

**The Collected Works
of Eric Voegelin,
Volume 9:
Published Essays,
1934-1939**

*Thomas W. Heilke,
Editor*

University of Missouri Press

THE COLLECTED WORKS OF
ERIC VOEGELIN

VOLUME 9

PUBLISHED ESSAYS
1934–1939

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PROJECTED VOLUMES IN THE COLLECTED WORKS

1. *On the Form of the American Mind*
2. *Race and State*
3. *The History of the Race Idea: From Ray to Carus*
4. *The Authoritarian State: An Essay on the Problem of the Austrian State*
5. *Modernity without Restraint: The Political Religions; The New Science of Politics; and Science, Politics, and Gnosticism*
6. *Anamnesis: On the Theory of History and Politics*
7. *Published Essays, 1922–1928*
8. *Published Essays, 1928–1933*
9. *Published Essays, 1934–1939*
10. *Published Essays, 1940–1952*
11. *Published Essays, 1953–1965*
12. *Published Essays, 1966–1985*
13. *Selected Book Reviews*
14. *Order and History, Volume I, Israel and Revelation*
15. *Order and History, Volume II, The World of the Polis*
16. *Order and History, Volume III, Plato and Aristotle*
17. *Order and History, Volume IV, The Ecumenic Age*
18. *Order and History, Volume V, In Search of Order*
19. *History of Political Ideas, Volume I, Hellenism, Rome, and Early Christianity*
20. *History of Political Ideas, Volume II, The Middle Ages to Aquinas*
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The Editorial Board offers grateful acknowledgment to the Earhart Foundation, Liberty Fund, Inc., and Robert J. Cihak, M.D., for support provided at various stages in the preparation of this book for publication. A special thanks for support goes to the Charlotte and Walter Kohler Charitable Trust.

The University of Missouri Press offers its grateful acknowledgment for a generous contribution from the Eric Voegelin Institute in support of the publication of this volume.

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ERIC VOEGELIN

VOLUME 9



PUBLISHED ESSAYS
1934–1939

TRANSLATED FROM THE GERMAN BY

M. J. HANAK

EDITED WITH AN INTRODUCTION BY

THOMAS W. HEILKE

UNIVERSITY OF MISSOURI PRESS

COLUMBIA AND LONDON

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5 4 3 2 1 05 04 03 02 01

Cataloging-in-Publication Data available from the Library of Congress

ISBN 0-8262-1337-5

⊗™ This paper meets the requirements of the American National Standard for
Permanence of Paper for Printed Library Materials, Z39.48, 1984.

Designer: Albert Crochet
Typesetter: BOOKCOMP, Inc.
Printer and binder: Thomson-Shore, Inc.
Typeface: Trump Mediaeval

Contents

Editor's Introduction	I
1. The Race Idea and Science: A Clarification (1934)	13
2. One More "Race and State" in Political Science: A Rebuttal (1934)	17
3. Drafting a Constitution for Austria (1934)	23
4. A New Cameral System in the Mirror of History (1934)	28
5. The Authoritarian State Core (1934)	32
6. Danse Macabre, 1934: A Retrospect on the Commemoration Day of the Deceased (1934)	37
7. Race and State (1935)	40
8. The Administrative Regime: Advantages and Disadvantages; A General Report by M. Adolf Merkl, Professor at the University of Vienna, and Mr. Eric Voegelin, Private Docent at the University of Vienna (1935)	54
9. Popular Education, Science, and Politics (1936)	79
10. Josef Redlich (1936)	91
11. Austria and the Studies Conference (1937)	96
12. Changes in the Ideas of Government and Constitution in Austria since 1918 (1937)	99
13. Expression of Opinion and Opinion Formation (1937)	111
14. What May People Be Allowed to Know? (1937)	115
15. The New Style of Warfare (1937)	120
16. Flight into Work (1937)	123
17. On Sander's <i>General Political Science</i> (1938)	126
Index	161

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PUBLISHED ESSAYS, 1934-1939

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Editor's Introduction

Supposing Eric Voegelin had not eluded the Gestapo in 1938 to escape from Austria to Switzerland, what would his scholarly legacy have been? For American scholars, it might have been almost nil. Like many of the leading Austrian or Central European intellectual and artistic figures that he celebrated in essays contained in this collection, Voegelin himself might well have remained largely unknown to scholars in the New World. After all, who is Eric Voegelin on the western side of the Atlantic without *The New Science of Politics*, the five volumes of *Order and History*, *Anamnesis*, or the more than thirty-eight essays published over a forty-five-year span after his escape from Austria?

Unnoticed as it might have been, the scholarly estate of this thirty-eight-year-old professor of political science would nevertheless have been impressive in its breadth, depth, and extent. It would have included five books, twenty-seven scholarly essays published in edited volumes, collected proceedings, or professional and popular journals, and a series of nine occasional pieces in the popular press from 1934 to 1937. Among his books there would have been two volumes on the European race idea that Hannah Arendt later assessed as the "best account of race-thinking in the pattern of a history of ideas available," and the first volume of which he regarded as one of his "better efforts."¹ Another book, on Austrian constitutional history, would include penetrating critiques of the then-formidable theory of positive law developed by Hans Kelsen, the chief architect of the

1. Hannah Arendt, *The Origins of Totalitarianism* (1951; New York: Harcourt, Brace, Jovanovich, 1973), 158; Eric Voegelin, *Autobiographical Reflections*, ed. with intro. by Ellis Sandoz (1989; available Columbia: University of Missouri Press, 1999), 25.

Austrian constitution of 1920.² (Several articles and occasional pieces from the same period would extend arguments and observations made in the book, including its critique of positivist legal theory). Voegelin's curtailed legacy would also have contained an innovative if not entirely successful attempt to re-think the phenomenon of ideologies as forms of religious movement. There was also, of course, his first book, an unusual and perceptive examination of the "American mind." It received scant attention from scholars in Europe or elsewhere.³ While the two books on the race idea, *Rasse und Staat* and *Die Rassenidee in der Geistesgeschichte*, received much more interest from German scholars, there is no evidence that American scholars noticed either of these works. Similar fates appear to have befallen Voegelin's final two books before his emigration. By historical circumstance, moreover, the published editions of four of these five books would be largely destroyed. All this before the works that together made Eric Voegelin a respected and disputed figure among American students of political philosophy.

As much as in any of his books from this early period, it is in the essays and occasional pieces, roughly the last third of which are collected in this volume, that we see the broad spectrum of Voegelin's thinking and scientific study even as a relatively young scholar. The essays have a wide range of topics: Several serve as synoptic commentaries on aspects of the five books that he published between 1928 and 1938, but others take him in directions we seldom or never see in his other published work.

Three topics prevail in the essays collected in the present volume: (1) Austrian constitutional history and politics; (2) the European race idea; and, (3) the practice, teaching, and content of political science (under which one may include two journalistic pieces on public opinion). Beside these topics, there are an extended essay on comparative public administration and three further journalistic pieces, two of which reveal Voegelin's practice of social thought. Working within these topical headings, there are multiple thematic

2. For a brief history and intellectual context of the period, see Ericka Weinzierl, "Historical Commentary on the Period," trans. Fred Lawrence, in Eric Voegelin, *The Authoritarian State: An Essay on the Problem of the Austrian State*, trans. Ruth Hein, ed. with intro. by Gilbert Weiss (Columbia: University of Missouri Press, 1999), 10–38, vol. 4 of *The Collected Works of Eric Voegelin* (hereinafter *CW*).

3. Jürgen Gebhardt and Barry Cooper, "Editors' Introduction," in Eric Voegelin, *On the Form of the American Mind*, trans. Ruth Hein (1995; available Columbia: University of Missouri Press, 1999), ix, vol. 1 of *CW*.

threads that wind their way through these essays and that remain of interest to contemporary readers. Let us consider three. First is the role of Voegelin as public intellectual; second, the meaning and use of political theory; third, the question of the proper intellectual stance for a scholar. Not surprisingly, the three are closely related to one another.

Thirteen of the pieces contained in this collection are short items that Voegelin published in trade journals and newspapers, of which nine appeared in the *Wiener Zeitung* in 1934 and the *Neue Freie Presse* in 1937. In these we see two brief episodes in which Voegelin plays the role of public intellectual not only as a lecturer, but in print.

The *Wiener Zeitung* has had a venerable history. First published in 1703 as the *Wienerisches Diarium*, and becoming the *Wiener Zeitung* in 1780, it continues as a major newspaper in Austria to the present day. Before the Second World War, however, the *Neue Freie Presse*, founded in 1864, was the more prominent publication. It was considered by many writers and pundits to be the best newspaper in Europe, on a par with the *London Times* in England and *Le Temps* in Paris.⁴ It may well have had "the highest journalistic standards in the world," being "the foremost paper in the [Austro-Hungarian] Empire." Alongside news of the day, both papers also published various kinds of guest editorials and literary or cultural essays, known as "feuilletons,"⁵ which were the favorite genre of the large Viennese circle of literary aesthetes and, ironically, of their elders, the Viennese bourgeoisie. To have such a piece accepted in the *Neue Freie Presse* was, by some accounts, "to have 'arrived' on the Austrian literary scene."⁶ Voegelin's "Danse Macabre" ("*Todesreigen*"), which he published in the less prestigious *Wiener Zeitung*, is reminiscent of the affected, romantic style of the genre; we note its unusual style and subject matter in contrast to any other piece Voegelin published during this period. His other newspaper submissions were mostly opinion pieces, several of which are written at a level of intellectual engagement still observed today in some European newspapers but rarely seen in their American counterparts.

The topics of these pieces range from an announcement and explanation of the tenth session of the International Studies Conference,

4. Allan Janik and Stephen Toulmin, *Wittgenstein's Vienna* (New York: Simon and Schuster, 1973), 45.

5. *Ibid.*, 78.

6. *Ibid.*, 45-46.

sponsored by the League of Nations in Paris in the summer of 1937, to several comments on the question of the race idea in European politics, to remarks concerning Austrian constitutional developments, to observations on Austrian society and world affairs. Ranging as he does across these topics, how does Voegelin take up and formally play his role as public intellectual? To answer this question, we must briefly consider Voegelin's theoretical orientation.

Gilbert Weiss has observed that the 1930s were a period of transition for Voegelin from the neo-Kantian stance of hermeneutic sociology of his early Weberian work to a new epistemological model that he began to develop in his 1928 book on the American mind and that was brought to completion only long after he had begun living and working in the United States. Specifically, the earlier epistemological stance involved a "certain degree of theoretical abstraction from reality, based on the skeptical attitude of the scientist toward the object of science," because "an immediate direct grasping of reality" did not seem possible. The scholar and scientist must construct an apparatus of ideal types to bridge this gap.⁷ An important task of social science is therefore the development of such apparatuses:

Thus the objects of cognition are intellectually generated. Concepts provide the selective principle "with which reality is investigated . . . [A]ll disciplines of knowledge must be more or less tightly organized around selective principles or goals which they set for themselves and not by the content-area they investigate." Only by means of transcendent a priori categories can reality, which is in itself chaotic and formless, be ordered to yield knowledge.⁸

In contrast, beginning with his sojourn in America under a Laura Spellman Rockefeller Memorial Fellowship from 1924 to 1926, Voegelin became gradually more skeptical about such constructs themselves in distinction to the reality in which we participate. He would increasingly concern himself about this participation with his scientific exploration of consciousness, experience, and symbolic representation, which emerged fully for the first time in *The New Science of Politics* and continued with periodic breaks in organization and theoretical formulation through *Order and History* and in

7. Weiss, "Editor's Introduction," in Voegelin, *Authoritarian State*, 7.

8. Gebhardt and Cooper, "Editors' Introduction," xiv. The authors quote Jeffrey T. Bergner, *The Origin of Formalism in Social Science* (Chicago: University of Chicago Press, 1981).

Anamnesis. At the time the essays in this present volume were written, however, Voegelin's exploration of these problems dated back a mere decade. In 1924, he was already concerned with a "reconstruction of the complete science of the state," which, in several essays of this volume and in the two books on the race idea, shows itself to include a "philosophical anthropology" that takes into account the full range of human experiences—the moral experience of the individual, the experience of community, the experience of political rule, and the experience of historical transition and change in such rule, for example—as the foundations of any political community, be it a polis, a kingdom, or a state.⁹ Voegelin would become increasingly skeptical of this entire European epistemological debate, rejecting first and foremost the neo-Kantian concern with epistemology that emphasized the development of a priori systems of analysis rather than beginning with the phenomena at hand and ordering them as seemed most adequate to their shape and character. His findings, however, continued to be delivered with the Weberian model of an "objective" scholar in mind, even in the role of a public intellectual. What does this model look like in Voegelin's practice?

Let us consider, as an example, the concluding comment of "Expression of Opinion and Opinion Formation," which appeared in *Neue Freie Presse* in 1937. After establishing a clear distinction between the opinion of the everyday "Dummkopf"—whose views of things are based on political phantasm, emotion, mere private interest, or the effects of mass opinion influence apparatuses—and the opinion of an informed, thoughtful citizen, which is based on rational deliberation and discussion, Voegelin contrasts the manner in which democratic and totalitarian states have solved the problem of creating community through the expression of public opinion. Such opinion is problematic for political unity, because it may at times be conflictual, putting the community members at odds and creating disunity rather than cohesion. "Today," Voegelin concludes, "we cannot as yet pass definitive judgment on" the two distinctive

9. Eric Voegelin, *Race and State*, trans. Ruth Hein, ed. with intro. by Klaus Vondung (1997; available Columbia: University of Missouri Press, 1999), 3–5, vol. 2 of *CW*; Voegelin, "On Sander's *General Political Science*," herein, 126–60; Voegelin, "Reine Rechtslehre und Staatslehre," *Zeitschrift für öffentliches Recht* 4, no. 1,2 (1924): 124 [English version, "Pure Theory of Law and Political Science," forthcoming in Eric Voegelin, *Published Essays: 1922–1928*, trans. M. J. Hanak, ed. with intro. by Thomas W. Heilke and John von Heyking [Columbia: University of Missouri Press], vol. 7 of *CW*].

solutions that democratic and totalitarian regimes have devised in response to the potential divisiveness of public opinion formation and expression. All we can say is that “the democratic solution is bound up with a well-established, enduring tradition dating back to the classical bourgeois era and with a sufficiently large popular core that possesses a homogeneous set of values so that it can resist emotionalization,” while the totalitarian “way that leads to emotionalization runs the risk of leading to the rule of depersonalized masses.”¹⁰ No “definitive judgment”? What are we to make of such a conclusion?

A comment in a piece that also appeared in the *Neue Freie Presse* later that year, “What May People Be Allowed to Know?” may help us. There Voegelin examines the role of knowledge and censorship, including the ever-important phenomenon of self-censorship in the formation and preservation of political communities. Loyalty to one’s country serves as an occasion for such self-censorship, because it may well require of the loyal citizen that he or she selectively ignore pertinent information about his or her object of loyalty in order to retain that loyalty. For this reason, Voegelin comments, “ethicists came to the conclusion that unconditional loyalty is a questionable virtue—but our task here is not to moralize but to present a descriptive analysis.” Such an analysis has at least two self-imposed limitations: It does not move to moral judgments about present conditions, nor does it make speculative judgments about possible futures. This kind of analysis is the (Weberian) task that Voegelin sets himself throughout these essays; such moral neutrality in analysis is particularly evident in his analysis of European racism and in his replies to critics of that analysis. Voegelin’s nonmoralizing stance as public intellectual also informs his self-understanding as a scholar and a teacher. His understanding of his scholarly and public tasks is closely related to his understanding of theory, and we receive clear statements of the theoretical scientific basis for his “neutral” stance in those replies.

Theory, as Voegelin was developing it, was “an attempt claiming to order a field of problems rationally, and thus to render it comprehensible.”¹¹ Voegelin, to repeat, was thereby clearly turning away from the neo-Kantian epistemologies that animated the scholarly debates into which he had been trained; this effort at comprehen-

10. Herein, 114 below.

11. Voegelin, *American Mind*, 4. This idea of theory is closely related to Wilhelm Dilthey’s formulation (cf. Gebhardt and Cooper, “Editors’ Introduction,” xiv–xvi).

sibility meant that he would also have to reject a positivist doctrine of the state in favor of a theory of the state whose "systematic center is located . . . in the fundamental human experiences that give rise to the phenomenon of the state"¹² This new direction did not mean, however, that Voegelin rejected the systematic results that studies based on such rejected epistemologies produced, as long as one was clear about the limitations of those results. A complete theory of politics must, however, include an examination and analysis of the full breadth of the realms of being in which human beings participate. When Voegelin engages in his careful parsing of an argument, the reader may become puzzled by this distinction between the theoretically limited but useful results of a theoretically limited but useful science on the one hand, and a theory of politics that takes into account the entire context of political life on the other. Voegelin can praise Sander's precision of argument and analysis, even while he perceives an "immanent systemic flaw" in Sander's political science, and this flaw does not make Sander's work a complete failure. Rather, while he has begun with a faulty premise, we can learn much from his "technique of justifying the science in question" as we proceed with our own studies.¹³ A similar form of argument attends Voegelin's later evaluation of Weber.¹⁴ Thus, Voegelin's use of concepts such as "closed soul" and "open soul," whose distinction he developed through his encounters with American thoughtways, was a first step in developing the broader theory of politics, but even these and other theoretical articulations were not always necessary for the careful articulation of more narrow problems. These broader concepts—explained more fully in Voegelin's introduction to *American Mind* and in his studies of the European race idea—in turn did not reach the luminosity of his later exploration of the classical experience of *nous*, but they were certainly sufficient for uncovering the logical and methodological problems in specific patterns of thinking, as he shows in his replies to Guerke and in his criticisms of Sander's theory of politics.

While the evolving "grand theory" of his later works may yet not be in place, Voegelin achieves a great deal with the tools he has developed to this point. He can, for example, trace the genealogy

12. Voegelin, *Race and State*, 5.

13. Herein, 160 below.

14. Eric Voegelin, *The New Science of Politics: An Introduction*, foreword by Dante Germino (1952; Chicago: University of Chicago Press, 1987), 22–24.

of specific ideas and theories—including the race idea and the theory of positive law—and subject them to critical scrutiny. Such careful examination, as Voegelin shows in *The History of the Race Idea*, can reveal a defective way of seeing and the manner in which it can be improved:

The knowledge of man is out of joint. Current race theory is characterized by uncertainty about what is essential and a decline in the technical ability to grasp it cognitively. We turn to the history of a great idea to trace the law of its creation in happier moments of the world-spirit and to return from this immersion in its mature forms with a new firm vision and with hands now more skilled to reproduce what we have seen.¹⁵

The absence of a fully developed philosophical anthropology with which we are familiar from later works means that the present essays do not have the force of the metaphysical analysis that Voegelin would later bring to bear on social phenomena. His understanding of the task of the serious scholar and public intellectual was at this point somewhat more limited. It did not, however, prevent acute scientific analysis on the basis of which readers could make their own judgments:

It is not the theoretician's concern to express moral indignation and pass value judgments. He can uncover the implications of ideas and demonstrate their possible consequences; more cannot be done within the realm of serious scholarship. Obviously, this is Max Weber's position, which Voegelin adopted at that time as the soundest epistemological stand in the philosophical and ideological turmoil of the time.¹⁶

This epistemologically determined “detached manner of analysis,” moreover, does not mean that the intelligent reader cannot “easily draw his own conclusions,” as some reviews of Voegelin's work demonstrated.¹⁷ Voegelin's analysis and his replies to his critics offer that much—which is a great deal indeed—but no more.

Clearly, then, Voegelin saw his role as a public intellectual and scholar, not to pass judgments, but principally to offer an analysis on the basis of which such judgment can then be formed. This stance was defined in part by his conception of social-scientific theory. To repeat, it may have been more restrained than the kinds

15. Eric Voegelin, *The History of the Race Idea: From Ray to Carus*, trans. Ruth Hein, ed. with intro. by Klaus Vondung (1997; available Columbia: University of Missouri Press, 1999), 3, vol. 3 of CW.

16. Vondung, “Editor's Introduction,” in Voegelin, *Race and State*, xv.

17. Vondung, “Editor's Introduction,” in Voegelin, *History of the Race Idea*, xiii.

of judgments we see in, say, the previously unpublished analysis of Martin Luther's reformatory activities in *History of Political Ideas*¹⁸ or in the final chapter of *The New Science of Politics*, where "the fate" of Western civilization hangs in the balance as we challenge the gnostic movements that have invaded it,¹⁹ but it was not a stance that placed any obstacles in the way for those who would wish to take the next step of making evaluative judgments.

In this context, we may also consider Voegelin's self-description as a teacher. He made the precise reasons for his opposition to ideologies, including especially National Socialism, Marxism, and positivism, eminently clear in his comments in the *Autobiographical Reflections*. He disliked their intellectual dishonesty, had a "primitive" aversion to "killing people for the fun of it," and rejected at several levels their destruction of language.²⁰ At the same time, however, he recalled that his relations with the radicalized students he taught, especially those on the left, were not generally hostile.²¹ In "Popular Education, Science, and Politics," he reflected on the pedagogical demands of an institution whose goal is to offer a liberal university education to working-class people whose financial circumstances would otherwise not have given them access to it (79 below). These young adults, Voegelin later recalled, were the "intellectually more alert and industrious radicals from the worker's environment." Relations between himself and his students, he further recalled, were "conflictual," yet friendly:

Since the subjects I had to teach were political science and the history of ideas, wild debates immediately ensued in which I could not give in or I would have lost my authority. During these years a permanent good relationship developed between the young radicals and myself. . . . Though the conflict between the young Marxists and my first attempts at being a scientifically oriented scholar was always strongly articulate, the personal relations were the best. After the lecture and seminar hours in the evening, after nine o'clock, the group always got together and continued the discussions in one of the numerous coffee-houses in the neighborhood. I still remember a scene in the 1930s when, after a wild

18. Eric Voegelin, *History of Political Ideas*, vol. IV, *Renaissance and Reformation*, ed. with intro. by David L. Morse and William M. Thompson (Columbia: University of Missouri Press, 1998), 217–68, vol. 22, *CW*. For a similarly acerbic evaluation of Luther's life and thought, see Jacques Maritain, *Three Reformers: Luther-Descartes-Rousseau* (New York: Thomas Y. Crowell Company, 1929), 3–50. Voegelin points to the influence of this book on his own interpretation.

19. Voegelin, *New Science*, 189.

20. Voegelin, *Autobiographical Reflections*, ed. Sandoz, 45–47.

21. *Ibid.*, 85–87.

debate resulting in disagreement, one of these young fellows, not so very much younger than I was myself, with tears in his eyes told me, "And when we come to power we have to kill you."²²

How, then, to educate them?

Having dismantled the positivist claims of neutrality that pervaded the intellectual culture of institutions like the Ottakring Volkshochschule, where he taught, Voegelin notes that the "scientific world view" of the positivism that animated the pedagogical doctrines of the school was not that distant from the "political world view" of the "scientific socialism" that defined the attitudes of the Volkshochschule students.²³ This is a world view that seems to admire science (*Wissenschaft*) but that is in fact threatened by the science that Voegelin practices, since such a science seeks to investigate the foundations of "their [material-dialectical] faith and [. . .] their hope for [historical-material] redemption"²⁴ and to put this hope and faith fundamentally to the question. This questioning has its own problems, however:

One cannot convince a Marxist that the working class is not the most important phenomenon in the world and that its triumph is not an eschatological event without destroying his cosmic status. Yet a spiritual uprooting and metaphysical destruction are certainly not the purpose of popular education. If we analyze the concrete situation of this education more closely, we will find that a theoretical orientation may become purposeless and even damaging when it tries to prove its worth in a contest with a demonic world view. A religious system of the Christian type gives science not only a wider space of movement than the demonologies of the nineteenth century, but it is only within a system of this type that the traditional form of Western science with its wellsprings in the mystical contemplation of God may meaningfully function socially.²⁵

Without such a meaningful social function and systematic context, teaching "science" as Voegelin understood it to ideologues in a liberal institution seems to be a dangerous enterprise of building castles in the air:

In consequence, popular education that has a scientific basis can be practiced and promoted in a meaningful way only if educational policy is an integral part of a more encompassing state and cultural policy

22. *Ibid.*, 86.

23. Herein, 82 below.

24. Herein, 89 below.

25. Herein, 89 below.

that sets as its goal the de-demonization of the political sphere and the reestablishment of a direct relationship of the individual person to God. Without such an encompassing state and cultural policy it would be, in my judgment, unethical to tear men, who are in their own way happy with their demonic faith, away from this happiness by a scientific broadening of their horizon, or even only to cause them to vacillate in this faith. The functional value of Western science is, in its traditional orientation, bound up with a communal culture that keeps alive the knowledge of God that goes back to the great thinkers of classical antiquity.²⁶

How, then, to keep the ideological demonologies of radicals whom we cannot convert from tearing a society apart as each group—Communists and National Socialists, liberals and anarchists—strives to establish the realm of salvation that their “demonic faith” promises? The answer, for Voegelin and many others, was an authoritarian state that would keep such demonologies in check. When the German annexation of Austria in 1938 was accomplished unopposed by the Western democratic states of Europe and North America, this solution was undone, but not from any inherent weakness in the solution itself.²⁷ For those who would look forward, we catch glimpses here of Voegelin’s partially sympathetic reading of Hobbes’s response to radical politics in *The New Science of Politics*.²⁸ We also anticipate Voegelin’s dismal conclusion, not quite in view here, in volume VI of *History of Political Ideas*, that true “freedom of the spirit” is impossible in such an ideologically fragmented society that depends for its unity on yet a further, supervening ideological creed.²⁹

Two items that Voegelin published in 1935 and 1937 respectively are not included in this collection. The first, “Selected Translations of the Ruling of the Supreme Court of the United States on the Question of the Gold Clause of February 18, 1935,” is, as the title indicates, simply a translation Voegelin made of a U.S. Supreme Court ruling. The reader is accordingly referred to the appropriate Reports for the English original.³⁰ The second is an essay on the image of Tamerlane

26. Herein, 89–90 below.

27. Voegelin, *Autobiographical Reflections*, ed. Sandoz, 42.

28. Voegelin, *New Science of Politics*, 153–65.

29. Eric Voegelin, *History of Political Ideas*, vol. VI, *Revolution and the New Science*, ed. with intro. by Barry Cooper (Columbia: University of Missouri Press, 1998), 214–15, vol. 24 of *CW*.

30. Cf. *Norma v. The Baltimore and Ohio Railroad Company and United States et al. v. Southwest Bankers Trust Company, et al.*, 294 U.S. 240 (1935).

among the Renaissance humanists, which Voegelin developed out of his research in Paris in 1934.³¹ During that time, he became aware of "the enormous influence that the Mongol invasions and the events of the fifteenth century, especially the temporary victory of Tamerlane over Bayezid, had as a model of the political process in the sixteenth century."³² Voegelin discovered that during the sixteenth century "practically every author of importance dealt with these events, which were completely outside the normal experience of politics in the West and introduced an inexplicable rise to power, which affected the very existence of Western civilization, as a factor into world history." The impressive defeat by Tamerlane of the Ottoman Turks, who at that time were the greatest security threat to the Europeans, touched the imagination of nearly every European humanist, including Machiavelli, for whom Tamerlane's victory entered into the conception in the *Prince* "of the man who can rise to power by his own virtue."³³ This article was reprinted in the German edition of *Anamnesis*, and the series editors are including it in the English translation of *Anamnesis* in the *Collected Works*.³⁴ It is the last piece that Voegelin actually published before his flight from Austria, and its subject matter is in some ways a kind of bridge from the earlier topics we find in this collection to the subject matter of the *History of Political Ideas* and beyond.

The final piece in the present collection was accepted and to be published in spring 1938, but by then the National Socialists had made actual publication of the banned author's work impossible. "On Sander's *General Political Science*" was therefore published in the first volume of the reconstituted *Österreichische Zeitschrift für öffentliches Recht* in 1947. Since the essay rightly belongs topically and chronologically to the prewar period, it has been included here.

With this brief sketch of a few of the many matters of interest and importance in this collection, the reader is invited to appraise for himself or herself the gems that await within.

THOMAS W. HEILKE

31. Eric Voegelin, "Das Timurbild der Humanisten. Eine Studie zur politischen Mythenbildung," *Zeitschrift für Recht* 17 (1937): 545-82.

32. Voegelin, *Autobiographical Reflections*, ed. Sandoz, 36.

33. *Ibid.*, 36-37.

34. "Das Timurbild der Humanisten. Eine Studie zur politischen Mythenbildung," in *Anamnesis: Zur Theorie der Geschichte und Politik* (Munich: R. Piper and Co. Verlag, 1966), 153-79, forthcoming as vol. 6 of CW.



The Race Idea and Science

A Clarification

The National Socialist revolution has made the race idea the principal idea in the construction of the German *Volk*. We therefore stand at the beginning of a political and scientific development that demands of us that we bring clarity into a broad field of questions. The author of the following essay initiates such needed clarification by distinguishing between three fundamental questions: (1) the race experience and the race idea that grows from it; (2) the science of race; (3) the question of the technical legal realization of the race idea. The first two of these principal questions are addressed in the following essay.¹

The race idea and a science of race remain fused nowadays in a manner of thinking that, although grounded in the history of the speculation about race, must nevertheless be overcome, if coming to terms with this question is to rise above the traditional level of German philosophizing, and if this entire issue is to be made safe from the possibility of utterly gratuitous attacks by its opponents. This fusion of idea and science becomes evident from the fact that prominent investigators of the race question fail to *adequately differentiate*, due to the convincing forcefulness of their experience of race, between propositions of a scientific nature capable of withstanding scientific testing on the one hand and, on the other hand, propositions that we must deem to be an immediate expression of experience per se that cannot be scientifically either proved or disproved.

This article, "Rassenidee und Wissenschaft: Ein Beitrag zur Klärung," originally appeared in the *Kölnische Zeitung, Sonntagblatt*, January 21, 1934, 9.

1. In this connection, we refer the reader to the systematic work of the author, *Rasse und Staat* [*Race and State*] and to the complementary writing on the development of the modern race idea, *Die Rassenidee in der Geistesgeschichte von Ray bis Carus* [*The History of the Race Idea: From Ray to Carus*].

The racial experience is rooted in the fundamental state of affairs that *man is a corporeal-psychic unity*; man's body and psyche are not two spheres of being, separated from each other and mutually meaningless; instead, they are fused in the integral being of man, forming a single unit. This unit obtrudes itself as such in an immediate experience of the integrated style of an individual by way of word and action, play of the features, demeanor, and body language. We learn furthermore that each individual is, with respect to this homogeneous being, not different in his essentials from every other human being, and that, in fact, there exist *greater groups*, namely, the races, that turn out to be uniform in their essence, without detriment to the singularity of the individual within a broader scope. One may have or not have this experience, this race experience; having it depends on the individual and on the integral historical situation of the society in which a given individual lives. It may not occur at all in a community, it may be confined to certain individuals, it may be a widespread occurrence—as it now happens to be hereabouts. Whatever the circumstances that bring it about, in no case does it fall within the confines of intellectual scrutiny; it cannot be rationally substantiated; its importance cannot be impressed on those who do not possess it. It belongs entirely to the sphere of the psyche, and not to a superficial layer of excitement at that, but to a depth that is decisive for one's comprehensive attitude toward human existence.

The wish to fashion an image of history and community that is to serve as a reinforcement of this experience and as a norm for action arises from the race experience. We collect data of experience with the aid of the science of history and the natural sciences, using them as building blocks for the construction of this image; we try to gain understanding of the life of nations and states in the course of history based on the rise, the amalgamation, and the decline of races. The sequence of personal encounter and experience outlined here is to be understood as dictated by the constituents of its essence. Historically a personal encounter with the phenomenon of race grows gradually as a consequence of experiences involving races, and the consequently increasingly compacted personal encounter acts as a stimulant to a further exploration of the races; personal encounter and experience act as reciprocal stimulants. In the process of shaping a world view that corresponds to the personal encounter with race, fusions creep in that are contestable. Historical reality is a product of numerous

causes; hence it is quite impossible *rationally* to ascertain which of them is the determining factor. It is quite plausible to trace the decline and fall of the Roman empire to racial chaos—we possess an abundance of data that justify such an interpretation. Nevertheless, the Roman debacle can be also explained as a result of the fixing of the maximum price of cereals, which led to a decline in the acreage under cultivation; this in turn led to growing difficulties in the provisioning of the cities; this caused the depopulation of the cities and the ruination of the peasantry, etc. The dissolution of an economy based on slave labor can be traced to the influence of Christianity, but it is likewise common knowledge that a new method of harnessing the beasts of burden was invented that enhanced extraordinarily the efficiency of farming operations. As a result, slaves ceased to be indispensable to the operation of grist mills; in addition, the overland transportation of flour, which was previously impossible because of the low pulling power of draught animals, now became possible. By depending on his fundamental experiences that contribute to the construction of a historical image, the philosopher of history will ascribe a preponderant significance for historical processes to a religious idea, economic causes, or to race. In the construction of a world view, therefore, *principles of experience*, which can be tested scientifically, combine with interpretive directions that are based in experience. However, these two components of the world view must be kept separate: first, in order to preserve scientific purity, but also—and primarily—for the sake of maintaining pure both the personal encounter and the will to construction.

Today, the second point made above seems to me to be the more important one. One of the most deplorable consequences of the nineteenth-century cult of science is the superstition that everything in this world can be proved "scientifically." In this comes to the fore a weakness of the personal encounter, a lack of trust in it, a flight from psychic reality. Everyone must bear *responsibility* before community and history for his personal encounters and the convictions and attitudes that spring from them. Pretending that these convictions are scientific propositions is an abrogation of responsibility; this leads to the invention of a kind of anonymous legality that can be burdened with the responsibility for one's beliefs and actions. The world view of the race doctrine thus comes dangerously close to a materialist conception of history and to "scientific" socialism, which—aside from everything else—suffers from two ailments:

(1) a shift of responsibility to a system of "scientific" propositions, and (2) bringing historical processes under a law, and thereby making room for a feeling of a paralyzing, action-blocking fatality.

Hence what we demand is more realism, more tidiness, more responsibility, and less escapist yearning for a refuge behind pseudoscientific propositions that absolves us of responsibility. These demands are aimed less at the politician who wishes to implement the race idea through legislation, than at *the scholar*.



Once More "Race and State" in Political Science

A Rebuttal

I

In the September 30 issue of the *Reichsverwaltungsblatt und Preussisches Verwaltungsblatt* Dr. Guerke published a four-column critique of my book *Race and State*,¹ entitled "Race and State in Political Science."² It is a follow-up to a section of basic remarks relating to the above subject matter. At this point I have nothing more to say in reference to the statements made by Dr. Guerke and his critique of my book. On the other hand I feel it necessary to note that his *representation* of my theories, which comprises several columns, has missed the mark in each individual point he chose to address. Consequently, Dr. Guerke's statements call for a rectification so as to inform the readers of the *Reichsverwaltungsblatt und Preussisches Verwaltungsblatt* that the theses imputed to me by Dr. Guerke are in fact not advocated by me. I frame the rectification in a form that, item by item, first briefly summarizes Dr. Guerke's representation and then follows up with views that are unequivocally mine concerning the issues in question. I have confined myself in this procedure to points that are concretely and methodically crucial. I regret that I

This article, "Nochmals, Rasse und Staat in der Staatslehre: Erwiderung," originally appeared in *Reichsverwaltungsblatt und Preussisches Verwaltungsblatt* 55 (1934): 202-3.

1. Eric Voegelin, *Rasse und Staat* (Tübingen: J. C. B. Mohr, 1933).

2. N. Guerke, "Review of Eric Voegelin: *Rasse und Staat*," *Reichsverwaltungsblatt und Preussisches Verwaltungsblatt* 54 (1933): 781-85.

cannot deal with the details of his critique (in some cases his quotations are not to the point); otherwise this rectification would swell into the boundless. My silence about these details does not, however, indicate that I recognize the specifics of Dr. Guerke's representation as correct. On the contrary, his representation is incorrect in nearly every single sentence.

II

(1) Dr. Guerke maintains that I have said or at least implied that the "idea of the state" is the one and only "reality" of the state.

Ad 1: I am of the view that the idea of the state represents a portion of the reality of the state, but that it does not constitute the entire reality of the state. Aside from the idea of the state, several other elements participate in the construction of the reality of the state. On pages 2 through 5³ of my book I have listed four of these elements; one of them is the experience of mastery and subordination. The ideas of the state do not arise in a vacuum; instead, they are linked to "fundamental experiences" that form the actual foundations of the state. The ideas of persons [*Personenideen*] (such as the ideas of monarchy, empire, and of the leader [*Führeridee*]) are associated with the experience of *person*, while the ideas of community [*Gemeinschaftsideen*] (Christian, ethnic, and federalist ideas) are associated with the real experiences of *community*; body ideas [*Leibideen*] (which include the idea of race) are in turn associated with corporeal experiences [*Leiberlebnisse*] (especially with the experience of race). The concepts of "person and community are grounded essentially in the body," and therefore body ideas (the tribal, mystical, and race idea) "will always share significantly in the structure of the reality of the state" (p. 5 of my book).⁴ Consequently I establish first of all the reality of the body and real corporeal experiences as a foundation upon which the constructs of political ideas are based.

(2) I have supposedly rejected the "concept of race," attributing to race the status of a "mere idea"; thus I am guilty of relegating race "to the realm of ideas, or assuming it to be non-existent." Consequently I am supposed to have attempted to remove race "from a natural being to the domain of political ideas."

3. *Race and State*, 2-5.—Ed.

4. *Ibid.*, 5.—Ed.

Ad 2: Nowhere have I "rejected" the "concept of race"; instead I have explicitly determined that there exists a large number of concepts of race, to wit:

- a) a biological concept of race (the concept of "pure lineage" in theoretical biology);
- b) a concept of race in terms of natural science and anthropology (a concept of human groups with common somatic characteristics);
- c) a physiognomic concept of race (as propounded by Clauss);
- d) a concept of race derived from spirit (as developed by Schelling, Carus, Spann, George, Hildebrandt).

Finally, rising above the experience of corporeal foundations, there is a political race idea, or the myth of race, the myth of blood (Rosenberg).

Hence I do not reject the concept of race but recognize it as the object of four sciences, namely of theoretical biology, of anthropology as a part of the natural sciences, of physiognomics, and of philosophical anthropology. My critiques, which demonstrate that in all of these sciences the concept of race has as yet not been satisfactorily elaborated in a theoretical sense, were evidently misinterpreted by Dr. Guerke as "rejection." Nor have I "removed" race from natural being to the sphere of an idea; instead I juxtaposed the problem of science with the problem of ideas as being of equal importance, a fact that is evident from the division of my book into two parts, which deal, respectively, with the investigation of the concept of race and of the race idea.

