisis through the imaginary idea of *lex ruinae*, which simultaneously means the *law of ruins* and *ruinous law*, in order to show how law can serve as both a bulwark against symptoms of social, political, economic, and cultural crises and as a regulatory mechanism that provokes these expressions of looming system collapse in the first place. In exploring the relationship between law and contemporary crisis, I seek to compare and contrast these two sides of *lex ruinae*. That is to say that I consider the *law of ruins*, which concerns the ways in which law might respond to periods of crisis through the creation of regulatory stability and ethical coherence and, by contrast, the *ruinous law* that represents a legal model that ends up promoting the forms of behaviour that lead to states of crises in the first instance. In this respect, my overall objective is to read the legal fiction of *lex ruinae* through a critical lens that emphasises the political, historical, and contingent nature of the law itself. This vision of the political nature of the law is, of course, emphasised by the use of the Roman imaginary, and specifically the Latin term *lex ruinae*, to project the problem of the contemporary poly- or perma-crisis back to Rome, in order to situate it within an historical period of crisis somewhere between the collapse of the Republic (the crisis of the republic ran from roughly 133 BC to 44 BC) and the rise and then fall of the Empire (27 BC to 476 AD). In addition, the purpose of the use of the fiction of *lex ruinae* is to evoke the Roman Ur-ground of modern law, for the sake of opening a space for the exploration of fundamental problems of the philosophy and politics of law, such as stability, universality, justice, rational order, and the extent and nature of sovereignty, which first emerged in the Roman context, but are equally relevant to our own world in crisis. Writing on the crisis of the Republic and the rise of Empire, Benjamin Straumann [1] explains how we might understand the work of the classic Roman theorist of law, Cicero, in terms of the attempt to develop constitutional responses to the rise of the legal exceptionalism of Caesar and Antony and thus provide a brake on their growing authoritarianism. In this regard, Straumann takes Cicero's constitutionalism as a kind of emergency response to the exceptionalism of the emerging empire and the critical moment when law is situated somewhere between a *law of ruins*, when rules and regulations are concerned with constraining power in dire circumstances, and a *ruinous law*, where law becomes about arbitrary decision and the justification of the exception. Following Straumann's lead, the point of *lex ruinae*, and its broader disciplinary framing I am calling *crisis jurisprudence*, is to explore this tension between (a) law as a defence of justice, universality, and natural order, (b) legal regulation as a vehicle for the demonstration and justification of power, exceptionalism, and authority, and finally (c) the critical moments between these two alternative conceptions of the law when the differences between legal systems founded upon might, right, and justice hang in the balance and must be decided.

In many respects, the case of Cicero is important for grounding the imaginary of *lex ruinae*, because this represents perhaps the key historical exemplar of the moment the *law of ruins*, or law in the process of collapse or constitution (*constitutionalism*), runs up against *ruinous law*, or law of power, which, as I will go on to show in this piece, contains the seeds of its own destruction in the sense that extension, expansion,

and the drive to imperial conquest represent symptoms of a fatal strategy set upon overcoming every limit. In the case of Cicero, the political struggle between the legal theorist, set on the defence of *res publica* and an ethical conception of law informed by Stoicism and the idea of natural law, and Caesar and Antony, who wanted to base law and legal regulation on *imperium*, power, authority, and exceptionalism, ended with the philosopher losing his head. In much the same way that Cicero's murder (43 BC) might be seen to mark the moment the Republic tipped over into Empire, I want to suggest that it might also be seen as an originary monument of *lex ruinae*, in respect of the way that Antony's murder of Cicero and subsequent display of the philosopher's head may be seen represent the ruin of universal law and the transformation of the Roman legal system into an institution focused on the defence of power over and above any concern for justice. Although we might imagine this moment, the moment marked by Antony's display of Cicero's severed head minus the philosopher's tongue to emphasise the point that power would no longer tolerate criticism, should be thought about in terms of the representation of a kind of once and for all statement of *imperium* and *dominium*, my use of the term *ruinous law* is founded upon the idea that the fusion of law and power is ultimately fatal because it is simply not possible to overcome every limit. This point is emphasised by Heather and Rapley [2] in their recent work that compares and contrasts the collapse of the Roman Empire and the ongoing poly- / perma-crisis of American or global capitalism. For Heather and Rapley, the problem of the fusion of law and power, which, as I will show through my discussion, has a long history in western theories of law, philosophy, politics, sociology, and economics, centres upon the ways in which this complex supports a drive towards expansion, extension, and limitless ambition, which is ultimately impossible to sustain. But why is this the case?

As Heather and Rapley explain, the reasons why the imperial fusion of law and power in a drive towards endless overcoming and expansion is ultimately unsustainable seem essentially economic, where the idea of economy must be understood in its widest sense to take in issues of biological metabolism and the interaction between humanity and nature, but there is also a sense in which the problem of the limits of imperial power also shades into literary and philosophical notions of tragedy and the reality of the human condition that brings together animal finitude and a quasi-divine drive towards the infinite. Thus, what I am calling *ruinous law* is ruinous, and a kind of fatal strategy, because it encourages and enables *over-reach*, *over-extension*, and a drive towards the infinite, which, I will try to show, results in a situation we might understand in terms of the *agony of power* in a state of spasm, where the tendency towards *over-coming* and *over-extension* meets its tragic limit in a counter-tendency towards fall-back and contraction. Moreover, it is by building upon this idea of the fatality of the fusion of law and power, founded in a Roman imaginary that is simultaneously historical (the murder of Cicero) and speculative (the notion of *lex ruinae*, comprising the *law of ruins*, and *ruinous law*), and finally Heather and Rapley's comparison of the collapse of the Roman Empire and the looming catastrophe of the contemporary American Empire, that I propose to try to think through the problems of the law, power, and sovereignty in our own globalised poly- or perma-crisis. Although we know that what separates the Roman case from our contemporary moment of crisis is, of course, a difference of scale, since the former was ultimately a

regional power, whereas the latter form of empire established by America in the ruins of World War II quickly became global, I would make the case that the comparative dimension remains useful. That is to say that while we must recognise that the consequence of the difference of scale of the Roman and American empires is that the difference of the scale of the crises they confronted and must continue to confront today should be understood as similarly divergent, in both instances the problems of power, sovereignty, and justice they faced and continue to face remain more or less the same.

According to this perspective, even though what separates these two cases, and what radicalises the problem of the American Empire is the condition of global complexity, which, I would suggest, provides justification for writing about a contemporary *poly-crisis*, which covers multiple inter-related systems and is spatially extensive, and a *perma-crisis*, which extends through time and seems to know no end, simply by virtue of the way systemic crises appear to take on a life of their own on the basis of cascade effects and negative feedback loops, we can learn from a comparative perspective that deals in fundamental political concerns about the exercise of power through law. Moreover, in much the same way that it is possible to draw conceptual comparisons between the politics of law operative in the Roman and American cases, I would suggest that we can also trace an historical line from Cicero and the Stoic conception of law as a natural, rational, cosmic order to the problem of the law in the American Empire. This history would develop through the Justinian legal system that emerged in the Eastern Roman Empire (the *corpus juris civilis* was codified in 528 AD) up to the Weberian [3] theory of law where Rome represents the foundation of Western thinking about regulation and take in a long historical process covering the theological approach of Cicero and the Stoics through to the instrumental rationality of contemporary American law that frames what Katharina Pistor [4] writes about in terms of the code of capitalism. Thus, I would say that we can refer to Weber's [3] thesis, which was influenced by Hegel's idea that Roman thought was ultimately about the translation of concrete things into abstractions, to understand how what I am calling *lex ruinae* might cover the study of Cicero's desperate constitutionalism, struggle against the rise of Caesar and empire, and his eventual murder at the hands of Antony, through to consideration of the role of law in what, following Hardt and Negri [5], we might call the American Empire. The overall purpose of making these connections would be about trying to make sense of the ways in which the changing nature of legal regulation, and centrally the emergence of the code of capital in first Roman, then English, and finally New York law, have and continue to contribute to the problems of the poly- and perma-crisis.