(3) Dr. Guerke claims that in my investigations I chose the individual as the point of departure, while it is the "collective" ["*Gesamtheit*"] that should serve this purpose.

Ad 3: This claim is resolved by the elucidations of point 1: the ideas of *person* arise from the experience of person, the ideas of *community* arise from the fundamental experience of community, as I have explained on page 4 ff. of my book; the idea of race arises from the experience of the racial community.

(4) I allegedly "set back" the corporeal-spiritual unity of man in political science, which placed me "outside the reality of life."

Ad 4: I have not set back the corporeal-spiritual unity of man in political science; quite the contrary, I advanced it through the development of a theory of the unity of the human (pp. 30 through 35

of my book),⁵ which I designate as "superior" to all other conceptual constructs for the purposes of explicitly laying the groundwork of a race doctrine (on p. 30). The reasons for Dr. Guerke's doubts and misunderstandings will be revealed in my comments concerning point 8.

(5) I have supposedly incorporated "the nation into my state construct [*Staatsbild*], not as a fact of life, but as a human plurality that is convinced by a specific 'body idea,' without this idea finding any expression in corporeal being, i.e., in the racial status quo."

Ad 5: This assertion proffered by Dr. Guerke is likewise refuted by a reference to the elucidations addressing point 1. I have explicitly incorporated the concept of *Volk* and the experience of *Volk*—and, specifically, the experience of race—into a theory of the state by means of the theory of "fundamental experiences" (cf., apart from the principal elucidation on p. 4 of my book, chapter 1 of part I and chapters 1 through 4 of part II). *It goes without saying* that a fundamental experience can arise only where there in fact exists the corresponding foundation for this experience; in the absence of a real race foundation, no race experience will occur; where a race experience arises, there will be also a race foundation. To be sure, the existence of a race foundation need not necessarily produce a race experience—the present-day German race experience represents an epoch in German history precisely because earlier, when the race foundation was less endangered, there existed no race experience of such intensity of consciousness as is manifested at the present time. Only where a race experience arises and is formed into an idea can a foundation for the investigation of race, legislation addressing race, and race politics arise—as is the case in present-day Germany.

(6) I have allegedly asserted that "the Nordic idea is, in essence, not a national idea."

Ad 6: Taken literally, Dr. Guerke's quotation is correct, but it is incorrect in terms of its actual meaning. I have demonstrated in the chapter of my book dealing with the "Nordic idea" that even though it may indeed appear to be a national idea (of the German, English, American, or Nordic variety), due to the diffusion of the Nordic race it might also figure as an international idea—as in Lenz (the "blond International") or in Guenther.

(7) I have supposedly constructed (by rejecting the concept of race) a "purely" political race theory that is tainted by deficiencies similar

5. *Ibid.*, 30-35.—Ed.

to the "purity" of the pure law doctrine, pitting "purity of method against life."

Ad 7: This summary assertion is refuted by what I have already said. An idea is not "pure," as I have explicitly stated, but linked in each given case to a "fundamental experience." The race idea is linked to the race experience; the latter can arise in turn only where it rests on concrete foundations. An idea lacking such foundations does not exist. (Cf. the theory of transition from concrete foundations to the idea, chapters 1-2 of part II of my book.)

(8) Dr. Guerke asserts on several occasions that I maintain a "negative" attitude toward the race theory; inasmuch as he himself mentions my positive attitude toward the race theories of Clauss and Spann, however, his conclusions can refer only to my critique of the race theories of Guenther and Lenz.

Ad 8: I do not, in fact, maintain a "negative" attitude toward the race theories of Lenz and Guenther (in this context I find it impossible to attach any clear meaning to the term "negative"); nevertheless, I make them objects of severe criticism, because the race theoreticians that formulate them do not postulate a human "integral being" but investigate body and soul as though they were separable entities with the aim of establishing the influence of the one on the other. The assertion that man's separate parts exercise such a mutual influence on each other is a materialist dogma that I reject; however, I reject only this dogma in principle, not the rest of the achievements of these researchers. This means that I do not reject their typologies of the races, although the detailed elaboration of the specific types is far from complete. Hence I have no quarrel with the existence of corporeal and psychic types, nor with their empirical correlation. Nevertheless, one should not draw too many conclusions from the existence of a correspondence of corporeal and psychic types, for absolutely nothing can be concluded per se from a factual correlation of two series of observations. The curves of declining birthrates and the dwindling of the stork population in Sweden are in a very precise correlation with each other, yet it would be obviously rash to draw conclusions from it that . . . etc. A correlation is of value only *when I already know* that a causal nexus between the two series is possible at all. It is precisely this that I *do not know* about the relationship between body and soul. Every historical event that we are ready to explain today by the influence of race has heretofore been explained as due to other reasons—and

to the full satisfaction of the explainers at that. I *cannot* derive the certainty of the significance of race from *science*. To achieve this calls for a race *experience*. Where there is no fundamental race *experience*, the most elegant scientific arguments are of no avail. Yet if I have a race experience, historical data and the correlation between corporeal and psychic types become for me a valuable empirical prop to my experience. If I assume a critical attitude toward the materialist dogma that preaches the influence of body on soul, I do so *only* because I deem it unpleasant and a sign of the weakness of a race experience that grounds the race idea and race politics on *science*, rather than on the *experience* itself. The race experience comes first, science comes second. If the reverse order is followed, we expose ourselves to the danger of allowing the intellectualist absurdity of "scientific" Socialism to be followed by the similar absurdity of a "scientific" National Socialism; the fundamental requisites of politics do not spring from books but from fundamental experiences. The vital sources of the German nationalist movement are to be found, not in science, but in an experience that gives rise to myth, just as Mussolini, following Sorel, does not depend upon a theoretical system analogous to Marxism, but upon the "myth" of *italianità*.



Drafting a Constitution for Austria

The Austrian statesman who is to draft a constitution for this country has an unenviable task. Because of the country's hapless history of the past century, the problems presented by the drafting of a constitution are so unique that a fully satisfactory solution is highly unlikely. A glance at Austria's constitutional history since 1848 will reveal a surprising uniformity of style concerning the constitutional question, both under the old monarchy and in the new Austria. At the same time it will shed some light on the secular destiny that this state, equipped with limited forces, must shoulder.¹

Austria's constitutional history proceeds in a series of paroxysms that set in every time the chronic internal affliction passes into an acute stage as a result of an external cataclysm. Accordingly, the best structuring of its history is one that is guided by external impulses. The February Revolution in Paris provides the impulse to the constitutional labors of 1848, which, having received input from the Pillersdorf Constitution, lead to the Kremsier Draft,² and the government-imposed March Constituent Diet of 1849 lead to the absolutist Sylvester Patent of 1851.³ Austria's loss of prestige in the fifties, owing to its conduct during the Crimean War and the disastrous Italian War of 1859, resulted in a series of constitutions that ranged from the Patent of March 5, 1860, concerning the strengthening of the imperial council [*Reichsrat*] to the October Diploma of 1860 and the February Patent of 1861, ending

This article, "Verfassungsgebung für Österreich," originally appeared in *Wiener Zeitung*, April 27, 1934, 1-2.

1. For Voegelin's treatment of this period, see Voegelin, *Authoritarian State*, ed. Weiss, 107-59.—Ed.

2. Named after a Constitutional Convention held in Kromeriz, Moravia.—Trans.

3. December 31, which revoked the March constitution.—Trans.

with the suspension of the constitution of 1861. Nevertheless, this struggle had not run its course; in effect it became intensified by the defeat in the war of 1866, and ultimately produced the December constitution of 1867. The numerous, less significant acts of democratization owing to the reform of the voting system were then linked to the introduction of universal, equal, secret, and direct suffrage, called the Beck Suffrage Reform of 1907, which came about essentially from the reverberations of the Russian Revolution of 1905. The collapse of 1918⁴ introduced a series of constitutions of the new Austria in its first phase between 1918 and 1920. This failed to solve the Austrian problem, and the Home Defense Force [*Heimwehr*] movement made the constitutional reform of 1929 necessary. Finally the German revolution of 1933 initiated the period of reforms in the midst of which we find ourselves at the present time.

The general outline is fleshed out with features that maintain a uniformity of style even in specific details. Typical of this process of constructing a constitution is the consistently provisional character of the resulting document, which remains an outline. Already the Pillersdorf Constitution, which was intended to be a constitution of the empire, is twisted even before it is promulgated into a provisional constitution meant to provide only for a constituent imperial diet. The Kremsier Diet has never been implemented. As for the government-imposed constitution of 1849, only its least characteristic organ, the advisory imperial council, came into being. The Patent of March 5, 1860, was again a provisional measure, and the October Diploma of 1860 was not implemented. The February Patent of 1861 contained more enduring elements (primarily the constitutions of Austria's provinces), but the imperial council [*beratender Reichsrat*], the central organ created by the document, never assembled. The December constitution of 1867 had to do without a federative solution;⁵ and the reform of 1873 revived a centralized statehood for the Austrian half of the empire. The efforts to implement a [postwar] constitution began with a series of provisional drafts that paved the way from a centralized statehood to the federal state of 1920. A substantive component, the new federative distribution of competence, was deleted in the constitution of 1920; it was not

4. Of the Austrian empire.—Trans.

5. Due to the Austro-Hungarian Compromise.—Trans.

reinstated until in 1925. In the constitution of 1929, another core component, the establishment of a body representing Austrian provinces and classes, was deleted; it has never been instituted. Since March 1933, we have remained suspended in the provisional state of an authoritarian constitution that is based on the 1917 Enabling Act, which had been framed in view of the exigencies of the war economy. The essential characteristic of the coming constitution is that its function will be suspended and that, for the time being, another provisional measure will be promulgated that is supposed eventually to lead to implementation.

Let us turn to the causes of this series of phenomena, unique in the European world. The underpinnings of the situation are clear: Each of the series of constitutional propositions [*Setzungen*], outlines, provisional measures, deletions, and suspensions is represented in the political power sphere by a pendulum that swings from an absolutist state organization toward democratization, only sooner or later to swing back again toward an absolutist course. If one is not satisfied with the answer to the question concerning the content of these constitutional instruments that one receives from the principles of positive law, but if one continues to probe further in order to identify the forces that generate a state, one might possibly arrive at the conclusion that Austria has never quite abandoned the absolutist form of government. The democratic episodes were experiments that were bound to be undertaken, yet the authority of a centralized government remained the firm cohesive force. This applies without any doubt to the period ending in 1867, but the constitutional phase was also permeated by the spirit of imperial rescripts that perpetuated the legal style of an absolute and even a medieval estates-based monarchy; the mainstay of the government in the setting of a nonfunctional constitution was the rule by decree in accordance with Section 14. It is doubtful that, in political terms, the Austrian Republic has been a democracy since 1918. At the present time, the above-mentioned pendulum, following yet another failed democratic arc, returns toward the absolutist form.

The constitutional experiments, followed by the radical parliamentary-democratic experiment, were doomed to failure, because no force existed capable of creating a democratic form of government. We may articulate the problem that lies hidden in this lack of democratic potential by the terms *imperial people* [*Reichsvolk*] and *national state* [*Staatsnation*]. Austria's populace was never a "na-

tional state" in the sense of Western democracies, for it has preserved the medieval character of an "imperial people" as a result of the peculiar construction of the Austro-Hungarian monarchy until its collapse, and it has since been unable to reshape itself into a national state. The imperial people was tied to the [Habsburg] dynasty, but it was not a nation of common mind intent upon the formation of a state. Hence, inasmuch as the democratization, i.e., the political activation, of the masses was, in terms of its content, tied to the activation of the *national* political will, every step in the direction toward democracy had to be a step toward the disintegration of the empire, at least as experienced in its traditional form. This was not a specifically Austrian problem; it was in fact in one form or another the case with all of the Central and East European imperial constructs which, though entering the era of the activation of the masses with highly sophisticated modern state apparatuses, lacked—for reasons of political or economic history—that type of state-molding political man who is educated enough to be capable of socially assimilating the activated, pressing masses, a type similar to England's governing class or to the French bourgeoisie. One must never forget that the fundamental force of Western mass democracies is a type of political man who has been formed as an elite type *prior* to the establishment of democracy. Thus, when the question of democratization arose in 1848, Prussia faced the Slavic peril, which was less serious than the one in Austria, yet serious enough to avoid democratization and to allow the "right to vote as a privilege of the three classes" to remain in force. The Czechoslovak Republic finds itself in a similar position—a fact brought home more clearly every day—thanks to the medieval legacy of the empire. This position will result in all likelihood in its constitution, skillfully framed on the pattern of Western democracies and highly regarded in the United States, bringing about a more or less absolutist form of government. The constitutional life of the [Austrian] monarchy literally *exhausted* itself in attempts at modernization that, although undertaken in the spirit of the national-state patterns of the West, were not suited to the Austrian imperial tradition.

The collapse [of the empire] was brought home to the Austrian populace at the level of an imperial people; there was no such thing as an Austrian nation, and insofar as the new, extremely democratic constitution after the demise of the medieval monarchical power was based on a nonexistent popular power, the state found itself

lacking any political principle whatsoever, aside from the pressure demanding independence that was exerted by external forces. This new situation is characterized by three decisive symptoms: The new constitution was, in terms of legal technicalities, a construct fashioned to a high degree of perfection in accordance with democratic parliamentary axioms that had no foundations in political reality; political reality itself grew out of the struggle between party machines; the predominant political theory identified the state with the legal order, thereby expressing in consummate fashion the reduction of the substance of the state to a system of norms.

The time span of one-half of a generation that has elapsed since the foundation of the republic has failed to create a national community capable of generating a political formation. Yet the activation of the masses has made significant strides, thanks to the organizing activities of the party apparatus that pushed the state to the brink of collapse. Thus, a point was reached where an absolutist intervention again became necessary in order to save the state. To be sure, the absolute situation we are facing at present differs from the earlier terminal stages of the democratic pendulum in that the recurring democratic periods—especially the last one distinguished by the highly developed technique of manipulating the masses—has maneuvered the populace into a state of activation that no longer permits it be left to its own devices. For the broad masses, a state of politically active tension has become a form of a habitual psychic gratification that cannot be done away with easily, if at all. If the state is unable to fill this form with a content of its own choosing, it will be filled with differently constructed contents that threaten the stability of the state. The new authoritarian state must therefore operate in a consistent fashion with an institution like the Fatherland Front, which is furnished, as the exclusive agent of the development of the political will of the nation, with the form of a corporation, enjoying an authorized status in public law. The existence of such an institution provides a clue to the degree of development of the democratic problem with which the constitutional process in Austria must come to grips.



A New Cameral System in the Mirror of History

According to the new constitution, a system of corporate bodies that is in its kind a precedent-setting innovation in parliamentary history is to participate in federal legislation. An interpretation of this cameral system based on the political ideas that come together in it is rather difficult. The much-discussed encyclical *Quadragesimo anno* is likely to have contributed little to this system. The papal encyclical is based on the separation of society and state; it offers instructions concerning an organization of society on the basis of classes [*Stände*], but it says nothing about the organization of the state. Consequently, if two advisory chambers are in fact organized as representatives of the classes, and if these chambers in turn delegate a significant portion—approximately one-half of their membership—to make up the decision-making chamber, then this produces a superstructure in the sphere of the state that may prove suitable to the building of a society based on classes but that is not a necessary consequence of the demands made by the papal encyclical. As will be presently shown in greater detail, different motives may have come into play here, motives that stem directly from the sphere of problems created by parliamentary reform.

In spite of the participation of chambers representing classes in the federal Parliament [*Bundestag*], it is unrealistic to speak of a parliament of classes. These chambers, which are personal, self-administrative bodies, comprise only one-half of the parliamentary members; the other half consists of the representatives of the big territorial self-representative bodies, the states, and the state council.

This article, "Neues Kammersystem im Spiegel der Geschichte," originally appeared in *Wiener Zeitung*, May 5, 1934, 1.

It is actually impossible, in spite of the impact of the classes on the federal Parliament, to speak of a state constituted by them, because the brunt of the state's leverage is unequivocally exerted neither by classes nor by Parliament, but by the executive branch. The new Parliament is, in the first place, nothing but a somewhat extraordinarily constituted collegium with strictly limited functions. Nevertheless, viewed in terms of the general structure of the state, it occupies a place that in a democratic state would be held by people's representatives who are elected by universal suffrage. The Parliament loses its extraordinary character once we examine parliamentary history and the proposals of reform made by nineteenth-century statesmen and political thinkers. These reform proposals were prompted by threats to the classical form of Parliament, the emergence of the modern Parliament, and the crisis that has befallen the state. These proposals bore a surprising resemblance to some of the changes introduced by the new Austrian constitution.

The classical idea of the nature of Parliament, if it is to function in social reality, presupposes rule by a more or less homogeneous social stratum over state and Parliament, a class that is a mainstay of the state. This system has been imperiled by the broadening of suffrage, which included new strata of the population in order to accommodate the idea of democracy. As this peril grew, a number of proposals was submitted to save the system. The danger that carried decisive weight was the numerical predominance of the politically youthful strata of the population and an imminent shake-up of the entire structure of state and society through radical legislation directed against the numerically weaker strata of society. The problem of Parliament was subsumed into a formula that calls for a construct that would take into account the democratic idea of the representation of the masses and at the same time would, as heretofore, subordinate Parliament as an efficient organ of legislation to the executive and the governing class. There was no difference of opinion concerning the fundamental issue whether a legislative organ could be a useful state organ only if the executive can impose its will upon it; the state is at risk if the government is weak and especially if it is dependent on Parliament.

The American statesman Calhoun proposed a class-based multi-cameral system for the United States to avert the danger of radical democratization. Taking a retrospective look at the English parliamentary reform of 1832, Disraeli declared that a better choice

than extending the suffrage of the lower house would have been the creation of a new chamber in addition to the two already in existence. The upper house would represent the upper aristocracy, the lower house the gentry and the powerful business interests, and the third house, the middle and working classes. Inasmuch as multiple-chamber systems encounter difficulties when functioning in political reality, there were plans to establish a single chamber representing the classes. Hare's proposal of proportional suffrage was intended to solve the issue of representing the classes. This solution is hardly acceptable after our experience with proportional suffrage, but in Hare's time only one-sixth of the adult male population was enfranchised; hence, his proposal made sense. If suffrage were to be extended to the masses, the proposal could no longer serve the purpose intended by its author. Lord Grey envisioned a lower house makeup co-opting members of diverse classes. One part was to be elected from territorial corporate bodies, cities, and counties on the basis of proportional suffrage; another part was to be made up of delegates of personal corporations, universities, and economic corporations (businessmen, workers, etc.); a third group was to be elected by Parliament itself, enjoying lifelong tenure so as to guarantee to the top leadership political independence from the electorate; finally, the government was to be granted the right to appoint a major portion of its members so as to preserve its independence from incidental majorities. These proposals by Lord Grey were spawned, not by a fantasy engaged in idle planning, but by a quest for new forms that would reestablish the meritorious features of English Parliament that it had enjoyed prior to 1832. The abolition of the antiquated forms that occurred in 1832 also swept away positive parliamentary features, in that a large number of Parliament's best members and almost all of the great statesmen had become members not by election, but by appointment.

As we scan these proposals, we discover that they have a close affinity with the new Austrian parliamentary structure. The multiple-chamber system is located on the ground floor of the legislative body. The technical difficulty of its functioning is taken into account by granting to the multiple chambers only an advisory function; this keeps them from paralyzing one another. The federal diet rises above them as a single chamber. It comprises the representatives of personal corporations, members of the cultural and economic council, representatives of territorial corporations,

and representatives of the states; and, finally, the predominance of the government is established through the members of the state council, which is desirable for the efficient functioning of the legislative body. This structure combines the essential elements of the English proposals aimed at the reestablishment of the classical Parliament.



The Authoritarian State Core

The preamble of the new constitution offers substantial insights into the configuration of the forces that mold the Austrian state. The purpose of a preamble is for the power that drafts the constitution solemnly to acknowledge the principles underlying the construction of a state that produce a political alliance by way of the constitution that follows the preamble. Hence, as a rule, a preamble contains three typical elements: the power authorized to draft the constitution; the principles of the drafting process; and the object of the provision instituting the constitution. The preamble of the new Austrian constitution contains only two of these three elements. It mentions the principles of the drafting process of the constitution, which are Christian, German, federative, and class-based; it also identifies the object of the provision instituting the constitution, namely the state of the Austrian people. But the preamble says nothing about the power authorized to draft the constitution. The Austrian people *receive* a constitution; the source remains anonymous.

There can be no doubt in respect to the author of the constitution—it is an authoritarian government. The fact that it does not refer to itself as the framing authority of the constitution reveals the peculiar character of the Austrian authoritarian state when compared to similar efforts to achieve political form. The Austrian authoritarian regime is not a new attempt at organizing a state to produce a national mass state as an outgrowth from a national mass movement but a tradition-bound and authentic heritage of the authoritarian conduct of the affairs of the empire by the Austrian monarchy. In the new Austria, the German remainder of the old imperial nation has not

This article, "Der autoritäre Staatskern," originally appeared in *Wiener Zeitung*, May 13, 1934, 1–2.

developed into a mature state-forming power; as a result, the role of the executive has remained essentially the same, despite the fact that the democratic problem has become ever more pressing. In fact, the new Austrian executive lacks the support of the monarchical source of legitimacy that made it possible to solve the difficult question that arose in 1913, for example, by means of an imperial patent declared "on the strength of my duty as regent." What has remained in place is the state apparatus and its ministerial leadership. It is proof of an admirable wisdom and of a realistic assessment of the situation that the executive has given up the right to set itself up as the source of the constitution's legitimacy, withdrawing anonymously behind the invocation of a divine author of all law, and making use, within the bounds of possibility, of the form of the old constitution in order to lay hold of those fragments of legitimacy that fit the democratic mold.

The Executive Circle

The politically crucial problems that bear on the legal aspects and constructions of the constitution have to be understood in the light of the peculiar situation of the executive apparatus of the state that in 1918 had lost the legitimacy afforded to it by the monarchy and that in the first years of the republic was unable to lay claim to a democratic legitimacy of the national-state variety, while it was at the same time unwilling to set itself up as a state-forming power. Instead it made efforts to gain new legitimation through the Church, the awakening of a patriotic mind-set, and an awareness of Austrian statehood. Due to the Empowerment Act of April 30, the entire state authority is currently *centralized* in the strictest fashion in the hands of the government. The publication of the text of the constitution as the first act arising from the Empowerment Act indicates that there is a will to loosen up this centralization; the content of the constitutional text shows along which lines this loosening is to proceed. As the core of a new differentiation in the direction of classes, the federative structure, and the establishment of the rule of law, the executive apparatus continues in a form that characterizes the state as authoritarian. The executive hierarchy begins with the president of the federation; it is he who appoints the federal chancellor and, upon the recommendation of the latter, the remaining members of the federal

government. The heads of the state administration are likewise appointed by the president of the federation on the strength of a triple recommendation by the state diets; this appointment requires confirmation by the federal chancellor. The appointments of the district heads and the security directors of the states require confirmation by the federal chancellor. The mayors are elected at community meetings, but the results must be approved by the head of the state administration in the case of cities participating directly in state government, and by the district chiefs in the case of all other communities. And now the executive circle is closed: the mayors of local communities are the organ that, on the basis of a triple recommendation of the federal assembly, elects the president of the federation.

A series of rights of recommendation given to the collective organs is built into the appointment and confirmation process. The constitution contains provisions guaranteeing that the loosening of the closed system will not cause difficulties for the executive, since the corporate organs, too, are structured very carefully with respect to a positive disposition toward the state on the part of its members. The federal assembly, which is charged with issuing the triple recommendation concerning the election of the president of the federation, consists of members of the four advisory chambers. The members of the state council are appointed by the president of the federation, which requires confirmation by the federal chancellor. The federal council consists of the heads of the state administration and state financial advisers. In the process of setting up the federal cultural council and the federal economic council, steps must be taken assuring that only "members loyal to the fatherland" become deputies. The same determination calling for a loyal disposition of their members toward the fatherland applies to the organization of state diets, which are charged with issuing the triple recommendation for the post of head of the state administration. For the community meetings that elect the mayors this requirement does not appear in the constitution, but future state laws may rule on the particulars of the organization of the community meetings, and the right to dissolve community meetings (Article 132.4) may also affect the attitude of these organs in response to the wishes of the executive. Thus the closure of the executive system is made secure in every conceivable way insofar as it is compatible with the federative, class-based, and locally democratic arrangements of the constitution.

The Executive Core

In the body politic, a *rigidly organized executive core* corresponds to the *strict centralization of the juristic sphere*, accompanied by a number of similarly oriented support organizations, movements, and alliances. The core is formed by the state executive: the bureaucracy, the army, and the police. Attached to these are various defense formations; the strongest among them is the Home Defense Force, which, since 1927, has been playing the leading role in the constitutional politics of Austria and in the efforts to create a consciousness of Austrian statehood. Socially, these defense formations are organized in a fashion similar to formations of this kind in other countries. The staff and the command posts are as a rule held by veterans—both officers and enlisted men—of the world war, by the so-called trench aristocracy. The enlisted men, especially the younger generation, are mostly recruited from the ranks of the unemployed among the petty bourgeoisie and the working class. The defense formation—and this is especially true of the Home Defense Force—professes a fascist idea of the organization of the state but has no independent program for the organization of society. Its social structure introduces into the Austrian *classe dirigente* a dynamic capacity for decision-making in response to the demands of the moment, untrammled by conformity to norms, which capacity has evolved in the neighboring states into a fully articulated idea of the *vita eroica*, animated by a martial, nonbourgeois spirit. The remnants of the Christian-Socialist alliance, the professional politicians who have arisen from it, and Catholic alliances are further sources of power for the executive. The catalogue of Christian-Catholic and social and political-economic ideas in the new formation of the state—protection for farmers, artisans, and laborers—originates from these sources.

The Fatherland Front

The authoritarian problem haunting Austria is clearly outlined in the development of the Fatherland Front. It did not take the lead as an organization of a democratic mass movement for the reconstruction of the state in the authoritarian sense, but first unfolded within the new regime. From the perspective of the authoritarian core, the formation of the political will of the nation is to be organized in such a fashion that, once the constitution with its democratic provisions

comes into effect, it can function without friction under executive leadership. To achieve this end, the front has been converted into an *alliance of public law* that is authorized to intervene in the operations of government agencies; and an internal restructuring of the alliance is planned, separating the core front from the rest of the membership. The core front is to consist of 150,000 reliable individuals, the bureau heads, who are authorized to control the state apparatus and public life. The formation of the core front is comparable to the core formations in the mainstay movements of other authoritarian states: This formation is to serve the purpose of more or less closing off the governing class from the mass of the population that is politically less uniformly activated. The difference between the Austrian core formation and the authoritarian systems resting on democratic mass movements is the inversion of the movement's direction: The authoritarian core is formed first, from which the political activation of the national community is then to be directed. The direction of movement of the Fatherland Front, which is authorized to serve as a bridge between the state and the people, reveals again the affiliation of the evolution of the Austrian state with the primacy of absolute power. As a type of state order, this primacy is a legacy of the Austro-Hungarian empire.



Danse Macabre, 1934

A Retrospect on the Commemoration Day of the Deceased

The image of this violent year, abounding in dramatic events, is also mirrored in the names of those who died in its course. On the threshold of the year 1934 stood a ghastly guest: political assassination. It was in the last days of December 1933 that the *Prime Minister of Rumania* succumbed to a volley of revolver shots from political fanatics at the railroad station in Sinaia. Unfortunately, the year 1934 continued in abundance what its bloody and threatening prelude heralded: Terrorist murder became its sovereign theme. On June 15, it struck down the Polish minister of the interior *Pieracki* in Warsaw, and culminated for Austria with the *dies nefastus*,¹ the 25th of July. On the site of his workaday activities, dedicated to nation and homeland, the heroic chancellor Dr. *Dollfuss* was treacherously cut down by dehumanized rebels. All of Europe lowered her sword at his bier in reverent mourning. Yet Austria stays the course set for it by the untimely deceased who has hallowed it with his blood.

The echo of the shots fired in Marseille that abruptly plucked the *king of Yugoslavia* and the French foreign minister *Barthou* from life still quavers threateningly across Europe. It is a moment of atonement indicating that, as far as one can judge and in the face of All Souls Day, the danger has been conjured up that a new worldwide holocaust might flare up at the fresh graveside of the two latest murder victims. The ghastly vision of Sarajevo pales, but the worry

This article, "Todesreigen 1934: Eine Rückschau zum Gedenktage der Toten," originally appeared in *Wiener Zeitung*, November 1, 1934, 3.

1. "Unholy day."—Trans.

concerning Europe, that Europe which two decades ago trod a path through the hell of the world war, lingers.

Death, that great herald of hosts, has sounded retreat this year for more than one leading figure in that struggle between peoples. The hoary Field Marshal *Hindenburg*, father of the fatherland in both good and bad days, ended his earthly pilgrimage on the 2nd of August. Worn out by fatigue, those eyes that had witnessed the brilliant rise and the dismal fall of the German empire were closed. The ramparts of the Tannenberg memorial enclose the mortal remains of a man who attained grandeur as commander-in-chief, but was perhaps even grander as a man of duty.

News of the death of the Colonel General *von Kluck*, who died a few weeks earlier at the patriarchal age of almost ninety years, was a reminder of the beginning of the world war, of the days in September 1914, when the German Army of the West neared the walls of Paris in an apparently unstoppable advance. The "miracle of the Marne" forced back his troops, who were almost within eyeshot of Paris.

The renowned defender of Fort Przemysl, Colonel General *Kusmanek*, also figures among the prominent dead of this year, as does the liberator of Bukovina, General *Fischer vom See*. With these two men and with the former minister of war, *Freiherr von Krobatin*, who died at the beginning of this year, Austria's best military tradition has faded.

The Japanese laid to rest a war hero of truly grand proportions and of now almost legendary renown, Admiral *Togo*, who had won decisive naval battles in the Russo-Japanese war in the Strait of Tsushima and at Port Arthur. Japan's entry into world history dates back to those days.

Raymond *Poincaré* was not a man to wear battle dress, and yet he was as steely and iron-hard as any warrior. The death of Prince Sixtus of Bourbon-Parma, a brother of Empress Zita, brought to mind the unsuccessful attempts at peace negotiations undertaken by Emperor Charles, who had died in exile on Madeira.

A tragic death befell one of Europe's crowned heads, *King Albert* of Belgium. A solo climbing expedition turned out fatefully for the mountain-climbing enthusiast. The king, who had conquered unnumbered peaks, met with death when he came to rest in a shattered heap after a fifty-meter fall in the rocky region of Namur.

Arts and letters also stand at new gravesides, some of which are all too early. On New Year's Day, *Jakob Wasserman* led what was to

be a dance of the shades. He died in Altaussee, amidst new projects, just barely over sixty years of age. He was followed two weeks later in Munich by Hermann *Bahr*. The tribute that the beaux arts had to render as their due to death is not exhausted with Professor Anton *Hanak*, with Richard *Kralik*, one of the most prominent historians of the civilization of Catholic Austria, with the teacher of Jan Kubelik, the renowned violinist, Ottokar *Sevcik*, with the composer Hans *Schrecker*, and the poet Theodor *Däubler*.

A magnificent woman, equally precious as artist and human being, and, more than anything, unforgettable and irreplaceable for us Viennese, was struck down by sudden death in the concert hall. The voice of Hansi *Niese*, on whom heaven bestowed the gift of making people laugh for hours at least and thereby enjoy happiness, has fallen silent. She is not any less likely to be forgotten than her congenial colleague Max *Pallenberg*, abducted by the god of death from the world of the breathing into Hades. Remembrance of the golden age of the people's opera was renewed by the death of the privy councilor Rainer *Simon*.

Death made a final balancing of accounts with an all-powerful business magnate: Rudolf *Sieghart*, who headed the Boden-Credit-Anstalt [Land Credit Bank] at the time it stood foursquare *aere perennius*.² . . . Sieghart died, one could nearly say, in exile, the friend and adviser of four prime ministers of Emperor Franz Joseph, namely of Gautsch, Koerber, Beck, and Bienert.

In conclusion, we must honor the memory of a lady, of Madame *Curie*, the discoverer of radium. Twice awarded the Nobel Prize, she fell victim, just as her famous husband did twenty years earlier, to the as-yet-unexplored long-term effects of this wondrous element from which the husband-and-wife team wrested so many secrets. Such a death is no death at all; it leads directly to immortality.

2. The German original misspells *aere* as *aera*; the quotation is from Horace, "monumentum aere perennius" ("more enduring than a graven monument").—Trans.



Race and State

The topic "Race and State" has extraordinarily complex ramifications—it ranges from questions of theoretical biology to the forms of myth-generating spirit, from questions involving social security to the theory of state forms. Today we shall excerpt from this range of topics a political-psychological question that investigates the internal and external conditions under which a *Volk* is psychically open to the adoption of the race idea as a political idea that serves as the state's foundational and formative idea. For purposes of our investigation, we will accept in advance the conclusions produced by research on race, both theoretical and historical, and especially the significance of race as a concrete factor determining political events. We thereby immediately address the question at hand in a narrower sense. Our intention is, first of all, to outline by way of summary the essence of the modern state and its relationship to the reality of race as it was viewed around the middle of the nineteenth century by the first theoreticians of race; next, we shall turn in the same brief and summary manner to the principal presuppositions of intellectual history that contributed to the rise of the race idea and that lent to it the significance it is enjoying presently, so as to address in a more detailed fashion the political-psychological question of the penetration of the race idea into the formation of the political community.

The modern, post-medieval state comes into being as an organizational automatization of the striving for power, as it is incorporated in the personalities of the great dynasts and, especially, in the rulers of the age of absolutism. The medieval integrity of the *sacrum*

This essay, "Rasse und Staat," originally appeared in *Psychologie des Gemeinschaftslebens*, ed. Otto Klemm (Jena: Gustav Fischer, 1935), 91–104.

imperium, constituted by a plethora of interdependent liege-and-vassal relationships under the dual supremacy of pope and emperor, becomes fragmented into the power spheres of Western national kingdoms and of territorial principalities in Central and Eastern Europe. In the process of the expansion of these power nuclei in proportion to the respective territory's extent, executive machineries of the bureaucratic and military variety are created whose function is to subdue the feudal power establishment, to secure dominance over the region in question, and to assert this dominance over against the external world. The power apparatus as defined by Max Weber develops as an independent entity that severs de facto all religious and blood bonds; and in parallel with this de facto severance, it also carries out a severance at the level of ideas based on the doctrine of the absolute status of the prince, the doctrine of *raison d'état*, and the doctrine of the state as a work of art. As far as concrete family relationships that have served since the era of the migration of nations and the consolidation of the Germanic conquest as the underpinnings of medieval history are concerned, this process, spanning several centuries, represents a dissolution of these relationships. This is due in part to the loss of power suffered by the feudal conqueror nobility, to the annihilation of this nobility in armed conflicts, to the rise of new ruling families, to a blending with the social strata pressing for co-optation, and, viewed more generally, to an ideational devaluation of these relationships in the face of a new power configuration of the state that became differentiated from the old bonds. In this situation, which received its final pungency in the destruction and removal from power of the aristocracy in the course of the French Revolution, the first theoreticians of race address the question of the relationship between race and state, bringing it into focus in accordance with their respective political biases. Two principal types of bias begin to crystallize: one reflecting aristocratic pessimism, and the other bourgeois pessimism; the former is represented by Gobineau, the latter by Klemm. Gobineau, a scion of Norman aristocratic stock, is horrified by the decline of aristocracy; he is keenly aware of the racial difference between the Germanic aristocracy of France and her Celtic populace; he sees the leveling caused by the revolution as another step in the process of decline of a great, talented race that had created and sustained cultures wherever the conquering drive had taken its bearers. In bold strokes he sketches a powerful vision that forebodes the dismal end of an equalized humanity devoid of

grandeur. Klemm, the German bourgeois, enthusiastically hails the same historical process. He views humanity as an individual writ large; its components complement one another; active and passive races are bound to mingle in a marriage of nations so as to integrate mankind and to enable its noblest cultural flowers to bloom. Hierarchy and aristocracy fall apart in plain view; and for this reason the present age carries within it the hope of a greater future. Theories of this kind are Janus-faced: One face looks retrospectively at the newly emerged state and the dissolution of the ancient ties that the state had brought about; the other face evaluates the achievement, looking forward under the new and newly empowered idea of racial bonding between men.

This new idea, the race idea, had already had its great past by 1850; its ascendancy until that point and in the second half of the nineteenth century unfolds within the general setting of a profound change in the existential mood of the West. The medieval world horizon is broken up spatially, in its temporal depth, in its knowledge concerning people and *man* in general, and in the ideal unity of mankind in Christ. Since the Renaissance, the voyages of discovery and exploration deliver, at an accelerated pace, new information about new lands, new human types, new moral codes, creeds, religions, and social institutions. Since the middle of the eighteenth century, the temporal horizon is similarly pushed back by a newly awakening historiography. New peoples are recognized as agents of political history; Asiatic cultural spheres appear on the horizon as independent historical entities. Following this dual expansion of the horizon of knowledge, we come to identify two different phases of the racial doctrine: The first culminates in Buffon's system, offering an overview of the corporeal diversity of mankind, producing a somatic classification by race. This overview differs from our contemporary state of knowledge only in its details, not in the compass of the total picture. The second phase, which reaches its first apex in Klemm, Gobineau, and Carus, introduces race as a historical substance, as a bearer of political action, and it produces the first draft of a world history grounded on race.

In the span of one hundred years between Buffon and Gobineau, the two-dimensional tableau of the human races develops into the historical drama in which they appear as important actors. This change presupposes the dissolution of the Christian image of man into two features that are of prime significance for us. First, the idea of

mankind as being one and determined to be redeemed by Christ, and thereby the sole subject of world history, is broken up into a diversity of historical subjects, into a plurality of human communities, of peoples that, as such, stand in an immediate relation to God. The individual human person is no longer unconditionally a member of humanity; instead, his or her status is mediated by particular communities that are interposed as independent substances of history between man and God. It is the function of this inward orientation to allow these specific communities to suppress God and to take His place. The individual human person's existence is not determined by his or her relationship to God but by his or her status as a member in relation to a particular community. Second, the Christian separation of the immortal soul from the mortal body is done away with in a prolonged stepwise process; it is successively replaced, first by the concept of organism, of body as a unified substance in material-psychic terms, and, second, by the concept of an earthly corporeal-psychic person *qua* human substance that is no longer divisible into spirit and body, but is both, constituting one unit. The idea of corporeal-spiritual community, which is the idea of the race, is only possible under the presumption of this alteration in the image of man and of mankind as a historical substance encompassing human beings as members of the same species.