The key point here, which Pistor effectively draws out across her key work, *The Code of Capital* [4], is that the development of law from Rome, where the legal rights of people over things were first codified, through England, where land became a key concern of the process of enclosure, up to the American case, when the law of private property extends to the code of life itself (DNA), is that the charismatic, theological centre of the idea of law that Cicero sought to defend for the sake of universality, justice, and universal order has been lost in a rush to technical codification. According to Pistor, the central problem of this history is the turn towards privatisation, the exclusion of social rights, and a failure to think about the law as a brake on power and specifically *economic* power. Thus, I would argue that Weber's [3] theory of the

progressive rationalisation of law from Rome through modern capitalism and beyond set the scene for the critique of the instrumental rationality of capital, which takes in the work of Adorno and Horkheimer [6] and other more contemporary thinkers such as Bernard Stiegler [7], where the problem of the law is less about the detail of private property and contract and more specifically focused upon a kind of regulatory principle sustaining the capitalist enterprise concerned with appropriating, owning, leveraging for the sake of profit, consuming, appropriating more, to own more, to make more profit, to consume more and so on ad nauseum. In this regard, we can see that what Weber's [3] history of the rationalisation of law, and Pistor's [4] theory of the code of capitalism, bring to classical and more contemporary understandings of capitalism, such as those of Marx [8], Adorno and Horkheimer [6], and Stiegler [7] is an explanation of the ways in which law provides a form of institutional deep structure to support, sustain, and promote the endlessly repetitive, expansive, system of capitalism that lives and dies on the basis of its ability to commodify and codify what comes to be private property in the name of relentless economic growth.

But why does this legal-economic history matter to the study of the contemporary poly- / perma-crisis? The answer to this question is that under these conditions, when law becomes increasingly rationalised and focused upon the coding of property, it is clear that the meaning of value loses its ancient connection to the idea of virtue, which found its origins in the Latin word *virtus* (virtue, moral excellence), that in turn overlapped with the related term *valor* (valour, moral worth), and in the modern world becomes about relative measure, economy, and quantitative difference, rather than any qualitative evaluation against an ideal of universality. From the point of view of the notion of *lex ruinae*, which we remember contrasts the *law of ruins* with the *ruinous law*, the problem with this shift from understanding value as a qualitative to a quantitative measure is that the original Stoic idea of law understood in terms of universal reason, justice, balance, and moderation is lost to a new vision of (economic) law and evaluation that no longer recognises limits, simply because it is founded upon a logic of technique, repetition of codified rule, and endlessly counting upwards. Although this problem clearly mirrors Cicero's critique of imperium and unchecked power, which lacks the sense of proportion, moderation, and understanding of tragic limitation that was central to Stoic thinking, what the contemporary economic framing of this issue reveals is where exactly these limits reside in the case of the poly- / perma-crisis of the American Empire of the twenty-first century. As I will move on to explain in the second section of this piece concerned with the history of the poly- / perma-crisis, it is possible to understand these limits in classical Marxist terms [8], by thinking about the contradictions within the capitalist mode of production itself, including, most importantly, the adverse effects of competition, the problem of over-production, and the law of the falling rate of profit, but also extend thinking about the economics of the crisis by exploring the ways in which the problem of the American Empire resides in its global dimensions, which has exhausted space, time, and biospheric resources to the extent that the central problem of the Anthropocene is now one of looming extinction [7].

If it is the case that the problem of the contemporary poly- / perma-crisis currently engulfing the American Empire of the twenty-first century is one concerned with the fatal law of power, endless expansion, the relentless growth under the sign of the

legal code of capital, then it is possible to understand that we are living under the sign of *ruinous law*, or what Žižek [9] writes about in terms of the perversity of law, and that the central question of the critical present is thus concerned with what I am calling *crisis jurisprudence*, thinking through a new dire *law of ruins*, and learning to somehow live in a catastrophe that will above all else require an understanding of limits. In this regard, we return to the basic of problem of Cicero's Stoic opposition to Caesar and Antony and the two faces of the legal fiction of *lex ruinae*, which adapts the historical Roman law of Lex Aquilla focused on issues of structural collapse and legal responsibility, to think about how we might build a socio-legal edifice in the age of global crisis in order to survive the *ruinous law* and what we imagine is to come next in the form of system collapse. Given this framing of *lex ruinae*, which suggests that the *ruinous law* that has evolved on the basis of Weber's [3] history of Roman rationality might be on its last legs, simply by virtue of the fact that there is nowhere left for imperial power to colonise and no more resource available to codify and commodify, we can see the purpose of what I am calling *crisis jurisprudence*, which would aim to study law in the age of systemic rupture, political breakdown, environmental collapse, increasing social division, epistemic disintegration, and the normalisation of psychopathology that makes it hard to think straight and make reasonable decisions. In other words, *lex ruinae*, and the notion of *crisis jurisprudence*, is concerned with understanding the role of law in the age of poly- / perma-crisis and provoking critical thinking about legal regulation and centrally legal limits in a situation where very little seems to make sense and the very ground of reason upon which law rests no longer really holds. Under these conditions, law and legal questions are no longer about technical issues, and the ways in which this, that, or the other law applies in specific circumstances, but rather a much more radical rethinking of the role of law in an age of looming whole-system collapse.

Hence, the field of *crisis jurisprudence* must take in questions of philosophy, politics, sociology, economics, history and culture and draw upon thinking in these diverse fields, simply because in a state of global complexity where interconnection is absolute and different sub-systems interpenetrate and interact on the basis of Deleuze and Guattari's [10] logic of schizophrenia and the rhizome, it is necessary to understand how law shapes and is in turn shaped by philosophy, politics, sociology, economics, and culture. In what follows I seek to demonstrate this interdisciplinary approach to understanding the relationship between the law and the poly- / perma-crisis in order to ask fundamental questions about the ways in which legal structures and decisions interact with issues of justice, universality, power, extension, and limitation. Thus, I use the legal fiction of *lex ruinae*, and the speculative field of *crisis jurisprudence*, to trace a history of thought concerned with law in moments of crisis, from the struggle between Cicero and Caesar, which I have sketched out above, through Weber [3] to Schmitt [11], Benjamin [12], and Agamben [13] up to exploration of the failure of American Empire where law is essentially the code of capital and the law of endless economic development. Throughout my discussion I am centrally concerned with the condition of *lex ruinae*, which means law in a state of crisis, torn between a concern for limitation and regulation and expansion and extension, and law in a state of suspension, where either universality or exceptionalism eventually wins out, leaving a situation where the legal system operates in the interest of the

many, the few, or the one. As a result of this focus on moments of crisis, suspension, exception, and decision, I want to argue that *lex ruinae* and the wider field of *crisis jurisprudence* are characterised by what Samuel Weber [14] calls methodological extremism, which means that it is no longer enough to study law from the point of view of the norm, simply because the norm no longer holds in an age of extremes, collapse, and executive order, and that what we must do instead is stay with instability, uncertainty, and the limit case.

Under these conditions, which, I have sought to show, define the problem of *lex ruinae* and the field of *crisis jurisprudence*, the law is no longer closed, finished, or somehow decided, but rather open, provisional, political, stressed, strained, and in the process of being constantly unmade, made, and remade. Against traditional conceptions of law that tend to bracket extreme cases (war, environmental collapse, and revolution are often considered extra-legal) and think about the space of the legal in terms of the application of a norm in the name of regularity, progress, and development into the future, the point of my article is to imagine *lex ruinae* and *crisis jurisprudence* in terms of a model of law and way of thinking about law in a time of rupture, disruption, and endless change, when we must live balanced on the edge of chaos and where the idea of a norm no longer simply applies, but must be fought for and defended in the name of an idea of justice that is about more than the application of technical regulation. Thus, the point of *lex ruinae* and *crisis jurisprudence* is that law must be made and remade in a context of contingency, uncertainty, and instability, where the power of the decision to empower and disempower is ever present. On the basis of this conceptual framework founded upon the legal fiction of *lex ruinae*, in what follows I propose to project the idea of the *law of ruins* that is also a *ruinous law* forward into modernity and consider the concept of crisis and specifically the crisis of sovereignty in the work of Koselleck [15], Hobbes [16], and the Weimar theorists of the exception, Weber [3], Schmitt [11], and Benjamin [12], before tracking this theoretical trajectory forward into exploration of the work of Agamben [13] and Esposito [17], who similarly use the Roman exemplar to support a discussion of the contemporary American Empire and issues around the relationship between biopolitics, law, and life. Running alongside this philosophical scaffolding, which will explore the problem of sovereignty, crisis, and law in modernity and post-modernity, I will also build upon Weber's [3] insights about rationalisation, law, and the development of capitalism, to show how the kind of legal framework that developed across the history of modernity and the modern age of endless crisis, which, we remember, Pistor [4] writes about through the idea of the relentless codification of capital, contract, and property rights, may be running out of road in the contemporary global crisis space, simply because there is nowhere else, no more land, no more time, and no more objects left to commodify in the name of increasing profitability.

As I will try to show in my reading of the progressive crisis of the American Empire, it is possible to understand this situation in terms of both internal and external contradictions, where internal limits relate to the classic Marxist theory of overproduction and oversupply [8, 18], and external limits are outlined by bioeconomic explorations that explain that biospheric conditions are unable to cope with the outcomes of the *ruinous law* concerned with overcoming every limitation [7]. It is, of course, possible to relate both of these contradictions that expose the very real limits

of the power of Empire (the agony of power) back to the notion of *lex ruinae* and the Stoicism of Cicero which would argue for a notion of rational law characterised by proportion, moderation, justice, and balance and also locate this defence of finitude in the contemporary work of Agamben [13] and Esposito [17], where those others power ruins, such as the bare life of Homo Sacer, find common cause in the *munus*, *communitas*, or community based upon recognition of the universal fragility and vulnerability of life, rather than what Esposito [19] calls *immunitas*, which describes the processes of legal individualisation that guarantee immunity from responsibility for the other and writes this into contract law. Against this vision of a kind of (a)social or perhaps even anti-social contract that is always about protecting the individual, the point of *lex ruinae*, the *law of ruins*, and reference to Cicero's Stoicism, Agamben's [13] figure of Homo Sacer who can be killed with impunity, and Esposito's [17] notion of *munus* and the irreducible nature of responsibility for others, is to say that the idea of immunity is no longer sustainable in an age of collapse, scarcity, exposure, vulnerability, finitude, and limits and that we must instead develop a way of thinking about law that emphasises common defence in the face of catastrophe. However, we recognise that this is not the case today where *ruinous law* still holds sway and understand that the extremism of the poly- / perma-crisis resides in the contradiction at the heart of the legal socio-economic-political model Esposito [19] criticises because it is founded upon the system of *immunitas* that separates people from people and people from things. The basic coordinates of this contradiction reside in the mis-match between the legal system Weber [3] and Pistor [4] connect to the development of instrumental rationality and the code of capitalism and the problems of over-coming, over-reach, over-expansion that are now very clearly expressed in the catastrophic realities of the Anthropocene, such as climate chaos, economic crisis, scarcity, ever-increasing social division, and a kind of epistemic disaster that means that it is possible to know and witness all of this, but still not take action on the basis that privacy and private property remain somehow sacred.

From the point of view of the legal fiction of *lex ruinae*, however, the institution of private property is a kind of tomb and what is needed today is a *law of ruins*, rather than a *ruinous law*, that would be centred upon an ethics of the *munus*, and the community of vulnerability, for the sake of surviving looming system collapse. In this regard, the contemporary poly- / perma-crisis represents a moment of decision, to reference the political theologies of Schmitt [11], Benjamin [12], and Agamben [13], but also an existential choice about the very future of life on Earth. This choice is between ever more ruination under the sign of the *ruinous law* of power or community survival through the construction of a dire *law of ruins*. At the moment, living in a state of crisis, a state of suspension, it is difficult to imagine the future without thinking about catastrophic outcomes. This is, of course, the very opposite of modernity, when we were certain that crisis and its genealogical kin, critique, would deliver us into a utopian future. There is no such hope, no such belief, in the contemporary period of the poly- / perma-crisis, but instead a kind of generalised pathology of future possibility. This is why, in my view, we need to think through *lex ruinae* in order to reconstruct the future on the basis of legal artifice and legal fiction that could provide institutional form to a new community of defence. In order to achieve this aim, we must start by thinking about the crisis in a particular way that refers back to

the original Greek meaning of the term *krisis*, from the word *krinein*, which means to separate, to decide, to judge, and recognise that this approach to understanding the critical present as a legal issue that requires decisive action flies in the face of the contemporary political paralysis. At the moment, there seems to be little scope for the kind of fundamental political or legal change required to move beyond the crisis, but I would suggest that this is because the world system remains caught within the coordinates of the American Empire and *ruinous law*. As I will hope to show below, this is the case even though the leadership of the global system appears on the verge of passing from America to China, primarily because both powers operate on the basis of the code of capital, where things are property to be commodified for use to produce profit. Under these conditions, which, as I will demonstrate, are no longer really functional today because of internal and external economic contradictions, it is difficult to see how the global capitalist system will move beyond the current crisis where everything seems to happen, but nothing really changes.

In my discussion above, I have sought to describe this situation in terms of a *spasm*, characterised by the contradiction of an economic system endlessly driven to expand, but at the same time in the process of contracting, because the fundamental resources that historically drove expansion are no longer available, but we must also think about this situation in terms of a crisis of sovereign power, authority, and the ability to decide upon a law and legal framework appropriate for contemporary conditions. In many respects, the contemporary crisis and the paralysis of power centred upon an inability to understand the need to reform law, to move beyond the *ruinous law* of the code of capital towards a new *law of ruins* appropriate for a system in decline, recalls the vision of sovereignty in a state of collapse set out by Benjamin [20] in his book on *Trauerspiel*, the German tragedy of the Baroque period. In this sixteenth century genre, Benjamin explains how power is everywhere, but nowhere, and sovereignty is defined by an *inability* to decide. Akin to Shakespeare's Hamlet, the prince is defined by his *indecision*. Is this how we should understand the problem of the contemporary poly- / perma-crisis? This is the argument I want to make in what remains of this article. That is to say that my argument will be that the contemporary crisis is defined by the exhaustion or agony of a particular version of political and economic power – the global American political-economic system that emerged in the wake of World War II – and that what we are living through in the present are the last days of this system and the *ruinous laws* of the code of capital. In order to move beyond this model, my thesis is that we, and my use of the term 'we' refers to those living in the ruins of the system, must seek to invent a new *law of ruins* appropriate for a system in collapse. This is the basic thesis of *lex ruinae*. In this context the purpose of what I am calling *crisis jurisprudence* is to understand the contemporary crisis of law, power, sovereignty, exceptionalism, and justice with a view to thinking through a future *law of ruins*.

In the following pages, I propose to begin this work by thinking about the problem of the poly- / perma-crisis in terms of imperial burn-out and the failure of capitalist profitability that I would suggest sits at the very heart of the contemporary crisis. By explaining this crisis of profitability in terms of both classical Marxist approaches, where the problem is intra-systemic relating to contradictions within the capitalist mode of production, and through bioeconomic theory, where the contradiction

resides in the inter-systemic relationship between the economic and planetary systems, I hope to provide an account of the reason the American Empire of capitalism is exhausted and running out of road. Noting that it is difficult to see how the shift in leadership of the Empire of Capital from America to China would resolve the problem of the crisis, simply because the Chinese model will not alter the fundamental legal code of capital, the point of this exploration of the problem of the global capitalist economic system is to explain the basic coordinates of the poly- / perma-crisis and suggest that this is what is responsible for the profound sense of disenchantment, futurelessness, and anomie currently enveloping Western societies. From the point of view of these societies caught in the spasm of the end of empire, ours is an age of decline, death, destruction, looming extinction, depression, despair, and paralysis. In this regard, it seems as if we are living in an age of decomposition, the decomposition of the ultra-complex global empire, and a funereal period of history that is no longer modern, no longer post-modern, but rather *post-mortem*. We are, thus, living in an undead period of history that I would argue represents the implusive phase of empire. This is precisely why we need the Roman legal fiction of *lex ruinae*, *crisis jurisprudence*, and the *law of ruins*. In the second section of this piece, I propose to sketch out the basic problem of the poly- / perma-crisis, before locating this in an exploration of the problem of law, sovereignty and the power to decide, and finally economic exhaustion.