Finally we gain a new, broader view of the possible ascendancy of the race idea when we assume that the new assessment of the corporeal community [*Leibgemeinschaft*] represents one aspect of an encompassing new evaluation of the entire vital sphere and of the instinctual foundations of a human being, and that this new evaluation of the entire vital sphere must in turn be viewed as an aspect of a more sweeping change in the existential mood. New insights into the significance of the irrational element in human existence are gained across the board. The shock experienced by the Christian cosmos has its psychic concomitant in a more acute sensitivity to the sources of the atypical, the abnormal, the irrational, the disorderly. In the sphere of ethics, we can clearly detect the incipient dissolution of the firm system of norms marked by Kant's categorical imperative in which the will to law comes face to face in a peculiar way with the wide-awake feeling for the subjective aspect of legislation—in a crowded succession of transitions, the dissolution of the rational and a new postulate of irrational life as the source of law proceeds hereupon from Fichte, Nietzsche, and Bergson, to Sim-

mel and Max Weber—surrounding all speculations concerning the moral phenomenon that revolve around concepts such as existence, attitude, concrete situation, responsibility, moment [*Augenblick*], and decision.

After this widest opening of the horizon, in which we can here and now set the ascendancy of the race idea, we shall address the specific question of how the race idea penetrates into the state.

The modern state that gained independence as a power formation has to a high degree become detached from blood ties. The question we must now put to ourselves is how, in the new post-Christian situation that favors the awakening of a new consciousness of blood relationships, the race idea exerts influence on the genesis of a state. This is a core question touching on political psychology that has not as yet been given a reasonably satisfactory answer. Nor can it be given, as long as it remains in suspension and unclassified, like an unhewn block; it needs to be investigated in its principal ramifications, which will produce an integrated picture once all of its ancillary problems are clearly highlighted. We must above all guard against conceiving of the race idea, its ascendancy, and its relevance to the state as a problem that has bearing on the organization of the state. We must likewise avoid the notion that in the process of the phasing out of the organizational forms of political liberalism and of the new state order of the totalitarian and authoritarian variety, an essentially unavoidable transition from a racially indifferent state to a racially conscious one somehow takes place. We have before our eyes the compelling examples of the Russian and Italian dictatorships, yet they are indifferent to the race idea; furthermore we see before us a number of East and Southeast European dictatorships as well as fascist movements in West European states that consider the question of race to be entirely subordinate, or not an issue at all. The world of political forms has a life all of its own; the traditional state forms have become unable to fulfil their purpose, because the conditions prevailing at the time of their creation have undergone a change. The institution of Parliament rests upon undemocratic premises; its function is linked to the control of the state or at least of the Parliament itself by a more or less closed, relatively small *governing class* as in the classical case of English parliamentarism; the institution itself is threatened when in the process of political liberalization and activation new strata of the population continually and actively enter the political process. In the era of the liberal mass

state, Parliament is still relatively capable of carrying out its function where one or several of the following conditions prevails: (1) where the parliamentary style has been firmly established by a *governing class* in a pre-liberal period and is, consequently, capable of assimilating the "new men"; (2) where, as in England, dictatorial forms that endow the party leader with a de facto thoroughgoing independence from Parliament are created on the floor of the Parliament itself; (3) where nineteenth-century industrial development and the concomitant monstrous increase in population have been kept within relatively narrow bounds, as in the case of France. Where these conditions did not arise, as in Italy, which had no parliamentary tradition or a *governing class*, or as in our case [i.e., Austria], where neither one of these has existed, and where, in addition, we had to deal with an enormous industrial population—workers and employees—as politically "new men," Parliament failed as an institution. The crisis of parliamentarianism arises from the conditions prevailing in a mass state that lacks a tradition of political forms; the new formation of a *classe dirigente*, of an estate that sustains the state by means of a movement of the fascist and national-socialist variety, becomes necessary. Where the thoroughly undemocratic form of parliament is newly subjected to the circumstances of a politically activated mass state, it fails. But all these observations address questions of the creation and sustaining of political forms in their relationship to the realities of power of a *classe dirigente* and of an activated people [*Volk*] that has been recast into a mass by the Industrial Revolution. These are political-technical questions. No path leads from them to the race idea, and the race idea contributes nothing to their solution.

The organizational pattern of a state is a secondary phenomenon in relation to the phenomenal field of fundamental political powers. It is in the field of fundamental powers itself that the race idea originates at all levels by activating human consciousness of the significance of race. The path toward the construction of the state under the aegis of this idea passes through the consciousness of the race idea in a people and over the elevation of the former to the realm of political volition. We now can formulate our question more precisely: How must the self-consciousness of a people and especially its political consciousness be construed so that the race idea may penetrate into the realm of state formation?

The first approach to answering our question lies in the examination of two essential moments in the formation of ethnic con-

sciousness: (1) in the demo-political situation in which a people finds itself over against other races; (2) in the point in time that ethnic consciousness and especially political consciousness is activated.

It should be clearly understood without need for further evidence that racial consciousness arises more readily where a people must demo-politically come to terms with peoples and segments of peoples that clearly differ racially from itself. A typical locus of the awakening and a clear-cut formation of racial consciousness is the colony in which a European settlement finds itself clearly contrasted to other racially distinct peoples. A typical case of this kind, for example, is the American race problem. The immigrants, in the first centuries predominantly of North and North-West European descent, conceived of their ethnic self in contrast to the racially clearly different Indians and, in the course of subsequent American history, in contrast to the Negroes, the Mexicans, the Chinese, and the Japanese. Finally, since 1880, a clear racial consciousness in opposition to immigration from Southern and Eastern Europe begins to assert itself. In New Haven, when I inquired about the ethnic makeup of the city, I was told by a scion of an old New England family that, of the 150,000 inhabitants, some 40,000 are white, the rest are Italians, Jews, other Southern and Eastern Europeans, and Negroes. Similar situations may be found in most European colonies. They can even be found in Europe proper, where, through historical circumstances, a people of Mongolian origin finds itself split off among peoples of European racial descent, as in the case of the Magyars.

But it is precisely these instances of race consciousness becoming intensified by glaring and gross racial differences, which are, as a rule, further escalated by rather significant differences in the development of language, culture, and civilization, that demonstrate that the root of the race idea as a world view is *not* to be found here. In the American case, for example, we can show very well that racial consciousness has its effects entirely in the sphere of concrete social differentiation without reaching the intensity of a world-view principle of national political activation and of a fundamental idea of state formation. Lines of social demarcation are not drawn according to a race theory of biological provenance, or according to a metaphysics of race. Instead they are drawn in order to close a social orbit that is essentially determined by cultural and civilizational contents that are not based on a race idea. The closing of connubial bonds by historically older families not only excludes

Negroes, Indians, and Asians, but also Europeans of the same race. An American journal once offered a prize for the best answer to the question "What is Americanism?" First prize went to the contributor whose answer was as follows: "Americanism is the sum total of the feelings I would experience were I to hear that my daughter wants to marry a foreigner." This shows the closing of the connubial bond to be based on motives that in practice *also* affect non-European races, but that cannot in fact be designated as racial motives. The attempt, by representatives of the race idea like Stoddard and Grant, to activate the [American] people, was in practice unsuccessful, as were similarly inspired attempts in France, Italy, and England.

The second group of moments seems to me to have a much greater significance for the development of a psychological disposition toward the acceptance of the race idea. These moments focus on the historical point in time of the activation of a people's self-consciousness, especially of political self-consciousness. From this point of view, it seems useful to identify two types of peoples who, with respect to their political activation, could be classified as a *nation-state* [*Staatsnation*] and an *imperial people* [*Reichsvolk*].

The nation-state type would be determined by the following characteristics: (1) an early destruction of the feudal political power field by a centralized state power; (2) an assertive early disengagement of the power sphere from the medieval imperial union; the idea of the relevance of the empire is redirected early toward an imperial claim rivaling that of the empire; (3) a relatively greater historical depth and hence closure at the level of the idea [*ideelle Geschlossenheit*] of a unified political power field; (4) an early delimitation of the state power's claim to validity in the personal sphere in connection with a delimitation of its spatial claim to validity; (5) the growth of an awakening nation into a state delineated in this way by the depth of history and by spatial and personal claims to validity; (6) the activation of a people on its way to nationhood proceeds under the influence of ideas [*Ideengehalte*] that are rooted at the latest in the eighteenth century; consequently these ideas still pattern the political man essentially under the aegis of the category of person, rather than the category of member of a secular collective.

The type of an imperial people would then be determined accordingly by the following features: (1) in terms of power politics, the areas occupied by the people [*Volksraeume*] are divided into districts of feudal dominion and later on into territorial states within the

framework of the imperial union; (2) the imperial idea is *explicitly* preserved in the large territorial power constructs (this accounts for the bipolar nature of the imperial idea, as for instance Prussia-Austria); (3) a relatively shallow historical depth in the imperial area remains until the most recent past without firmly established boundaries; (4) demo-politically unfavorable settlement conditions exist; the East is first colonized in the thirteenth century; sporadic settlement in the open eastern regions; (5) no growth of ethnic consciousness occurs in the power sphere, but a relatively apolitical awakening of peoples since the Middle Ages; (6) political activation occurs under the influence of the ideas of the eighteenth and nineteenth century, hence under the aegis of secular ideas of community that make the emphasis on the individual secondary to the concept of man's character as a member of a secular collective.

The types described are to be understood as ideal; i.e., even if this or that feature may be absent when individually applied, it does not constitute a refutation of the validity of the type. In concrete cases, both types may overlap to the point that the elements of one type might coalesce with the elements of the other, with the political-psychological result that the characteristics work against one another. The national-state type finds its maximal applicability in the case of France; the imperial-people type finds it par excellence [*katexochen*] in the German people. Based on these points of reference and on the concomitant series of cases distinguished by a more or less high degree of applicability, the elaboration of these types acquires relevance for the political psychology of the European sphere.

Based on the elaboration of these types, we may postulate a thesis that is of crucial importance for our question: While national states in principle show little psychological inclination to accept the race idea, imperial peoples in principle show a much stronger inclination to do so. This thesis is a direct result of the types postulated above. With respect to the contents of their activation, the national states are still rooted in the Christian sphere and the possibilities of ideas that it yields. These ideas are the following: personal freedom of the individual; the power construct of the state; the country and its inhabitants. All of these are subsumed under the community idea of a spiritual and corporeal unity in Christ. These contents are not lacking in the imperial people, but they are decisively overlaid by the new ideas of secular communities that have been exercising

an activating influence since the eighteenth century: the people, class, and racial community as historically immediate substances. The political consciousness of being active experienced by nation-states is established [*vorbesetzt*] by older ideational contents; the newer ones find no unoccupied territory in this consciousness where they could gain a foothold. On the other hand, as in the case of the imperial people, where national consciousness in fact already exists but political activation has not been as yet definitely implemented under the aegis of the idea of the freedom of the person, having instead taken political shape in revolutions, there is in principle room for any idea that can be embraced by the imperial people as the first and foremost and, at the moment, as the most powerful one. We shall presently deal in detail with the consequences for the German people of this open predisposition and especially with the acceptability of the complex of biological ideas as it has developed in the past fifty years. But let us first turn, for the sake of a juxtaposition, to the reaction of a nation-state consciousness to the race idea, as given in the ideal case of Mussolini's *Dottrina del Fascismo*.¹

In Mussolini's conception, the state is a superhuman personality, a unity of consciousness and will, and this state is simultaneously a nation. Consequently, the concept of people is not postulated as an absolute potency of history, which brings forth its political organization, its state; instead, "la nazione creata dallo Stato, che dà al popolo, consapevole della propria unità morale, una volontà, e quindi un'effettiva esistenza" (the nation is created by the state, which confers on the people, being conscious of its own moral unity, a will and hence an effective existence). Entirely in the spirit of the protofascist Renan, Mussolini assumes that the spirit of the nation gains its full self-consciousness perhaps only in a few individuals, perhaps only in one, and that these few, this one, are to activate the nation among the many, in order to integrate everyone into a spiritual union, into a united will. And now the crucial sentence: "Non razza, né regione geograficamente individuata, ma schiatta storicamente perpetuantesi, moltitudine unificata da un'idea, che é volontà di

1. *The Doctrine of Facism*. An English translation may be found in *Readings on Fascism and National Socialism* (Chicago: Swallow Press, 1952), 7-24. Mussolini first published this essay as an article in *Popolo d'Italia* on August 4, 1932. It was subsequently published in 1933 as an entry ("Dottrina") under the heading "Fascismo" in the *Enciclopedia Italiana*.—Ed.

esistenza e di potenza: coscienza di sé, personalità" (not a people individuated by race and space [literally "geographic region"] but a breed that is immortalized in history, a multiplicity united by an idea that is will to existence and power: a self-conscious personality). The state is *personalità* (personality), it is *forza, ma spirituale* (power, but a spiritual one).

In glaring contrast to this doctrine of the national state, which postulates the creation of *Volk* and nation by the state, stands the German idea of the people, as founded by Herder and the Romantic doctrine of the spirit of the *Volk*. *Volk* is a metaphysical substance of history whose origins cannot be traced back any further, in Max Hildebert Boehm's terms, a "self-constituted" [*eigenständig*] *Volk*. I shall list other definitions in lieu of further explanations: Boehm: "the nation is at its core a state-Volk in the process of being or becoming to the extent that it manifests a will to being, in respect to an exclusively individual 'Volkness,' and a bearer of political and historical actions, which exchanges the attitude of mere vassalage for the self-consciousness of a citizen." Max Wundt: *Volk* "is a naturally given unity, whose conditions are dictated by nature." "Volk is the creating agent, state that which is created." Edgar J. Jung: "a Volk is an individuation (a specific, individually unique phenomenon) of divine spirit and hence an organic whole that comes into being and perishes." Stapel: "A Volk is a living unity of humans that spans centuries, who share a common psychic type, who procreate their kind corporeally and spiritually from generation to generation, and who develop from within themselves a common patrimony of cultural accomplishments and ideals." Johann von Leers: "the Volk as the foundation of the state, recognized in its uniqueness, in its distinct racial soul, is a totally new foundation of the state; this concept is simultaneously an overcoming of the idea of the Western European national state, constructed at the cost of thousandfold torments." Speaking of Hitler's conception of the state, Leers says: "for him the state represents a protective garment, an organizational form, a breastplate, a political summary of the Volk."

In the expressions of the German idea of a people [*Volksidee*], the idea of the primacy of the people in the power triangle state-nation-people resonates throughout. In the purview of ideas of the national state there is certainly no lack of knowledge concerning people, spirit of the people, or character of the people, but the coalescence

of the people into the unity of a national state essentially occurs in an ideational climate dating prior to 1800 through the immediate relationship of individual persons to the state, as though through a short circuit that arcs past the unity of the people. Yet the stirrings of a unique consciousness of peoplehood, which is indifferent to Christianity, shows at the same time a psychological disposition to allow the new collectivist ideas of the nineteenth century to capture it. This does not mean that there always and in each case exists in the realm of the type of the imperial people, which encompasses all of East, Central, and Southeast Europe, a willingness to adopt *every* collectivist idea, especially the race idea. We in fact can observe empirically that to this day the race idea as a deep-seated phenomenon is confined to the German people. Other psychic preconditions, which we will now address in our concluding observations, must account for this.

German intellectual history of the nineteenth century is decisively characterized by a breach that occurred in 1830: Until that date an idealist philosophy of the spirit prospered; after 1830, an incursion of materialism and realism occurred. For the transformation of the idea of the state, this breach means a turning away from a view of the state as a spiritual realm and the adoption of a view that concentrates on concrete factors in Scheler's sense: the economy, power, blood. The idea of the state propounded by Classicism and Early Romanticism was dominated, not by a concentration on the then-nonexistent reality of German state power, but by dreams of spiritual realms that hovered either in the biblical realm or in the realm of antiquity. Kant and Fichte constructed an empire as a perfect state order in the infinitely remote future in which mankind would be redeemed from the evil of sensuality. It was an ideal realm that for Fichte, a Johannine mystic, merges with the heavenly realm following the end of the world and the expiration of temporality—this is the dream whose final afterglow still suffuses the redemptive idea of a stateless society in *The Communist Manifesto*. The dreams of Hölderlin, Heine, and Schiller are derived from antiquity. Heine sketches an image of the ideal state, the realm of the blessed islands in the Aegean Sea; the same south-sea charm lives on in Schiller's aesthetic state, as unfolded in his letters *On the Aesthetic Education of Man*. From Hölderlin's, Schiller's, Heine's, and Goethe's idea of the smallest group, the select circle that would serve as the core of a new empire, the dream proceeds to George's New Empire and the

otherwise difficult to understand statist character of this notion of a development of circles and the statesmanlike cast of the artist's nature.

The discovery of the vital sphere breaks into the dreams of a spiritual state with an unprecedented force especially in the German territories, because the consciousness of this discovery reveals by way of *contrast* something entirely new and as yet unseen. Nineteenth-century thinkers seized enthusiastically upon its newly recognized importance for the concrete structure of people and state; in their joy of discovery they tend to view the vital sphere as the exclusively determining factor of communal life; this excessive enthusiasm casts a shadow over the essential aspects of the world of psychic structures. The activation of the Western national state is implemented with an emphasis on the national state center, which has been involved for centuries in the realities of economic and power struggles. Consequently, this kind of reality is not new to them. For the German consciousness of peoplehood [*Volksbewusstsein*], this reality is brought to full light only in the nineteenth century. We note the growth of three successive systems of ideas, which, attaching themselves to the three concrete factors of economy, power, and blood, exercise a more or less relevant impact on the masses with a more or less enduring life span, each in accordance with its respective suitability to the activation of the masses. To the concrete factor of economy we see attached a socialist system marked by class struggle; its impact on the masses is powerful, but it tends to bring about a crisis, as it clashes with the idea of the unity of people and nation. To the concrete factor of power, we see attached the ideas of Lassalle and Engels, of Nietzsche and Treitschke, and, finally, the peculiarly German idea of *Realpolitik*; it is not immediately suitable for motivating the masses, since employing its principles, especially in foreign policy, is of minor concern to them. *Realpolitik* nevertheless has an indirect influence that must not be underestimated with respect to the image that the broad mass of the population is apt to form of the state and the legitimate principles of its actions motivated purely by power interests. This holds especially true for the postwar period during which the principles of interstate ethics and legal obligation found application, to the detriment of the German Reich. Finally, linked to the concrete factor of blood, there are the systems of race theory, whose powerful impact on the masses is laid before our very eyes.

Summing up, we may state: Three layers of preconditions were fulfilled so that in the political formation of the German *Volk* the race idea could penetrate all the way into the organization of the state.

(1) The common European preconditions concerning knowledge of the plurality of the human races; the shattering of the Christian world view; the emergence of the concept of particularistic human communities as the ultimate metaphysical units of history, an idea that was already in existence beyond the Christian sphere.

(2) The narrower group of preconditions that we have delimited by the delineation of the nation-state and imperial-people types.

(3) The particular preconditions that typify German intellectual history in the nineteenth century, the contrasting effect of concrete factors over against the intellectual ideas of empire and the particularly strong emphasis on specific ideational contents in the nineteenth- and twentieth-century activation of the people, produced by this contrasting effect.

It was under these historical preconditions that the German nation entered its period of national revolution; the fact that in this revolution the vital ideas alive in the consciousness of shared peoplehood acted in unison with their national equivalents in the process of the intellectual and volitional unification of the people and that these ideas have been propelled all the way into the formation of the state organization is to be ascribed—taking all of these preconditions into consideration—to the crucial influence of the national-socialist movement and of its Führer.



The Administrative Regime

Advantages and Disadvantages

A General Report by M. Adolf Merkl, Professor at
the University of Vienna, and Mr. Eric Voegelin,
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I

The concept of an administrative apparatus in the continental European sense refers to a phenomenon in the life of the state that is highly complex, and which cannot, therefore, be reduced to a formula by way of a relatively simple typification that could make possible a simple judgment concerning the advantages and disadvantages of this institution.

Difficulties already arise with the historical development of its institutional core; this development will have determined, in accordance with its processes that vary from case to case, the administrative apparatus now in place. Furthermore, this development must not be ignored, if one is to understand the current climate of public opinion and of science with regard to the administrative apparatus. The French *régime administratif* is deemed the prototype of the European administrative apparatus, owing to Dicey holding it up as an antithesis to the *rule of law*. The centralist structure

This essay by Eric Voegelin and Adolf Merkl, "Le régime administratif: Avantages et inconvénients. Rapport général de M. Adolf Merkl, Professeur à l'Université, et M. Erich Voegelin, Privatdozent à l'Université de Vienne," originally appeared in *Actorum Academiae Universalis Jurisprudentiae Comparativae/Mémoires de l'Académie Internationale de Droit Comparé*, ed. Elemer Balogh (Paris: Sirey, 1935), vol. 2, pt. 3, pp. 126-49.

of the French administrative establishment goes back to the *ancien régime*; its beginnings can be traced—unless one prefers to go back even further in history—to the era of Richelieu's centralization and to the final stages of the removal of the aristocracy from administrative posts and the establishment of a bureaucracy by the young Louis XIV. It owes its present transparent rational form to the French Revolution, and it achieved its zenith in Napoleon's legislation promulgated in *Pluviôse* of the year VIII.¹ This core of the administrative system goes back historically to the gradual dissolution the feudal apparatus of centralized administration, to the dispossession of the feudal nobility of its financial, military, judicial, and police functions and the parallel strengthening of the centralized power of the sovereign with its own staff of officials. Around the core of this elaboration of an instrument of a centralized state control, taking place during the struggle of a declining feudal state with its ascendant absolutist successor, clusters the idea concerning the separation of powers as formulated by Montesquieu. This idea itself *qua* idea has been operative throughout Europe and has likewise decisively influenced American jurisprudence. Yet it was in France, because of a unique political situation, that the separation of powers took effect in a way almost entirely unparalleled in other states. Attempts at reform, launched in the pre-revolutionary period by the enlightened-absolutist administrators, especially the reforms implemented by Turgot, were in effect foiled by the conservative resistance of the highest judicial authorities, the *parlements*,² which enjoyed a great measure of independence; unlike the familiar guarantees of judicial independence in our day, the *parlements* owed their independence to the salability of the judgeships. Inasmuch as the crown, always plagued by financial straits, lacked the means to repurchase these judicial posts, the judges were *de facto* unremovable and took full advantage of this situation. The administrative legislation of 1790 and of Year III,³ which laid the foundations for the separation of the courts of justice from the administrative apparatus, owes its rigorous formulation exclusively to the revolutionary rage over the element of delay in

1. *Pluviôse* is the fifth month of the French Republican calendar, corresponding to January 20–February 18 of the Gregorian calendar. In the year VIII of the Republican calendar, this month occurred in the year 1800 of our standard dating.—Ed. and Trans.

2. The *parlements* were the principal French courts of justice prior to 1789.—Trans.

3. 1794–1795 of our standard dating.—Ed.

the judicial process; only this approach can explain the principle, valid to this day, that bars the courts "de connaître des actes de l'administration" (from having knowledge of administrative legal actions) and strictly prohibiting them "de troubler" (to meddle in) administrative activities.

The preferential treatment of the administrative apparatus is in this case an expression of the revolutionary will taking action against the conservative institution of the *ancien régime*. Corresponding to this tendency to strengthen the administrative apparatus is the wish, striving in the opposite direction, to create an authoritarian institution intended to preserve tradition, shielding it from the radical democratism and liberalism of the legislative branch. The administrative apparatus is set up as the most strict and rigid, all-embracing, and independent institution possible, on the one hand owing to a sentiment against the *cours souveraines* (sovereign courts), on the other hand from an idea to preserve intact a ready-to-strike instrument of all-embracing power for the national state that would guard against the specifically French dangers of doctrinaire radicalism. Hauriou defined law as a legal tenet in the service of freedom, and administrative rules as legal tenets in the service of the centralization and authority of the government. The tradition and unity of state actions, as embodied in the administrative apparatus, is to be protected against the possible excesses of the democratic organs.

How impossible it is to reduce the complicated structure of the phenomenon of administration to a common conceptual denominator, be it that of the historical process, of the elaboration of institutions, of the political situation, or of the idea, becomes evident in the fact that the same theory of the separation of powers tends to produce vastly different institutional constructs in different historical and political settings. The fear of radical experiments by the legislative branch, which in France helped to strengthen the position of the administrative establishment, effected in the United States a strengthening of the judiciary in its function as an institution meant to preserve the tradition of the idea of law. Standing in the path of the usurpation of powers, the Supreme Court of the United States has developed into a conservative institution that retards legislative efforts pursuing social reform, whose behavior in paralyzing progressive administrative activities gives it some resemblance to the behavior of the *parlements* of the *ancien régime*.

This example brings into focus the ability of the constituent elements of a state function to move against one another. The function of an authoritarian institution, designed to preserve tradition, may be carried out at one time by the administrative apparatus and at another time by the judiciary. The judiciary may, thanks to the independence of the judges, act at one time as guarantor of liberal demands against absolutism and at another time as the representative of conservative ideas, as it did under the *ancien régime*, or as it does today in the United States and in the German Reich of the postwar period.

The French administrative apparatus arose as an instrument of a royal, centralized power that was locked in a struggle with the centrifugal powers of the feudal administrative establishment. In contrast, the administrative apparatus in the German territories is the result of a struggle of the individual state sovereign powers seeking independence from the imperial federation and finally breaking away from it. The powerful administrative apparatus of the individual German states, which was independent of the control of the regular courts and also free from the supervision of administrative courts well into the second half of the nineteenth century, arose in the wake of the federation's fragmentation. In this process the administrative apparatus of the sovereign German lands freed itself from the control of the supreme court of the Holy Roman Empire, without first becoming subordinate to judicial control within the individual territories. In the period between 1495—i.e., the foundation of the imperial supreme court—to the dissolution of the empire in 1806, the right to redress before the supreme court exercised by the subjects against the bureaucracy of the individual state sovereigns brought about a judicial regulation of the territorial administrative apparatuses that had a concrete affinity with the English rule of law, sharing common roots with it in regard to its historical provenance. This affinity is evident, even though in practice this regulation became gradually more difficult to assert against the great sovereigns [of the German lands] and could offer effective legal protection only in conflicts involving the smallest territories. In accordance with one's preferences, one may interpret the intrastate relationship between the judiciary and the administrative establishment during this time span as the independence of the latter or as a circumstance of judicial regulation, since the superior courts and higher administrative offices were organized in the form of colleges and hence were typically

merged into one. The administrative office was simultaneously a court of law [*Gerichtsbehörde*]; the court of law was not independent. We must, however, avoid seeing the harassment of the subjects by the administrative activities of these so-called electoral police states with too horrified a liberal imagination, since the administrative agendas of the period in question were quite trifling in comparison with the scope of those in our day. The dissolution of the empire set off an intraterritorial process of separation of the judiciary and the administrative apparatuses. Legal jurisdiction [*die Gerichtsbarkeit*] is organized independently; the competence of the courts is restricted to civil and criminal cases; the introduction of constitutionalism brings judicial independence in its wake, the trial proceedings are improved, etc. This process is matched by a considerable loss of the administrative establishment's earlier judicial competence as the individual states phase out the superior offices organized as colleges, replacing them with a system of bureaucratic ministries; at the same time the administrative apparatus is subordinated to a stricter centralized leadership. The contrast between the first-rate performance of the regular courts and the backwardness of administrative proceedings becomes ever sharper in the constitutional era. This leads to the well-known discussion (Bähr, Gneist) concerning the necessity and form of judicial control of the administrative apparatus, which ultimately results in the creation of administrative courts in the German states (Prussia in 1871, Austria in 1875). Administrative jurisdiction [*Verwaltungsgerichtsbarkeit*] is either built into the administrative system as a series of tribunals, as in the case of the German states of the empire, or established as a court of the first and last resort, placed above the administrative apparatus. This arrangement allows complaints to reach the administrative court only after a series of administrative recourses has been exhausted. This system was used in the Austrian empire and continues in force in the successor states, i.e., in the Austrian and Czechoslovak republics.

The types of centralized administrative establishments that crystallized in France and Germany out of a specific political struggle, ultimately connected with the reshaping of the structure of the Carolingian empire, determine the principal continental types; the remaining types stand in contrast to the former, both geographically and concretely, as merely peripheral phenomena. Nevertheless, states on the periphery of the Carolingian empire have, especially in

Scandinavia, made noteworthy strides in individual developments in generating their respective administrative establishments.⁴

The nature of a derivative type of administrative apparatus on the Continent in earlier times is most typically represented by the development that took place in the Netherlands. The federation of the Dutch states, built essentially on the principle of self-administration, becomes centralized in response to the influence of French ideas and power politics. This occurs first in the Batavian Republic of 1798; later, following various interludes, this trend continues as a result of Louis Napoleon's legislation of 1807, imposed on the departmental and communal administration, which abolished entirely the self-administration of the provinces. The later constitutions of 1814 and 1815 do again provide for provincial statutes authorized by the king; "still, the administrative practices of the Restoration era were so impregnated with the French spirit of centralization that these determinations were interpreted in a manner that would guarantee the highest degree of uniformity, so that all of these Provincial Statutes are almost word-for-word identical." Prof. F. J. A. Huart, from whose report I excerpted this sentence, emphasizes furthermore: "Even though a Supreme Court was created in 1802 and a general revenue system introduced in 1805, Louis Napoleon's government (1806), which subscribed to the French concept of administration, and the ensuing 'Foreign Domination' (1810) were required in order totally to wipe out the traditional *Kantönligeist*⁵ and to transform the idea of state unity from a theoretical postulate into an idea that was effective in practice and to which the entire administrative apparatus was subordinated."

A later example of the derivative type is the Italian organization of the administrative apparatus and of administrative jurisdiction [*Verwaltungsgerichtsbarkeit*]. It begins with an imitation of the French system of prefectures and the Council of State; in 1865 it phases in a system that is in close accord with German thoughts concerning the state judiciary of that period, as the competence for legal protection in administrative affairs has been transferred to standing courts. Finally, in 1890, the Italians readopt a system akin to the French that deals with all litigation except for cases that have been assigned, either individually by positive laws or in general by the law of 1865

4. For the typology of the European state sphere, cf. Otto Hinze's works.

5. A Swiss dialect expression for "narrow particularism" (literally, "canton spirit").—Trans. and Ed.

(violations of the rights of citizens or of individual political rights), to regular courts.

II

It is necessary to keep our attention focused on the historical unfolding of the continental phenomenon of the administrative establishment, viewing it through the prism of its own conditions and situations, in order to gauge the importance that is given to the much-discussed contrast between the [French] *régime administratif* and the rule of law, and, even more so, the importance that is not its due. The substance of this contrast appears to me to lie, if one may judge by the excellent reports dealing with special topics [presented at this symposium], less in the technical advantages and disadvantages of this or that type, than in the historical and political sentiment that strongly tinges the assessment of judicial forms and their functional value (this is particularly true in the English reports, although it is not reflected at all in the reports dealing with Canada and the United States). In order to remove this aura of sentiment, I will, first of all, lay bare in three points the institutional core to which the discussion of this contrast continually refers; these points are:

- (1) the greater or smaller scope of administrative activities,
- (2) judicial oversight of the administrative apparatus—exercised through its own administrative courts or through the regular courts,
- (3) the liability of the state and of its organs.

Let us now compare this core question with the formulation that Sir Leslie Scott offers in his report on the Rule of Law. He lists four principles as relevant: (1) that the oversight given to the regular courts should be preserved for cases of an alleged "usurpation or excess of a Minister in the use of his powers either legislative or judicial"; (2) that this oversight should be demanded as an authority of appeal concerning legal errors over against administrative decisions; (3) equality of all under the law; (4) that the decisions must be founded on "legal principles" and not on "ministerial expediency." Every expert knows that these requirements, the fulfillment of which is regarded as the signal accomplishment of the rule of law, are fulfilled in precisely the same manner, if not better, by the continental organization of the administrative apparatus and its judicial oversight. The contrast is justified, not by the effectiveness of the institutions, but on the strength of the underlying political idea. Through the rebuff

of "usurpation," the fear of ministerial "excesses," the demand for equality before the law, and the aversion to "ministerial expediency," a deep mistrust caused by past administrative abuses is dimly visible, including those of the absolutism of the Stuart reign, the *ancien régime*, and the German police state; moral indignation with the abominable treatment of Voltaire by the French administrative and judicial establishment of his time, which seems to have been the principal ingredient of Dicey's negative assessment of the *régime administratif*, resonates throughout these formulations. They also voice the fundamentally negative attitude of classical liberalism toward state activities in general. The advocacy of the Rule of Law is not so much due to a defense of a specific institution as it is inspired by the sentiment that underlies these institutions; at the same time I cannot fail expressly to stress my respect for the venerable character of this sentiment.

For the reasons stated above, the peculiarly English high esteem for jurisdiction could not have come into being in the development of the administrative apparatus on the European continent. The English version of the *régime administratif* of the Tudor and Stuart periods, which culminated with the Star Chamber, was abolished in the seventeenth century. As a result, an administration of justice carried out exclusively by the regular courts followed; this process received a powerful boost from the considerable shrinking of administrative functions in the post-mercantilist era. During the Manchester period, the English administrative apparatus arrived at a minimum sphere of activity that is without parallel among the continental states, and it only grew very slowly under the demands of industrialism. One must not forget the support that the dominant position of the courts received because of the scanty number of tasks assigned to them in contrast to the administration. If contrasting the early judicial control of this apparatus in England and the advantages produced thereby with the by-no-means flawless judicial control of the administrative establishment on the European continent during the first two-thirds or three-fourths of the nineteenth century is justified, it must also be strongly emphasized that this temporary advantage was achieved at the expense of a shrinking administrative activity, the advantages and disadvantages of which for the English nation can be assessed only in political terms; such assessments have not always come out in favor of a system that restricts the administrative apparatus.

III

After having isolated and elucidated the history and the sentiments rooted in it, the positive judicial situation can now be examined on the merits of its own content.

Monsieur Laferrière presents his report on "Le Régime administratif français" [The French Administrative Apparatus] in the form of a defense against the theses of Dicey. In accordance with the thrust of the attacks he is countering, he attends less to the question of the scope and latitude of the administrative apparatus than to the protection of the individual's rights in his relations with this apparatus. The characteristic institution that was the target of Dicey's disapprobation was the administrative judiciary with its culminating point represented by the *Conseil d'État*. The grounds for misgivings concerning this tribunal that may have existed in the past have since disappeared. Granted that it is not organized formally as an independent court and that its members may be removed from their posts, in practice this leftover from the days of its subordination to the administrative apparatus, which can be explained by the history of the *Conseil's* genesis, has no influence on the independence of the court. One may say that review of the administrative apparatus at the topmost level is exercised by an independent special court. The possible misgivings concerning the activities of this tribunal stem rather from judicial deficiencies of a technical nature in the delimitation of its competence. The general basis of competence is the revolutionary legislation that prohibits regular courts from interfering with the activities of administrative entities and from rendering judgments concerning administrative regulations. The concept of administrative regulation, however, is not delineated by law but is the subject matter of an ongoing definitional process generated by the decision-making function of the *Conseil* itself; in cases of disputed competence, decisions are made by the tribunal where the conflict has arisen. Under certain circumstances, this uncertainty of delimitation of competence leads to trials that drag on for years, which, in cases of unusually bad luck, result in a conflict over competence and in a practical denial of justice for the party involved. These disadvantages, resulting from a strict separation of the judiciary from the administrative apparatus, can be removed by appropriate statutory measures; in fact, on December 15, 1931, the senate passed a bill that orders the following: "peuvent être

déférées au tribunal des conflits, lorsqu'elles présentent contrariété conduisant à un déni de justice, les décisions définitives rendues par les tribunaux administratifs et les tribunaux judiciaires dans les instances introduites devant les deux ordres de juridiction pour les litiges portant sur le même objet" (in instances when lawsuits that have bearing on the same matter are brought before the two types of jurisdiction and the definitive decisions passed by the administrative as well as by the judicial tribunals present a contradiction resulting in a denial of justice, these may be referred to the tribunal of conflicts).

In spite of these deficiencies, the *Conseil d'État* is a tribunal much sought after, and its growing popularity made repeated reforms of its internal organization in rapid intervals necessary. These reforms are intended to deal with the mounting number of cases brought before it. Access to the *Conseil* is unusually easy, and the proceedings are inexpensive. Monsieur Jèze wrote in 1911: "Undoubtedly there is no country where a person who has suffered damage as a result of an administrative legal action may turn to a supreme administrative court without paying a sum exceeding 60 centimes." The *Conseil* owes its popularity to an ever-broadening recognition of its advantages. It is not merely a court, but an adviser to the government; indeed, on occasion it has also been charged with the preparation of legislation (e.g., a draft for the organization of the administration in Alsace-Lorraine); this close tie with the administration does not work to the detriment of the parties in any way; on the contrary, the *Conseil*, thanks to its thorough knowledge of the administration and of its genuine needs, can confront it on a much more self-assured and freer basis than the regular courts. The courts do everything possible to avoid either a well-founded or groundless criticism that, because of their civilian prejudices, they hinder the administration in the fulfillment of its tasks. The *Conseil* has also lost the political-administrative character of its establishment period and of the Restoration. It evolved into a special court whose impartiality no one doubts and whose expertise enables it to protect the rights of the litigants better than any regular court can. Finally, the granting of the right of a redress [*Beschwerderecht*] of an illegal administrative action to every man who feels that his *interests* (rather than his *rights*) have been violated broadens the range of those entitled to redress to the point that this right acquires almost the nature of an *actio popularis* in certain matters.

The principal thrust of the attack by the partisans of the rule of law is directed against the legal duality introduced by the *régime administratif*; the relations of subject to state are governed by a different complex of norms than the relations of the subjects to one another. The pride of the rule of law is the legal principle that an official, be he a minister or an underling, is accountable for his actions under the same law as a private citizen and may be brought before the same courts as the latter. Using a number of examples, Monsieur Laferrière shows that, as a result of an older theory of the *puissance publique* (public authority), government actions are removed to a greater extent from judicial control; they are the only class of actions of the administrative apparatus that may neither be quashed nor serve as grounds for liability. In all other cases involving relations between a subject and the administrative establishment, resort is made to an uncodified legal complex [*Rechtskomplex*] that has been developed by legal decisions in accordance with the principles of civil law. As a result, the rights of the subject are protected in the same manner as they would be by the regular courts applying civil law; in fact, in numerous cases the rulings issued by administrative courts are more favorable to the subject than when the *Code Civil* is applied.