2 Understanding the Poly- / Perma-Crisis

In exploring the problem of the contemporary poly-crisis, rather than the broader compound term poly- / perma-crisis, Michael Albert [21] focuses on issues relating to climate change, pandemics and zoonotic spillover, unstable food systems, the emergence of new technologies including AI that threaten massive levels of redundancy, strained international relations and warfare, and Malthusian problems relating to population and economy. According to Albert's thesis, in previous periods of history crises were singular, impacting upon individual systems, but in the age of globalisation and complexity, there is no such separation. Developing a point first made by Edgar Morin, who wrote about the problem of the poly-crisis in his book *Homeland Earth* [22], Albert's thesis is that global system integration means that any contemporary crisis is likely to become a poly-crisis made more problematic by the interaction of multiple systems through cascade effects, feedback loops, and phase transitions. In this regard, Albert explains that it is far more difficult to address systemic issues in the age of poly-crisis, because of the nature of complexity and the ways in which systems interact, than it was in earlier phases of modernity, for example, when, as we know from Durkheim [23] and others who sought to legislate for these problems in the name of system function, interactive systems were much more basic in nature. Recognising this point, Albert seeks to characterise the nature of the poly-crisis in terms of broad overlapping categories relating to socio-economic issues (economy, ecology, and food supply), violence (war, terror, and technological risk), and identity (race, ethnicity, conflict, and populism), and show how the interaction of these problems has resulted in the contemporary crisis. Thus, he explains how the capitalist

drive to increase the global food supply in order to respond to pressure of population has resulted in large scale land conversion that has exacerbated the problem of climate change and ecological damage relating to flooding, drought, and other extreme weather events. Although this drive has been sustained by the code of capital and the eco-modernist belief in the possibility of sustainable growth, the decline of capitalist productivity and profitability over the course of the post-World War II period when environmental damage has increased dramatically does not really suggest that the current global economic model is the answer to developing a sustainable way of life on a fragile planet.

In turn, Albert [21] notes that it is unlikely that new technologies, such as AI, which express the capitalist belief that the development of the mode of production will drive productivity, profitability, and investment in society, can effectively respond to the problems of the poly-crisis. Referring to the ecological impacts, and specifically water usage, and potential social and economic effects, including mass redundancy, linked to artificial intelligence, Albert suggests that any benefits of the AI revolution are likely to be more than offset by its very serious negative impacts. Specifically, Albert suggests that large scale redundancy caused by radical shifts in the labour market comparable to that of the industrial revolution would potentially result in a kind of existential crisis around the purpose of humanity, crises of identity and a return to primordial forms of belonging, the rise of exclusionary sacrificial politics, possible violent uprisings, and consequent shifts in state power towards new forms of techno-authoritarianism focused on population control. Thus, Albert ends up concluding that the likely outcomes of the contemporary poly-crisis would be either a potential return to the politics of the Hobbesian [16] Leviathan, focused on the control of violence, management of inequality, injustice, and psycho-social collapse through biopolitical measures; the collapse of the modern form of state sovereignty and a return to pre-modern forms of localism and more primitive forms of social organisation comparable to contemporary failed states (Afghanistan, Syria, the DRC); or an eco-socialist model of society, organised around principles of social value over individual profit, collective planning, and a rejection of the capitalist obsession with economic growth, which, if we reject the eco-modernist vision of sustainable capitalism, will only lead to further catastrophic climate change. Although Albert's imagined futures may appear to recall the dystopian nightmares of Orwell, Atwood, and McCarthy, there is no doubt that it is possible to identify the seeds of these potential transformations in the politics of the contemporary poly-crisis, where techno-authoritarianism, primordialism, and eco-socialist tendencies are clearly present.

While Albert's first scenario, the increasing rise of a form techno-authoritarianism that would seek to control the impacts of the poly-crisis, rather than change direction, represents a kind of catastrophic radicalisation of the *ruinous law* and code of capital I have sought to explain above, it strikes me that his second and third potential futures represent what might emerge in the wake of the slow motion collapse of the contemporary global capitalist empire and creation of a new *law of ruins* focused upon survival in a world of scarcity. However, the difference between the two alternatives is clear. Whereas the former would represent the implosion of Durkheim's [23] complex society back towards some form of pre-modern, feudal, simplicity, with the subsequent effect upon political thinking and negative attitudes towards others

and so on, the latter response would have more chance of preserving the modernity of community on the basis of a shared understanding of common humanity, vulnerability, exposure, and finitude, or what Esposito [17] calls the Roman *munus*, for an age of regression defined by scarcity of resource. In respect of his exploration of the contemporary poly-crisis and potential routes into the future, Albert's work is invaluable. Akin to other theorists concerned with the collapse of complex society, including most notably Joseph Tainter [24], Albert enables us to understand the stresses and strains underpinning the contemporary poly-crisis and perhaps more importantly what the future is likely to look like. In turn, and specifically important for this article, Albert's work is essential for providing a broad outline of what *lex ruinae*, and a *law of ruins*, might involve and the different forms it might take. However, I think that where Albert's account is lacking is that he has little concern for power, sovereignty, politics, and the relationship between crisis and the kind of struggles that inevitably take place, as the history of the transition from the Roman Republic to Empire shows, when sudden fundamental social and economic change takes place. Although there is no sense that Albert sets out to provide an account of power in his work, it is clear that this is important if we are to understand why, for example, one of his future scenarios might win out over another.

In addressing this issue, specifically in the context of the contemporary crisis, Robert Kaplan [25], who has written a range of books diagnosing the decline of the American Empire of globalisation from the end of the Cold War and early 1990s onwards, suggests that if we want to understand the problems of the present we should return to Weimar and the crisis of sovereignty that engulfed the republic in the 1920s. Despite the fact that Kaplan's reference to Weimar is largely comparative, and at a stretch metaphorical, and he does not attempt to write a history of the crisis of sovereignty, I would risk the claim that it is possible to develop this history on the basis of his work in such a way that would enable us to supplement Albert's [21] reference to the poly-crisis, which refers to the spatial extension of crisis through a range of interconnected systems, with the related concept of perma-crisis, that first came into use in the 1970s and was popularised in the wake of the Covid pandemic, to describe the paradoxical extension of a moment of crisis through time. While Kaplan [26] makes the connection between the contemporary age of poly- / perma-crisis and Weimar, by, for example, writing about the globalisation of Weimar, what I would hope to show is that it is possible to trace this crisis of sovereign power and the (in)ability to decide back much further to the origins of modernity (a period defined by crisis) and beyond, as I have sought to explain through reference to Cicero, Caesar, and Antony, and the crisis of Roman power. The result of this long history might be that we end up concluding that the notion of crisis and the relationship between crisis, sovereignty, and power is essentially a kind of Heideggerian [27] or Sartrean [28] existential problem related to the basic human condition, rather than an issue concerned specifically with structural concerns focused on specific societies. Essentially, I think that this is how Kaplan [25] ends up understanding the contemporary crisis across recent books on the tragic mind and what he calls the contemporary global wasteland.

Following his classic book on the coming anarchy from the early 1990s [29], where he first began to predict the end of the globalised American Empire, in his more recent work Kaplan argues that we should return to Weimar to understand the

crisis of the present [25]. Writing about the world of ruins in the post-World War I period, Kaplan bemoans the history of the lack of order that led to the Russian Revolution and the formation of the Soviet Union, the catastrophe of Weimar, and the subsequent rise of Nazi totalitarianism. Although he offers no critical discussion of the Weimar theorists of sovereignty, power, and exceptionalism, Weber [3], Schmitt [11], and Benjamin [12], the contemporary concerns he reads back to Weimar were their concerns that we can read forward to the present through, for example, Agamben [13] and Esposito [17], who make the link between the crisis of the inter-war period and Hardt and Negri's [5] contemporary Empire. According to Kaplan [25] it seems that the difference between the world of Weimar (1920s Germany) and the Weimar world (the fractured present) is one of speed, interconnection, and a dizzying level of complexity that means that we are never able to get a grip on reality in order to make an informed decision. Writing on Adam Tooze's various diagrams, which he attempts to use to capture the reality of the poly-crisis, Kaplan says that the historian's *krisenbilder* (meaning images or visions of crisis) often lapse into incomprehensibility. While this is precisely the opposite of the purpose of the *krisenbilder*, Kaplan [26] suggests that what this inadvertently reveals is a key aspect of the contemporary crisis concerned with a lack of comprehension, uncertainty, and disorientation that underpins and conditions the problem of indecision that in turn relates to our inability to respond to the critical situation in such a way that might enable us to move beyond it. In response to this problem, Kaplan's [30] suggestion across his recent work is to learn the lessons of ancient tragedy and understand the limits of power and sovereignty. In other words, he thinks that we must return to Sophocles, Aeschylus, and Seneca.

Recalling my above discussion of Cicero, Stoicism, and the critique of imperial power, Kaplan's [30] key argument is that the tragic understanding of limits has been lost in post-modern and specifically post-Cold War politics. In the period following the fall of the Berlin Wall, the collapse of the Soviet Union, and in the wake of Fukuyama's [31] celebratory End of History, Kaplan's thesis is that America became a globalised Empire that was unable to recognise limits. In supporting this view, he explains that Americans are ahistorical people, who have forged a society on the basis of a land of abundance and lack of scarcity, and thus have never had to reckon with the experience of the Ancients, and specifically the Greeks, who learned the hard lesson that not everything can be overcome. In other words, having never had to face up to the hard reality of what Sartre [32] writes about in terms of *facticity*, Kaplan's thinks that the American Empire, the empire of global capitalism, is founded upon a kind of post-tragic Ur-fiction of endless abundance and that this is precisely what has become unsustainable in the contemporary poly- / perma-crisis that is essentially about a problem of scarcity and finding ways of living with this condition. In the face of the *ruinous law* of the code of capital that refuses to see beyond the American Ur-fiction of abundance, Kaplan [30] suggests that we need to return to the tragic thinkers of Greece and Rome in order to understand how to live within limits and ultimately save civilization from chaos, violence, anarchy, and collapse. Thus, Kaplan explains that we need sovereign decisions, and to exercise the power to create order on the basis of what he calls constructive pessimism, because the alternative is to descend further into the Hell-scape of conflict, confrontation, and the struggle

over resource. Essentially, Kaplan [26] thinks about the contemporary crisis through the lens of T. S. Eliot's *The Waste Land*, the classic modernist text of post war devastation, and reaches the conclusion that we need to find ways to live in ruin. This is why he suggests returning to the Ancients and the model of tragedy. In his view the American Empire of abundance and endless expansion is over. We are living in the age of the agony of power.

But while Kaplan's [25] neo-realist theory might represent an argument in support of my theory of *lex ruinae*, and the *law of ruins*, we know that the masters of the contemporary Empire have much less sense of the end of the capitalist model and would be more likely to think about what I am have been calling *ruinous law* in terms of Schumpeter's [33] famous idea of creative destruction, which, we must remember, is seen to be essential to the development of capitalism. In this model, there is no progress, and centrally no profit, without ruin, catastrophe, and collapse that destroys dead capital and gives birth of new profitable companies. As a result, and from the point of view of Schumpeter, it would be hyperbolic to suggest that the contemporary crisis is somehow systemic, and about anything more than a periodic reset or recalibration of the system. On this basis, there would be no reason to correct the *ruinous law* of creative destruction or think about a defensive *law of ruins*, because what really needs to happen is the invention of new capitalist futures. Thus, we must leave the ruins of the past to their crumbling fate and move on, which might involve, for example, finding ways to extract profit from extraterrestrial bodies (meteorites or exo-planets). The key point is, therefore, that if the current globalised system is caught in a downward spiral towards entropic collapse, we must find ways to invent a new *extropian* politics and a new *extropian* economics to keep the post-tragic show on the road, even if this causes massive levels of social disruption, destruction, and ruination. Although the contemporary version of this thesis, which often seems to revolve around notions of *extropian* futures involving transhuman evolution based upon research into microscopic extremophiles, appears fantastical and founded in science fiction, the essential point that crises are normal is one that is to some extent supported by the *modern* history of philosophy, politics, society, and economics.

Given this insight about the *normality of crisis*, and with a view to tracing the history of crisis to shed further light on the question of *lex ruinae*, *ruinous law*, and the *law of ruins*, the key point becomes about trying to establish whether there is something very different about the contemporary poly- / perma-crisis that somehow separates it from previous crises that have been the motor of modern and post-modern history and suggests that we (humanity) are on the edge of a paradigm shift to a *new* model of society that would need to be underpinned by a *new* kind of regulatory system, what I have been calling, a *law of ruins*. The question would be, therefore, whether the idea of normal crisis is itself in a state of crisis and we are somehow now living in an age of *meta-crisis*. If this is indeed the case it would mean that we have moved beyond the modern and post-modern period, which Koselleck [15] writes about in terms of the age of normal crisis and critique in his classic book on the limits of sovereignty and power, and we would need to rethink the idea of a form of society driven forward into the future on the basis of endless disruption. Although I want to make the case that this is precisely where we are, and that what we are facing today is beyond the cyclical normal crises of modernity, this is a question that I think that we

can only really answer by tracing the history of crisis in modernity and post-modernity and understanding the ways in which moments of crisis have been understood to be at once essential to (economic) progress, but also apocalyptic openings to some new socio-legal form that would organise life on the basis of stability and the kind of natural law found in Cicero and the Stoics.

According to Koselleck [15], who was taught and heavily influenced by Carl Schmitt, the modern age of crisis began with the collapse of the medieval, theological, model of society and the emergence of a plurality of belief systems. In this state of uncertainty, Koselleck explains that Hobbes [16] sought to suspend the new crisis of belief through his authoritarian politics of the Leviathan, or Living God, who could make and enforce law above and beyond the struggle between individuals. This was necessary for Hobbes, who Leo Strauss [34] calls the first modern philosopher because he dealt in historical reality, rather than the quasi-theological idealism of the ancients, on the basis that human behaviour is driven by a desire for power and overcoming that only ends when people run into the limit of their own finitude, death. In other words, without the imposition of law to control the human drive for power, we would tear each other apart in a limitless struggle for power and control. This is the famous Hobbesian *warre of all against all*. Thus, Hobbes seeks to suspend the state of nature and civil war through the creation of the Leviathan and the social contract, which sees humans trade their freedom to pursue power over others for security under the rule of the Mortal God, who retains the ultimate power and freedom that resides beyond the social world. By the time of the late 19th / early twentieth century, and the invention of psychoanalysis, we know that Hobbes' [16] Leviathan had become the Freudian [35] father figure, the patriarch, who Jacques Lacan [36] would later suggest is essential for securing the socio-legal symbolic order that sustains normal psychological functions, anchors the subject in reality, and importantly enables them to make rational decisions. According to the psychoanalysts, then, the Hobbesian Leviathan / father figure is not simply necessary for securing the social contract, and ensuring limits to the extent to which individuals seek to exercise power, but also organising and securing psychological reality and the coherence of what we might call following the phenomenologists, *the world*.