In summary, it may be said that administrative jurisdiction and its culminating point in the *Conseil* enjoy advantages over regular jurisdiction in respect to: (a) the simplicity and affordability of the proceedings; (b) their expertise and the resultant ease in keeping the administrative apparatus within the bounds of its competence; and (c) the subject in many cases finding himself in a materially better position when appearing before an administrative rather than a civil tribunal. The flaws of the former jurisdiction—a blurred delimitation of competence, the uncertainty of the law based on precedent in comparison to codified law, the delay of litigation due to a heavy case load—must not be blamed on the nature of the organization, but may be eliminated by appropriate legislation.

In spite of the sharp contrast between the French and the English type of administrative establishments, they are both located on the same time-honored liberal tradition. This is why, in his defense of the French system, Monsieur Laferrière could move the interest of the individual and personal rights to the foreground as the primary question of administrative law. The *Austrian* post-revolutionary *régime administratif* is based on more recent ideas that move in

the direction of a socialist state democracy. This is why Professor Merkl's report moves to the foreground the subordination of the administrative apparatus to law as an expression of the will of the people. The customary meaning in the French-English debate of the expression *droit administratif* (administrative law) as a special law that regulates the grievances of the subjects against the state in contrast to the *droit commun*,⁶ which decides on tort claims and questions of the obligations of the subjects in their reciprocal relations, is foreign to Austrian legal parlance. The liability of the state is acknowledged by a provision of the constitution, but in practice and in terms of the political interest of the population, it is relegated to the background; the principal focus is on the preservation of the rights of the individual by means of a meticulous judicial review of administrative actions at all levels with respect to their legality. The displacement of [public] interest is to be explained primarily, aside from events of political history, by the vast scope of administrative activities. This vast scope is in part a legacy of police-state interventionism, and in part it results from the continuous expansion of agendas in response to the ideas of state socialism.

The prerequisite for a judicial control of this vast administrative apparatus is created by particularly close ties between administrative activity and legal empowerment that are unique on the continent. Prior to the [Austrian] constitution of 1920, the administrative apparatus was bound by laws, in accordance with the principles of a constitutional state, to the extent that it intervened in the freedom and property of the subjects. Aside from that, however, there existed a not inconsiderable area reserved for bureaucratic activities, termed "free state activity" [*freie Staatstätigkeit*], without a particularly firm legal basis. Article 18 of the federal constitution of 1920 became the keystone of a legal administrative apparatus, codified for the first time with perhaps the farthest-reaching formulation imaginable in the classical pronouncement of the author of the constitution, Professor Hans Kelsen: "The entire state administration may exercise its functions only on the basis of the laws." This provision makes the sum total of administrative activities, irrespective of their content, whether exercised in the private sector of the economy or in the governmental sphere, dependent on administrative legislation, even if, in accordance with the nature of the matter, the legal regulations

6. Literally, "common law," which in this case actually refers to civil law.—Trans.

cannot be equally deeply binding in the details—thus, for instance, the administration of external affairs enjoys a wide-ranging latitude when compared with the especially limited latitude of the administration of taxation.

To the breadth of the tasks and to the federative character of the republic corresponds a highly segmented administrative apparatus; the new procedural law [*Verfahrensrecht*] lends a measure of unity to its diversity. The procedural law for administration [*Verwaltungsverfahrensgesetzgebung*] of 1925 has introduced uniform procedural principles for the entire federal bureaucratic apparatus and for that of the member states, a notable exception being the administration of taxation. These principles imposed forms on governmental administration “which, on the one hand, by assuring the right of the parties to be heard, offer the right to legal recourse, etc., and, especially, the force of law of administrative actions, thus securing for the population the possibility of an effective representation of their interests over against the administrative authorities and, on the other hand, offer to these authorities a representation of public interests, free from the suspicion of capriciousness.”

The vast scope of administrative activities that intervene in the citizen's life in all the phases and directions of its activities requires guarantees against the capriciousness of administrative authorities of a different kind than the rather modest *ex post facto* claims for damages stemming from illegal encroachments on freedom and property. The Austrian system of justice places the main emphasis on preventive guarantees of the legality of administrative acts. This purpose is served by the party legal instruments [*Parteirechtsmittel*] of a rationalized administrative procedure, by the Institute of the Legality of Administrative Actions, created in 1925 in response to a proposal by Professor Merkl, and, finally, by administrative legal jurisdiction. Aside from a number of Special Administrative Courts [*Spezialverwaltungsgerichte*] there exists an Administrative Court [*Verwaltungsgerichtshof*], which, upon reorganization, replaced the former Administrative Tribunal of the monarchy. Unlike the French *Conseil d'État*, it is also formally independent. In addition, the Constitutional Court [*Verfassungsgerichtshof*] reviews the constitutionality of laws and the legality of ordinances. The competence of the Administrative Court is designed to be as broad as possible by means of a general clause, while the right to redress is naturally granted only to persons who feel their rights have been violated by a decision of

an administrative authority; this redress procedure is different from the French approach, in which an alleged encroachment on [personal] interests makes the complaint legitimate. The factual assurance of this guarantee is evident from the fact that the [Austrian] court has to rule annually on no more than a few hundred petitions for redress. This fact can be explained "by the educational effect of an administrative jurisdiction that caused the administrative authorities, who generate millions of individual administrative actions, to take into account the possibility of a review by the Administrative Court."

The Austrian administrative apparatus represents within the general scope of the continental *régime administratif* a type that contrasts sharply with its French equivalent. From a purely external viewpoint, the equivalence of the administrative apparatus with the judiciary is achieved by the subordination of the entire administrative establishment to one authority, which is the Administrative Court in its position as the topmost point in the system. As a completely independent court, this court is in no respect inferior to the regular courts and, through its expertise, is superior to them. Furthermore, the extension of administrative agendas of a state-socialist nature shifts the entire system into a political perspective that differs considerably from the attitude of Western liberalism: The idea of the freedom of a citizen does not seek primarily the protection of the legal sphere of the individual, but rather a guarantee of freedom by ensuring the legality of state actions. The rights of the individual are not preserved any less than in France or England; but in public opinion and with respect to political principles, the purpose of legality concerning the state must undoubtedly cede its primacy to the purposes of culture. In the arrangement of the system, the first thought is not concerned with the potential wrongdoing suffered by the citizen at the hands of the administrative apparatus and the corresponding protective guarantees, but rather with an effort to bring the positively assessed achievements of the administrative apparatus under legislative review.

IV

The contrast between the French administrative type and the Austrian, which I have tried to sketch here, becomes sharper when we contrast English interest in the administrative establishment with the Austrian. Sir Leslie Scott states in his report: "There is

a general impression amongst Englishmen that we live under the Rule of Law, and that no community is well-governed which does not; and the ordinary Englishman thinks of the Rule of Law solely in terms of remedy; he pictures himself vindicating his rights in the Law Courts, or being tried and punished if he were to commit a crime." The typical English problem with administration is securing a legal recourse against damages that arise from an infraction in the official duty of an administrative authority; the main concern of the Austrian administrative type is the technical mastering of the legislative tasks in such a way that the administrative apparatus is appropriately bound on the one hand, but that the laws do not become an unmanageable chaos of detailed rules on the other. The reason why English politics of law has so far had no need to worry about problems of this kind and has been able to master the problems of control over the administrative establishment with the relatively primitive instrument of the Common Law Courts is, as we have indicated earlier, because until now it did not have to contend with extensive administrative agendas. The war, with its escalation of administrative activities, brought about a radical change in regard to these agendas; a relatively minor increase in their number remains in its wake, which was nevertheless substantial enough to necessitate the ministries and the subordinate echelons to be entrusted with decision-making powers and to issue ordinances to an extent that aroused intense public concern. These concerns are partially of the traditional and sentimental kind and are fueled by the approaching broadening of the administrative apparatus in the direction of state socialism, which has proved unavoidable even for England and threatens the autocracy of the venerable Rule of Law; in part, however, these concerns are also concretely justified in the light of continental concepts, because the broadening of the agendas is not counterbalanced by a corresponding controlling organization of the French or Austrian kind.

The examples offered by Sir Leslie Scott are of great significance. The Parliament, not being able to resolve the details of administration cast in the form of law, is forced to grant to the ministries the right to issue ordinances [*Verordnungsrecht*] as is, for instance, the case with the form of the regulation on page 47 of the Endowed Schools Act, which reads as follows: "The Order in Council approving a scheme shall be conclusive evidence that such scheme was within the scope of and made in conformity with this Act; and the

validity of such scheme and order shall not be questioned in any legal proceedings whatsoever." Such and similar regulations confer on the ministries the right to issue, in lieu of legislation, ordinances and instructions that are naturally exempt from control by the courts. It is true that the continental administrative apparatus also acknowledges ordinances in lieu of legislation, but in normal times these ordinances play only a subordinate role in the law-making process. After the war, the French government was granted extraordinary powers of authority several times by means of a simple piece of legislation; among others, the administrative reforms of 1926 were carried out by ordinance. These extraordinary measures have aroused a great deal of suspicion; the authorizations had a fixed time limit of only a few months, and they were, in the opinion of competent experts, unconstitutional. In Austria, too, government ordinances were occasionally issued in critical situations and were legitimized by special constitutional empowerments, but within the general administrative framework they represent a practically self-effacing segment: No use has ever been made of the presidential authority to issue decrees. In England, on the other hand, according to Sir Leslie Scott's report, a number of cases of this sort has been accumulating in the last few years to the point of arousing serious concerns, which prompted the Lord Chief Justice to publish a book under the title *The New Despotism* and which led to the appointment of a committee for the examination of "the legislative and judicial powers conferred on Ministers." What applies to the expansion of the practice of issuing ordinances in lieu of laws also applies to the inevitable expansion of the decision-making power of the administrative authorities in the execution of their functions. This expansion is an attack on the Rule of Law, and the resulting loss is not counterbalanced by an adequate control over the new legal form.

The report by Professors Kennedy and Finkelman concerning Canada reveals a similar situation. The steady accretion of Canadian administrative law is caused by the same phenomena as in England: industrialism; population growth; a transformation of an agrarian economy with negligible needs for intervention into an urban economy where the claims for redress are numerous, etc.; as well as local and governmental assistance in the exploration and exploitation of natural resources in a vast and thinly populated land; a minimal resistance to the expansion of administrative law in a dominion where the struggle for self-administration has not assumed the inten-

sive forms it did in the mother country; and, finally, the vicinity of the United States, where experimentation with new administrative forms is frequent and numerous in each of the individual states. This accretion occurs through the creation of administrative bodies with a far-reaching authority to issue ordinances and decision-making powers. "Generally the legislation has done no more than create the board and indicate the problem to be dealt with, leaving it entirely to the administrators to evolve for themselves the principles which are best suited for application to the immediate problem." The laws of empowerment typically contain formulas that identify the subject matter to be addressed by the administrative activity in question and then the general administrative goals; the means to their attainment are left to the discretion of the ministers. The natural gas law of Ontario, for example, empowers the respective minister to issue ordinances and instructions concerning the methods of the competitors, trade policies, and the actions of anyone that, in the minister's opinion, are "unreasonable or improvident or inconsistent with the due conservation of the natural gas supply in Ontario." The Workmen's Compensation Act determines that the competent board is to make decisions "upon the real merits and justice of the case" and is not to follow any rules based on precedents. Another law empowers the respective administrative organ to approve or reject applications for the issuance of licenses for trading securities "for any reason which he may deem sufficient." The legislative branch delegates the broadest range of competence to the administrative apparatus: Goals are concisely delineated, the ways to achieve them are not predetermined, rules of procedure are completely absent.

As a result of these administrative techniques, the citizens experience severe legal insecurity that is intensified by various abuses that should be avoided. In their decisions as well as in their ordinances, the administrative authorities largely exclude the public. With the exception of a few boards, the administrative organs do not publish their decisions, so that the public cannot find out anything about the principles underlying the decisions of the boards that the boards themselves have established. To be sure, the presenters of this report are of the opinion that keeping this information secret has its advantages; especially at the outset of the experimental search for the appropriate means of executing its tasks, an administrative authority might find itself impeded by its own decisions, should it find it necessary to alter the principles underlying these decisions. Yet there

are no justifying grounds to be found for keeping the ordinances secret. The right to issue ordinances is, in principle, not regulated; some ordinances may be issued only with the assent of the premier, others with the assent of the respective minister, and yet others must be presented to Parliament; some must be published in the bulletin of the respective authority, some need not; some authorities issue brochures containing lists of their ordinances, yet others find this unnecessary; whether or not the ordinances are published seems to depend directly on the inclination of the official in charge of editing the empowering legislation. As a result of the tortuous nature of the ordinance materials, which often proves to be inaccessible to the interested parties, the administrative activities smack strongly of an arbitrariness that is reflected accordingly in public mistrust. To remedy the situation, the presenters propose a law mandating an across-the-board regulation of ordinances, making them as easily accessible as the statutes.

Judicial control over these far-reaching administrative empowerments is completely inadequate. In general, the legality of administrative actions is subject to regular court review, yet as an instrument of oversight, this review is not very effective, inasmuch as the scope of the delegation is so extraordinarily extensive that hardly any administrative action exists that, in respect to the materials assigned to it, would not fall within the bounds of its competence. Yet the judiciary will not review the compatibility of actions that fall within the bounds of administrative competence with the Common Law; in fact they cannot, for this would destroy administrative efficiency, the latter having been achieved with the express purpose of solving problems where the existing legislative and common-law institutions have failed. In this situation it seems to me to matter little if, according to the presenters in question, the laws of empowerment often contain, as in England, a clause stating that ordinances issued on the strength of laws pertinent to them carry the same weight as if they had emanated from the laws themselves. This means they have become ordinances that are substitutes for law and are consequently exempted from the control of the courts. As a remedy for these abuses, the presenters propose the creation of a special tribunal empowered to review administrative actions on all levels; one may assume that they have in mind an institution along the lines of a supreme administrative court, which is common on the European continent. I would like to add that an improvement in

the technical aspects of drafting legislation [*die Gesetztechnik*] is equally important, a problem that the presenters have not treated further.

A thread revealing a mounting insight into the failure of common-law institutions in dealing with these new legal problems and a diminishing dread of the suppression of the rule of law links the English report with the Canadian paper and with that of Professor Franklin, which deals with the North American Union. In the case of the United States, the specific reason may be found in the status of American constitutional law, which makes it possible for the Supreme Court to oversee the activities of the administration much more effectively than the English and Canadian courts are able to do. A provision of the Fourteenth Amendment stipulates that no citizen may be deprived of his life, liberty, or property without due process of law; this constitutional principle serves as basis for the Supreme Court's rigorous review of administrative laws and of their constitutionality. The English and Canadian reports have demonstrated that because of the comprehensive empowerment clauses of English and Canadian statutes, the courts are in no position to execute a review of administrative decisions and ordinances. The principle of parliamentary sovereignty allows no review of the laws of empowerment even on the basis of a higher principle. In the United States, the law is subordinated to the Constitution; the institution of judicial sovereignty developed in the place of parliamentary sovereignty. The American oversight of administrative legislation resulted from the combination of these two elements. As we have indicated earlier, this control has for many decades been tantamount in practice to the destruction of all legislation aimed at social reform. A clear and mounting mitigation of the Supreme Court's attitude and a deviation from the rigid legal concepts of classical liberalism has been asserting itself only since 1910. This trend gravitates toward an interpretation of the Fourteenth Amendment that is more compatible with the sociopolitical demands made by the federal and state legislatures.

Professor Franklin does not offer a detailed analysis of the actual institutional structure in the area of administrative law (it would, in fact, be impossible to outline the general features of this colorful abundance of legal forms in a few pages) but contents himself with an especially exhaustive elaboration of the reasons that made an

expansion of administrative law imperative. Aside from the general reasons arising from legal problems caused by industrialism, he traces the genesis of administrative law to the failure of the common-law courts in two essential respects: in the first place, the judiciary proved incapable of expeditiously transforming common-law concepts, which had received their last decisive formulation under the influence of the natural-law theories of the eighteenth century, to suit the requirements of a society that was gravitating toward socialism. Thus, for example, the theory of responsibility that was the basis of claims for workers' compensation as a result of industrial accidents was not replaced by a theory that postulated the broadening of entrepreneurial liability, even though older historical materials supporting such a changeover were available. Secondly, the courts did not find a theory capable of individualizing the strict Common Law to make it suitable for modern problems. Beyond this, the new situations that have arisen called for technical expertise that none of the old common-law courts possessed, even though they may have changed their precepts and may have been aware of the problems of method with which they were faced. "Administrative law has given what the traditional law has pretended that it would not give: new precepts and individualization of adjudication. With the decline of certainty as the end of law the unique elements of juridical life have come to the fore. Conventional courts have failed to take account avowedly of these elements, and these new institutions have been created."

Professor Franklin interprets the failure of the courts as a universal phenomenon marking a transition from the American pioneer era, whose democratic ideal declared everyone qualified for all existential achievements, to a society with a division of labor under the aegis of state socialism. The courts fail not only when faced with problems solved by the administrative apparatus, but also when mounting specialization drifts within the common-law sphere toward a situation where a single judge cannot master all of the legal materials. Professor Franklin speaks of the "accommodation of democracy to the existence of the expert." He sees very clearly the problem that retreated quite strongly in the Canadian report and completely in the English one, namely, the problem of legal technique, which is charged with pushing the issue of the Rule of Law into the background. We must realize "that the task of legislation is paramount

in this country, and that the pressure of needs calls for general formulation by a general legislature and a subsidiary complementary formulation by executive specialists working out the standards set." "This need for the socialisation of society has been entrusted to administrative law, which has undertaken a task that the ordinary courts will not assume."

In summing up, we must acknowledge that the presentations concerning the administrative systems of England, France, the United States of America, Canada, the Netherlands, and Austria no longer allow, in regard to the problem of the administrative apparatus, the traditional classification of the state sphere into a continental-European and an Anglo-American group of states. Such a dualistic grouping is even less admissible when the investigation embraces the motley abundance of states about which no reports are available. The model of the so-called continental-European group of states represented by France has been outranked by other European nations with respect to specific basic traits of its administrative establishment. Thus, for instance, the parliamentary system of government has in principle been developed more radically in individual cases—namely, in the Austrian federal constitution—than in the countries where it originated. On the other hand, there are several European states that have followed the French model with hesitation or have explicitly rejected it, a fact that has not been demonstrated anywhere more clearly than in the Soviet Union. But even the English administrative institutions have not been unconditionally imitated on American soil. Specifically, the North American Union has adopted certain features of the administrative systems as developed on the European continent; in fact, even the English administrative establishment has drawn nearer to the so-called continental type of administration by developing a system of administrative law and administrative judiciary.

For an examination encompassing the sum total of the materials made available on the basis of the current experience of existing states, a much more complex classification of the types of administrative systems is clearly in order than the one arising from the juxtaposition of the *régime administratif* with the rule of law. It is also clear that the contrast of administrative institutions between two states that differ in this respect is not nearly as sharp as the contrast produced by many other judicial differences. Nevertheless, both political science and jurisprudence tend to overestimate the

contrast between the two types of administrative systems in question, referred to in a less generalized manner as the French and English type, and to utilize this contrast as a fundamental classification of the orders of state administration.

The *differences* that may be empirically established between the administrative orders of individual states may be traced back, if we broadly categorize them, to three main roots:

(1) The *differences* in the *state form* come into play not only in legislative processes, but also in *administration*; this becomes evident when we bear in mind that administration no less than the legislative process is a way of expressing the will of the state. The contrast between the administration of a police state and of a constitutional state, as it existed between the West European and Central European states of the eighteenth century and for a varying period of time in the nineteenth century on the one hand, and in the recent past on the other, is a matter of common knowledge. This contrast may also be expressed as the difference between the administration of states based on parliamentary democracy and the administration of states ruled by autocratic dictatorships. No proof is needed to show that the gap between the administration of contemporary France and that of the France under the Louis, i.e., the *ancien régime*, or the gap between the administration of contemporary France and that of contemporary Russia is wider than that between the administration of France and that of England. The differences in the structures of administration that are rooted in contrasting state forms consequently run deeper than the differences of content in respect to the techniques of the legal protection of subjects over against the administration, to which fact we can trace the contrast between the so-called *régime administratif* and the rule of law.

(2) Apart from the variety of *state forms*, the variety of *state purposes* also determines the variety of administrations, because the swings of the fundamental political course, as, for instance, the change between individualist and collectivist conceptions of the state and between expansive and limited state goals, is nowhere thrown into as sharp relief as in the administrative apparatus. One might even say that this apparatus is the barometer of the dominant political forces and tensions. And in this case, too, it can be said again that what accounts for a deeper-seated difference in the administrative apparatus is whether this apparatus has as its principal goal the preservation of order and consequently acts in a predomi-

nantly authoritarian manner—especially in matters of the police—or if this apparatus prefers to address civilizational and cultural tasks to the point that administrative activities of an authoritarian nature appear to be only downright unavoidable and ancillary measures for administrative purposes that lie beyond this purpose. Hence, there is a wider gap between, say, the French and English administrative establishments on the one hand, both of which favor a stance of the individualist and liberal kind, and the German and Austrian administrative establishments on the other hand—these latter two clearly displaying among the so-called capitalist states of Europe the most pronounced traits of state socialism—than the gap separating the English administrative apparatus from its French and Austrian equivalents. The reason for these discrepancies is simply the lack of correspondence between the continental administrative establishments and the rule of law.

(3) Finally, differences between the structures of administrative establishments in different states arise from the *different relationships of these establishments to other state authorities*, specifically to legislatures and judiciaries. Reduced to the simplest formulation, this relationship may be expressed as that of coordination and subordination. The difference between the rule of law and the type of administrative apparatus that is its opposite, which is the focus of the present analysis, belongs to this category; the latter, in turn, calls for a classification into various constructs [*Erscheinungsformen*], namely, the French construct on the one hand, and its German-Austrian equivalents on the other hand. The description of this above-mentioned variant of the *régime administratif* can be found in works like *Institutionen des Verwaltungsrechtes* [*Institutions of Administrative Law*], by Fritz Fleiner (Tübingen: Mohr); *Deutsches Verwaltungsrecht* [*German Administrative Law*], by Walter Jellinek (Berlin: Springer); and *Allgemeines Verwaltungsrecht* [*General Administrative Law*], by Adolf Merkl (Vienna: Springer).

The preceding exposition should provide the insight, by its means of uncovering the various roots and deviations among the types of administrative establishments in different states, that the presentations referred to [throughout this general report] that deal with types of administrative establishments have actually addressed only two specific ones, aside from which there exist numerous other types, distinguished by other features; the difference that has been given

preferential treatment here actually recedes, relatively speaking, into the background in respect to the other possible differences.

In respect to the value and valuelessness, advantages and disadvantages of the administrative systems that have come under comparative scrutiny here, we would like, however much the French system appears to have a closer affinity to ours when viewed in its relationship to our own [Austrian] institutions, to state the following: Our intention is not to deny the advantages and hence the right to exist of the Anglo-American administrative institutions within their national setting, all the more so since they perfectly coincide with the German ideal of a judicial state [*Justizstaat*] as codified in the Constitution of the Frankfurt [Saint] Paul Church of 1848. There is only *one thing* we must resolutely dispute, being otherwise in perfect agreement with the excellent and convincing propositions put forth by Professor Laferrière: namely, that it is exclusively the *rule of law* that is able to provide protection to the individual against encroachments by the administrative establishment, while the independence of this establishment from the regular judiciary exposes the subject to administrative caprice. We must agree unreservedly with Mr. Laferrière that such experiences involving our administrative system—assuming that these are real experiences and not mere prejudices—are to be blamed, not on the nature of the system itself, but on the inadequacies of execution. With reference to the report on the Austrian administrative apparatus, we must insist that the uncompromising application of principles of lawful administration, according to which all administrative actions must be prescribed in terms of content and legally passed by Parliament, performs effectively. This performance is furthermore assured by the law of administrative procedure, guaranteeing the same rights of participation and assurances to the citizen as would a court trial. Finally, the governmental control of administrative authorities as opposed to independent special courts serves the same purposes as would the rule of law, though, under certain circumstances, in an even more effective manner. Countries with the rule of law may in the future adopt these alien institutions on an even more extensive basis, in proportion to their ever-expanding administrative tasks, since the merely repressive and nonpreventive provisions of the rule of law and the lack of expertise on the part of an ordinary judge will in all likelihood not be capable of

managing these tasks. Furthermore, it is absolutely not undesirable that diverse administrative systems in diverse states should coexist side by side. The law, as with all products of national culture, should be original and indigenous, nurtured in national traditions, and adapted to national needs. It is not always national uniformity, but also national differentiation, that marks cultural progress.



Popular Education, Science, and Politics

The new ordering of the Austrian state has raised a number of most difficult questions concerning popular education. The reflections that follow will focus on the one among many, in the course of my teaching political science at the Ottakring Volkshochschule, that proved to be of fundamental importance and that required a solution through action in every lecture I delivered. The elements of this question include the tradition of the Austrian idea of popular education, the political persuasions of the students, and a required impartiality in the scholarly attitude of the lecturer. The three elements must find a relationship to one another and to the requirements of educational policies mandated by the newly organized [Austrian] state.

I

The tradition of the Austrian popular university goes back to the idea of popular education born at the close of the nineteenth century. The popular university was to offer educational benefits to the “people,” i.e., to the working class in the case of the institution in question, which benefits, given the existing social structure, would be accessible in the absence of such institutions only to the middle class and at high cost. This goal is set by the belief in the value of getting an education, and furthermore by the assumption, as naïve as it may appear now, that getting an education is only a question of the transmission of knowledge and not also—and primarily—one that addresses the entire existential attitude; finally, the goal pursued by this institution is an idea that was shared by Marx and Engels,

This article, “Volksbildung, Wissenschaft, und Politik,” originally appeared in *Monatsschrift für Kultur und Politik* 1 (July 1936): 594–603.

but whose credibility has been severely shaken in our day, namely, that the meaning of the edification of the proletariat is a democratic generalization of the privileged form of bourgeois education.

The practical aspect of the educational goal was determined by the demand for "neutrality," a concept difficult to grasp in this day and age and which cannot, in terms of its content, be exactly defined. The most important contents of this demand for neutrality that arose around 1900, nurtured by the intellectual climate of the time, might be the following: Popular education was to be politically neutral, i.e., the presentation of the subject matter in the courses offered by the popular university was not to be tinged with the political partisanship of the lecturer. In practice, this goal was achieved by not offering any political science and social science courses at all. This gap in the educational program was tolerable at the time, because an interest in politics had not as yet been strongly developed among the students. It was also possible, because in those politically less turbulent days political neutrality represented the partial content of a much more subtle, more elusive "neutrality of world view." Around 1900, the supporters of the idea of popular education held a faith in the unlimited efficacy of scientific knowledge. They believed it possible to saturate a person's orientation with education right down to its roots in order to ground life on a "scientific world view." The "neutrality" in question may have been conditioned in part by political caution—conflict with political and religious forces was to be avoided. At its core, it was conditioned by the conviction that "neutrality" in education was possible without the sacrifice of essential components of the educational program. The partisans of the idea of neutrality did not believe that education had to be *restricted* to areas of knowledge that were indifferent as to world view, but rather that a scientific presentation of subjects would make the passing down of "religious" and "metaphysical" values *expendable*. They cherished the Comtean faith in the evolution of religion and metaphysics into science. A "scientific world view" was to replace "irrational," subjective world views. "Neutrality" was an expression of a positivist attitude toward religion and metaphysics.

It goes without saying that such "neutrality" was constrained by its internal dogmatism. Two out of many anecdotes should bear this out and, at the same time, give a hint about this constraint. A few years ago I had to discuss a course on systems of political ideas with

a personality who carried a great deal of weight in Viennese popular education circles. This individual expressed his doubts about such a course and claimed that I would encounter problems with neutrality. He argued that there must be systems of political ideas that could be presented neutrally, since their content is of the objectively scientific kind, such as for instance, the Marxist system; but when I came to the fascist system, its presentation would not be easy, for I would ultimately have to concede that this system involves something objectively untenable. In another case, students in one of my courses informed the school administration that in the process of presenting the theory of evolution, I presented more recent criticism of Darwin's doctrine with apparent approbation, while referring to Dacque's theory as another possible interpretation of the facts of evolutionary history. Being a young man, I received a gentle rebuke from an older, more experienced individual: The popular university may well be a site of free scientific instruction, "but we would nonetheless want to adhere to Darwin's theory of evolution."

Within the span of one generation, the features of tradition have undergone some retouching. The political activation of the postwar years has made the desire for political science and social science courses among students evermore insistent. In the last fifteen years several courses dealing with this subject matter were introduced; they attract roughly one-quarter of the student body. "Neutrality" could no longer hold to the form of disregarding problems in political matters but had to prove its worth by deed in the manner of instruction. It is not easy to pass a blanket judgment on this period and on the testing of "neutrality" without having one of the participants feel that he has been judged unjustly. But when I examine fully the achievements of all those excellent men who have made an effort to appraise the state of scientific knowledge through objective instruction, the judgment still seems to me to be defensible that the "neutrality" of the teaching of political science and of the social and economic sciences has, on the whole, left the impression of a continued "neutrality on the scale of a world view" in the teaching of philosophy and epistemology. At any rate, it can be said that, apart from the docent, whose endeavors are primarily scientific, there exists a number of persons whose teaching is clearly tinged with socialist or liberal-bourgeois tendencies but that this political left wing is not counterbalanced either quantitatively or qualitatively

by persons of Catholic or nationalist leanings. "Neutrality" in terms of an anti-religious and anti-metaphysical positivist attitude also became noticeable in the scientific instruction in state-supported schools.

II

The "scientific world view," which is grounded on the idea of neutrality, shows a close affinity to the "political world view" that determines the attitude of the students of the Volkshochschule. Marxism defines itself as a system of "scientific socialism." It represents the kind of a political world view that has arisen in the second half of the nineteenth century under the aegis of a faith in the possibility of scientifically founding [man's] existential attitude. Within world views that are politically as far apart as the materialist concept of history and the political race theory, or the world views of liberal economics and of sociological relativism, the same animating construct, which is rooted in nineteenth-century positivism, inhabits each. The lawlike genesis of such a world view typically brings to view the following steps of its movement:

As a rule, an essential characteristic of scientific knowing can be detected at the basis of the world—of a macro-economic, biological, historical, or sociological kind. The impetus to broaden the function of science in the direction of a political world view is given by the fact that none of the realms of existence that can be scientifically identified in this process exist in isolation; as segments of the integral entity called man and of his social existence they are in fact related in one way or another to all the other existential elements of man. The assertion that some kind of relationship between geographical, biological, economic, organizational, mental, and religious facts always exists in human society can be substantiated by philosophical and anthropological evidence. This thesis proposing a connection among the existential elements of man in the integral entity *man*, formulated here only in vague terms and without regard to the complications that would arise in a more detailed analysis, becomes simplified by the partisans of the world views under examination into an ontological thesis that there exists a ground of being of human society in relation to which the contents of all other spheres are dependent and mutable. This means, to

put it in concrete terms, that the sum total of the mental structures of society is dependent, unequivocally and totally, on, say, the economic system, or on race, or on the existential situation, or on geography. The function of the specific science in question is broadened; science becomes what we will call for our purposes a fundamental science. A science may be called fundamental when, by having introduced the ontological thesis that the sphere of being it recognizes is ontically causal, it is made an explanatory science of all of social existence.

The next step on the path leading toward a political world view is taken by the introduction of that scientific myth that we mentioned above while explaining the idea of neutrality. The partisans of the political world view typically believe that the world is in principle knowable; if some unknown regions or specific facts remain, this is due to an imperfection that will be overcome with further progress in science. We recognize in this scientific myth the vulgarized, dying gasps of the Enlightenment's faith in reason. Science is to provide the key to knowledge of the world; all other human ways of grasping and enduring the world must bow to the primacy of science; viewed through the prism of science their reality will often be negated, unmasked as illusions, revealed as ideology, solved as imaginary problems, and branded as inventions of Jesuits, Freemasons, Jews, and bourgeois for the purposes of stupefying the people, exploitation, or a personal acquisition of money and power. A closed, dogmatic edifice is erected on the basis of the fundamental science; it allows us, on the strength of its ability totally to explain everything, to declare every divergent opinion as unscientific, unreal, as conditioned by class background or material motives, etc., thus devaluing every opinion in its concrete demand for validity. This position cannot obviously admit an *argumentum ad personam*¹ as applicable to itself: My communist students become exasperated when I assure them that I do not consider their views to be an exclusive product of their class background and of material interests, but that I detect as another cause a moral passion that was alive in the beginnings of the worker's movement.

This determines the general form that, once it is filled with emotionally loaded contents, gives rise to a concrete political world view *qua* religious system. The world view links up with a fact that affects

1. A (fallacious) argument ad hominem.—Trans.

one's mood such as, for instance, the condition of the worker in a bourgeois-capitalist society, and weaves around this fact the web of its dogmas: the world view has its god—the class; its devil—the bourgeois; its prophets and redeemers—Marx and Lenin; its Bible—*Das Kapital*; its Judgment day—the revolution; its paradise—the classless society. It is a demonology that is closed to God but that explains to its faithful the evil of the world, gives them a spiritual hope of redemption from evil, and points the way to the heavenly kingdom. The religious character of the political world view must be gauged in its full range in order to prevent misunderstandings of the kind that would suggest that by becoming enlightened as to the “errors of Marxism,” or that by taking political measures, the problem that arises from a demonic belief held by broad layers of the population can be solved; the core of the question has a religious nature.

III

The task of Austrian popular education within the framework of traditional institutions is unequivocally delimited by the traits—recognizable until now—of the newly organized state along the lines of pedagogical politics. The popular university is not allowed, in its capacity as a private association, to engage in political education. Likewise the religious problem, which emerges because of the demonological character of the political world view, cannot be solved by an association that sets popular education as its goal. We must assume a stance based on the fact that an institution of popular education has been preserved and that the instruction it offers must be conducted in a scientific manner. We now turn to the analysis of the problem of how, under these circumstances, the relationship of the teaching of political science to the political and world-view demands of the state takes shape, and how it takes shape with regard to the political world view of the students.

As far as the relationship of science to political questions and especially to questions—of crucial interest to us—dealing with the political and legal aspects of the constitution of the new state is concerned, I am of an opinion that many people might find surprising, namely, that such conflicts are unlikely to occur. Wherever they do, they may be traced as a rule to the fact that liberal constitutional methods of dealing with constitutional law, which may be quite in order in respect to their political origins, are nevertheless

misunderstood in regard to their nature and held scientifically to be timelessly valid. It is to be expected that difficulties will arise when these methods are applied in circumstances of an authoritarian constitution; but these difficulties are the consequence, not of an opposition between science and politics, but of an opposition between a liberal-constitutional and an authoritarian politics. This thesis can be verified in individual cases only by a test of their material content—something for which there is neither space nor opportunity here; instead I would like to refer here to my work on the "Authoritarian State":² In it the reader can find solutions to some of these spurious conflicts, as well as indications at what points genuine conflicts between science and politics do indeed occur. These points, however, are of such a specialized kind that they would hardly become the subjects of instruction given at a Volkshochschule.

It seems to me that the range of possible conflicts is broader when they arise from a contact of science with a world view. The instruction at an educational institution like the Volkshochschule must in principle be compatible with a world view to which the state is committed. Now, in the case in point, this possibility of conflict as far as political science is concerned is, insofar as I understand the matter, of very little consequence. The Christian world view is, in relation to science, a world view with a relatively large space of freedom. The contents and articulation of problems in contemporary political science are—owing to a common European intellectual development—essentially the same as the corresponding contents of the Christian world view. I must add, however, that my opinion is the result of extended periods of study in France and Anglo-Saxon countries, where the post-Reformation development of political science has proceeded in a relatively unbroken continuity with its classical, Catholic counterpart. Many of my German colleagues, who pattern their image of science primarily on the basis of a series of German breaks of continuity since the Reformation, will not share my interpretation. What I mean, therefore, is that the eventual possibilities of conflicts have their place in the ramifications of problems and on a niveau both of which have hardly any relevance in an establishment dedicated to popular education. With a bit of skill and tactfulness questions about the relationship of a scientific lecture to state requirements can be easily handled.

2. Voegelin, *Authoritarian State*.

It is much more difficult to establish a satisfactory relationship with the political world view of the students. In the Viennese establishment of popular education nowadays, we find ourselves in a highly peculiar situation: Whereas in the educational policy of the absolutist era a certain tension existed over against the regime, which considered an all-too ample information available to its subjects as undesirable, it is precisely to these subjects, who fought for an expansion of their educational possibilities, that today's state grants a chance of a scientific education with an extraordinarily high degree of liberality. And yet the students are determined to resist this liberalism and demand energetically that they not be disturbed by expanded knowledge in their circles. The Marxist student body of the *Volksheim* [Popular Residence Hall] nowadays engages in its discussions in a sort of cultural warfare against the freedom of scientific lectures, so liberally vouchsafed by the state. It is only in the relations between the lecturer and his students that the relationship of science to politics reveals the full range of its problems.

The question of what is the essence of science can be answered neither by supplying a list of its contents nor by listing its methods, but rather only by a reference to a specifically possible orientation of man to *theoria*, to *contemplatio*. In this we follow Aristotle's opinion that *theoria* is the faculty of the *theiotion* in a human being, of spirit. From this determination of essence we can shed light on the laws of meaning concerning the relationship of the theorist (in the classical sense) to the practices of communal volition, thinking, and acting.

The theoretical orientation will share with the practical a common material point of departure insofar as all practical as well as theoretical conduct is, by means of individual and communal life, given materials in advance, the selection of which is determined emotionally and traditionally and with which the individual or the community must "deal" or "come to terms." Following this common point of departure, however, the paths of the theoretician and the practical man diverge. The endeavors of the former strive for an essentially infinite widening of his horizon, a survey of the world; among all great Western thinkers this survey has the goal of grasping the order of the world in its articulation all the way to its origin in God. The purpose of this survey becomes most clearly graspable in the meditations of Saint Augustine, in which the degrees of being are

scaled so that the meditating thinker might attain at the pinnacle of his *intentio* that degree of participation in the Divine Being that is accessible to man as the ultimate degree of his earthly dimension. The mysticism of the *fruitio Dei* is the secret motivation of every genuine "theoretical" orientation.³ While the theoretician experiences the nature of the spirit as that aspect of man that is closest to the Divine and takes possession of divine creation through acts of cognition, the practical man strives to fashion a community (to which the theoretician also belongs) with the aid of earthly human forces. He can achieve his goals only under the harsh conditions of man's inferior nature; his actions are as harsh as the conditions under which they take place; these actions are inevitably ridden with guilt, even if his intentions are pure, because he must use human passions and material interests as his tools.