Moreover, the father figure is essential for preventing the subject from sliding towards self-destructive (masochistic) and destructive (sadistic) behaviours under the sign of the death drive [37]. Again, what matters is limitation. However, in much the same way that the psychoanalysts recognised the fragility of these social and psychological structures, Koselleck's [15] history of modernity similarly notes the instability inherent in the Hobbesian system brought about by the mortality and the vulnerability of the Living God, and recognises that sovereignty is always a form of edge work. While Freud would explain how the law becomes supernatural, on the basis of internalisation of the law of the primal father, and psychological, through the construction of the super-ego, in his anthropological works and centrally *Totem and Taboo* [35], he also understood its fragility and potential for breakdown under pressure of trauma. Similarly, Koselleck [15] shows that the political vulnerability of the Hobbesian [16] law was founded upon its public nature that always allowed for private critique. According to Koselleck's history, this separation of public law and private critique opened up a space of struggle between state and citizens, which

would revolve around an argument about the immorality of the state and its laws and the need to find ways to move towards a more perfect, utopian form of society. In this regard, Koselleck's [15] story of modernity, which begins with the crisis of theological law, explains that beyond the Hobbesian attempt to resolve the civil war in a new secular state, it has never really been possible to overcome crisis, but rather that what has happened is that this state of instability and uncertainty has been driven forward into the future through critique and a desire for revolution and utopian change. Under these conditions, law becomes about critique, which is itself representative of a kind of sovereign power, and the looming collapse of society into civil war is endlessly deferred into the future by the belief in utopian resolution somewhere over the horizon. From this point of view, we can see how Koselleck's [15] law of modernity is mobile, dynamic, progressive, and critical of the status quo, and thus ultimately revolutionary. Indeed, this is how Koselleck thinks about the French revolution, and the Jacobins who were possessed by a kind of legal futurism to eradicate every possible enemy of the people, and how we might understand Thomas More's [38] original model of utopia, which projected the future towards the new world of America.

Although Koselleck [15] does not mention sociology in his work, I think that it is important to explore the emergence of the discipline focused on the study of social law under conditions of modernity, because this enables one to begin to think about the ways in which Marx, Durkheim, and Weber, and the later Weimar theorists of sovereignty engaged with the history of the problem of crisis. The central point to be made here is about the primarily *economic* form that the bourgeois critique of the state began to take on in the modern period, the ways in which this started to contrast with an alternative vision of society that took shape in the sociologists and Weimar theorists of sovereignty, and finally how this might be seen to reflect the disjuncture in thinking about the law that I have sought to capture in the Roman legal fiction of *lex ruinae* between a *ruinous law*, defined by a belief in progressive nature of crisis, and a *law of ruins*, concerned to move beyond endless crisis on the basis of a view that the quest for power is ultimately fatal. In order to explain the emergence of this disjuncture in the modern period we must return to Hobbes [16] who, we remember, sought to arrest the crisis of modernity through the sovereignty of the Leviathan, and organise political society on the basis of the Mortal God's authoritarian power. However, what we also know is that his liberalism meant that the resolution of the crisis was never complete and that this went on to take the form of bourgeois critique founded upon establishing primarily social, political, and *economic* power. The Canadian political theorist C. B. Macpherson [39] makes this key point about Hobbes' liberalism in his classic work on the idea of the possessive individualism. According to Macpherson, in seeking to resolve the violence of the state of nature and civil war, Hobbes' essentially projected the endless struggle for power towards economy, where it became the driving force of competitive, possessive individualism, and the motor of early modern capitalism.

Macpherson's [39] point is that Hobbes secures the political sphere and establishes peace by projecting endless crisis into economy and early modern capitalism, which starts to take on the critical, dynamic form we find in the work of the classical sociologists, Marx, Weber, Durkheim, and Simmel. At this point, capitalism becomes *the* space of crisis, and over the course of the nineteenth and twentieth centuries evolves

into the sphere where power, authority, and sovereignty reside, leaving social and political theorists, including the classical sociologists and Weimar theorists of sovereign power, resigned to suggesting ways to resolve fundamentally economic crises considered productive for capitalism through suggestions for more or less revolutionary change. This was in many respects Koselleck's [15] key point about the durability of crisis, and the ways in which it was able to drive modern progress on the basis of a bourgeois belief in some form of utopia to come, but what reference to Macpherson's [39] reading of Hobbes introduces, which is essential for understanding a key shift in thinking about modern crisis in sociology, is a focus on economy, competition, and the struggle for power in the new capitalist state of nature. We know that Marx and Engels were sensitive to this situation, writing about the dynamic of modern capitalism in terms of the power to melt everything solid in their classic work, *The Communist Manifesto* [40], and then using the Hegelian dialectic to imagine the final resolution to the modern crisis in a communist utopia of stability [41]. However, we also know that Marx and Engels' sensitivity to the social effects of relentless change were importantly supported by an *economic* understanding of the modern crisis that showed how endless revolution was simultaneously necessary for capitalism, but also ultimately destructive, in the sense that they thought that it was precisely this dynamic that would result in the collapse of capitalism and the emergence of the communist society or society based upon what I have been calling the *law or ruins*.

In explaining the *ruinous law* of capitalist crisis and the reasons there is no way to move beyond this condition, Marx and Engels develop a theory of the inherent contradictions of the capitalist mode of production, which suggests that there are limits to the dynamism of its crisis form [18]. In other words, beyond the dynamic nature of crisis, which drives capitalism forward into the future on the basis of the logic of the *ruinous law* of creative destruction, Marx and Engels identify the capitalist mode of production's point of internal contradiction, exhaustion, fatality, and meta-crisis, which I want to argue we are living through today. According to this thesis, first set out by Engels, the essential problem of capitalism resides in the way in which the struggle for power drives competition, over-production, over-supply, immiseration, and the eventual collapse of consumption [18]. Thus, the essential problem of competition and over-production is that it causes a reduction of price, which in turn leads to a reduction in wages, that then undermines consumption, leading to a reduction in profitability, until the vicious cycle eventually results in a critical moment of apocalyptic collapse. Although capitalism has managed to defer this moment of meta-crisis—through (a) imperial adventure and the establishment of empire, which enabled the reduction of costs (free labour in the case of slavery, free raw materials in the example of primitive accumulation) and the opening up of new markets and trade routes, and beyond this, (b) the expansion of credit based on projected future profits, in order to make up a lack of profitability in the present—we can see that the basic logic of the Marxist critique of capitalism remains sound. Indeed, developing Engels' original formulation in the third volume of *Capital* [41], Marx outlines the problem of the falling rate of capital, which explains how the increasing use of technology to reduce labour costs only further undermines consumption through redundancy, the collapse of wages, the immiseration of the worker who begins to imagine revolutionary change, and the destruction of levels of profitability that would have enabled

innovation, investment, and the deferral of the apocalyptic crisis to end all previous crises.

Perhaps conditioned by the fatality of the modern capitalist system, the history of social and political thought shows that the *ruinous law* of competition shaped modern society and politics and continued to occupy the thought of the classical sociologists. Following Marx and Engels' critique of the capitalist economic system, driven forward by its destructive law of competition, in his *The Division of Labour* [23] Durkheim wrote about the destructive nature of 'the malady of the infinite', meaning the individual's endless desire for power, and the need to defend the socio-legal system against anomic forces. In other words, if Marx and Engels were able explain the fatality of the modern capitalist economy, what we find in Durkheim is an exploration of the impact of this dynamic upon the socio-legal system. Against modern contract law, which in his view ended up reinforcing the anomic cult of the individual, Durkheim looked back to a more basic form of law, similar to that explored by Esposito [17] in his work on the Roman *munus*, where the self is responsible for the other on the basis of the logic of gifting, and the law of *nexum* or debt bondage where individuals are bound together without the possibility to severing ties. Although *nexum* was essentially repressive, in respect of its enforcement of debt servitude, Durkheim prefers the generalisation of this idea to the cult of the individual and negative solidarity, simply because it has the potential to limit the individual and their endless search for power by binding them to others in relations of interdependence. As we have seen, we find a similar critical reading of modernity, capitalism, and the logic of rationality in the work of Weber [3], who bemoans the translation of value into comparable quantities in the age of instrumental rationality, and the impact this has upon the ability of the individual to make decisions. But while Weber [42] sought to respond to this Hobbesian problem of a crisis of value and sovereignty through reference to the idea of vocation, where the individual simply has to make an existential choice, we know that his successors, specifically Schmitt [11] and Benjamin [12], sought alternative solutions to the crisis of law in the wasteland of Weimar Germany.