The tensions between science and politics are found in the situation portrayed in this manner. He who acts practically must follow different paths than he who is searching for the traces of God in the world. The "idea of neutrality," of which we spoke in the beginning, tried to find a formula for this parting of the ways. As questionable as it seemed to us, because it sketched a dogmatic image of the world under the title of a "scientific world view," thereby becoming unfaithful to the original meaning of the undogmatic *contemplatio*, it was nevertheless guided by the instinct that the *contemplatio* must stand in opposition to practice with a certain strangeness and could not, because of its nature, pursue the same goals. But the idea of neutrality was mistaken in assuming that "neutrality" could be realized humanly and in social practice, as if science and politics ran like separate channels alongside each other without coming into contact or mixing. Just as theory and practice are possibilities of integral man and he cannot cut one out from his being as he follows the other, so science and politics cannot be isolated from one another in the life of a community. The scientific orientation has appropriate consequences for social practice that reside in human nature. In each close-knit community there is an upsetting impact when individuals stray from the existential and spiritual standards

3. This conception of theory and science has a close affinity with the one developed by Jacques Maritain. Cf. his *Von der christlichen Philosophie* [*On Christian Philosophy*], trans. and ed. Balduin Schwarz (Salzburg and Leipzig: A. Pustet, 1935), esp. 80, 112, and 114. [French edition: *De la Philosophie Chrétienne* (1933), in *Jacques et Raïssa Maritain: Oeuvres complètes*, ed. Jean-Marie Allion et al. (Fribourg, Switzerland: Editions Universitaires, Paris: Editions Saint-Paul, 1982-), 5:225-316.]

typical of that community: In every community that is predominantly constituted by socially practical, politically oriented people, the theorist is a nuisance by his very existence. The average man experiences every existential orientation that deviates from his own as alienating, peculiar, comical, and threatening. The mere glance at a life that is different from his own touches a live nerve in him, for it threatens to lower the value of his own way of life. It gives impetus to reflection, to speculation about the worth and justification of one's own existential orientation; the great geographical, ethnographical, and historical expansions of Europe's horizons have always given rise to waves of skepticism. Merely being different therefore suffices to call forth this tension. If, in addition, being different is ordained to be life in a radically open, infinite horizon, there must arise an especially acute tension between this and every other kind of life that runs its course in a finite and practical horizon of goals, actions, and emotions. In modern European history, the sixteenth century with its persecution of the humanists and the twentieth century with the awakening of the idea of the political man have discovered that the theorist is a "divisive element": Their observation has been quite accurate. The breadth of the horizon and the contemplative orientation have without doubt a loosening effect on the closure and intensity of actions of human beings; they produce skepticism and tolerance.

The contrast between theory and practice has its roots in human nature—it cannot be finally reconciled at some point in time and it cannot be resolved in principle by speculation and programs; it can be only balanced out concretely by the everyday practical conduct of all participants moving from one situation to another. It makes no sense to raise objections based on a scientific or political "viewpoint" against another always different point of view. A newer way of thinking that proposes that there is no such thing as an unpolitical orientation and according to which even an orientation posing as unpolitical is, in fact, political, is correct up to a point in that even a theoretical orientation gives rise to problems of social practice; yet it is at the same time incorrect when it places theoretical and practical orientations on the same footing. The problem lies much deeper than simply at the level of politics—it is inherent in human nature, which is equally capable of and in need of practice and theory. A human community cannot endure without the practical achievement of community formation, but if it militates in principle

against theoretical orientation, it could destroy the achievement that is peculiar to the *theiotaton*.

Let us now draw the conclusions that are relevant to the practice of popular education.

Those whose existence is delimited by the Marxist world view and who find happiness in its fold feel obligated by its scientific myth to promote scientific self-development, but they do not love science, for it represents a threat to the security of their faith and to their hope for redemption. The peculiar responsibility of the teacher, who must operate within this theoretical orientation, originates in the religious character of the political world view. It is not his task to turn the people he is addressing into theorists—they must remain oriented primarily toward practicality and community ethics. On the one hand, he must not try to bring them over to his side, but on the other hand, he contributes by his activity to the loosening of their specific community ethos, and more than merely of their ethos, of their communal religion. Conviction and religiosity are so closely linked in class demonology that the one cannot be targeted without the other being hit. One cannot convince a Marxist that the working class is not the most important phenomenon in the world and that its triumph is not an eschatological event without destroying his cosmic status. Yet a spiritual uprooting and metaphysical destruction are certainly not the purpose of popular education. If we analyze the concrete situation of this education more closely, we will find that a theoretical orientation may become purposeless and even damaging when it tries to prove its worth in a contest with a demonic world view. A religious system of the Christian type gives science not only a wider space of movement than the demonologies of the nineteenth century, but it is only within a system of this type that the traditional form of Western science with its wellsprings in the mystical contemplation of God may meaningfully function socially.

In consequence, popular education that has a scientific basis can be practiced and promoted in a meaningful way only if educational policy is an integral part of a more encompassing state and cultural policy that sets as its goal the de-demonization of the political sphere and the reestablishment of a direct relationship of the individual person to God. Without such an encompassing state and cultural policy it would be, in my judgment, unethical to tear men, who are in their own way happy with their demonic faith, away from this happiness by a scientific broadening of their horizon, or even only to

cause them to vacillate in this faith. The functional value of Western science is, in its traditional orientation, bound up with a communal culture that keeps alive the knowledge of God that goes back to the great thinkers of classical antiquity.

Once this precondition is met, however, "theory" can achieve an important communal end that is grounded in the essence of man's being. The life of man requires a strong concentration of his feelings on the community and its tasks. This necessity constantly exposes him to the danger of raising the significance of the object of these feelings—be this a people or a class—into boundlessness, divinizing it; a demonic being, the community, replaces God, and a demonic faith and a demonic ethic replaces religion—this is the very political world view whose type we outlined earlier. Through its orientation that is essentially open to the world, theory can help to prevent a demonizing closure of a communal "world"; theory directs our gaze to the multiplicity of communities that exist alongside one another and can thereby prevent us from the raising of the value of our own community into limitlessness; it directs our gaze across the levels of being from nature to God and can thereby prevent us from divinizing one of the lower levels.



 Josef Redlich

In Josef Redlich humanity lost a man of extraordinary talents and achievements. He was a scholar and a politician, jurist and historian; he was as familiar with the Anglo-Saxon world as with his Austrian homeland. He excelled in his professional specialty and was an adept of the arts, a brilliant debater, a fascinating *causeur*, and a respected writer. This versatile man came from a Moravian, German-Jewish family of industrialists. Financial independence assured him an undisturbed maturation of his scientific and political faculties and a careful development through the study of jurisprudence in Vienna, Leipzig, and Tübingen and sojourns in England lasting for a number of years. Born in 1869, he witnessed in the third decade of his life the departure of the Taaffe ministry and the unrest that occurred in the wake of Badeni's language ordinances.¹ Redlich's in-depth grasp of Austria's problem and the necessity for federalization took shape in

This article, "Josef Redlich," originally appeared in *Juristische Blätter* 65, no. 23 (December 12, 1936): 485-86.

1. Count Kazimerz Felix Badeni, a Polish aristocrat and governor of Galicia, was appointed by Emperor Franz Josef on October 2, 1895, to succeed Count Eduard Taaffe as prime minister in the Austro-Hungarian parliament. Taaffe's career as prime minister, which began in 1879, was spent in significant part in efforts to moderate and reconcile the ethnic, political-ideological, and class cleavages that were increasingly fragmenting the late-nineteenth-century Austro-Hungarian empire. Badeni's language ordinances, issued in April 1897, made the Czech language equal to German in all official government communications in the province of Bohemia. Its effect of disadvantaging German-speaking government officials was an indicator of the waning influence and control of ethnic Germans in the Habsburg monarchy, and therefore within the empire. Reactions to the ordinances were swift and severe: They included student protests, mass demonstrations, severely disruptive obstructionist tactics in Parliament, and even violent clashes between protestors and units of the military and police. The emperor accepted Badeni's consequent resignation on November 28, 1897. Subsequent efforts at compromise, including the eventual withdrawal of the ordinances, led to further ethnically based protest and violence for at least a year after Badeni's departure.—Ed.

the nineties, equally conditioned and promoted by impressions from his native Moravia and by insights into English affairs of state.

Around 1905, in his mid-thirties, he reached the first plateau of his scientific achievements. This period also marks the inception of his political career. *Englische Lokalverwaltung* appeared in 1901, and *Recht und Technik des englischen Parlamentarismus* in 1905.² Both works were translated into English and are must reading on the subject. Redlich's stature in the Anglo-Saxon world rested on this achievement and on personal connections in English society—his renown not only has outlasted the war but has become even more solid in the postwar era. Following his lengthy and thorough scholarly preparation period, he began to engage in political activities. He was a member of the Moravian Provincial Diet from 1906 onward, and beginning in 1907, he represented German-Liberal interests as a member of the House of Representatives that was created by the general plebiscite.

These political activities did not result in a break with his scholarly endeavors; instead they opened up a new dimension in which his intellect could unfold further. His labors in Moravian politics and in the broader scope of the Austrian Imperial Council are a direct continuation of his studies of local administration and parliamentary law. As a scholar, he thought of himself as the successor of Gneist and believed that a renewal of the Austrian monarchy was a practical possibility to be achieved by the expansion of autonomous administration and by granting autonomy to the nationalities comprised in the monarchy. His scientific studies concentrated on his native land; in 1910 he published a study entitled *Das Wesen der oesterreichischen Kommunalverfassung* [*The Nature of the Austrian Communal Constitution*].³ Meanwhile, he pursued a busy teaching career, first as

2. Josef Redlich, *Englische Lokalverwaltung: Darstellung der inneren Verwaltung Englands in ihrer geschichtlichen Entwicklung und in ihrer gegenwärtigen Gestalt* (Leipzig: Duncker and Humblot, 1901) [English translation: Josef Redlich, *Local Government in England*, trans. and ed. Francis Wrigley Hirst (New York: Macmillan Company, 1903); cf. Josef Redlich and Francis Wrigley Hirst, *The History of Local Government in England: Being a Reissue of Book 1 of Local Government in England*, ed. and with intro. and epilogue by Bryan Keith-Lucas (London: Macmillan, 1970)]; Josef Redlich, *Recht und Technik des englischen Parlamentarismus: Die Geschäftsordnung des House of Commons in ihrer geschichtlichen Entwicklung und gegenwärtigen Gestalt* (Leipzig: Duncker and Humblot, 1905) [English translation: *The Procedure of the House of Commons: A Study of Its History and Present Form*, trans. Alfred Ernest Steinthal, ed. Sir Courtenay Peregrine Ilbert (London: A. Constable and Co., Ltd., 1908)].

3. Josef Redlich, *Das Wesen der österreichischen Kommunalverfassung* (Leipzig: Duncker and Humblot, 1910).

a private docent, then, from 1901 onward, as a full professor. In 1907, he became the first Austrian exchange scholar at Harvard. Between then and 1913, he undertook several lecture tours in England and in the United States.

In these years he manifested an astonishing vivacity. He was co-founder of the Austrian Political Society; he was a member of the Fabier circle—many initiatives for social reform in Austria stem from this group. He became a member of the commission for the promotion of administrative reform; as the reporter for this commission, he drafted an excellent report on the reform of the Austrian finance administration. His great intellectual cultivation and his extraordinary erudition aroused admiration. He was a friend of Hermann Bahr, Hugo von Hofmannsthal,⁴ and Gustav Mahler.

The war interrupted his many activities abroad. The year 1917 brought a break with his political friends, because he stopped believing in the possibility of a positive outcome for the Axis powers and he did not approve of the policies of the Seidler Cabinet. In 1918, as uncompromising supporters of the ideas of autonomy and federation, he and Seipel were invited by Emperor Charles to join the Lamasch Cabinet, which was to initiate the federalization of the empire.

To all outward appearances, Redlich spent the postwar years lecturing with only a few interruptions. As early as 1920 he was again a guest professor in America, and he lectured in 1921–1922 at the newly founded Political Institute in Williamstown. He was a professor of comparative state law at Harvard from 1925 onward. In 1930 he became associate justice of the International Tribunal in the Hague. Following the *Credit-Anstalt* [savings and loan] crisis, he briefly became minister of finance in the Buresch Cabinet in 1931.

In those years he also reached the second plateau in his scholastic endeavors. In the span of just a few years, several books appeared: *Das oesterreichische Staats- und Reichsproblem* [*The Problem of the Austrian State and Empire*], vol. I in 1920, vol. II, 1926; *Die Oesterreichische Regierung und Verwaltung im Weltkrieg* [*Austrian Government and Administration during the World War*], Carnegie Foundation, 1925; *Kaiser Franz Josef I. von Oesterreich* [*Emperor Franz Joseph I of Austria*], 1928. Thanks to this series of works, especially the book on the wartime administration and the unfin-

4. Interested readers may wish to consult Helga Fussgänger, ed., *Briefwechsel von Hugo Hofmannsthal und Josef Redlich* (Frankfurt am Main: S. Fischer, 1971).—Ed.

ished *Problem of State and Empire*, Redlich became a great Austrian constitutional historian and political theorist. As a jurist and theoretician, he continued a line of inquiry pursued before him by Eisenmann and Tezner: He endeavored to portray the juridically unique structure of the monarchy under the category of "empire" as distinguished from that of "state." The introduction to the *Problem of State and Empire* and chapter 1 of *Government and Administrative Establishment* are jewels of institutionalist political science. The significance of this realist descriptive and theoretical achievement will only be fully appreciated in the future. According to Redlich, political science before the war was unduly exposed in German Austria to the pressure of political passions, too readily making efforts to adapt the categories of German theories of the imperial state after 1870, which were the product of a quite differently structured political situation, to Austrian circumstances. In consequence, Redlich's realist conceptions of the state have not produced the resonance that was their due. Likewise, the significant institutionalist theoretical content that inheres in Redlich's descriptive method has received hardly any recognition as yet. It is similarly reserved for the future to identify, with the help of Redlich's description of the government and the administrative system of the old monarchy, the lines of continuity that connect the new Austria with the old empire; I refer merely to his excellent description of the politicization of the administrative apparatus that sets in during the "Period of Obstruction" and carries on in a straight line toward the phenomena of the postwar period. There is, furthermore, the description of the military administration during the war that sheds light on the effectiveness of the military in movements taking place in the new Austria. The same applies to the hints regarding the class movements in the old Austria, the authoritarian elements that were present in the wartime administrative apparatus, the problem of the politicization of the masses, etc. The works addressing Austrian state and administrative law arise from the same spirit that had steered the young Redlich toward the problems of English local administration. A thread of intellectual and political will runs through his life that manifests a rare straightforwardness and unwavering direction. His involvement with the problems of his Moravian homeland, with the issues of English local administration, and with the crucial problems of the old multinational empire finds cohesion in his belief in the significance of self-administration on the smallest level and

in autonomy on the larger national scale as the foundation of a peaceful, federative organization of large, heterogeneously structured communities.

His last works, written in the concluding stage of his life, were meditations on Austria. They were written out of a feeling of a pan-German obligation to engage in soul-searching and in an examination of the causes that have plunged the German nation into the crises of the wartime and postwar periods. "This duty is incumbent, insofar as this examination of the past concerns Austria, not only on those Germans who were the erstwhile citizens of the old state and empire, but on the entire German nation, whose fate, as these past years have impressed on it in such a terrible fashion, has been linked to the Austrian problem in such a convulsive fashion, which fate also remains linked in the future to the enduring effect of forces that were released from the historical federation of the Habsburg monarchy and have now been unleashed in every direction."



Austria and the Studies Conference

During the week of June 28 to July 3, the tenth session of the International Studies Conference will take place in Paris, with Austria participating for the first time.¹ The International Studies Conference is an organ of the League of Nations and utilizes the Institute for Intellectual Cooperation in Paris as its secretariat. The conference organizes biennial studies whose topics deal with issues of international significance. The topic of the segment of studies that will close with the forthcoming tenth session deals with "Peaceful Change," namely, the peaceful settlement of issues that could set off international conflicts. The topic is divided into a number of sub-themes, among which the following deserve notice: questions of population and migration, questions of colonialism, raw materials, and the marketing of commodities, interstate procedures of peaceful settlement, and the Danube problem.

The work is organized in a manner that provides for individual qualified institutes or national coordination committees in the different member states to deal with the topics selected by the conference. In the process, they will especially subject to scrutiny the procurement of materials from their own respective countries. Until the autumn of 1936, Austria has participated in these activities by using the services of the Consular Academy and the Institute for the Research of Trade Cycles; after that, it did so through the Austrian Coordination Committee with which, aside from the two above-mentioned institutes, the Institute for Political Economy and

This article, "Österreich und die Studienkonferenz," originally appeared in *Neue Freie Presse*, June 19, 1937, 3-4.

1. Voegelin attended this conference in his official capacity as secretary of the Austrian Coordinating Committee for International Studies. For his scholarly contribution to this conference, see the essay that follows this one.

Sociology, the Chair of International Law, the Institute of Statistics on Minorities, the Seminar on Economic and Cultural History at the University of Vienna, and the Technical Institute of World Trade are affiliated. The committee is chaired by Prof. Dr. Alfons Dopsch.

The agenda of the conference is not political, but exclusively of a scientific nature; hence, based on the tasks performed, it draws no political conclusions nor does it draft resolutions. We should like to list several of the committee's contributions so as to outline the scope of the studies it has undertaken. Carr-Saunders [prepared a study] on the world's population (England); Staley, on raw materials in peace and war (U.S.A.); Angus, on Canadian immigration possibilities and sources of raw materials (Canada); Qualid, on international migration problems (France); Gliwic, on the population optimum (Poland); Burky, on the international circulation of capital (Switzerland); Soemme, on passenger and freight traffic in the Polish Corridor (Norway); etc. The Austrian Coordination Committee submitted the following studies at the conference by the affiliated institutes: the Consular Academy submitted studies on international law by Professor von Verdross from the seminar directed by him and his assistant Dr. Verosta and by the section chief, Dr. Blühdorn; furthermore, memoranda on the management of foreign exchange and interior migration by State Councillor Dr. Kerschagl and Dr. Guttmann; a study from the Institute of Statistics on Minorities by Professor Winkler on the fertility of the inhabitants of the Danube region; reports from a study group consisting of Professor Brunner, Dr. Seben, and myself on the political ideas and movements in Austria before and after 1918 and on the transformation of the constitutional idea; and, finally, the comprehensive reports of the Institute for the Research of Trade Cycles, produced under the direction of Professor Morgenstern.

The last-mentioned reports of the Institute for the Research of Trade Cycles represent a significant document for the possibility of international scientific cooperation. They are a component of a mini-program, elaborated by the Danube states in accordance with mutually agreed upon guidelines, intended to examine the economic problems of the Danube region. This program comprises: (1) a list of chronological events with regard to issues involving the politics of trade after 1918; (2) export trade statistics; (3) price statistics. A continuation and expansion of these activities is planned. The

significance of this wide-ranging research on materials that will be instrumental in the understanding of international problems is obvious. The vigorous participation of Austria in these activities has been made possible by the generosity of the Rockefeller Foundation. The Austrian Coordination Committee is represented at the conference by Professor Dr. von Verdross in respect to matters of international law, by Professor Morgenstern in matters involving economics, and by the secretary of the committee² in matters dealing with sociology and administration.

2. Voegelin—Ed.



Changes in the Ideas of Government and Constitution in Austria since 1918

I

Under the aspect of "Peaceful Change," Austria offers a curious problem. While other countries are centers of unrest because they have got what they wanted and are trying to keep it against other claimants, or because they have not got what they wanted and are now trying to get it, Austria has been during the greater part of the last two decades a danger-spot of Europe because of its strong inclination toward nonexistence.¹

This curious state of things expressed itself in the Austrian ideas on government and constitution. And the rather remarkable change that has occurred regarding these ideas since the Great War is an excellent indicator of the change of the internal political structure of Austria and the growth of a will to independent political existence.

The Austrian constitutional problem may be put in one sentence: Austria is a nationally uniform state without being a national State. The population of the present territory of Austria has never in history formed a political unit. Austria has a long and glorious history, but

This text originally appeared as "Changes in the Ideas of Government and Constitution in Austria since 1918," in *Memoranda. Prepared by a Study Group on Ideological Questions. Austrian Coordinating Committee for International Studies. General Study Conference on Peaceful Change*. International Studies Conference, 10th Session, June 28–July 3, 1937 (Paris: League of Nations, Institute for International Intellectual Cooperation, 1937), 1–16.

1. The original text of this essay is a sixteen-page typescript, written in English. The present republication has, for the most part, been subject to a light editorial hand; in conformity with other volumes in this series, Voegelin's British English spelling and usage have been Americanized. This text is reprinted also in *Authoritarian State*, ed. Weiss, as an appendix (367–79).—Ed.

it is not the history of the present Austria as an independent body politic; it is the history of Austria as part of the mediaeval empire or as an integral and dominating part of the old Austrian monarchy. During their history, the Germans of Austria have been an empire-building and colonizing people; Vienna has been, up to the rise of the present Reich, the seat of the only German Great Power. And, when in 1918 the break-up of the old monarchy ensued, the population on the Austrian territory was "left" as a "residium." While the other successor states are products of an evolution towards national independence of the population on their territory, the Austrian population was never inspired by a will to independent national existence. Austria, when it was created after the war, had a population, but it did not have a people in the political sense of the word.

By the word *nation* or *people* we mean a social group possessed by the will to common and independent political existence; the two most important criteria for the existence of such a will are: (1) a readiness to rank party interests and programs second, leaving first place for the interests of core national importance; (2) a readiness to defend a common political existence against aggression. Of course, there will always be individuals and groups who do not fall in with this order of values; the criteria mentioned have, therefore, to be interpreted reasonably as meaning that, at any critical point of time a sufficiently large part of the community is inspired by a sure political will to make the weight of dissenting groups and individuals negligible.

II

When we apply these criteria to the Austrian situation in 1918 and subsequent years, we find that our thesis of the Austrian people not being a people at that time is correct. In the last weeks of October and the first half of November 1918, the leaders of the parties informed the public frequently in a programmatic manner of their view of the situation and of the steps they had taken in order to create a satisfactory political status for Austria. A first page of these weeks is filled by the endeavors to create a Danubian Federation between the successor states including Austria. This attempt failing, the idea of the union with Germany, the *Anschluss*, came to the foreground. It would, however, be a mistake to interpret this idea, at the time, as the ardent wish of the Austrian people. The pronouncements of the party leaders accompanying the Law of November 12, which

proclaimed the union with the Reich, made it quite clear that this measure had been taken because the more desirable alternative of a Danubian Federation could not be realized. But the policy of joining the German Republic seemed inevitable because all parties agreed in the belief that, for economic reasons, an independent Austria could not exist. The will to nonexistence as a political unit was expressed with a clarity beyond doubt.

A similar lack of decision characterized the formation of the inner structure of the new state. The conservative parties were much in favor of a monarchy, but they were hampered in pursuing this aim by the resistance of the Socialist Party as well as by external force. The Socialist Party, itself, had a right wing, represented by the chancellor, Dr. Renner, that believed that the ideals of 1848 were now realized; and it had a left wing that believed in the dictatorship of the proletariat as the ultimate goal and considered the democratic republic as an interlude and first phase of evolution towards this aim. The democratic, parliamentary, republican constitutional instrument agreed upon by the parties in 1920 was the outcome rather of external necessities than of any positive will of the fathers of the new Austrian constitution.

III

From the beginning, therefore, a discrepancy developed between the idea of government envisaged by the constitutional instrument of 1920 and the constitutional reality of the Austrian republic. The constitutional instrument was intended to create a democratic republic, meaning thereby a republic with a parliament as the representative of the people; according to the constitutional instrument, the *people* was to be the last source of political power in the republic. Since no such thing as an Austria political people or nation existed, the parliament soon developed into an assembly of parties, opposed to one another on the cardinal point that the left-wing party asserted the ideal of class war, while the several other parties were held together by the firm resolve not to become the victims of the class war waged by the socialists.

The Austrian population was divided along the party lines in a rather rigid way. A series of general elections proved that the party adherence of the individuals would not be shaken. Austrian politics lacked absolutely the elasticity of Western democracies, which arises

from the fact that a sufficient number of citizens are capable of changing the party of their choice, so that the power of the parties can change, and a change of the parties representing the government is possible. The stability of party adherence and the discipline within the parties reached such a stage that a brilliant teacher of public law was of the opinion that the election of single members of parliament was superfluous and that the system would work much more simply when the vote was given for a party only and it was left to the party leaders to compromise on the legislation and other state affairs, every party having in council the weight of the votes received at the last election, the members of parliament, the supposed representatives of the people, being practically of no importance. This real constitution, of course, was incompatible with the ideas of the constitutional instrument, that is: the ideas of a free formation of political opinion, of an election of deputies according to the issues, of a formation of factions within parliament, of the free mandate, etc. The constitution in the working proved to be the permanent cleavage of the population into antagonistic stabilized parties, the absolute power of the parties over the members of parliament, the imperative party mandate, etc.

This period of discrepancy between the written and the real constitution of the country was characterized by a peculiar idea of government and constitution. The written constitution was considered a formal instrument at the disposition of the parties for the attainment of their private purposes. As the political force envisaged by the constitution, the people did not exist; only a formal adherence to the constitution seemed necessary to the real forces, the parties, and the letter of the constitution was quite unscrupulously abused in open contradiction to its spirit. Especially the anti-democratic parties, in the beginning the socialist, later on also the national socialist, considered the rights granted to political activity exclusively as instruments put at their disposal in order to destroy any rudiments of democracy that might exist. The anti-democratic parties created strong organizations with a numerous bureaucracy; they tried to organize their members in a "totalitarian" way by transforming their mental attitude and disposition along strict party lines and according to their *Weltanschauung*; for that purpose they created very efficient educational systems; and, last [but] not least, they organized private armies, which in the case of the socialist army was bigger and in some respects technically

better equipped than the state army. The socialist army, the so-called *Schutzbund*, would have been an even more serious instrument than it actually proved to be in February 1934 but for the questionable qualities of some of its leaders. There had been developing a "state within the State," or rather, Austria was split up into several statelike personal organizations on the same territory, held together by external pressure under a common "constitution." In 1933, the split had gone so far that as a matter of fact there existed besides the state army a number of party armies who participated in the short civil war of February 1934 and in the years of anti-Austrian warfare of the National Socialist party: on the one side, the socialist *Schutzbund* and the S.A., on the other side, *Heimatschutz* (Staremburg-Fey), *Ostmärkische Sturmscharen* (Dollfuss-Schuschnigg), and others.

This evolution has been favored by a widespread attitude towards the constitution that, to a certain extent, had been a heritage of the old monarchy. The old Austrian empire had not been a national state either; and the role of the parties after 1918 was played before the war by the different nationalities within the empire. A political attitude has been growing since the constitutional era of 1848 that might aptly be called "the administrative style." This is to say that the living forces of the old monarchy, the nationalities, were using the constitution in a similar way to the parties in postwar Austria. The constitution was not a living force in itself, but a legal instrument applied by the neutral administration (the emperor, the government, bureaucracy, and army) and used by the collective forces of the nationalities only for ends that were not intended by the constitution itself. The constitution of the "administrative" style is not the heart of the political life of the people; it is not the symbol of its will to national existence, but rather a colorless set of legal rules used by the political forces living under them. In this situation, a curious idea of "legality" evolves; the groups cherishing it do not intend to live up to the constitution but rather to use the constitution as a technical legal instrument for the realization of their political aims. This idea of "legality" was of considerable importance in the crisis of 1933-1934, when the anti-democratic parties resented bitterly the measures taken by the government to preserve the existence of the state as "illegal," because acute examination of these measures could show that some of them did not comply with every letter of the writ-

ten constitution. The decisive point of these reproaches, however, was the fact that they were made by the parties whose outspoken programme was the destruction of the constitution by any means suitable for that end. The "idea of legality" of that period may be put in the phrase: in the opinion of the anti-democratic movements the democrats were under an obligation to cling to the letter of the constitution until the anti-democratic forces were strong enough to do away with it. The rules of the constitution had to be observed, according to this opinion, although the social reality to which they should be applied were lacking. The "democratic" contents of the constitution should be the guiding rule for the government, in spite of the fact that there existed no Austrian "demos."

IV

The events of 1933-1934, and especially the German revolution, brought about a fundamental change in the Austrian political situation. The problem of the existence of the republic as a whole as well as that of its organization had been left in suspense up to that date; now events urged a decision. The existence of the state had to be preserved against the national-socialist propaganda for a union with Germany; the inner structure had to be stabilized against the class-war ideology. The two exigencies were met by the authoritarian and corporative reorganization of the state.

A few weeks after the *Machtergreifung* [seizure of power]² in the Reich, an incident of parliamentary procedure, which probably would have passed without consequences at any other time, made it possible for the government to replace parliamentary legislation by delegated legislation of the government itself. The Constitutional Court was prevented by a technicality from passing judgment on the constitutionality of the governmental orders. By these measures the real constitution of the republic was transformed from government by parties to the authoritarian government of a single group, whose nucleus consisted of the former Christian Socialist Party and the so-called *Wehrverbände*. The evolution of the constitution was marked by the following dates:

2. Hitler was appointed chancellor on January 30, 1933, and the Reichstag granted him dictatorial powers in March of the same year.—Ed.

A. Legislative Power

(1) March 1933 to April 30, 1934: legislation of the government by orders based on a law of 1917, control by the Constitutional Court made impossible.

(2) Since May 1, 1934: legislative and constitutional power conferred on the government by the Law of April 30, 1934, passed by the old Parliament; this law is still in force and will remain so until the corporative organization of the state is completed.

(3) Since November 1934, a supplementary legislative power is given to the new legislative assembly (the Bundestag) organized by the constitution of May 1, 1934; this legislative power is to become exclusive when the corporative organization is completed.

(4) Power of legislation by governmental orders [*Noterordnungen*] conferred by the new constitution; will become practical only when the legislative power under (2) has come to an end.

B. Authoritative Political Organization

(1) The Patriotic Front as founded by Chancellor Dollfuss in 1933; free political organization to attract the forces in favor of the policy.

(2) The First Law on the Patriotic Front, creating a Corporation of Public Law with the executive right "to form the political will of the people," May 1, 1934.

(3) The Second Law on the Patriotic Front making the federal chancellor *ex officio* leader of the front; May 20, 1936.

C. The Parties

(1) Activities of the Communist Party prohibited by order of May 26, 1933.

(2) Activities of the National Socialist Party prohibited by order of June 19, 1933.

(3) Activities of the Social Democratic Party prohibited by the orders of February 12 and 16, 1934.

(4) Disarmament of members of parties whose activities were prohibited, and of their military organizations. Law of August 31, 1934.

D. The *Wehrverbände*

(1) Period of independent organization (*Heimatschutz, Ostmärkische, Sturmsharen*, etc.).

(2) Volunteer Guard (*Freiwilliges Schutzkorps*) organized by the government in 1933, reorganized in June 1935.

(3) Designation of the *Wehrverbände*, whose members had the exclusive right to join the Volunteer Guard; June 1935.

(4) Creation of a Front Militia, being a military organization of the Patriotic Front; Second Law on the Patriotic Front; June 1936.

(5) The Front Militia becomes an auxiliary force of the state executive; June 1936.

(6) The members of the Volunteer Guard are taken over to the Front Militia; July 1936.

(7) The *Wehrverbände* are dissolved. The Front Militia receives the monopoly of volunteer military organization; the Front Militia has "to continue the tradition" of the *Wehrverbände*; October 15, 1936.

E. General Compulsory Service

The Law of April 1, 1936, and a number of subsequent orders created the Compulsory Service for all Austrian male citizens from 18 to 42 years of age.

F. Youth Organization

Creation of the *Österreichische Jungvolk*. Youth Law of January 1937 on the patriotic education of the youth. Youth meaning: boys and girls up to the age of 18. Separate organization of the Catholic Youth.

V

These measures show the reverse development of those of 1918 and the following years. While in the former period a constitution was constructed that lacked in a fundamental respect a basis in political reality, now the political reality develops first, partly in contradiction to the former written constitution, and then the laws are given that fit the new development. A decisive political will to exist, and to exist in a definite way, is the primary fact that creates the adequate legal instrument to stabilize the new order. The political forces envisaged by the new legislation on matters of constitution are the forces that can be discerned in reality as the decisive forces of the Austrian government, while under the constitution of 1920 the principal political force envisaged by that instrument, the "people," did not exist in any relevant way, and the real political forces, the parties, had no place in the system of the written constitution.

The new infiltration of reality was brought about by events that have already been hinted at. In 1918 there was no good reason for an independent Austrian existence. As an economic unit, the country

was cruelly maimed by the dismemberment of the old monarchy, and the solution of all difficulties seemed to lie in the union with some larger economic area. The national feeling was equally in favor of a union with the Reich; and the Socialist and Catholic Parties did not object to union with a country where the parallel parties exerted such considerable influence as the Social Democrats and the Zentrum in the Reich. After the German revolution of 1933 the situation radically changed: Only the National Socialist minority was in favor of the *Anschluss*; the Socialist and Catholic Parties could not any longer approve this policy after the experience of the sister-parties in the Reich. The two largest parties, who together in the parliament of 1933 commanded 80 percent of the votes, had a new and very real interest in the independent existence of Austria. The smooth development of this favorable situation, however, was hampered by the difficulty that the Socialist Party was prevented by its class-war ideology, its tradition, its anti-religious cultural ideals, and the accumulation of bitter feeling between the big parties during the years since 1918 from cooperating in the reconstruction of Austria in a satisfactory way—the short civil war of February 1934 exterminated the Socialist Party and left the field to the Catholic forces alone.

An entirely new type of political responsibility and morale was growing fast. The inclination towards nonexistence was replaced by an Austrian "mission." While up to 1933 independence was more or less forced upon Austria by the Treaty of Saint Germain and the later agreements "obliging" Austria to stay "independent," independence now had become a necessity in order to pursue the realization of certain political ideals. The National Socialist *Weltanschauung* with its totalitarian claim proved to be incompatible with Catholic ideas of personality, society, and humanity. The Austrian tradition of peaceful and tolerant administration acquired a new value when the neighboring Great Power professed adherence to a form of government that demanded the restriction of personal rights in favor of the omnipotence of the community, the *Volk*, and the state. Chancellor Dollfuss attached particular importance to the "authoritarian" quality of the new government as opposed to the totalitarian ideals. A movement made itself perceptible that endeavored to clarify the particular qualities of the true Austrian (the *Österreichische Mensch*) as the bearer of the new Austrian mission founded in a century-old tradition. The Austrian German was discovered under the influence of Mediterranean culture, while the Reich was said

to be dominated by the German type that had not been imbued by the Latin spirit; Austria was said to be the representative of the German Romanitas. And, last [but] not least, the monarchist movement, which had no real meaning during the period when the idea of *Anschluss* was dominating the scene, gained in force, because it offered a reasonable solution for the problem of Austrian independent political organization and a safeguard against all the projects of a "union."

VI

The peculiar meaning of the Austrian idea of authoritarianism cannot be grasped adequately unless it is considered in relation to the idea of corporative organization. The idea of organizing the people on professional lines is an old one in the history of parliamentarism. Since the 1850s programmes have sprung up in the United States (Calhoun), England (Grey), and France (Renan) with the intention of reforming Parliament in order to make it technically a working instrument of government under the new conditions of mass democracy. To avoid domination over groups of important social function, but small in number, by the large masses of petty-bourgeois and industrial workers, Parliament should be organized—in the general sense of such reformers—according to professional and other functional groups, giving proper weight to each group irrespective of its size; this measure should preserve the influence of small groups who, otherwise, would have been annihilated politically by the masses. The "corporative" state is, in this respect, a technical measure to paralyze certain disadvantages of mass democracy.

Another incentive to corporative ideas comes from the social field. The Marxist ideology of class war furthered by way of reaction the project of associations comprising industrialists and workers in one social unit. This idea goes back to the end of the last century and has been fostered in Austria particularly by the Vogelsang group.

A third element may be found in the idea that "economic interests" should participate in the government of a nation and perhaps replace "political" representation. This idea has its foundation in an exaggerated opinion of the brain qualities of economic "leaders" as compared with those of politicians, and more generally in a trend to consider the "specialist" as the proper type of man to handle different social problems. The idea expressed itself in the movement

of "Economic Councils," which should form part of the governmental organization of a state (German Reich, France). In Austria this movement can be recognized since the constitutional era of 1918 and 1920.

And ultimately, and for Austria very important, the organization of professional corporations corresponds to the Catholic social ideas on the subsidiary function of larger communities. The large community, the state, should intervene only when the means of smaller social units do not suffice for their ends. The organization of smaller social units with a certain autonomy is one of the postulates of the encyclical *Quadragesimo Anno* (1931)—which, for the rest, expresses the idea of social pacification and extermination of class war ideology as well.

All these factual and ideological motives together have been causes of the Austrian corporative organization. A corporative organization of the people on the lines of professional and other functional interests has a technical consequence that had not been taken into account by the reformers of the nineteenth century, which, however, has been seen already quite clearly by a statesman like Seipel (and also by French teachers of public law like Hauriou and the institutionalist school). A representative of economic and other functional interests can never be a political representation of a people. It is a system of private interests and not an organization of the *res publica* as a political unit. A representation of interests can work without destroying the state only when a political authority is organized that will paralyze and counterbalance the centrifugal tendencies of private interests and works as the representation of the will of the people as a whole. A corporative representation requires a political authority as its technical counterpart in the governmental organization of a country.

This technical necessity of an authoritarian government seems to develop into the essential contents of Austrian authoritarianism. The problem is perhaps not yet seen quite clearly; at the least, the Second Law on the Patriotic Front (May 1936) has still created a Leaders' Council, consisting of forty members, whereof fourteen are representatives of the corporations. But it has already been realized in certain governmental circles that the organization of this council gives rise to misgivings. The Patriotic Front is destined to be the political organization of all citizens and it should, therefore, be organized on the lines of the general political interests of the

people and not incorporate representatives of particular economic interests. It will probably, sooner or later, become necessary to clarify the situation and to separate technically the lines of representation necessitated by the corporative organization of the state.

VII

I have given a very general outline, in a wood-cut fashion, of the technical problems of Austrian reorganization. But I hope that the decisive changes in the ideas of government and constitution have become clear, and also their practical import for the problem of "Peaceful Change," as far as Austria is concerned. While up to 1933 Austria was "forced" to be "independent," while no political people did exist in a relevant way on the Austrian territory, and therefore, Austria was a danger spot in the sense that changes in the map of Europe of tremendous consequences have been imminent because of Austria's will to nonexistence, since 1933 the situation has changed considerably. It would be an exaggeration to say that now an Austrian people exists in a most satisfactory way—but certainly it is now in the making. The unpolitical, administrative attitude and the atmosphere of exploitation by the parties has been dissolved; a consciousness of the political necessities is developing rapidly. With the parties, the private armies have disappeared, and a Front Militia and the General Compulsory Service have taken their place. A youth organization is developing. And insight into the peculiar political problems of a corporative state is growing. From the point of view of domestic politics, a not entirely peaceful but certainly a change has taken place, which is now rapidly making for the consolidation of the political unit. From the point of view of foreign politics, this consolidation removes the danger of the inclination of a state in Central Europe to disappear from the map, with all the consequences that might ensue.