In the case of Schmitt, the problem of Weimar was excessive democracy and the solution was a return to Hobbesian authoritarianism. Writing his now infamous *Political Theology* [11] in the ruins of economic collapse, Schmitt emphasises the central importance of the decision, the exception, and sovereignty in establishing law in what he sees as a lawless context. By contrast, Benjamin suggests an alternative response to the state of exception and the moment of crisis. In his early work *Critique of Violence* [12], Benjamin explains that the law is always already founded in extra-legal violence and that this origin conditions the operation of all modern law as a form of catastrophic progress into a future of ruins and rubble. Against this vision of the violence of law, which forms the basis of his later *On the Concept of History* [43], Benjamin's response is to suggest a form of divine violence, which in the later work becomes the task of a kind of messianic Marxism, which would suspend the catastrophic *ruinous law* and create a new kind of society in the rubble of the destroyed world. Although it is normal to read Schmitt and Benjamin together, and contrast their political positions, visions of the state of the exception, and sense of the importance of establishing law in a lawless context, I would suggest that they are also bound together by a kind of fatal logic inherent in their debate about exceptionalism.

What I mean by this is that in much the same way that Cicero was ultimately unable to defend the Republic from the rise of the Empire and the power of exceptionalism, and ended up losing his life for the sake of his belief in universal justice and natural law, Benjamin was similarly lost trying to escape from the exceptionalism Schmitt sought to promote on the basis of its ability to decide. Moreover, I think that we might risk extending this comparison even further by noting that in the same way that the Roman Empire eventually exhausted itself in *over-reach*, *over-extension*, and *over-coming*, the Nazi regime similarly consumed itself in its drive to exterminate those exceptional others Agamben [13] writes about in terms of Homo Sacer and bare life. In this respect, then, perhaps Agamben is the best guide to the reason we need to think about the current crisis through the lens of *lex ruinae* and find ways to separate out *ruinous law* and the *law of ruins*, because what he is able to show is that the truth of Schmitt's exception, and perhaps the truth of all exceptionalism that seeks to suspend the problem of crisis through the exercise of power, is Homo Sacer, bare life, and the camp, and that rather than thinking about the ability to decide upon authoritarian power in terms of a miracle, which is what Schmitt says in his *Political Theology* [11], we should consider this moment the true catastrophe of modernity.

While the above discussion of Weber [3], Schmitt [11], and Benjamin [12, 20, 43] and the broader context of Weimar shows that they were unable to effectively resolve the modern problem of crisis that would eventually lead to the rise of Nazi Germany and its apocalyptic collapse in the ruins of Berlin on 30th April, 1945, consideration of the other utopian / totalitarian response to the crisis of the early twentieth century Kaplan [26] identifies is similarly useful for making sense of the potential (lack of) future of the contemporary American Empire caught in the teeth of the poly- / perma-crisis. By contrast to the Nazi example, where the attempt to respond to the modern crisis of capitalism, social decline, and political paralysis, led to apocalyptic conflagration in the exercise of a kind of sado-masochistic Freudian death drive [37], in the Soviet case what is most interesting is the way in which the attempt to overcome endless crisis in a really existing utopia led to a kind of fossilised society that collapsed in slow motion under the weight of its own contradictions. In many respects, I would make the case that a combination of the Soviet case, which we can understand through reference to Alexei Yurchak's [44] work on the final days of the USSR, that illustrates how collapse happens through endless empty repetition, and the Nazi example, which conversely explains how the maniacal thirst for power and domination eventually leads to self-destruction, should serve as object lessons about the potential fate of the American Empire in the age of the poly- / perma-crisis under the sign of what I am calling *lex ruinae*, the *ruinous law* and *law of ruins*. While the relationship between Schmitt's [11] attempt to establish the sovereign exception, Benjamin's vision [12, 43] of the suspension of mythic violence and catastrophic progress through divine, messianic, revolution and the creation of a new law based upon justice, the broader Weimar context that led to the rise of Nazism, and the metaphor of ruination, should be clear enough when we think about the fate of Germany in 1945, the relationship between the Soviet Union, crisis, and ruin involves taking a slightly different perspective and thinking in terms of the politics of a frozen system that sought to suspend crisis through a logic of *refrigeration* that ultimately led

to its collapse and ruin over the course of what Yurchak [44] calls the ‘last Soviet generation’.

Writing about the period of Soviet realism from the mid-1950s to late 1980s, Yurchak [44] explains that the collapse of the Soviet system was a fate nobody could imagine, but that was simultaneously entirely unsurprising when it actually happened. In seeking to describe the fate of the ‘last Soviet generation’, Yurchak explains that under Brezhnev, the discourse of the Party had become entirely performative, ritualised, wooden, and ultimately meaningless. Under these conditions of what he calls *hyper-normalisation* and stagnation, Yurchak shows how new cultural imaginaries began to emerge to shed light on life under the frozen system. Akin to Koselleck [15], who explains how opposition to the Hobbesian sovereign began to emerge from the sphere of bourgeois privacy, Yurchak explores a range of proletarian underground movements, including necro-realism, which found ways to critically engage with the Soviet system, without ever moving to a position of direct confrontation. In the strange case of the necro-realist movement, Yurchak illustrates how performers and artists represented themselves as being caught in a state, similar to Agamben’s [13] *Homo Sacer*, somewhere between life and death, in order to represent the reality of the Soviet system itself. Against the fossilisation of the system, which had become a kind of frozen necrotopia, Yurchak explains how people thought about the ‘imaginary west’, as a place of the future, a place of hope, and a place of possibility, that also represented the end of Soviet empire of senility. In this regard, Yurchak is able to show that America represented hope for those living in the Soviet Empire that had failed long before its eventual collapse into ruins in the early 1990s. While the Soviet attempt to resolve the endless crisis of modernity took the form of the Party, which sought to oversee law and dominate every aspect of people’s lives, at the end of the Cold War America seemed to represent a new possibility for an alternative vision of distributed, democratic sovereignty. At this point in the history of the twentieth century, when George Bush senior spoke of a NWO (New World Order), and Francis Fukuyama [31] wrote of the end of history, the American Empire was in its prime, and we could not have imagined the rapid decline towards the state of contemporary poly- / perma-crisis.

Although it is possible to identify pivotal events that might be seen to indicate the ruin of the Empire, and consider the impact of 9 / 11, the war on terror, the 2008 financial crash, and the Covid pandemic, in many respects these do not capture the essence of the problem of the poly- / perma-crisis, which I want to suggest resides in the problem of the *ruinous law* of the code of capital that means that the globalised system Hardt and Negri [5] wrote about in terms of Empire is unable to escape the logic of power, expansion, extension, and overcoming. As we have seen, Hobbes [16] thought that it would be possible to contain this endless drive to power under the sovereign law of the Leviathan. Following this Hobbesian move, we know that Adam Smith [45] imagined distributed sovereignty through the law of the invisible hand, with the result that the political authority to restrict *ruinous law* of economic power was eroded and reduced by a *laissez faire* belief in providence and a kind of divine calculus. By the time of the neoliberals of the American Empire, who subscribed to Hayek’s [46] theory of spontaneous order, the idea of the managerial state was already in place. Indeed, in his book *The Kingdom and the Glory* [47], Agamben

argues that economic sovereignty set upon the administration of life had been coming since the Roman Empire when power was considered absolute and what mattered was the management of subordinate populations. However, what we have seen from our reading of Heather and Rapley's [2] work on the decline of empire is that Rome itself was ultimately undone by the fatal logic of power, *over-extension*, *over-expansion*, and *over-reach*. My argument in this piece is that the globalised American Empire is facing a similar problem today, that this is how we should understand the contemporary poly- / perma-crisis, and that this is ultimately why we need the legal fiction I am calling *lex ruinae*. Here, my suggestion is that *lex ruinae* can simultaneously enable a critical analysis of economic sovereignty and the *ruinous law* of the code of capital and open up a space for exploration of a *law of ruins* concerned with survival on the other side of the devastation wrought by the late capitalist system that cannot see beyond growth and the logic of creative destruction.