Expression of Opinion and Opinion Formation

The idea that public and private opinion are the tribunal before which community life has to sue for legitimacy is grounded in a concept of man developed in the eighteenth century. Man was represented as a rational person who can shed all prejudices and who can form for himself an "opinion" based on "information." The emotional and traditional factors of character and opinion formation were ignored, and the possibility that opinion can be produced by propaganda was hardly noted. Measured by the standards of our current knowledge about the half and fully unconscious influences to which every man as a member of a community is subject, this image was empirically false.

The idea was not illusionary, however; it could become effective in practice, because the "person" that was supposed to be the bearer of opinion was modeled on a very specific type of man. Rousseau portrayed him as belonging to an intermediate class between poor and rich, between rulers and *populace*, a group of men who, approximately equal in wealth, social status, education, and intellect, are not of a high enough station to make exorbitant demands, nor low enough to have nothing to lose; their common interest dictates that laws be observed, authorities respected, the constitution preserved, and the state be at peace. This healthiest portion of the commonwealth guarantees that its goals are none other than those of the general welfare. It is then the middle bourgeois who is taking care of his business that served as model for the person whose "opinion" was to be expressed and asserted in public life.

This article, "Meinungsäußerung und Meinungsbildung," originally appeared in *Neue Freie Presse*, May 30, 1937, 1.

Rousseau also formulated the exclusive conditions under which the transition from private to public opinion was to take place. Information concerning any question was to be made accessible to every individual, and he in turn was to be free to make use of it in order to form his own opinion without the influence of anyone else. This would do away with the extremes, and a happy mean would assert itself. Yet this system is upset when opinion groups come into being: The number of opinions drops, becoming equal to the number of parties; achieving a balance becomes difficult once one group becomes stronger than all of the rest put together; public opinion no longer exists at all, but only the private opinion of the strongest party.

These prerequisites, which were to make possible a free private opinion as a source of public opinion and of public will, never existed with respect to a person guided by reason and free of the influence of feelings; if they ever did, they are nowadays endangered or have disappeared altogether. Rousseau's "information" is not equally accessible to everyone. It is not only the bourgeois type that forms and expresses opinions; in fact, other social strata have achieved dominance, and the voice of the populace participates loudly; the formation of opinion is not free but is subject to influence apparatuses whose pressure is being steadily perfected; these are in turn being manipulated by the earlier-mentioned "opinion groups" that try to block the formation of public opinion and to detour its formation in the direction of their own interests; the fact is that large European communities are controlled by a single group.

Parallel with these prerequisites, the contents of the idea changed. The idea of opinion formation begins with the assumption that a community consists of persons that share the same basic attitudes (namely, that its members are bourgeois individuals guided by reason), whose commanding majority reacts to the same questions in approximately the same manner, since they are in possession of the same information. The "information" is the infrastructure that must have a corresponding superstructure of values shared in common, so that, in the upshot, "opinion" may result. When people who belong to the same social group react to the same questions, being in possession of the same information, in different ways, because they are split in respect to their basic attitudes—as when, for instance, they champion incompatible world views—no public opinion can arise. It is precisely the questions concerning world views that, in

accordance with the original idea, were without disputable content, that are nowadays introduced into the sphere of opinion formation—with a war of opinions in the worst case being the result.

Furthermore, the German language offers the opportunity to accommodate under the term *opinion* two meanings that are kept separate in, for example, the French idiom: that one may entertain a *conviction* but may not have any *compétence*. In German, the fact is easily overlooked that any *Dummkopf* may have an opinion but that the opinion that is actually meant is one that is well founded and that can be demonstrated to be such in a rational argument. Hence “opinion” easily merges into *convictions* and *inclinations*, which are proudly owned up to by the one who has them, and this without realizing that the worth of a conviction does not consist in its possession but in its content and its bases. Often, too, such an opinion and its utterance are excused with *optima fides*¹—but one does not possess *optima fides* in order to be convinced; instead, one has to *know*, according to the original concept of opinion, what one says and does—and this with a constant skeptical readiness to change one’s opinion should new information become available.

Today, the idea of opinion has been formalized and includes every utterance that claims to be an opinion—ranging from an utterance that is paid for to one that is hammered in by propaganda, from opinions formed in good faith to those shot through with bad faith, from a rationally founded opinion as one of the steps in a discussion to an unfounded assertion intended to stir up emotions and pursue social “integration.” Under these circumstances, the institution of the right to freely voice opinions can become a tool for the annihilation of the person whose community-creating achievement this institution was intended to protect.

Two principal attempts at solving this situation are apparent in the contemporary European world. The democratic states opt for a solution through laws guaranteeing state protection. The purpose of these laws is to prevent the threat of the annihilation of a person and of his or her opinion by emotional aggression masquerading as opinion. Typical measures taken to implement this purpose are: the prohibition of emotion-stirring uniforms and insignia, of paramilitary formations and of their deployment; the prohibition of utterances of opinions by spoken or written word, or visual representation

1. “best faith,” i.e., gullibility—Trans.

calculated to stir up emotions or provocation, etc.; prohibition of parties that demand totalitarian measures for the expression of their "opinion," i.e., in a Rousseauian sense, who would replace the *res publica* with their *res privata*. Measures of this kind are attempts to fill the fully formalized concept of "opinion" with a concrete content in order thereby to de-emotionalize public life.

Totalitarian states take a different tack. Here the expression of opinion is radically emotionalized, and the state monopoly on propaganda becomes an instrument for the shaping of the citizens' opinion. The theory of the person is dropped altogether and replaced by a doctrine of a hierarchical classification of one's fellow countrymen, fashioned on the pattern of an idea of the people: The Führer and the elite lay hold of the spirit and will of the people, of the mass of fellow countrymen, by means of an immediate intuition as they follow their Führer. According to this view, democracy "debases" "the people to the level of a majority"; in a totalitarian state the Führer expresses the "opinion" of the people, "under certain circumstances even against the subjective caprice of mere popular conviction."

Today we cannot as yet pass definitive judgment on these solutions. At any rate, the democratic solution is bound up with a well-established, enduring tradition dating back to the classical bourgeois era and with a sufficiently large popular core that possesses a homogeneous set of values so that it can resist emotionalization. And at any rate, the way that leads to emotionalization runs the risk of leading to the rule of depersonalized masses.



What May People Be Allowed to Know?

We are familiar from daily politics with arguments concerning the free expression of opinions and censorship. The partisans of the former appear in the role of advocates of truth and of its free, courageous proclamation; the partisans of the latter are often blamed for trying to hinder people from developing their personality by broadening the range of their knowledge and education. This political combativeness distorts and conceals the deeper motives that condition it, doing it so thoroughly that today even the surface of this political issue has almost been lost. This customary antagonism has its origin in the era of liberalism and does not mean at all that one group of people is for freedom of speech without qualifications, while another would prohibit it. What it really means is that the partisans of the free exchange of opinions wish to express *certain* convictions, such as, for example, ideas of the liberal-bourgeois variety, but are not at all pleased when other ideas, such as those of the proletarian-socialist variety, are aired. Furthermore, it means that the advocates of censorship would have *certain* things not mentioned, but have nothing against other things being mentioned. In addition, the politics of the hostile juxtaposition of speaking one's mind and prohibiting it keeps out of sight a large number of people who do not wish to do either, namely, the listeners. These can in turn be classified into people who hear certain things and other people who just as determinedly wish not to hear certain things, and, finally, the great number of people who are indifferent to this question.

Thus, when we force our way through the political formulas and reach reality, the deeper issue comes to the fore: May people be

This article, "Was dürfen die Menschen wissen?" originally appeared in *Neue Freie Presse*, November 7, 1937, 1-2.

allowed to know *everything*? And, if not, what *may they be allowed* to know? And, furthermore, who is it that *forbids* them to know? Is it always the others who forbid, or do they not forbid it to themselves? Everyone knows from experience that there are things he likes to hear and other things he would rather not hear, that there are things he likes to remember and other things he would rather forget. Depth psychology enlightens us about mental processes that push imaginings or thoughts temporarily or permanently beneath the threshold of consciousness. The belief that people want to know *everything* and are, so to speak, recording apparatuses that neutrally register all objects in the world that affect them and elaborate them into a system of articulation is false. The radical political idea of the desire to know and to speak, which is based on this belief, stands and falls with this false empirical psychology.

In effect, denial and repression in the formation of opinions and positions are processes as important as reception and consciousness. Every pedagogical method attains its goals by representing desired thoughts and images to the pupil, then impressing them on him by repetition, and by keeping away from him the undesirable ones. Every advertising technician must have the means mastered that produce in the customer at the moment of purchase the readiness to choose an article produced by his firm and to make him completely forget the existence of articles offered by the competition, which are probably just as good and, besides, even cheaper. The same psychological organization controls man's life in a community. A community consciousness exists that adopts certain contents, rejects others, and represses yet others. One of the most crucial political tasks serving the preservation of a community is to keep intact the organization of this consciousness in the face of its great mass of members. I am selecting from the profusion of issues one topic: loyalty to a political community.

Loyalty is a comprehensive and vague condition. The element that is relevant to our question could be summarized in the formula "My country, right or wrong." This meaning of loyalty is a conviction and attitude of devotion of a human being to his community. It is not a momentary experience, but an enduring attitude that requires, among other things, a permanent restraint on thought and speech lest faith in the idea be jeopardized, either before one's own inner forum, or in the presence of others. We speak of a "disloyal" attitude

in cases where someone makes disparaging statements about people and communities to which he owes loyalty. Outward tokens of loyalty do not cause mental strain only when they are based on an inward loyal disposition. Such inward disposition requires a certain one-sided selective knowledge concerning whatever it is that has a rightful claim to this loyalty. Knowledge of its good qualities is permitted, but not of its bad ones. A loyal person has to develop a mental attitude that enables him to consciously grasp whatever promotes the ideal and to reject as unbelievable whatever would belittle it. Should his best efforts prove unable to dispute what belittles this ideal, he must forget it as quickly as possible. Should this, too, fail, he has to convince himself that whatever belittles this ideal is insignificant. This is why ethicists came to the conclusion that unconditional loyalty is a questionable virtue—but our task here is not to moralize but to present a descriptive analysis.

The community has various means at its disposal for promoting a loyal attitude among its members. One of these equally preferred as well as notorious means is to touch up history: A better national history consists of victories, while defeats have befallen others; the contributions of one's own people to the culture of humanity are incomparable, while the contributions of other nations are marginal, or likely of suspicious worth. Information about serious crises is suppressed as much as possible. Goethe was of the opinion that the endangerment of our continent by the Mongol invasion in the thirteenth century would have to be blotted out from European consciousness; even today common belief has it that the withdrawal of the Mongols was caused by the courageous resistance of the Silesian knights.

A brilliant means to produce reliable loyalty is mass propaganda that has modern technical means at its disposal. It fills the souls of the community members with the appropriate images in a grand style and excludes all inappropriate ones. In addition, its effectiveness is extraordinarily intensified by the current religious situation and the ability to project evil outward. In this situation, abuses need not necessarily be concealed, for they, too, can intensify loyalty, if their perpetrator is "the other one." Bolsheviks, Jews, Freemasons, Jesuits, fascists, capitalists, liberals, the satiated democrats, militarism, etc., are so many genially invented devils who not only make it possible for the loyal man to recognize evil as their handi-

work, but stir up in him an even more fanatical loyalty to his currently poor and persecuted community. The results of this method are quite excellent. I tested party members of diverse political persuasions and established that after reading an information sheet, they know everything that their loyalty allows them to know and nothing that they are not allowed to know. They refuse to read newspapers that contain too much of what they are not allowed to know.

Great difficulties for a perfect organization of loyalty arise from the fact that people are not only political beings, but are also equipped with elements of an apolitical mental existence. People who have made it their business to recognize reality without regard for social and political taboos are seen as a nuisance. In all times, conflicts have therefore arisen between what people's loyalties allow them to see and what they nevertheless know, or even want to know, as they put up an apolitical resistance. During the high flowering of Greek culture, it was against the law in Athens to study astronomy, because the stars were thought to be gods; when, a decade ago, an ill-fated teacher in Tennessee exhumed Darwinism, a sensational trial was held in the backwoods. I select my examples from reputable and renowned democracies, because many "loyal" democrats are firmly convinced that these conflicts occur only in evil dictatorships. Every political community that has at the same time developed a scientific culture is faced with the problem of protecting its organization of loyalties from knowledge. There is no general rule for a solution. Nevertheless, one could say that sciences that do not deal with matters that are taboo, which is to say, with matters of importance to the organization of loyalties, in general have more space to maneuver—such as, for instance, mathematics, or, in modern culture, physics (insofar as it must not be Marxist-dialectical)—while the historical, political, and social sciences always find themselves in a tricky situation. One might say furthermore that during times in which the community is not seriously endangered, the space for knowledge enjoys more freedom, while in situations requiring intense loyalties, much is not permitted to be known—during the war it was forbidden in the United States to cite certain biblical passages, as was the case with Kant's *On Eternal Peace* in Germany.

Wise men have therefore drawn the conclusion that many things should be said only within a small circle and certain things said to no

one at all. Plato writes in his Second Letter: "The greatest safeguard is to avoid writing and to learn by heart; for it is not possible that what is written down should not get divulged. For this reason I myself have never yet written anything on these subjects, and no treatise by Plato exists or will exist, but those which now bear his name belong to a Socrates become fair and young."¹

1. Plato, "Epistle II," in *Plato VII*, ed. and trans. R. G. Bury, Loeb Classical Library (Cambridge: Harvard University Press, 1952), 402-19 (at 314B-C). Voegelin's translation into German includes his interpolation that "these subjects" refers to "the innermost core of [Plato's] teachings."—Ed.



The New Style of Warfare

The material and moral arms buildup of our day has as its goal a so-called total war, the full commitment of a nation's power resources. Every citizen will be called upon to contribute to this buildup; the war of the future will not discriminate between combatants and civilians. Fantasy is given free rein to portray the radical ravages of this war, reinforced by the events taking place in Abyssinia, Spain, and China. While pictures are spread all over the world of peoples engaged in a mutual *en masse* slaughter, a new reality insinuates itself into this portrayal. Its peculiar nature will be hardly noticed, because it does not correspond to the public's expectations. What we are facing here is not a second world war, but we are, so to speak, caught right in the middle of it, without having as yet fully realized it, due to the oddity of its outward forms. All the great powers are today participating in this war, as are several middle-sized and small European states and a number of Asian and African peoples. Yet in spite of their total organization on a war footing, these nations have not engaged one another in warfare with a total commitment of their war machines, but are instead deploying relatively small units that serve as outposts. The motherlands of the great powers are not battlefields.

The features of this new style that can so far be discerned are the following: At the moment, at least, the great powers have not the least inclination to engage in open combat nor to test on each other the effectiveness of their respective war machines. For this reason, the attentive observer of events finds it nearly impossible

This article, "Der neue Stil des Krieges," originally appeared in *Neue Freie Presse*, November 20, 1937, 2.

in individual instances to tell who is fighting whom. In the age of national wars and of imperialism, the respective frontlines were clear. Nowadays, in contrast, the traditional national entities are more or less deeply splintered by world views and other interests, so that, at least in the present phase, they are not engaged in battle as closed units.

In the Sino-Japanese conflict the combatants are only partially identifiable. The belligerent on the Japanese side is without doubt neither the people nor the government, but the Manchurian general staff and the officers corps that is recruited nearly exclusively, in contrast to European armies, from among small-holding farmers. Who is in charge is evident from the latest communiqué of the Japanese representative in Peking, which states that "the Japanese army has no intentions to unify Manchukuo¹ and the five Northern Provinces into an empire." As it was recently formulated by a Japanese, Japan currently has no diplomacy, but only a strategy. According to all available reports, the Japanese operation [in China] does not enjoy uniform support from the workers, landowners, and the bourgeoisie. The situation on the Chinese side is even less clear. In the Northern Provinces, the old type of a provincial general involved in business transactions seems to predominate. In Nanking, the center of the resistance is Chiang Kai-shek and his National Reform Movement. But there exist circles prepared to come to terms with Japan.

Thus, the war is not waged directly between state and state or people and people—hardly ever before have the peoples involved participated less in world affairs than is the case in this great uproar of peoples of our time. A total war would most likely be a war of annihilation. In order to avoid this risk, war is being waged, so to speak, on the spot, namely, there where the actual goals of the war are located. None of the great powers intends to absorb another one, but each wants to hold or conquer positions on the periphery of its range of power. The war dissolves into individual actions of the power organizations—not of the peoples—in order to gain the disputed positions. Those that bear the suffering are the civilian populations who have the misfortune of living geographically at critical points. The war moves along the line of least resistance. The attackers choose

1. A Chinese puppet state created by the Japanese.—Trans.

opponents who are militarily greatly inferior, avoiding as much as possible clashes with adversaries equal to themselves. Where the great powers are fighting directly with one another, they confine themselves to employing regional military means, and they try to avoid an expansion of conflict that might lead to a clash of the motherlands.



Flight into Work

In the course of history, human beings have assumed different attitudes toward work. Work has been the object of scorn and of high praise; it has been avoided and it has been sought; it has been considered a curse and a blessing; it has been felt as a burden and as a social obligation. Aristocratic cultures saw work as unworthy of a master; first, naturally, physical labor with its unaesthetic accompanying phenomena and consequences, but also mental work that lays claim to the entire man. Even Montesquieu, the author of the *Spirit of the Laws*, encountered certain difficulties in his career because of his work, since the writing of books was not worthy of an aristocrat. Voltaire's social status was so questionable that on one occasion he was caned by a nobleman because he took the liberty of making some nasty remarks. It was not until the ascendancy of the bourgeoisie that work acquired its prominent rank in our culture. Finally work became the existential form of bourgeois man and successful work a sign of ethical testing and religious election.

The transition to the bourgeois assessment of work has nevertheless not settled the issue for us. Exactly to the extent that work controls daily life ever more intensively, new questions keep arising. Work, exhaustive work as a life-style, is bearable and possible as long as it makes good sense in the world view of the workers. He who believes in the divine judgment "by the sweat of your brow you shall eat your bread" will not experience hard work as a pleasure, but he will find it to be meaningful in his religious world view. He who believes, as the Calvinists do, that success in work is proof of his eternal bliss will not flag in his efforts to furnish this proof. When

This article, "Flucht in die Arbeit," originally appeared in *Neue Freie Presse*, December 16, 1937, 1-2.

this faith vacillates, however, the burden of work becomes oppressive and destructive of life; an uprising against the burden of work begins to stir.

In Europe, the rebellion of intellectuals and proletarians against work begins almost simultaneously. The intellectual targets primarily the division of labor and specialization; he turns against the destruction of personality by a one-sided development of the faculties and against the stunting of integral man. Throughout the works of Hölderlin and Schiller there rings a bitter lament over the fragmentation of man and the destruction of genuine humanity by the specialization of labor. Then laments start gathering momentum concerning the crushing work load of the industrial worker who whiles his life away in misery and ends it prematurely; his existence has no meaning whatsoever. The work of the bourgeois, physically lighter, affording greater freedom and a possibility of edifying the mind, becomes the ideal. Socialist thinkers wish to enable the worker to enjoy the amenities of the bourgeois mind and life-style by a shorter work day and an increase in wages. The times are ruled by the idea of flight from work and by a dream about a perfect existence in which men lead their lives in ample free time and in a manner worthy of their dignity. In many respects this dream turned out to be utopian. It is true that the work load has become lighter, work hours have been reduced, and people have more free time. But for all of this, the world has not become better and leisure time is not an unmixed blessing. "Use of leisure time" has become a European problem. Large masses of people do not seem to know what to do with leisure time; it takes a collective effort to channel them in a manner that is beneficial to them and not detrimental to society. Labor organizations were the first to organize the life-style of their members outside the work place.

At present, a new attitude to work has appeared everywhere and at all levels of the professions and trades. It is taking a stance directly opposite to the old one. While one could earlier identify a flight from work, a flight into work can now be noted in innumerable individual cases. By forcing the worker to pay attention to his task and to show dedication to its execution, work provides a safe haven from personal worries and mental pressures. In times of universal malaise it provides a universal haven; in times of unemployment, in the absence of work opportunities, it becomes for those millions excluded from the labor force a yearned-for boon. The reasons for this

may vary greatly. One man seeks refuge in work because of his insight into the meaninglessness of all other activity; with its regular pace, work is a form determined by fate that offers him the foundation for life and frees him to enjoy the pleasant life of the small communities of family and friendship. Another man seeks work out of despair, because even though he is aware of more important matters than the fulfillment of professional obligations, he cannot concretely do justice to these matters, or because he seeks to forget the sight of the evil things of his time that he is unable to set right. A third person—and many of his kind exist in the collectivist cultures of Europe—seeks work because he sees in it the most meaningful reality in the service of the community; he feels he is the tool of the collective that he serves and he is unable to see any other meaning of life outside of this service.

Whatever the reasons may be—insight into fate and surrender to it, resignation, despair, joyful service—many people, at least those not utterly obtuse, turn nowadays, as far as this seems possible and for one reason or another, to some kind of activity. They work far beyond the necessary demands made on them: Everyone knows people who cultivate a plot of land in their free time or work at arts and crafts, learn foreign languages or continue to improve their education in their profession. It even causes resentment everywhere that people for whom “it is not necessary” work and, as a general conviction has it, deprive others of the chance to work. The era of disdain for work, the ideal of lordly existence, the proletarian craving for bourgeois leisure, all of these have been swallowed up by new needs, and a new attitude is growing to maturity.



On Sander's *General Political Science*¹

Sander's *General Political Science* is in terms of topic and size the most significant German-language contribution of the past few years to a systematic groundwork of a science of the state.² The straightforward scientific attitude of the author, the rare professional conscientiousness in the unfolding of fundamental ideas, the declaration of war on normative political science, the vigorous attacks on the current practice of political science, as well as, finally, the new formulation of the problems of state and of law give the author and his work the right to expect his colleagues to come to grips with the issues he has broached.

I

Sander calls his work a "groundwork" [*Grundlegung*] that does not pretend to go beyond a discussion of the basic issues concerning the nature of the state. He claims that a more far-reaching unfolding of the problem would serve no purpose, since the concrete situation of political science today requires a clarification of principles, while dealing with the details is less pressing. The situation of political science, as Sander sees it, is the first determinant for a delimitation of the subject matter for the combative stance that underpins his investigations.

This essay, "Zu Sanders Allgemeiner Staatslehre," originally appeared in *Österreichische Zeitschrift für öffentliches Recht*, n.s. 1, no. 1/2 (1947): 106-35.

1. The footnote that appeared in the German original read, "With the permission of the author, this essay, which was typeset in the spring of 1938, now appears in the first volume of the new series of *Österreichische Zeitschrift für öffentliches Recht*."

2. Fritz Sander, *Allgemeine Staatslehre: Eine Grundlegung* (Brünn-Prag-Leipzig-Wien: Verlag Rudolf M. Rohrer, 1936), i-xiv, 1-521.

The situation is critical. The faculties of jurisprudence and political science basically conduct two kinds of science, neither of which could rightfully lay claim to the name of political science: legal dogmatics and macroeconomics. Political science is not cultivated independently but has been reduced to introductory lectures for the presentation of constitutional law. The chief causes of this state of affairs are that, in principle, the state has no interest in political science nor in a public airing of the question why certain people rule and others obey; furthermore, the faculties of jurisprudence and political science serve primarily as training facilities for state employees, for whom knowledge of and loyalty to the law is desirable, whereas too much speculation about foundations is not; and, finally, educational practices in dogmatic juristic specialties, which in themselves do not require any in-depth scientific and research activities, might be detrimental to the attitude required for the solution of much more difficult questions. Political liberalism is responsible for the fact that knowledge concerning the state has neither developed nor been preserved outside of the university; by assuming a basically anti-state attitude, it insists on dissolving problems of the state into legal problems and devaluing fundamental constituents like "rule," power, "sovereignty," etc., removing them from discussion. The result is that political science is in a state of decay and its problems are covered over with categories of legal dogmatism; jurisprudence also suffers, because its independence is lost as it blends with political science. There is a need for a struggle for the establishment of a "pure political science," a "relentless struggle" that "must not cease until it is generally acknowledged that political science is not the same as jurisprudence, that 'the jurist' has no business within the sphere of political science, and that the so-called 'faculties of law and political science' will not reclaim a significance that transcends the transmission of special professional and vocational techniques—which in no way fall within the pale of university instruction—until they focus on a theory [*Lehre*] of the state as the crucial point of instruction" (xii ff.).

The structure of the book is simple and clear. An analysis of the fundamental state of affairs is followed by a determination of the nature of the state and, thereafter, of the constitution; then come sections on the various types of states and the relations between states; the study concludes with a determination of the nature of

law and the relationship of the state to law. In what follows I take up the main features of the definitions and the consequences that follow from them:

a) Sander defines *the state* as "the specific command-rulership [*Befehl-Herrscher-macht*] of a specific man in regard to a specific relationship at the point of time that he who wields this power to command and rule is ready to exercise it" (135).

b) This power of command-rulership is a type of the original power to rule and, specifically, that type of power which enables a man to see his command executed (96, 119).

c) Original rulership [*Herrscher-macht*] is the power to induce by a demand the addressee of this demand to engage in the desired behavior (89).

d) Power is a condition in which "a specific man in a specific place and at a specific point of time can effect an achievement by the strength of his volition" (85).

The chain of definitions that leads in reverse order from power through an original rulership and command-rulership to the state is interlaced with yet another series:

a) A command [*Befehl*] is a kind of commandment [*Gebot*]. It is a command when the commandment asserts that the threatened unfavorable response it contains will be effected by the behavior of a third person (the custodian of compliance), who is dependent on the same commandment (9 ff.).

b) A commandment is a kind of demand. A demand is a commandment if it asserts that the fulfillment of the wish contained in it is in the interest of the addressee, because otherwise a third person will adopt a behavior aimed at the realization of a negative value for the addressee (9 ff.).

c) A demand is a kind of behavior incentive [*Verhaltenswerbung*]. A behavior incentive is a demand if it asserts that in the nonfulfillment of a wish a negative value would be realized that would be detrimental to the sum total of the addressee's interests.

d) A behavior incentive is a dual assertion that someone makes in order to induce someone else to engage in a specific behavior (commission or omission). One assertion refers to a wish concerning the behavior of the other (assertion-of-behavior-by-an-other). The second assertion concerns the interest of an other by means of which the inducer wishes to awaken a belief in the other that the fulfillment of the wish is in the interest of the other (3).

e) A behavior incentive is a socialization, i.e., a process that encompasses relations of mutual influence between people with the purpose of bringing about a psychic relationship between two people, i.e., a society (1 ff., 16). A society comes into being when a "different spirituality" "belongs to two souls at different points of secular time respectively, meaning that a soul-instant of behavior incentive will always belong to one soul, but a soul-instant of the fulfillment of the behavior incentive will belong to the other soul" (17). Relations of mutual influence between people are either only corporeal relations or relations in which a corporeal state or a psychic state that finds expression in the corporeal state of one person exercises influence on the soul of another (1).

Both chains of definitions intertwine as the definitions of the second enter into the first as *differentiae specificae*. Rulership [*Herrschaft*] is a kind of society, namely, one in which the addressee of the demand complies with this demand (17). Through society, rulership becomes power to socialize, through rulership the power to socialize becomes command-rulership, and through its readiness to action, it becomes specific as the power of the state.

I have put this series of definitions in an order that proceeds from the most specific concept to the most general one. This establishes a clear line of filiation that runs directly to the presupposed fundamental concepts, while Sander's profuse ramification into kinds, which proceeds from the general to the specific, is omitted. Thus we gain insight into Sander's *modus operandi*, especially into his tidy conceptual technique, which determines the nature of the state in uninterrupted fashion from the presupposed categories. The most important presupposed categories are the following: world, thing-place-time, man-body-soul, action. Sander develops them neither demonstratively nor descriptively, but introduces them as expressions whose meaning one might assume will be understood by everyone. Sander has adopted these categories from Rehmke's *Fundamental Science* [*Grundwissenschaft*] and he attributes to them, as far as I can see, the same meaning as Rehmke. These categories are a further determinant of Sander's delimitation of the subject matter of political science.

The definition of *the state* as the command-rulership possessed by one who is ready to action delivers a third determinant; this definition is the starting point of further analyses for Sander that we cannot present in their entirety, but only by way of examples. The

definition of *the state* founds political science as a social science, i.e., as a science that is characterized by precisely determined social conditions. The range of these conditions that Sander's analyses touches is relatively narrow; his investigations are in essence clarifications, critiques, and precise redefinitions of fundamental concepts that may be found in the standard works of traditional political science by authors such as Laband, Jellinek, and Kelsen; the treatment of the tenets of the doctrine of pure law as a development of positivist legal theory taken to its ultimate consequences is particularly perspicacious.

The determination of the nature of the state, as Sander undertakes it, gives rise to a triadic element in the complex conditions of the state: the possessor of state power whose commands are fulfilled; the subject of the state who is ready to fulfill them; and the caretaker of this fulfillment. Every time such a triad exists and when, in addition, the possessor of the command-rulership exercises his power, the condition called state exists. If we accept this determination, it follows that the usually so-called condition state is not a state in the sense of a determination of essence, but a higher-level construct. In the historical states it is not a matter of a one-time exercise of command-rulership by one man over another in respect to a specific object, but of the exercise of power over a number of subjects and of objects. Sander is consistent in his terminology, calling the historical states "aggregate states," because they consist of a great number of states, i.e., of circumstances constituting the exercise of state power that differ temporally, personally, and concretely.

This first solution of a problem posed by a traditional concept is a typical example of the set of problems that Sander raises. If one takes seriously the sociological determination of the concept of state, certain problems are solved, but new problems arise. Thus, in the preceding case the concept of state as a legal person [*Staatsperson*] disappears, and the idea of state rule in which the "state" would be the subject of rule, proves to be untenable with regard to reality. In reality there exist only people, and the "state" is not a person, but a status, a set of circumstances, a relationship between men; the unitary state is an aggregate of such relations that is held together as a union by the identity of the possessor of state power in the exercise of all factual instances of state power. The new problems that emerge are questions of reality in relation to a given that is assumed to be a state. According to Sander, a state does not exist if the commands given by the possessor of state power do not originate in his own

volition but are given at the suggestion of a third person; in this case what we have is not a "genuine state," not a command-rulership, but only a quasi-state. This case and others like it show that in the process of ascertaining whether or not a state exists in the concrete instance, we cannot move beyond probable judgments. At the same time, an opportunity also arises for the first hint that, in terms of Sander's concept of political science, a constitutional instrument is no decisive criterion for ascertaining if the state projected by this instrument exists at all and that it exists in the way in which the instrument sketches it. The question concerning the existence of a state and its particular type must be solved by a direct investigation of its social reality, without recourse to constitutional law.

The concept of sovereignty succumbs to the same dissolution; the concept proves tenable only in its meaning as the original power to rule wielded by a man. The word *sovereignty* is identical in meaning to command-rulership.

A territory dissolves into an aggregate of sites where commands are fulfilled; this so-called "territory of subjects" is essential to the state, not contrasted by the fact that each state has a specific territory different from that of other states.

The people is not an essential element of a state, since a state exists even if only one single subject stands opposite the possessor of state power. In a unitary state, one can speak of a "people" as the aggregate of those people who are prepared to fulfill the commands of the same possessor of state power (the sovereign).

The concept of an act of state disappears, because no subject of a state exists.

The problem of the identity of the state in history (the "French" state, the "Roman" state) dissolves into the circumstances of a temporal succession of various states that have a large number of elements in common with one another (a gradual change of the "people" through births and deaths, a change of sovereigns, while the stock of subjects remains constant, etc.).

This conception, furthermore, determines a new founding of the constitutional problem. The conditions that constitute the "state" as such "have" no constitution, because a constitution can exist only with reference to a state. The constitution is not a criterion of a subject known as the "state," but rather a condition external to the condition "state." The constitution is a condition "that embraces the sum total of those generalities that come under consideration as

preconditions [assuring] that, always given the same impulses, the same transition of this state and of the succeeding states into the same states in respect to certain moments always takes place" (206). A state or a unitary state does not necessarily "have" a "constitution." If it was founded anew by way of revolution, no constitution exists with respect to this state. Nor is there a constitution when a state has been transformed for the first time into a state that is identical with respect to certain criteria; one can first speak of a constitution when a series exists of at least three states that are identical with respect to specific criteria. The opinion that every state has a constitution arises from the mistaken assumption that a constitutional instrument [*Verfassungsurkunde*] is a constitution. A constitutional instrument is not a constitution but a summary of behavior incentives aimed at producing in the future a constitution with respect to a state. Whether this "attempt" to produce a constitution has met with success can be deduced, not from the text of the instrument, but only from a study of constitutional reality.

I will not pursue further examples; instead I shall enumerate the most important concepts and tenets that Sander subjects to a similar analysis as those referred to earlier. They are the following: the doctrine of state authorities, the classification of state forms, monarchy and republic, absolutist and constitutional monarchy, oligarchy and democracy, the parliamentary-republican system, etc.; furthermore, the analysis of the doctrine of intrastate connections [*Staatenverbindungen*], such as an administrative union, alliance [*Allianz*], protectorates, personal unions and real-unions, leagues of states, and the federal state; finally, the doctrine of interstate relations and international law. This enumeration does not exhaust the subject matter Sander addresses, but it insists on a correct representation of the set of topics he discusses: These topics are typical of traditional political science. In this way we have provided a fourth determinant for Sander's delimitation of the topics of political science.

The relationship of state and law, of political science and jurisprudence, of political science and legal dogmatics comprises a further complex of problems. Sander deals with these issues once in connection with an analysis of the relationship of the doctrine of constitutional instruments to the doctrine of state constitutions and a second time in much more detail in the final chapter of his book, entitled "The Law." Political science, as Sander construes it, is a study of social circumstances, relationships, and actions; it is not a normative

science. As noted earlier, the constitutional instrument is not the constitution of a state. Political science and constitutional doctrine are juxtaposed to the doctrine of the constitutional document; the latter is guided by the behavior incentives inherent in constitutional laws. It is a doctrine of interpretation, and as such it cannot establish if state and constitution exist *de facto* in accordance with the intent of constitutional laws. So-called legal dogmatics is not a science of law, because law is a social circumstance; instead legal dogmatism is a science of the sources of law; the theory of constitutional law [*Staatsrechtslehre*] is not a science of the state but a science of the sources of the state and the constitution.

Sander's basic position is clarified in more detailed fashion with the aid of a number of concepts from which I have selected a few of the more significant ones that characterize his general conception. The term *norm*, as understood by Sander, is a law of effect (causal law) that refers to a chain of effects "in which someone by means of an active effectiveness effects an achievement" (442 ff.). In this sense, every human action has a norm or guideline. Norms as causal laws can only be discovered, but not established. The talk about "establishing a norm" is misleading, because it masks other circumstances in which a norm is included in the meaning. "Norming" may, for instance, mean that a demand may be made whose intent may contain a guideline for action; but it could also mean the establishment of a "duty" (an "ought") that arises if the one who attends its fulfillment is disposed to censure the addressee of the demand in the case of nonfulfillment on the part of the latter. The "legal order" is, consequently, not a summary of norms that could be determined by concretely ethical means, but at all events a summary of behavior incentives that aims at the realization of a desired social state of affairs. The concept of "objective law" must therefore be set aside, because the content of "legal order" is in no case "law" but at all events a "source of law" in the sense that it is directed at creating law.

The concept of law, however, must be determined from that sphere, namely, civil law, whose legal nature is prescientifically least doubtful. "Law" in the sense of civil law is to be understood as "subjective law," i.e., determined more precisely as a freely exercised competence to impute to another by means of a special procedure, i.e., through "legal channels," an unfavorable circumstance in which is inherent a failed expectation that a command will be obeyed (473).

To each law corresponds a legal duty of the other; this duty arises if the judge and the executor are disposed to censure [another] in case of noncompliance on his part. To put it in more traditional terms: Person B is obligated to an entitled person A, if noncompliance with a demand is sanctioned through a process of verdict and execution.

If the legal concept endures, a series of important systematic consequences arises. The so-called "objective law" is then nothing but a summary of commands given by the possessor of state power; if these commands are termed *law*, "power" is mistaken for "law," whereas nothing else should be termed *law* except the social situation outline above. Although it would be possible to call the commands that serve as the basis for law and are given by the possessor of state power "legal ordinances," if at the same time one keeps in mind their true nature, one must clearly see that not every command of the sovereign is a legal ordinance.

"Legal dogmatics" is not a "theory of law" but an interpretive science of the sources of law. Nor can this science do more than establish that the givers of commands are aiming with their commands at providing a foundation for laws and legal obligations; it is unable to establish if this goal has been realized, that is, if "positive law" has been created as a social state of affairs. As a result, legal dogmatics is not a science of "positive law"; this error arises from the silent assumption that the intended legal situation has in fact been established. Only a science of a social state of affairs called "law" can be called a "theory of law"; hence a "pure theory of law" is, according to its nature, a special kind of sociology (490).

The situation is even more complicated in the case of so-called constitutional law. By its nature, the exercise of command-rulership as such cannot be subsumed under the category of obligation. The provisions of constitutional law, whose goal is the creation of a state and of constitutional conditions, are not commands given to the sovereign, inasmuch as the sovereign exercise of command-rulership excludes subordination to commands of a higher order. The essential contents of "constitutional law" do not, therefore, qualify as legal ordinances in the sense of ordinances providing a basis for law; instead they are behavior incentives that aim toward particular behaviors of the possessors of state power. Calling these incentives "law" is inadmissible and should be viewed as a typical encroachment of the

prejudice regarding norms on the part of legal dogmatics. "On the basis of the nature of sovereignty and of legal obligation it can be concluded that behavior incentives, which are directed at the exercise of sovereignty, can never be considered sources of law, because no one can exercise out of a sense of duty a sovereignty that is his by right" (495). The exercise of sovereignty is not a legal phenomenon but a state phenomenon.

This establishes the fifth and last essential determinant of Sander's conception of political science. His "pure political science" is outlined more precisely within the sphere of topics of a so-called traditional theory of constitutional law by the determination of the concept of law in terms of "subjective law" and by the resulting consequences for the relationship of state and law.

II

An evaluation of Sander's efforts encounters certain difficulties. He has structured his book with remarkable consistency and with a clear understanding of the needs arising from a systematic treatment of the subject matter. The concepts are carefully graduated in a hierarchy and are based on a series of categories. An immanent critique of the system of definitions must inevitably come to the conclusion that the system has been solidly constructed in strict adherence to the rules of logic; the basic assumptions are consistently adhered to and, on the whole, not confused by an inadvertent incorporation of new elements. Furthermore, whenever Sander polemicizes against the concepts of traditional political science and dissolves them, he is, in his clear and consistent manner and from his viewpoint, always right. However, his being right is to be provisionally understood as formal: When concepts are being developed from a system of axioms, concepts that are developed from a different system are incompatible with those of the first system; and the creator of the first system will be, if he works in a clean manner, invariably "right" over against the creator of the second system. Hence an immanent critique will only be able to confirm Sander's conclusions; but since it cannot come to different conclusions, because it is unable to move beyond the acknowledgment of a conscientiously completed work resulting in inner noncontradiction, it will also be completely uninteresting.

On the other hand, if we attempt a transcendent evaluation from the viewpoint of the following question—What have Sander's efforts contributed to the establishment of a groundwork of political science and to the understanding of the object called "state"?—then the previously mentioned difficulties set in. This, then, is Sander's approach: He sets up his system and does not argue for its value in concrete relations and in relation to the political science of the time in a discursive justification. Whenever the reader comes to a materially crucial passage in Sander's work, he is forced to pose questions that the author either does not answer at all, or to which he gives such weak answers that the reader's curiosity remains unsatisfied. Since the questions go unanswered, an exchange of views is impossible. The absence of a partner in discussion means that every expressed opinion that addresses one of these questions is lost in a void whenever it tries to engage Sander in discussion. I can therefore do no more than to formulate these questions and, to a certain extent, explicate them; in most cases the questions and explications would not be critical of Sander's opinions.

My questions follow the lines of the five main determinants that I have elaborated in the concise preceding review of Sander's *General Political Science*. They may be formulated as follows:

1. Why has Sander chosen his polemical point of departure from the set of problems arising in the faculties of law and of political science and in the normative theory of law? Why were other directions of present-day political science omitted?
2. Why does Sander ground his series of definitions on Rehmke's system of categories and not on a different one? Why does he ground them on a ready-made system in the first place and why does he not derive them from the material prerequisites of an object-oriented political science?
3. Why does Sander give the name "state" to the condition of "a possessor of command-rulership ready to exercise it," rather than to another condition?
4. Why do Sander's analyses and critiques target the traditional concepts of German constitutional political science and the positivism that builds from it, and why are other efforts to come to terms with the object "state" not even mentioned?
5. Why does Sander give the name "law" to the conditions of his choosing (which results in consequences for the question of the relationship between state and law) and not to others?

1. The attacks that Sander launches against the practice of political science are, on the whole, admittedly justified. The situation is illuminated by reference to the one fact that, despite significant monographic contributions, the entire political science culture of Central Europe has in more than three decades not yielded a single work that, in regard to a simultaneous mastery of the historical and sociological materials, the problems of jurisprudence, and questions of method, would be a match for even the epigonism of a Jellinek.

Sander raises one reason to the fore, namely, that in the organization of the curriculum political science serves as a prologue to lectures on constitutional law. Consequently it does not occupy the place that should be its rightful due according to its scientific rank. It seems to me that another reason is our customary practice of barring the jurist from acquiring a thorough knowledge of the history of political institutions and ideas. Political science in West European and American democracies receives valuable stimuli from the educational practice of *science politique*, or political science as a science of state institutions and their history and of ideas. These incentives are practically nonexistent among us, and it would be surprising if a science of the state were to thrive without a comprehensive knowledge of the historical background of the appearance of the state. Before writing his *Politics*, Aristotle studied the state institutions of the Greek world; Bodin's *Six Livres de la République* is a thesaurus of the knowledge of institutions in his age.

At this juncture we must pose the question why Sander launches his polemical note against the indubitable abuses that exist in the political science of the German-speaking world without the least hint that political science, like other sciences, is a concern shared by all the peoples of the world who have developed a scientific culture. We are naturally best acquainted with Central European issues; it is therefore necessary to address them relentlessly, but if I understand Sander's intentions correctly, his concept of political science should not be seen as a political-scientific work written for a particular occasion, but a work that participates in the discussion of the general problematic of a theory of the state. If this assumption is correct, I fail to understand why Sander narrows his polemical point of departure as well as the analysis that follows to a discussion of Central European issues, ignoring the entire rest of the world, where activities in the sphere of political science are indubitably quantitatively weightier and, in my opinion, also materially more

interesting than the course set by the Central European political science that has come under Sander's attack. I find no justification [for this approach] in Sander's work, and I can only end with a question mark.

Furthermore, Sander's polemic is directed, not against Central European political science, but against an orientation that was predominant in the recent past and that held sway in the organization of the university but that was nevertheless not the *only* one. The efforts I have in mind that were undertaken to set a different course fell short of Sander's work in terms of consistent execution, but the quality of conception of several is quite significant. I refer to chapters on political science by Max Weber, to Oppenheimer's political science, to Spengler's chapter on the state, and to writings with an affinity to traditional political science, namely, the works by Smend, Schmitt, and Schindler. These efforts aim in part at producing only a sociological political science, in part they wish to incorporate the sum total of sociological and juristic problems into one system, in part they have already assumed, in the history of science, a stance beyond the antithesis of sociology and jurisprudence. Sander's efforts are not as solitary as reading his book might have one believe; since I do not doubt that he is well aware of this fact, I can only bring up once more the question why his book reflects such a combative mood of rejection, but no hint at cooperation with others pursuing the same goal.

As Sander correctly points out, the scientific character of Central European political science has suffered much from the influence of political liberalism. The struggle against ideological prejudices, which encroach seriously on the smooth course of political science, is a point well taken. But even on this point the narrowing of Sander's polemic is notable. Again it seems to me, if I have understood him correctly, that his intention is, not to combat liberalism per se on behalf of the interests of another political system, but to combat the corruption of political science through politicization in general, liberal politicization being just one of many. Whoever surveys the political science of the last twenty years will notice that, aside from the liberal kind, there have been other politicizations; he will notice furthermore that all are long being moved aside at a steadily increasing rate by a politicization gravitating toward state totalitarianism. Insofar as the scientific development of the past few years has as yet revealed any clear indications, these seem to point, not to the

cancellation of liberal constructs in favor of a scientific systematic, but to a repoliticization that tends toward totalitarian thinking. As always in times of transition when the old system is collapsing and the outlines of the other are first becoming visible, the niveau of argumentation is not the highest. Only with some horror will the scholar become aware of "methodological" feuds of the kind in which a totalitarian teacher of political science completely dedicated to the state he serves rebukes his colleague that merely giving his book the title of *General Political Science* stigmatizes the author in an era of concrete political thinking as a fossil from a long-since surmounted liberal era, while the other notes that the isolation of the "political element" as order, alongside the aesthetic, ethical, logical, etc., stems from the era of divisive separation of fundamental human powers, which is absolutely inadmissible in an era of the total univocality of man and community in which, he says, he is delighted to be living. Times of such more agitated than agitating villainies pass quickly, but the tendency toward the totalitarian politicization of political science is beyond argument. Hence, if the construction of a political-scientific system must unavoidably run a polemical course, other directions for the politicizing ruination of science, aside from the "liberal" political science that has been misused to the point of extinction, would also exist.

An occasion for fruitful reflection would also have presented itself, if the political character of the political science that is practiced abroad had received attention. Politicization is an international phenomenon, and valuable perspectives would be gained if we were to examine the reasons why West European politicization has turned out not to be quite as destructive for the problem set of political science as its German counterpart. It seems to me that one of the crucial reasons for this is a more vigorous survival of the traditions of classical antiquity and pre-Reformation Christianity in Western political science. This fact should spur an investigation of the question whether an adoption of this tradition would not also bring some benefits to Central European political science. But we thereby already touch on the groundwork problems that we have raised with the second of our questions.

2. Laying the groundwork is the great problem faced nowadays by every effort at a political science. The last echoes of a grand tradition still rang in the Hegelianisms of men like Jellinek, weakened consid-

erably by the need to work through new materials and epistemological insights that would not fit the Hegelian schema. Since then, this political science has lost touch with a world view on a grand scale, in spite of some noteworthy methodological experimentation.

Sander has, without explanation, adopted Rehmke's fundamental science as a prerequisite science for his own effort. This procedure of simply adopting a system of categories would seem to call for justification in certain respects, for it brings about a preliminary judgment concerning the framework within which the treatment of the subject matter "state" is to take place. Such "adoption" has been effected repeatedly in the sphere of the theory of state and of jurisprudence in order to secure for the respective discipline a theoretical foundation—Sander himself has gone through several stages of such adoptions—but the problem is that this procedure leads to various difficulties because of the nature of the subject matter. The epistemological movement since 1870 has been determined among numerous of its proponents by Kant's direction, and, more specifically, not by Kant the metaphysician but by the transcendental critic of understanding [*Verstand*]. Furthermore, the movement receives its peculiar tinge from developing—in accordance with its attitude of transcendental critique—an analysis of the faculties of perception, an attitude that operates with a minimum of object-oriented knowledge and that operates with very few examples of an object-oriented science, which examples as a rule have come to be known by the epistemological theoretician through biographical accident. The epistemology and methodology, therefore, often reveal all too clearly the scientific model on which the theories have been patterned, and they fail when they are "applied" to another science. I refer only to one of the most significant instances of this occurrence, namely, to Husserl's phenomenology, which was oriented toward the problematic of the constitution of the objective world within consciousness and which ends with questionable results when it addresses the question of the constitution of the *thou* in the *Méditations Cartésiennes*. If one wishes to apply the phenomenological method, as developed by Husserl, to objects of political science, one must either move on the highest levels of generality and at a respectful distance from all relevant material questions or, if one narrows that distance, advance toward procedures that have nothing to do with those developed by Husserl. In addition, it happens quite often—and again I adduce the example of Husserl—that because of his inadequate knowledge of the

set of concrete problems involving man and society, the epistemological theoretician uncritically adopts as his philosophical point of departure dogmas concerning the essence of the human person that make the "application" of his theory to the sociological sphere impossible from the outset. Thus, for instance, Husserl has laid out an a priori theory of the "rational person" that corresponds approximately to the theory of Averroës; thanks to this dogmatic prejudice, he has made his fundamental concepts radically inapplicable to a science that, among other subjects, deals with the historical diversity of socioethical and political concepts of the person and, consequently, requires a nondogmatic theory of the possibilities of variations in conceptions of the person. Hence every case of "adoption" in fact brings up questions that call for careful investigation.

Let us next examine Rehmke's case. (By the way I must admit that I am familiar only with Rehmke's *Grundwissenschaft* [*Fundamental Science*], 2d. ed., 1929, but not with his *Logic*, nor his textbook on psychology, nor the book that lays the groundwork of his ethics.) Rehmke's theory has the great advantage over other theories one could "adopt" that it contains a philosophical anthropology. While neo-Kantian trends of all shadings, due to their concentration on questions of the critique of consciousness, gain access only to a small segment of the range of topics of the social sciences, Rehmke offers a doctrine of man with some references to the essence of community. In terms of its content, moreover, this doctrine has some strong points insofar as it acknowledges the existence of the "soul" and addresses the reciprocal corporeal-psychic relations between humans; hence it is not useless for political science from the outset, unlike all materialist metaphysics, which reduce the realm of the psyche and spirit ontologically to the phenomena of inanimate nature. Rehmke's doctrine recommends itself further because of the clean and reliable train of thought of its author, who achieves excellent results in the solution of speculative positions. The doctrine is, therefore, useful as a basis for concepts in political science like "man," "action," "social relation," etc.

I believe that with these positive traits the doctrine's essential advantages are nevertheless exhausted; I will now focus on this or that point that would lead me to believe that it would be inadvisable simply to adopt it as a basis for a political science. In the first place, Rehmke's *Fundamental Science* shares with various other attempts of its time a lack of a thorough foundation in concrete facts. This

lack does not stem from its character as a fundamental science, which, in terms of its program, strives to be a theory of "givens" without bothering to delve into the examination of these givens; it stems rather from the paucity of "givens" that come within the purview of the theory. A theory of "givens" that operates only with the categories of object, consciousness, and the unity of the interplay [*Wirkenseinheit*] between object and consciousness (= man) omits large classes of givens whose nature and extent might be elucidated by reference to the anthropological investigations of Scheler or Plessner. Classes of givens, such as "plant" or "animal," phenomena like the "urge of feelings," "instinct," "associative memory," "practical intelligence," and "spirit / mind," through which Scheler differentiates the classes of givens, are considered either not at all or inadequately. The classification of sciences into sciences that deal with the specific and sciences dealing with the general is hopelessly inadequate and irrelevant in the face of the structural riches that are the hallmark and essence of the social sciences as developed, for instance, by Max Weber in his essays on the theory of science. If one applies this theory of "givens" as is to political science, one could proceed only at a considerable distance from a number of substantial political-scientific problems. Should one wish to deal, for instance, with the race question insofar as it is relevant to political science, one would not get very far utilizing Rehmke's body-soul theory, because the major part of the problems that are likely to crop up lies buried in layers of generality that are deeper than those considered by Rehmke. One would have to seek the assistance of philosophical anthropologies that can operate closer to the "givens" than could Rehmke anywhere in his admittedly excellent analyses. By the same token, should someone wish to address the issue of the formation of community and state myths, he would not receive the least hint from Rehmke's "fundamental science" as to how this could be done, since the questions concerning the mythopoetic mind are not touched at all by Rehmke, even though community myths certainly represent an important class of the givens. Furthermore, whoever would wish to investigate the political-scientifically significant phenomenon of the "masses" would find nothing in Rehmke's "science" that could be even remotely viewed as a point of departure for handling the problems of depth psychology, etc.

These conclusions are not meant to be primarily a negative critique of Rehmke, but to raise the the question of the "applicability"

of his theory to political-scientific problems. They are intended to demonstrate the great distance of his analyses from the level at which the materially relevant problems of political science are located. Consequently, when one juxtaposes everything that is contained on the 113 pages of Scheler's small-format booklet on *Die Stellung des Menschen im Kosmos* [*The Place of Man in the Cosmos*] with what is missing from the 625 large-format pages of Rehmke's *Grundwissenschaft* [*Fundamental Science*], it would seem to me that a justification is in order for why Rehmke's doctrine of man has been adopted as a scientific prerequisite, rather than, for instance, Scheler's doctrine—this is not meant to indicate that I consider Scheler's anthropology an adequate scientific prerequisite for political science. Inasmuch as Sander does not offer any justification for this choice, I can again do no more than conclude with a question mark.

3. The third question brings us into the sphere of political science per se. Why does Sander call the command-rulership of one ready to use it a "state"? I find no adequate answer to this question in Sander's work. It is certainly the prerogative of anyone to choose a name that seems good to him for a state of affairs or of being that he has precisely circumscribed. It would not occur to me to raise a question here if all that were at stake is the fact that within the broad meaning of *state* Sander systematically fixes a meaning to which he assumes himself to be bound in his political theory. Here, however, Sander gives to a condition that is usually called "rulership" or "ruling power" the name of "state," while giving the name "integral state" to a condition that is customarily called "state." Let us consider Sander's decisive formulation:

The term "state" customarily denotes an "aggregate of states with a possessor of state power," which is to say, an "integral state." Using the term "state" in this sense takes into account the realization that it is only the integral states that arouse interest as conditions arising in history. At the same time, one must never overlook that a totality of command-rulerships, together with a possessor of power (disposed to exercise it), are in no way something essential to a condition called "state," because the command-rulership of a possessor disposed to exercise it even with respect to *one* single man and to *one* single object represent a state—in particular, all efforts to demonstrate that it is precisely the command-rulership in respect to *particular* objects that is essential to a state are doomed to failure. Beyond this, it must

also not be overlooked that every attempt to determine with precision a state as a totality of command-rulerships can succeed only if we focus on the *individual* states contained in an integral state—inasmuch as an integral state is precisely only an aggregate of individual, particular states, namely, an aggregate enjoying the special status circumstances of the command-rulership of a possessor disposed to exercise it. (135)

It is therefore unwarranted to apply the term *state* to integral states merely because these states are of historic interest; instead, conferring a name must be determined by the “essence” of the matter, and this “essence” is to be found in the command-rulership, but not in the state of affairs where the sum total of these powers is vested in a possessor. The state, moreover, can be defined as an aggregate of command-rulerships only if one focuses on the individual states contained in the integral state.

Sander’s line of argument illuminates his conception of the problem. Shifting the term *state* to an elementary condition from which “historically interesting” states are constructed is substantiated by the contrast between “historically interesting” and “essential,” whereby the author surreptitiously suggests that the “historically interesting” cannot be an essential aspect of the matter. Precisely this insinuation, however, requires substantiation, given the current state of political science in which a contrary opinion is held by an authority like Max Weber. I purposely choose Max Weber, because the sociological point of departure of Sander’s political science has a very close affinity with Weber’s political science. The condition that Sander calls “state, Weber called “rule” [*Herrschaft*] (“rule signifies the possibility of finding obedience to a command of specific content among appropriate persons”); he set the term *state* aside for a type of association with which he hoped to capture the *historical* and social factum of the “modern state.” Max Weber gives the following explanation for his procedure: “It is advisable to define the concept of *state*, because it is thoroughly modern in its ultimate development, in relation also to its modern type—yet again, in abstraction from those changeable purposes of content that we are currently experiencing” (*Economy and Society* [*Wirtschaft und Gesellschaft*], 28–30). This naming respects the historicity of the state’s emergence; Max Weber prefers to call neither the *sacrum imperium* nor the ancient polis “states.” The historicity of the emergence of the state is thereby acknowledged as “essential”—even though Weber drapes

this acknowledgment in colorless formulae like "it is advisable," or "it is purposeful."

If I may be allowed an addition, I would say—as I have done elsewhere on occasion—that the interpretation people give of the social circumstances in which they live constitutes in itself a component of this set of circumstances. The term *state* is a political science expression of only secondary significance; it belongs primarily to the self-interpretation of European political thinking during the last four hundred years. The question of where the "essence" of the state is to be sought cannot be answered by an arbitrary name assignment to a random set of circumstances; instead it must find its bearings in a socially *previously given* fact "state," if political science as a branch of social sciences is to possess any degree of truthfulness in respect to its subject matter. But what this previously given fact is, and whether the self-interpretations of people living in a political society are associated—which I am inclined to believe—with this fact or not, cannot be determined by terminological attributions, but only on the basis of an anthropology that encompasses the integral being of man, ranging from his corporeal and geographical ties all the way to his self-interpreting and mythopoetic spirit.

For this reason it is not inconsequential what kind of anthropology is "adopted" as a prerequisite scientific for political theory, and for the same reason I raised misgivings about Rehmke's respectable but modest anthropology from the outset. It seems that the choice of a "fundamental science" has been crucial for Sander's position in respect to this cardinal issue. Earlier we made a reference to Rehmke's classification of sciences into sciences dealing with particulars and those dealing with generalities as "hopelessly inadequate." That my earlier judgment was justified is borne out now that this classification is being utilized as a basis for the explanation of the condition "state," as Max Weber understands it. The Weberian conditions that constitute a "state" are neither a particular, nor a generality, but a complicated network of historical and ahistorical general elements. It seems inadmissible to me simply to set aside historicity as inessential, which is Sander's approach, and to relegate "essence" to a stratum of general determinants. As indicated earlier, this issue cannot be determined on the basis of political science itself, but only on the basis of ontology and, more specifically, of philosophical anthropology. A further discussion of this problem, however, is not possible at this point, because Sander does not enter into it.

If one wished to characterize Sander's position more accurately, one would have to draw a parallel between it and certain attempts at positivist-metaphysical reductions. Although Sander does not reduce the phenomenon "state" to an infrasocial level of being, he does reduce its historical qualities to an ahistorical social being. As a result, whole groups of topics that would otherwise belong to political science are excluded. Thus, the problems of social and political self-interpretation and the problem of political symbols are among those excluded; omitted, too, is the thorny question if, in the face of the symbolic character of the expression "state" and of the historicity of this condition, a general political science is ontologically even possible without becoming transformed on closer scrutiny into a doctrine of types of authority, federations, myths, and so on.

When we return once more to the quoted passage from Sander's book, it appears that the crucial question is the one discussing the attempt "to determine more accurately the state as an aggregate of command-rulerships." Certainly the state is an aggregate of the command-rulerships, and insofar as Sander's analyses demonstrate which individual types of states are constituted by which command-rulerships, they represent an outstanding sociological achievement. But the state is also several other things (cf. Max Weber); why these "other things" should disappear from political science seems to me to call for an ontological justification.

4. The next question touches in part on the previous one: Why does Sander allow his analyses to extend from the position he has gained only to constitutional political science? It seems to me that one of the reasons is that the institutions of the "modern state," to which the concepts of a constitutional political science refer, may have the best chance of acquiring considerable portions of what is essential when subject to an analysis that takes its bearings from command-rulership. This is because the theory of the independent rulership of the modern state contains a significant mythifying self-interpretation, borne by *hybris*, which meets halfway the analysis that receives its bearings from command-rulership. Or, to put it differently: The doctrine of command-rulership corresponds to a crucial mythic component of the modern state. To be sure, this operation, too, cannot meet with complete success, because the modern state is determined not only by the myth of independent power but also by a whole series of myths representing a sediment of history in the

present. Hence it seems insufficient to me, for example, to define *monarchy* as a state in which a single individual possesses the power of the state. This definition excludes from the social situation all historically and mythically relevant elements, such as, most importantly, the sacral character of European kingship. This definition goes on to press for further conceptual constructs that must occasion the most serious misgivings concerning their material aspects. This, then, is what Sander has to say about dictatorship: "The word 'dictatorship' refers to [. . .] a monarchical state created by revolutionary processes [. . .] that has replaced a state of a different kind, and in respect to this latter there exists a condition on the strength of which this monarchic state that came into being through revolution will be replaced in time again by a state of the kind that existed prior to this state" (290 ff.). Sander cites no examples that would illustrate his concept of dictatorship, but it becomes evident from his definition that concepts of political science can be derived not only from the layers of command-rulership, or from the continued and discontinued transition from one state into another, etc. Modern dictatorships are not to be characterized over against monarchy by the criterion of a short duration that does not survive the change of possessor of state power, but rather by their entirely different kind of foundation. Problems emerge here of the kind that Blüher wished to capture with the expression "heathen sacraments." The question about the number of the possessors of state power is not at all irrelevant, but it remains at the ahistorical level of the problem; expressions like "dictatorship" and "monarchy," as far as I am concerned, should be restricted, as should the term *state*, to the layer of historical types. We enter upon a broad range of problems when we ask about the relationship between ahistorical and historical layers of circumstances and between their foundations. I do not wish at this point to address this theme further, inasmuch as Sander could not deal with it given the principles of his political science. (We will have to deal with another aspect of the problematic of state forms in due course).

If Sander's analysis already runs into considerable difficulties with the material of the modern state, then examining the concepts of other spheres of political institutions—such as the European Middle Ages, or the genesis of empires in the Orient, which Sander makes no attempt to treat—will make the inadequacy of the ahistorical conceptual apparatus even more clear.

In regard to this point, we should pose once again a question that arose earlier, namely, why Sander's analyses deal exclusively with the conceptual constructs of German constitutional political science of the positivist bent, consistently ignoring West European and American institutionalism, which ends up with an entirely different system of concepts. There is also no discussion of the type constructs of Max Weber's sociology of rule [*Herrschaftssoziologie*], which is certainly germane. Sander's explanation that he does not wish to engage in arguments with other authors concerning these matters and that he will address them later does not correspond exactly to his procedure; after all, his critical dissection of the concepts of constitutional political science is also a direct argument with the creators of these concepts. The discussion of the subject of "institutionalism" could have been carried on anonymously just as well as the one dealing with "constitutional political science."

5. The last question addresses the determination of the nature of law and the consequences of this determination.

Sander defines *law* as an "aggregate of freely exercisable competencies for the purpose of unfavorably attributing to another person by means of a due process of law, i.e., through legal channels, a condition that constitutes noncompliance with a command." This definition of the concept of law is essentially identical with the customary concept of so-called subjective law (473).

In this case, Sander is more precise in giving the reasons that induced him to give the name "law" to the condition described above. All attempts to determine a condition scientifically must have as its point of departure pre-scientific knowledge of this condition; it is the task of science, not to invent new objects, but to develop clear knowledge from unclear. This point of departure must offer a pre-scientific knowledge that is certain of its object, "law," to such a degree that any doubt about it would deprive jurisprudence of its objective point of departure. Yet the certainty of possession is to be found in the knowledge concerning "civil law." This is why the analysis of an object has to begin with the pre-scientific object of civil law, so that it might establish, once this condition is clarified, if other facts termed "law" are subsumed under the concept derived from civil law (461 ff.).

In order not to cloud the issue, I suppress all misgivings about this line of argument and accept it for the moment as valid in principle.

The consequence for Sander is that, following the determination of the essence of law, a long series of circumstances, which would otherwise also be called "law," lose their claim to this name, in particular so-called "objective law."

Were we to adopt Sander's line of argument even on this point, I cannot, in the face of the consequences, suppress certain misgivings about its execution. The discomfort felt by every jurist when he hears that "objective law" is not law at all but, at best, a source of law, that large portions of "objective law" cannot lay claim to even this property but, since they are not even a basis for any "laws," they are to be classified as behavior incentives, that, consequently, the so-called criminal, procedural, administrative, constitutional, etc., law bears the name "law" without justification, that, furthermore, he is not dealing in any of these cases with "norms" in the traditional meaning of the word, since "norms" are actually guidelines for connections between performances and hence are laws of cause and effect—these strong misgivings seem to me an indication that the jurists who experience them evidently entertain the belief that their parlance, too, at least in its pre-scientific mode, is aimed at a condition called "law" and that their belief and their misgivings also deserve notice as pre-scientific points of departure in determining the essence of law, especially since this pre-scientific opinion can refer to a European tradition of several thousand years.

Certainly Sander's critique of the terminology *objective* and *subjective* law is irrefutable. To maintain that these two states of affairs are species of the genus law attests to the negligible ability questions of this kind have to penetrate the matter. Perhaps an attempt could be made, however, to take into account this "pre-scientific" tradition and to produce an appropriate description of the relationship that it intended, which, given a suitable terminological distinction, would allow the admission of the term *law* in either case. Limitations of space permit me only to offer suggestions.

Let us take as a point of departure the historical condition that cultures exist that understand the term *law* to mean not only, as Sander defines it, a social situation in which the entitled party can assert his claim by means of a suit and legal proceedings (including a process of investigation and execution) against the responsible party, but also a situation in which the party whose "rights" have been abridged enforces compliance with his demand through a direct exercise of power against the obligated party or attains corresponding

redress (type: feud law). Historical conditions of this kind give the appearance that it is materially purposeful not to link a situation of "law" "in respect to its essence" with the establishment of a process of legal decision-making and execution; it seems better to investigate the reasons that motivate people in this type of legal culture to speak of "law," "legal relationship," or "compliance with law," instead of "robbery," "murder," etc., in such cases. One of these reasons is now clear, namely, that the relationship between the "entitled party" and the "responsible party" is understood as governed by a "norm," whereby "norm," irrespective of further rationalizations of the phenomenon, has something to do with the field characterized by expressions like "imperative in terms of a value judgment," "should have been," "ethically required," etc., which is supposed to be determined by a traditionally vague meaning. The law-obligation relationship between two persons is a "legal relationship," because it is governed by a norm; instead of resulting in a social condition intended by the "norm" to be a "lawful" one, an "illegal" behavior of the responsible party results in a state of affairs that is "not in order"; the reaction of the "entitled party" "restores order" again; in that he appears as the preserver of order, "the law" becomes "his law," etc. All of these forms of expression, which have in part been formulas of European legal thinking since the pre-Socratics, operate within the notion of an ethically correct circumstance that can be disturbed and, furthermore, within a notion that the ethically correct circumstances can be grasped through linguistic expressions that do not describe circumstances in terms of relationships between entities, but intend them as "oughts." Expressions like (subjective) "law" and "duty" receive their specific meaning from the idea of a right order, and an expression like (objective) "law" likewise receives it from this idea as a "sketch" of a right order. The expressions "objective" and "subjective" law are therefore, as Sander correctly observes, not species of a genus, but linguistically and concretely not unfounded terms that denote the phenomenon of a right order, seen on the one hand from the perspective of a person's claim to the preservation of the right order within whose purview the claimant as well as the obligated party stand, and on the other hand in the direction of the "sketch" of such an order by means of which the existing order may be tested for its correctness. This double meaning of the term *law* may be unpleasant for the scientific penetration of the problem, but I do not believe that is a

sufficient reason for standing the entire terminology of jurisprudence on its head. The best solution would in any case lie in the coining of better qualifying attributes than the expressions "subjective" and "objective."

Before delimiting the phenomenon of law itself and in order to avoid any misunderstandings, I would like to establish that my misgivings about Sander's *terminological* solution do not represent an objection against his critique insofar as it is concerned with the subject matter. On the contrary, the analyses of the subject matter in this part should be considered Sander's most significant contribution to political science. Above all, we have the distinction, made possible by the choice of a sociological point of departure, between social reality (identified as the specific subject matter of political science) and the so-called "objective" law (the summary of assertions that represent the subject matter of legal dogmatics as a science of interpretation), in particular the distinction between state and constitutional law, constitution and the constitutional instrument, or, as I prefer to call the two fields in my normative bias, it is the distinction between real and projected order. In the face of a widespread lack of clarity regarding this issue, one must repeatedly and emphatically stress that the constitutional instrument is not a constitution and that—taken quite generally—the content of a law must not be blindly accepted to be the law. Every content of the law (in the broadest sense) is at the point of time of the law's promulgation a sketch of an order that the legislator intends to "realize" with the help of his law. Whether this realization succeeds cannot be inferred from the law. There always exists as a matter of principle the possibility that social reality follows other norms than those sketched by the legislator. In practice, the sketched law in modern states is in fact to a great extent the actual law. This historical state of affairs is the reason that most jurists tend to neglect this distinction. It is precisely in the province of constitutional law, however, that cases in which sketched and real law are not one and the same are not rare—I refer to Sander's excellent examination of the constitution and the constitutional instrument and the considerable tension between intent and reality in this instance; I also refer to my own examination of Austria and the chasm between sketch and reality that grows steadily up to the civil war. The "sketching of law" or the "normative project" (I use these expressions in my lectures and unpublished studies on the theory of law) often proves to be a reliable

thread for the ascertainment of "actual law," but this possibility must, nevertheless, never lead to the assumption that "sketched" law, which, in keeping with the determinations of validity according to legal formalism, is already "valid" law, is therefore already actual law. The jurist—particularly the one specializing in constitutional law—must make use of sources besides legal content in the process of ascertaining what the actual law is.

Thus, the correctness of Sander's distinctions must be acknowledged, and every theory of law developed with any care will have to adopt them in one form or another. In contrast, I find questionable whether Sander's conclusion that a distinction between a social reality unburdened by norms and the sphere of behavior incentives thereby given is in fact unavoidable. Seen through the prism of the system of categories developed by Sander and Rehmke, this differentiation does indeed seem unavoidable, since in the description of the world in Rehmke's "fundamental science" there is no place for the phenomenon of norms. Yet in my estimation this would call for the conclusion I alluded to earlier that a different anthropology as scientific prerequisite would have to be chosen that would accommodate the phenomenon of norms. Sander's reference to a "partiality to norms" is justified when he criticizes the thesis that "law" is to be understood as a summary of the norms that figure as the contents in the acts of legislators. Nevertheless, I consider the view that social reality, except for legislative acts, is free of norms, to be equally partial. If the "sketches of order" conceived by a legislator have not succeeded, reality nevertheless "has an order"; the persons who live in this order experience as binding norms that are different from the ones sketched by the legislator. This problem, however, has a close affinity with the fundamental question concerning the "nature of the law" and with the sources from which the law's specific obligatory quality stems.

From his position, Sander can make no response to this question, since he excludes the quality of obligation, as well as the problem of value in general, from his political science. I would therefore like to offer just a few words suggesting the direction in which these problems might be sought. The great difficulty faced by the theory of law so masterfully elaborated by Sander (441-461) is to make a closer determination of legal norms over against other kinds of norms. I can make reference here to only two points that are, nevertheless, deci-

sive for this determination; Sander addresses neither in presenting the arguments of his critique.

a) The direct derivation of the legal norm and its quality of obligation from a material world order faces a difficulty stemming from the fact that every legal order contains numerous norms that are regarded by those who are subject to this order as not morally binding and perhaps even as morally reprehensible, and, furthermore, that numerous norms that are morally indifferent (such as traffic regulations) may be found in the legal order. Yet morally objectionable norms have, as do morally indifferent ones, a specific quality of obligation that is experienced even by the persons who judge them to be objectionable or indifferent. One source of this quality of obligation is the acknowledgment of the "value of order" as such on the part of those who must abide by its principles. Social *order* is, in the opinion of those subject to the order, better than social *disorder*. The value of order also lends an obligatory quality to norms that are selectively considered objectionable or indifferent. The obligatory quality of legal norms does not correspond exclusively, in many cases not at all, to the concrete value [*Werthhaftigkeit*] of individual norms, but occasionally, and in many cases exclusively, to the character of a norm as a "component of order." The "value calculus," on the basis of which "bad order"—i.e., an order with a more or less large number of objectionable norms—is preferable to the alternative of disorder, is one of the sources of the specific obligatory quality of the legal order and its components. We are faced here with a set of multifarious problems. The following are the questions that crop up in this context: Does the value of order in the value calculus carry so much weight that any kind of individually objectionable norm must be accepted, or does a criterium of a "maximum load" exist, beyond which an order burdened with material nonvalue would be experienced by the ones subject to the order as unbearable and might be set aside, for example, by way of revolution and replaced by a new order? This situation is linked to the problem of the "social relevance" (Max Weber) of value attitudes, in the sense that a socially relevant number and group of people must decide the value calculus in favor of the existing order, that not all those subject to the order must have done so, but instead that the rest (perhaps the majority) can be prevented from setting aside the order in question because of a condition of helplessness. The argument concerning a theory of acknowledgment [*Anerkennungstheorie*] (which is not as primitive as Sander would make it appear for the purposes of his

critique) belongs here, according to which the validity of an order depends upon "acknowledgment," while "acknowledgment" becomes broadened from the status of general acknowledgment of an order to also include components of order that would not be acknowledged in a state of isolation. Sander does not address this entire complex of questions, which is intended to be one of the components of the normativeness of law.

b) Now it would be entirely possible that Sander refuses to deal with this group of questions, justifying this refusal with the claim that topics like the value of order, value calculus, etc., belong to the field of the speculative philosophy of law, while he wishes to deal exclusively with social circumstances as the only possible objects of scientific knowledge concerning state and law. Consequently, we propose to refer to a second component specifically of legal normativity that lies within the scope of social reality in a manner that Sander himself acknowledges. We do not wish to interpret value in general and value of order in particular in Scheler's meaning of *value*, which has been the target of Hecker's exquisite irony, i.e., not value as a component of a material order of value existing in and of itself. Rather, *value* means a value structure that is given along with the existential circumstances. These circumstances, in which the value of order comes into being, is the ordering substance of a community. At this juncture I cannot go into the details of a theoretical groundwork of the problem in question and will have to make do with a few exemplifying indications.

The communities in which people live in accordance with a given "order" are quite often sacral substances of various kinds and degrees. This statement refers, not to a collective entity existing in itself, but to an epitome of those psychic and spiritual processes in which people experience their relationship with others as "holy" or "hallowed." This results in a great variety of consequences for human relationships "within" the community and for relationships between people within it to others outside it. As examples that admit no doubt as to their qualification I would like to list primitive tribal alliances of the totemic kind, the phylae and phratries of classical antiquity as sacral substances of the city states, medieval *conjuraciones*,³ the *corpus mysticum Christi*, the *sacrum imperium*, modern conspiracies, "leagues," etc. If we overlook this entire range of questions of genesis

3. Unions confirmed by an oath.—Trans.

and decay, of degrees of intensity, of pigeonholing and mingling, of strength and weakness, of the crises of such substances with all of their complications, we can come up with a formulation (albeit a consciously primitive one): Sacral substances are a field within which orders between people may unfold. Good examples of how such a process is set in motion institutionally are Saint Paul's letters to the Corinthians, which charge the addressees to settle disputes between community members internally, removing them from the decision-making authority of the political judiciary external to the community, or the internal organization of secret societies as, for instance, Mazzini's *Giovine Italia*. In the sacral structure of the communities we will detect the social basis of the phenomenon of order and of the experiences of the quality of obligation with respect to general order and its components, which regulates the activities of the members of such a community.

In order to avoid any misunderstandings, let it be expressly stated that these remarks neither exhaust the problems of legal normativity, nor must all sacral substances inevitably bring forth legal orders. My remarks are only meant to show in which direction the determination of law and of the legal norm as a norm that is different from other norm types should proceed.

In view of these possibilities that Sander does not care to consider, ignoring the set of traditional problems concerning norms seems unnecessary to me. The assertion that social reality contains no norm phenomena in the traditional sense of the word *norm* can hardly be supported in the face of abundant sacral substances and the experiences of qualities of obligation, various types of order, partial orders, and individual norms that unfold in the sphere of these substances. When these circumstances are taken into consideration, I can no longer see any reason why the phenomenon of "sketched orders" and "projected norms" should not be considered "normative," since it indubitably arises from a real relationship with "types of order" in an attempt to realize these. Contents of laws are in any case (insofar as so-called "merely formal laws" are not involved) attempts at creating norms through the act of seriously intended positing; to the extent that these attempts are successful, they, too, are "real" norms.

It goes without saying that the great value of Sander's analyses that examine the structure of legal norms remains unaffected by this criticism, especially his affirmation that not all legal norms are sanctioned but that large portions, especially of constitutional law,

consist of unsanctioned norms. A theory that defines a legal norm as sanctioned in contrast to other norm types can easily be proven wrong by being tested by the material that the theory itself admits to be the material of legal norms. The alternative given by the doctrine of "pure law," to take up the unsanctioned norm as an element of the conditions in the determination of the sanctioned norm, is indeed constructively possible, but this question addresses not whether the one or the other construction may be realized, but rather whether the construction is materially justified. Shifting constitutional law into the province of the conditions of sanctioned civil and criminal norms is materially inadmissible, because this would eliminate the entire scope of objects aimed at by the promulgation of the constitution, the foundation of the state, the creation of institutions through the *idée directrice*, etc., together with the problems of order associated with these. Sander's distinction between commands and behavior incentives that do not have the character of commands corresponds essentially to the traditional distinction between the *lex perfecta* and the *lex imperfecta*; it seems to me that this distinction, like his description of the content of constitutional law as unsanctioned norm material and the analyses attached to it, belong to the permanent constituents of a well-founded constitutional theory.