3 Living in Ruins

In his famous essay *The Ruin* [48] Georg Simmel explains the sociological significance of ruins through a wider discussion that is extremely useful for understanding the logic of what I am calling, *lex ruinae*, *ruinous law*, and the *law of ruins*. According to Simmel's reading of the ruin, human civilization is built upon the mastery of nature, but this sovereignty, domination, and control is only ever temporary and must eventually crumble away. Although the master builders of civilization, culture, and the human edifice may imagine that their constructs will last forever, the ruin shows that every power wanes and eventually turns to dust. In Simmel's vision of the ruin, mastery is always temporary, whereas the relentless cycles of nature that see things come into being, struggle to survive, only to eventually perish and gradually fade away are permanent. Thus, Simmel understands human civilization in terms of a balance between two forces comprising a striving, surging, upwards will to overcome and a downward, dragging, corrosive logic that represents the inertia of nature that means that everything that is born, grows, and lives must eventually perish and crumble to return to a state of nothingness. We might speculate that if we ascend to the very apex of Simmel's civilizational drive to subdue, to control, and to overcome we would find the will to empire, imperium, and dominium, which, as we have seen throughout this piece concerned with the logic of the contemporary poly- / perma-crisis, is subject to the same kind of tragic, ruinous effect as every other cultural form. The presence of this tragic logic is, of course, perhaps even more apparent in the case of the empire because of the stark contrast between what we might call the *law of ruin* and the skyscraping ambition of those who believe they possess the exceptional power to overcome every limit and impose their will upon the world for ever more. Still, Simmel's tragic *law of ruin* is necessary, inexorable, and relentless and would similarly apply to Rome, Nazi Germany, the Soviet Union, and the American Empire of the present, regardless of the will of Caesar, Hitler, Stalin, or the neoliberal elites. In these worlds where the law of power seems absolute, and the ability to decide appears to condition everything, it is comforting to know that imperium cannot survive the march of time and that eventually ecological balance will return, insisting

upon the rule of the kind of natural justice Cicero and the Stoics set out in their work on republican law. In the context of *lex ruinae*, then, Simmel's [48] tragic insight that eventually even the greatest of monuments to the human will to power must crumble away and disappear, is surely support for the reason we must look beyond the *ruinous law* of endless expansion, extension, and overcoming towards a *law of ruins* founded upon humility and a very different understanding of the relationship between humanity and nature.

Although this article is informed by agreement with the kind of tragic logic Simmel [48] sets out in his reading of ruins, I have also sought to explain the problem of the contemporary poly- and perma-crisis through reference to notions of failed sovereignty, economic theory, and specifically the Marxist theory of crisis [18]. Supporting Marx and Engels' historical explanation of the fundamental contradiction of the capitalist mode of production, premised on the problems of competition and the drive to over-come, over-production, and the falling rate of profit, reference to Robert Brenner's [49] theory of the long downturn provides a detailed account of the agony of contemporary American economic power. According to this theory the burgeoning Empire's desire to manage the threat of communism in the early Cold War period led to its economic revival of Germany and Japan and the emergence of these two economies as competitors that drove the logic of over-production and lack of profitability on the global level. When China entered the market in the late 1970s / early 1980s under Deng, the problem of over-supply intensified and the Anglo-Americans shifted towards financialisation to keep their economies moving. Although Baudrillard [50] imagined American debt as weightless, free floating, hyper-real, and ex-orbital towards the end of the 1990s, the global financial crash of 2008, the subsequent squeeze on public service, and lack of growth globally, has meant that *being in debt* has taken on an almost unbearable weight since the crash. Indeed, for Adam Tooze [51, 52], the vast increase in indebtedness caused by first, the financial crash, and second, the Covid-19 pandemic, is the story of the poly- / perma-crisis. Similarly, writing on looming economic catastrophe Michael Roberts [53] imagines the collapse of the contemporary American Empire towards a state of barbarism on the basis of its unsustainable, unmanageable debt burden. Given this context, a shift away from American to Chinese capitalism may sustain the Empire of Capital for a time, but this is unlikely to save the system for very long because of the essential fact of over-supply, which is indicative of the internal contradictions of the capitalist mode of production, and beyond this, the existence of the perhaps even more profound issue of the external contradiction of the global economic model with the biospheric system that simultaneously sustains productivity and the existence of life on earth on the most basic level.

Writing on this bioeconomic problem across a range of books, Bernard Stiegler [7, 54] explains that the human drive towards imperium is essentially conditioned by a deep sense of vulnerability, or what he calls default, that humanity has projected towards nature in an effort to feel more secure. According to Stiegler, the result of the emergence of this existential economy of lack and excess has been the invention of ever more complex technologies concerned with mastering the world, the movement from industrial through post-industrial to global capitalism, and finally the realisation of the Anthropocene, which Stiegler [7] writes about in terms of the *Entropocene* in

order to signal the radical disjuncture between the human and natural systems and the exhaustion of the latter by the former. From Stiegler's point of view, there is no way out of this potentially apocalyptic situation without radical change. In his work, the notion of imperium, and the relentless will to power and overcoming, is represented by a form of existential economic path dependency or late capitalist Freudian death drive that refuses to recognise limits, even though this state of denial will eventually result in extinction. Against this truly *ruinous law*, Stiegler [7] suggests a radical shift in thinking about what it means to be human, a turn to what he calls *neganthropocentrism* (or negative humanism), and suggests that the current crisis of the global system might be understood in terms of the age of the pharmakon, where the poisoned world suddenly causes a moment of *krisis* where we realise that we must change direction and find a way new of living. Over the course of this article, I have sought to develop a similar thesis through reference to the legal fiction of *lex ruinae*, the *ruinous law*, and *law of ruins*. Following exploration of the meaning of this concept and the ways in which we might frame it in terms of Roman history, I have set out the basic coordinates of the contemporary poly- / perma-crisis, which span the spheres of economy (low growth, unsustainable levels of debt), politics (a crisis of sovereignty and leadership), society (inequality, division), psychology (despair, depression), culture (a sense of endings and lack of hopeful futures), and ecology and environment (looming ecological collapse), and sought to situate this theory in terms of a modern history of notions of sovereignty and the crisis of power.

Beyond consideration of Koselleck's [15] history of crisis, I have sketched out the modernity of sovereignty through reference to Hobbes [16], Schmitt [11], and Benjamin [12] in an attempt to show how, in much the same way that the politics of Rome, and the struggle between Cicero, Caesar, and Antony, might be understood through the lens of the tension between republicanism and the Stoic idea of natural law and imperium and a drive to power and overcoming, we can think about the modern history of crisis and sovereignty in terms of a tension between on the one hand, exceptionalism and power, and on the other hand, universalism and justice. Reading this story forward through Nazism, and the last days of the Soviet Union, towards exploration of the American Empire, which seems to be caught in the teeth of a poly- / perma-crisis that knows no limits, I have tried to extend contemporary accounts of the crisis, and most notably those of Tooze [51, 52], by suggesting that what humanity is facing today is true moment of *krisis* that requires a (legal) decision / judgement to turn away from the *ruinous law* of the code of capital, on the basis that the extropian vision of endless creative destruction will produce nothing but more social, political, economic, psychological, and environmental chaos, and think carefully about a legal system founded upon a *law of ruin* and the need to live in ruins. In terms of what this might look like I have drawn upon the work of contemporary theorists of sovereignty and crisis, Agamben [13], who writes of bare life and the need to move beyond sovereign power, and Esposito [17], who similarly imagines community or the munus founded upon the vulnerability, fragility, and natural limits of bodies, in order to try to sketch out the meaning of a law of ruins and existential limits. In this regard, I think that we might also refer to Anna Tsing's [55] recent work on the matsutake mushrooms and capitalist ruins to think about what it looks like to move beyond a world characterised by a belief in endless progress, and what we

might now understand through the idea of *ruinous law*, to one organised around the harsh reality of crisis, disturbance, extremes, and precarity, where staying alive is a collaborative enterprise. Perhaps this is how we should understand the *law of ruins*, the other side of *lex ruinae*, the legal fiction that we might use to think about the problem of law in the age of complexity and the poly- / perma-crisis.

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