The fixing of the expression "law" for "subjective law" and the exclusion of the problem of norms in the traditional sense of the word finally steer Sander toward a fundamental explanation of the relationship between state and law: "It thus becomes evident that the exercise of sovereignty within someone's competence cannot at all be a matter of a legal relationship; this means nothing else than that the command-rulership is, according to its nature, incompatible with law. From this it follows, however, that 'the law,' namely, legal relationships, are incompatible with the nature of the state and can never be identified as moments of a state" (493 ff.). This explanation is consistent with the logic of Sander's system. Objections against it cannot be raised immanently but only from the point of view of the question whether a theory of social reality that excludes the phenomenon of norm is materially useful. For Sander, this theory is determined by its beginning in Rehmke's *Fundamental Science*. This beginning, however, would require a foundation based in ontology; and on this point a further argument is impossible, because Sander—as has been established above—does not discuss the reasons for his beginning.

III

The main outlines that circumscribe the position and achievements of Sander's *General Political Science* within the current state of science are as follows.

The series of definitions that culminate in the determination of the command-rulership and the state have a close material affinity with Max Weber's theory of rule. Sander has differentiated the concepts of this sphere much further and with a firmer grip. The instrument for honing them was a Rehmikian fundamental science. Choosing this fundamental science as a scientific prerequisite made it necessary, however, to shift the concept of the state to the place where Weber put his concept of rule—with all the consequences that have been explained above.

The greatest achievement that was made possible from this position is the secure grounding of the reality of the state as an object of political science. Sander's polemic against normative political science and jurisprudence and their identification of state and law with the content of law is completely justified and its execution is successful. Distinguishing between constitution and constitutional instrument, between state and constitutional law, etc., are, in terms of their critical achievement, important contributions to the systematization of political science.

On the other hand, the choice of the scientific prerequisite and the definition of the state result in serious flaws affecting Sander's system insofar as broad segments of the subject matter that could have been incorporated, had the choice of the presupposed ontology been more fitting, are excluded from political science. The following are omitted essentials: the entire historical layer of the political phenomenon; the questions of sacral communities and sacral persons; next, political myths; and finally, the problem of norms.

The main body of Sander's *General Political Science* applies the concepts formulated in the book's first part to the topical portions of traditional political science (chapters 2 through 5). This part, too, is an excellent achievement as an analysis of traditional concepts and of the reductionism to authority figures. Future elaborations of this sphere of problems will be hardly able to ignore the fruits of Sander's efforts.

But as in the case of the book's first part, the second part, too, is plagued by the flaws stemming from Sander's basic assumption.

If one accepts Sander's definitions of *command-rulership* and *the state* and excludes questions of historical relevance, it becomes incomprehensible why he chose constitutional and post-constitutional political science as the typological subject matter of his analyses. Traditional political science (whereby the type I primarily have in mind is the one represented by Jellinek) prefers to orient its development of concepts to the absolute monarchy state type and those that have arisen as a political contrast to this type, because it was openly or secretly interested politically in this range of types. A scientific political science (if it includes the historical layer of the political phenomenon) would have to construct a comprehensive doctrine of historical types of political organization in which questions of constitutional or parliamentary constitutions take up the modest space that is its due corresponding to its 150-year-long currency in comparison to the well-known millennia of other types; or it would have to maintain (if it eliminates the historical layer) a strict neutrality toward the manifold of organizations of rule that have arisen in the course of time. Since Sander has opted for the second alternative, his decision to authenticate his concept of the state by an analysis of constitutional monarchy is materially unfounded. Why not the ruling organization of Arabic extended families? Why did he analyze parliamentary republics and not the exogamous clan constitution? Why the modern protectorate and not the relationship between the kingdom of the Franks and Byzantium? By his selection of the subject matter for his analyses Sander (intentionally? unintentionally?) opts in favor of a material type best suited to the political interests of the kind of political science against which he so vehemently polemicalizes. A historico-political element surreptitiously insinuates itself into his investigations.

At this juncture it would also be proper to pose the question whether there is any room, in accordance with Sander's own basic assumptions, for chapters in his *General Political Science* on "state types" and "relations between states." For if we accept Sander's ahistorical definition of the state, the possibility and value of a classification of states and a concept of state types become questionable, because relevant grounds for classification are missing. Naturally one *may* classify the states, as does Sander, according to those in which rule is by *one* person and those in which rule is by *numerous* persons—but why *should* one make such a classification? By the same token, one could classify states according to those in which

rule is by 1 through 26 persons and those in which it is by 27 through an infinite number of persons, or according to states in which rule is vested in blond as opposed to brunette persons, etc. The reasons for the traditional classification into monarchy and republic is *not* to be sought in the *number* of those invested with power, but in the problems of the sacral person (of the "holy king," etc.), sacral communities, types of sacraments that are instrumental in the creation of sacral substances, and in the question of the peculiar capacity for symbolical efficacy of persons in contrast to groups, etc., which is to say in spheres of political science that Sander leaves out of consideration. When one lacks relevant grounds derived from an ontology of community that facilitate the classification of the types of rule, every classification becomes materially pointless. The classification according to the number of rulers is painfully reminiscent of Linné's classification of flowering plants according to the number of stamens. On the basis of Sander's definition of the state, ruling figures can be infinitely combined; the value of the knowledge of such combinations is nil. Sander's concept of the state can unfold its effectiveness only on the *occasion* of its application to "state" and of the analysis of such cases in terms of the structure of rule.

Here it seems to me that an immanent systemic flaw lurks in Sander's political science. The typology of kinds of states and of relations between states can only be understood as a concession to the problem of historical, sacral, and mythological relevance for which, following the ontological beginning, there is no room in political science. In this respect, Sander's *General Political Science* again approaches the traditional type of political science, if not in its principles, then most certainly in its factual execution.

The concluding part of the work similarly offers a number of excellent examinations of the nature of law ("subjective law"), of the nature of the sources of law, and of the structures of various legal spheres. All of these analyses promote the handling of problems at essential points and set a new standard for the degree of precision in the development of concepts in this field. The most important points concerning the principal problematic of the determination of the nature of law have been indicated previously.

In closing I would like to make the following observation. The argument in part II of this study could produce the impression in some readers, even though I have repeatedly stressed the high qualities of Sander's work, that his efforts should be assessed as a failure and,

consequently, not worthy of any special attention. Nothing could be more mistaken than this assumption. Recognition of a significant theoretical achievement need not necessarily be expressed as agreement with the theories that are developed. A theoretical-scientific judgment is worth as much as its bases, and the value of the entire work is to be measured by the degree to which the technique of justifying the science in question has been mastered. In this respect, Sander's work has attained a very high degree of excellence.

Index

- Abyssinia, 120
Acknowledgment, theory of, 153–54
Actio popularis, 63
Administrative apparatus: in Austria, 64–67, 68, 69, 74, 76, 77, 93–95; in Canada, 60, 69–74; and civil law, 64; contrasted with Rule of Law, 54, 60, 69, 75, 77; in England, 60, 61, 64, 67–69, 74, 75, 76; in France, 54–64, 67, 69, 74, 75, 76, 77; in Germany, 57–58, 76; in Italy, 59–60; judicial oversight of, 60–61; in Netherlands, 59, 74; and state forms, 75; and state purposes, 75–76; types of, 74–78; in United States, 70, 72, 74
Administrative law, 65, 72–74
“Administrative Regime” (Merkl and Voegelin), 54–78
Advertising techniques, 116
African Americans, 46–47
Aggregate states, 130
Agriculture, 15
Albert, King of Belgium, 38
Allgemeines Verwaltungsrecht (Merkl), 76
Allianz (alliance), 132
America. *See* United States
American Mind (Voegelin), 2, 4, 7
Anamnesis (Voegelin), 1, 5, 12
Anerkennungstheorie (theory of acknowledgment), 153–54
Angus, 97
Anschluss, 100–101, 104, 107, 108
Anthropology: and integral entity *man*, 82; philosophical anthropology, 5, 8, 19, 141; and race, 19; of Rehmke, 141, 145; of Scheler, 143. *See also* Human nature
Apolitical mentality, 118
A priori systems, 4, 5
Arendt, Hannah, 1
Argumentum ad personam, 83, 83n1
Aristotle, 86, 137
Army (Austrian), 35, 102–3, 106
Astronomy, 118
Augenblick (moment), 44
Augustine, Saint, 86–87
Austria: administrative apparatus in, 64–67, 68, 69, 74, 76, 77, 93–95; administrative courts in, 58, 66–67; and *Anschluss* with Germany, 100–101, 104, 107, 108; army in, 35, 102–3, 106; as authoritarian state, 25, 32–33, 107–10; Beck Suffrage Reform of 1907 in, 24; compulsory service in, 106, 110; constitutional history of, 1–2, 23–27, 32–36, 65, 99–106; and corporative organization, 108–10; and Crimean War, 23; crisis of 1933–1934 in, 103–4; as danger-spot of Europe, 99, 110; and Danubian Federation, 100, 101; democratic episodes in, 25–27, 104; and Dollfuss, 37, 105, 107; Empowerment Act in, 33; Enabling Act of 1917 in, 25; executive circle in, 33–34; executive core in, 35; Fatherland Front in, 27, 35–36; Front Militia in, 106, 110; German annexation of, in 1938, 11; government of, since 1918, 99–110;

- government ordinances in, 69; Home Defense Force (*Heimwehr*) movement in, 24, 35; "idea of legality" in, 103-4; independence of, 107-8, 110; and International Studies Conference, 3-4, 96-98, 96n1; and Italian War of 1859, 23; as nationally uniform state, not national state, 25-27, 99-100; newspapers of, 3-4; parliamentary structure of, 28-31, 77, 107; Patriotic Front in, 105, 106, 109-10; police in, 35; political parties in, 101-2, 105, 107; and Redlich, 91-95; university education in, 10-11, 79-82, 84, 86, 89-90; Volunteer Guard (*Freiwilliges Schutzkorps*) in, 105, 106; youth organization in, 106, 110
- "Austria and the Studies Conference" (Voegelin), 96-98
- Austrian Coordination Committee, 96-98
- Austrian Government and Administration during the World War* (Redlich), 93, 94
- Austrian Political Society, 93
- Austro-Hungarian empire, 36, 91n1
- Authoritarian state, 11, 32-36, 107-10
- Authoritarian State* (Voegelin), 85
- Autobiographical Reflections* (Voegelin), 9
- Averroës, 141
- Badeni, Count Kazimerz Felix, 91, 91n1
- Bahr, Hermann, 39, 93
- Barthou (French foreign minister), 37
- Batavian Republic, 59
- Bayezid I, Sultan, 12
- Beck, Baron von, Prime Minister Max Wladimir, 39
- Beck Suffrage Reform of 1907, 24
- Befehl* (command), 128
- Befehl-Herrschermacht* (command-rulership), 128
- Beratender Reichsrat* (imperial council), 24
- Bergson, Henri-Louis, 43
- Beschwerderecht* (right of redress), 63
- Bienert, Prime Minister Richard Freiherr von, 39
- Blacks, 46-47
- Blühdorn, Dr., 97
- Blüher, Rudolph, 147
- Boden-Credit-Anstalt (Land Credit Bank), 39
- Bodin, Jean, 137
- Body ideas, 18
- Body-soul unity of man, 14, 19-20, 21, 43
- Boehm, Max Hildebert, 50
- Bolsheviks, 117-18
- Bourgeois, 83, 84, 111-12, 115, 123, 124
- Brunner, Professor, 97
- Buffon, Georges Louis Leclerc de, 42
- Bundestag* (Parliament), 28-31
- Bureaucracy, 35. *See also* Administrative apparatus
- Buresch Cabinet, 93
- Burky, 97
- Calhoun, John C., 29, 108
- Calvinism, 123
- Cameral system, 28-31
- Canada, 60, 69-74, 97
- Carolingian empire, 58
- Carr-Saunders, 97
- Carus, Carl Gustav, 19, 42
- Categorical imperative, 43
- Catholic Church, 35, 39, 82, 106, 107, 109
- Censorship, 6, 115-19
- Central Europe, 26, 51, 75, 110, 137-39, 148. *See also* specific countries
- "Changes in the Ideas of Government and Constitution in Austria since 1918" (Voegelin), 99-110
- Charles I, Emperor of Austria, 38, 93
- Chiang Kai-shek, 121
- China, 120, 121
- Christianity, 10-11, 15, 42-43, 48, 53, 85, 89-90, 139
- Civil law, 64, 133-34, 148
- Class: and cameral system, 28-31; Marxist view of, 84, 108
- Classe dirigente*, 35, 45
- Classicism, 51
- Class struggle, 52, 109
- Clauss, Ludwig Ferdinand, 19, 21
- Closed soul, 7
- College education. *See* University education

- Colonialism, 96
 Common law, 65, 65n6, 68, 71–73
 Communism and Communist Party, 11, 51, 105
Communist Manifesto, 51
 Community: corporeal community, 43; ideas of, 18, 19; loyalty to political community, 116–19; as replacement for God, 90; as sacral substances, 154–55; and theory versus practice, 88–89
 Comte, Auguste, 80
 Concepts: function of, 4; of race, 18–19
Conjuraciones, 154
Conseil d'État, 62–64, 66
 Constitutional law, 133, 134–35, 137, 151–52, 155–56
 Constitutions: of Austria, 1–2, 23–27, 32–36, 65, 99–106; of Germany, 77; relationship of, to the state, 131–32; and science, 84–85; of United States, 72
Contemplatio, 86, 87
 Corinthians, Paul's letters to, 155
 Corporative organization, 108–10
 Corporeal community, 43
 Corporeal-psychoic unity of man, 14, 19–20, 21, 43
Corpus mysticum Christi, 154
Cours souveraines (sovereign courts), 56
Credit-Anstalt (savings and loan) crisis, 93
 Crimean War, 23
 Cult of science, 15
 Curie, Marie, 39
 Czechoslovak Republic, 26, 58
 Dacque, Edgar, 81
 "Danse Macabre" ("*Todesreigen*"), 3
 Danube region, 96, 97–98
 Danubian Federation, 100, 101
 Darwin, Charles, 81, 118
 Däubler, Theodor, 39
 December constitution of 1867 in Austria, 24
 Democratic state: Austria as, 25–27, 104; and experts, 73; public opinion in, 5–6, 113–14. *See also* specific countries
 Denial, in formation of opinion, 116
 Derschagl, Dr., 97
Deutsches Verwaltungsrecht (Jellinek), 76
 Dicey, Albert Venn, 54, 61, 62
 Dictatorship, 44, 147
 Disorder and order, 153–55
 Disraeli, Benjamin, 29–30
 Dollfuss, Chancellor, 37, 105, 107
 Dopsch, Alfons, 97
Dottrina del Fascismo (Mussolini), 49–50, 49n1
 "Drafting a Constitution for Austria" (Voegelin), 23–27
Droit administratif (administrative law), 65
Droit commun (common law), 65, 65n6
 Eastern Europe, 26, 44, 46, 51. *See also* specific countries
 Economic Councils, 109
 Economic interests, 108–9
Economy and Society (Weber), 144
 Education, 10–11, 79–82, 84, 86, 89–90, 116
Eigenständig Volk (self-constituted Volk), 50
 Eisenmann, Professor, 94
Emperor Franz Joseph I of Austria (Redlich), 93
 Empires: Austro-Hungarian empire, 36, 91n1; Carolingian empire, 58; contrasted with state, 94; Holy Roman Empire, 57; Roman empire, 15
 Empowerment Act (Austria), 33
 Enabling Act of 1917 (Austria), 25
 Endowed Schools Act (Great Britain), 68–69
 Engels, Friedrich, 52, 79
 England: administrative apparatus in, 60, 61, 64, 67–69, 74, 75, 76; Common Law Courts in, 68; Endowed Schools Act in, 68–69; governing class of, 26; government ordinances in, 68–69; parliamentary system of, 29–31, 44, 45, 68, 72, 108; race in, 47; Redlich on, 92, 94; Redlich's lecture tours in, 93; Star Chamber in, 61
Englische Lokalverwaltung (Redlich), 92
 Enlightenment, 83
 Epistemology, 4–7, 8, 81, 140
 Equality under the law, 60

- Erscheinungsformen* (classification into various constructs), 76
- Eschatology, 89
- European race idea. *See* Race idea
- Evolution, 81, 118
- "Expression of Opinion and Opinion Formation" (Voegelin), 5-6, 111-14
- Fabier circle, 93
- Fascism, 44, 45, 49-50, 49n1
- Fatherland Front (Austria), 27, 35-36
- February Patent of 1861 (Austria), 23, 24
- February Revolution (Austria), 23
- Fichte, Johann Gottlieb, 43, 51
- Finkelman, Professor, 69-70
- Fischer vom See, General, 38
- Fleiner, Fritz, 76
- Flight from work, 124
- "Flight to Work" (Voegelin), 123-25
- Fourteenth Amendment of U.S. Constitution, 72
- France: administrative apparatus in, 54-64, 67, 69, 74, 75, 76, 77; bourgeoisie in, 26; *Conseil d'État* in, 62-64, 66; *cours souveraines* (sovereign courts) in, 56; Economic Councils in, 109; February Revolution in, 23; government ordinances in, 69; industrial development in, 45; Institute for Intellectual Cooperation in, 96; International Studies Conference in, 96-98; nation-state of, 48; *parlements* in, 55-57, 55n2; parliamentarism in, 108; race in, 47; revolution in, 41, 55; separation of powers in, 55; and Voltaire, 61
- Franklin, Professor, 72-74
- Franz Joseph, Emperor of Austria, 39, 91n1, 93
- Freedom, 11, 67
- Freemasons, 83, 117-18
- Freie Staatstätigkeit* (free state activity), 65
- Freiwilliges Schutzkorps* (Volunteer Guard), 105, 106
- French Revolution, 41, 55
- Front Militia, 106, 110
- Fruitio Dei*, 87
- Führeridee* (leader), 18
- Fundamental Science* (Rehmke), 129, 141-43, 156
- Gautsch, von Frankenthum, Prime Minister Paul, 39
- Gemeinschaftsideen* (ideas of community), 18
- General Administrative Law* (Merkl), 76
- General Political Science* (Sander), 126-60
- George, Stefan, 19, 51
- Gerichtbarkeit* (legal jurisdiction), 58
- Gerichtsbehörde* (court of law), 58
- German Administrative Law* (Jellinek), 76
- Germany: administrative apparatus in, 57-58, 76; annexation of Austria in 1938, 11; *Anschluss* of Austria with, 100-101, 104, 107, 108; censorship in, 118; Constitution of the Frankfurt [Saint] Paul Church of 1848, 77; Economic Councils in, 109; Hitler in, 104, 104n2; imperial people of, 48, 50-53; and judicial state (*Justizstaat*), 77; National Socialism in, 9, 11, 12, 13, 22, 45; and *Realpolitik*, 52; revolution of 1933 in, 24, 107; *Volk* of, 13, 20, 50-53; in World War I, 38
- Gesamtheit* (collective), 19
- Gesetztechnik*, 72
- Giovine Italia* (Mazzini), 155
- Gliwic, 97
- Gneist, Rudolf von, 92
- Gnostic movements, 9
- Gobineau, Arthur Comte de, 41-42
- God: community as replacement for, 90; humans' relationship with, 11, 43; and Marxism, 84; mystical contemplation of, 10, 89-90; and order of the world, 86-87
- Goethe, Johann Wolfgang von, 51, 117
- Gold clause, 11
- Grant, Madison, 47
- Greeks, 118, 137
- Grey, Lord, 30, 108
- Grundlegung* (groundwork), 126
- Grundwissenschaft* (Rehmke), 129, 141-43, 156
- Guenther, Hans F. K., 20, 21

- Guerke, N., 7, 17–22
 Guttman, Dr., 97
- Habsburg monarchy, 91n1, 95
 Hague, The, 93
 Hanak, Anton, 39
 Hare, 30
 Harvard University, 93
 Hauriou, Maurice, 56, 109
 Hecker, 154
 Hegel, G. W. F., 139–40
 Heimatschutz (Austria), 103
Heimwehr (Home Defense Force)
 movement, 24, 35
 Heine, Johan Jakob Wilhelm, 51
 Herder, Johann Gottfried von, 50
 Hermeneutic sociology, 4
Herrschaft (rule), 144
Herrschaftssoziologie (sociology of rule),
 148
Herrschermacht (rulership), 128–29
 Hildebrandt, Kurt, 19
 Hindenburg, Field Marshal Paul von, 38
 Hinze, Otto, 59n1
 Historiography, 42
History of Political Ideas (Voegelin), 9,
 11, 12
History of the Race Idea (Voegelin), 8,
 13n1
 Hitler, Adolf, 50, 104, 104n2
 Hobbes, Thomas, 11
 Hofmannsthal, Hugo von, 39, 93
 Hölderlin, Friedrich, 51, 124
 Holy Roman Empire, 57
 Home Defense Force (*Heimwehr*)
 movement (Austria), 24, 35
 Horace, 39n2
 Huart, F. J. A., 59
 Human nature: Christian view of, 42–43;
 and corporeal-psychic unity of man,
 14, 19–20, 21, 43; man as integral
 entity, 82; Rehmke on, 141, 145; and
 theory versus practice, 88–89. *See also*
 Anthropology
 Husserl, Edmund, 140–41
Hybris, 146
- Idea: body ideas, 18; of community, 18,
 19; of a people, 50–51; of person, 18,
 19; purity of, 20–21; of the state, 18.
See also Race idea
- Ideal types, 4
Idee directrice, 156
Ideelle Geschlossenheit, 47
Ideengehalte (influence of ideas), 47
 Ideologies, 2, 11, 83
 Immigration, 46, 97
 Imperial people (*Reichsvolk*), 25, 47–48,
 50–53
 Indians, American, 46, 47
 Industrial Revolution, 45
 Information and opinion, 111–12, 115–19
 Institute for Intellectual Cooperation, 96
 Institute of the Legality of
 Administrative Actions, 66
Institutionen des Verwaltungsrechtes
 (Fleiner), 76
Institutions of Administrative Law
 (Fleiner), 76
 Intellectuals, 124
Intentio (Saint Augustine), 87
 International law, 97, 98
 International Studies Conference, 3–4,
 96–98, 96n1
 International Tribunal, 93
Italianità myth, 22
 Italian War of 1859, 23
 Italy: administrative apparatus in,
 59–60; dictatorship in, 44; failure of
 parliament in, 45; Mussolini in, 22,
 49–50; race in, 47
- Japan, 38, 121
 Jellinek, Walter, 76, 130, 139, 158
 Jesuits, 83, 117–18
 Jews, 46, 83, 117–18
 Jèze, Gaston, 63
 “Josef Redlich” (Voegelin), 91–96
 Jung, Edgar J., 50
 Jurisprudence, 127
Justizstaat (judicial state), 77
- Kaiser Franz Josef I. von Oesterreich*
 (Redlich), 93
 Kant, Immanuel, 43, 51, 118, 140
Kantönligeist (narrow particularism),
 59n5
Kapital, Das (Marx), 84
Katexochen (par excellence), 48

- Kelsen, Hans, 1–2, 65, 130
 Kennedy, Professor, 69–70
 Kingship. *See* Monarchy; specific kings
 Klemm, Gustav, 41, 42
 Koerber, Prime Minister Ernst von, 39
 Kralik, Richard, 39
 Kremsier Draft, 23, 24
 Kubelik, Jan, 39
 Kusmanek, Colonel General, 38
- Laband, Paul, 130
 Laferrrière, Julien, 62, 64, 77
 Lamasch Cabinet, 93
 Lassalle, Ferdinand, 52
 Law: administrative law, 65, 72–74; civil law, 64, 133–34, 148; and classification of administrative systems, 74–78; common law, 65, 65n6, 68, 71–73; constitutional law, 133, 134–35, 137, 151–52, 155–56; definition of, 148, 149–50; England and Rule of Law, 60–61, 68; equality under, 60; Hauriou on, 56; international law, 97, 98; natural-law theories, 73; and norms, 133, 149, 150, 152, 155–56; objective law, 133, 134, 149–51; positive law theory, 1–2, 8, 130, 134; principles of Rule of Law, 60–61; procedural law, 66; pure law, 130, 134, 156; Rule of Law versus administrative apparatus, 54, 60, 75, 77; Sander on, 132–35, 148–56, 159; subjective law, 135, 149–51, 156, 159
- League of Nations, 4, 96
 Leers, Johann von, 50
 Legal dogmatics, 133, 134
Leiberlebnisse (corporal experiences), 18
Leibgemeinschaft (corporeal community), 43
Leibideen (body ideas), 18
 Leisure, 124
 Lenin, V. I., 84
 Lenz, Fritz, 20, 21
Lex imperfecta, 156
Lex perfecta, 156
 Liberalism, 127, 138–39
 Linné's classification, 159
 Logic (Rehmke), 141
 Louis XIV, King of France, 55, 75
 Louis Napoleon, 59
- Loyalty, in opinion formation, 116–19
 Luther, Martin, 9, 9n18
- Machiavelli, Niccolò, 12
Machtergreifung (seizure of power), 104
 Mahler, Gustav, 93
 Maritain, Jacques, 9n18, 87n3
 Marketing of commodities, 96
 Marx, Karl, 79, 84
 Marxism, 9, 10, 22, 81, 82, 86, 89, 108
 Materialism, 15, 51
 Mathematics, 118
 Mazzini, Giuseppe, 155
 Medieval period. *See* Middle Ages
Méditations Cartésiennes (Husserl), 140
 Merkl, Adolf, 54–78
 Metaphysics, 80, 89, 141
 Middle Ages, 40–41, 42, 147
 Migration, international problems of, 96, 97
 Military. *See* Army
 Monarchy, 147. *See also* specific kings
 Mongol invasions, 12, 117
 Montesquieu, Charles-Louis de
 Secondat, Baron de la Brède de, 123
 Moravia, 92, 94
 Morgenstern, Professor, 97, 98
 Mussolini, Benito, 22, 49–50, 49n1
- Napoleon, 55
 Nation, meaning of, 20, 100
 National Socialism, 9, 11, 12, 13, 22, 45, 105, 107
 Nation-state, 25, 47–50, 53, 100
 Natural-law theories, 73
Nature of the Austrian Communal Constitution (Redlich), 92
 Nazism. *See* National Socialism
 Negroes, 46–47
 Neo-Kantian epistemologies, 4, 5, 6, 141
 Netherlands, 59
Neue Freie Presse, 3, 5–6
 Neutrality, 6, 8, 10, 80–82, 87
 “New Cameral System in the Mirror of History” (Voegelin), 28–31
New Despotism, 69
New Science of Politics (Voegelin), 1, 4, 9, 11
 Newspapers, 3–4

- "New Style of Warfare" (Voegelin), 120–22
 Niese, Hansi, 39
 Nietzsche, Friedrich, 43, 52
 Nordic race, 20
 Norms, 133, 149, 150, 152, 155–56
 North American Union, 72, 74
Noterordnungen (governmental orders), 105
Nous, 7

 Objective law, 133, 134, 149–51
 October Diploma of 1860 (Austria), 23, 24
Oesterreichische Regierung und Verwaltung im Weltkrieg (Redlich), 93, 94
Oesterreichische Staats- und Reichsproblem (Redlich), 93, 94
 "Once More 'Race and State' in Political Science: A Rebuttal" (Voegelin), 17–22
On Eternal Peace (Kant), 118
 "On Sander's *General Political Science*" (Voegelin), 12, 126–60
 Open soul, 7
 Opinion and opinion formation, 5–6, 111–19
 Oppenheimer, Franz, 138
 Order and disorder, 153–55
Order and History (Voegelin), 1, 4
Österreichische Jungvölk, 106
Österreichische Mensch, 107
Österreichische Zeitschrift für öffentliches Recht, 12
 Ostmärkische Sturmsharen, 103
 Ottakring Volkshochschule, 10, 79, 82, 85
 Ottoman Turks, 12

 Pallenberg, Max, 39
Parlements in France, 55–57, 55n2
 Parliament, 28–31, 44–45, 68, 72, 74, 77, 107, 108
Parteirechtsmittel (party legal instruments), 66
 Patent of March 5, 1860 (Austria), 23, 24
 Patriotic Front, 105, 106, 109–10
 Paul, Saint, 155
 Peaceful settlement, 96
Personenideen (ideas of persons), 18

 Persons, ideas of, 18, 19
 Phenomenology, 140
 Philosophical anthropology, 5, 8, 19, 141
 Philosophy, 81, 82
 Phratries, 154
 Phylae, 154
 Physics, 118
 Pieracki (minister of Poland), 37
 Pillersdorf Constitution, 23, 24
 Plato, 119
 Plessner, Helmut, 142
 Poincaré, Raymond, 38
 Poland, 37
 Police, 35, 76
 Polis, 144
 Polish Corridor, 97
 Political liberalism. *See* Liberalism
 Political race theory, 20–21. *See also* Race idea
 Political science: Central European political science, 137–39, 148; characteristics of scientific political science, 158; definition of, 132–33; of Jellinek, 158; of Sander, 7, 21, 126–60; in state of decay, 127; teaching of, 81–82, 137; of Weber, 144–45. *See also* State
 Political theory, 6–9
Politics (Aristotle), 137
 Politics and science, 82–90
Popolo d'Italia, 49n1
 "Popular Education, Science, and Politics" (Voegelin), 9, 79–90
 Population, problems of, 96, 97
Place of Man in the Cosmos (Scheler), 143
 Positive law theory, 1–2, 8, 130, 134
 Positivism, 9, 10, 80, 82, 136
 Power, 128–29
 Practice versus theory, 86–89
Prince (Machiavelli), 12
 Private opinion, 111–12
Problem of the Austrian State and Empire (Redlich), 93, 94
 Proletarians, 124
 Propaganda, 117–18
 Prussia, 26, 48, 58
 Public opinion, 5–6, 111–19
Puissance publique (public authority), 64

- Pure law, 130, 134, 156
 Purity of ideas, 20–21
- Quadragesimo anno*, 28, 109
 Qualid, 97
- Race and State* (Voegelin), 2, 13n1, 17–22
 “Race and State” (Voegelin), 40–53
 Race idea: Arendt on Voegelin’s account of, 1; of Buffon, 42; and concepts of race, 18–19; and formation of ethnic consciousness, 45–47; and German *Volk*, 13, 20, 50–53; Gobineau on, 41–42; Guerke’s critique of, 17–22; history of, 8, 42–43; and modern state, 40–53; and nation-state versus imperial people, 47–53; and Nordic race, 20; and political community formation, 45–53; political race theory, 20–21; and race experience, 13–16, 20–22; and science of race, 13–16, 19, 22; Voegelin’s early works on, 1, 2, 4, 6, 7, 8
 “Race Idea and Science” (Voegelin), 13–16
 Radium, 39
Rassenidee in der Geistesgeschichte (Voegelin), 2, 13n1
Rasse und Staat (Voegelin), 2, 13n1, 17–22
 Raw materials, in international political economy, 96, 97
 Realism, 51
Realpolitik, 52
 Reason, in Enlightenment, 83
Recht und Technik des englischen Parlamentarismus (Redlich), 92
Rechtskomplex (uncodified legal complex), 64
 Redlich, Josef, 91–95
 Reformation, German, 85
 Rehmke, Johannes, 129, 136, 140–43, 145, 152, 156, 157
Reichsrat (imperial council), 23
Reichsverwaltungsblatt und Preussisches Verwaltungsblatt, 17
Reichsvolk (imperial people), 25, 47–48, 50–53
 Renaissance, 12, 42
- Renan, Joseph-Ernest, 49, 108
 Renner, Dr., 101
 Repression, 116
Res privata, 114
Res publica, 109, 114
 Richelieu, Cardinal, 55
 Rockefeller Foundation, 98
 Roman empire, 15
 Romanticism, 51
 Rosenberg, Alfred, 19
 Rousseau, Jean-Jacques, 111–12, 114
 Rule of Law: and classification of administrative systems, 74–78; contrasted with administrative apparatus, 54, 60, 69, 75, 77; and England, 60–61, 68; and legal technique, 73–74; Scott on principles of, 60–61
 Rulership, 128–29, 143–44, 146, 148, 157, 158
 Rumania, 37
 Russia, 24, 44, 75
 Russian Revolution of 1905, 24
 Russo-Japanese war, 38
- Sacral substances, 154–55
Sacrum imperium, 40–41, 144, 154
 Saint Germain Treaty, 107
 Sander, Fritz: accomplishments of, 126, 159–60; adoption of Rehmke’s science by, 129, 136, 140–43, 145, 156, 157; definitions of, 128–30, 136, 157; on law, 132–35, 148–56, 159; political science of, 126–60; on the state, 126–32, 136, 143–48, 157–59; Voegelin’s critique of, 7, 12, 135–60
 Scandinavia, 59
 Scheler, Max, 51, 142, 143, 154
 Schelling, Friedrich, 19
 Schiller, Johann, 51, 124
 Schindler, 138
 Schmitt, Carl, 138
 Schrecker, Hans, 39
 Schutzbund, 103
 Science: and Christianity, 89–90; Comtean view of, 80; and Enlightenment’s faith in reason, 83; essence of, 86; fundamental science, 83; neutrality and scientific world view, 80–83, 87; nineteenth-century

- cult of, 15; and politics, 82–90; and principles of experience, 15; of race, 13–16, 19, 22; Rehmke's classification of, 142; Weber on, 142
- "Scientific" socialism, 15–16, 22, 82, 89
- Scott, Sir Leslie, 60–61, 67–68, 69
- Seben, Dr., 97
- Seidler Cabinet, 93
- Seipel, Ignaz, 93, 109
- "Selected Translations of the Ruling of the Supreme Court of the United States on the Question of the Gold Clause" (Voegelín), 11
- Self-censorship, 6
- Separation of powers, 55
- Setzungen* (constitutional propositions), 25
- Sevcik, Ottokar, 39
- Sieghart, Rudolf, 39
- Silesian knights, 117
- Simmel, Georg, 44
- Simon, Rainer, 39
- Sino-Japanese conflict, 121
- Six Livres de la République* (Bodin), 137
- Sixtus, Prince, 38
- Skepticism, 88
- Slavery, 15
- Smend, Rudolf, 138
- Social class. *See* Class
- Socialism, 15–16, 22, 52, 76, 124
- Socialist Party, 101, 107
- Socialization, 129
- Society, 129
- Sociology, ideal types in, 4
- Soemme, 97
- Soul: body-soul unity of man, 14, 19–20, 21, 43; Rehmke on, 141
- Southeast Europe, 44, 46, 51. *See also* specific countries
- Sovereignty, 131, 135
- Soviet Union, 74, 75
- Spain, 120
- Spann, Othmar, 19, 21
- Spengler, Oswald, 138
- Spezialverwaltungsgerichte* (Special Administrative Courts), 66
- Spirit of the Laws* (Montesquieu), 123
- Staatenverbindungen* (intrastate connections), 132
- Staatsbild* (state construct), 20
- Staatsnation* (national state), 25, 47–50
- Staatsperson* (state as legal person), 130
- Staatsrechtslehre* (constitutional law), 133
- Staley, 97
- Stände* (classes), 28
- Stapel, Wilhelm, 50
- State: aggregate states, 130; authoritarian state, 11, 32–36, 107–10; and Christianity, 48; classification of types of, 158–59; conditions constituting, 130–32; contrasted with empire, 94; corporative state, 108–10; definition of, 128, 129–30, 143–44, 158; democratic state, 5–6, 25–27, 73, 104, 113–14; forms of, and administrative apparatus, 75; idea of versus reality of, 18; judicial state (*Justizstaat*), 77; Mussolini on, 49–50; and nation, 20; organizational pattern of, 45; and Parliament, 28–31, 44–45; and political science, 127; purposes of, and administrative apparatus, 75–76; and race idea, 40–53; Redlich on, 93–94; relationship between law and, 132–35, 156; Sander on, 126, 128–35, 136, 143–48, 157–59; *Staatsnation* (national state), 25, 47–50, 53, 100; theory of, 7, 18; totalitarian state, 5–6, 114, 138–39; Weber on, 144–45, 146. *See also* Constitutions; specific states
- Stellung des Menschen im Kosmos* (Scheler), 143
- Stoddard, Lothrop, 47
- Subjective law, 135, 149–51, 156, 159
- Supreme Court, U.S., 11, 56, 72
- Sweden, 21
- Sylvester Patent of 1851, 23
- Taafe, Count Eduard, 91, 91n1
- Tamerlane, 11–12
- Terrorism, 37
- Tezner, F., 94
- Theiotaton*, 86, 89
- Theoria*, 86
- Theory: definition of, 6; political theory, 6–9; and science, 86–87, 87n3; of the state, 7, 18; versus practice, 86–89
- Togo, Admiral, 38
- Tolerance, 88

- Totalitarian state: public opinion in, 5–6, 114; Sander on, 138–39
- Total war, 120–22
- Trade, 97–98
- Treaty of Saint Germain, 107
- Treitschke, Heinrich von, 52
- Tribal alliances, 154
- Turgot, Anne-Robert-Jacques, 55
- United States: administrative apparatus in, 70, 72, 74; Calhoun's proposal for multicameral system for, 29, 108; censorship in, 118; Fourteenth Amendment of Constitution of, 72; immigration to, 46; judiciary in, 55, 56, 60; and meaning of Americanism, 47; race problem in, 46; Redlich's lecture tours in, 93; Supreme Court rulings in, 11, 56, 72; Voegelin in, 4
- University education, 10–11, 79–82, 84, 86, 89–90
- Value, 154
- Verfahrensrecht* (procedural law), 66
- Verfassungsgerichtshof* (Constitutional Court), 66
- Verfassungsurkunde* (constitutional instrument), 132
- Verhaltenswerbung* (behavior incentive), 128–29
- Verordnungsrecht* (right to issue ordinances), 68
- Verosta, Dr., 97
- Verstand* (understanding), 140
- Verwaltungsgerichtsbarkeit* (administrative jurisdiction), 58
- Verwaltungsgerichtshof* (Administrative Court), 66–67
- Verwaltungsverfahrensgesetzgebung* (procedural law for administration), 66
- Vita eroica*, 35
- Voegelin, Eric: early publications of, 1–3; and epistemological debate, 4–7, 8; flight from Austria by, 1, 12; and meaning and use of political theory, 6–9; neutrality of, 6, 8; newspaper articles by, 3–4; on proper ideological stance for scholar, 9–11; as public intellectual, 3–6, 8; relationship between radical students and, 9–11, 79–81, 83, 86; themes of early essays by, 2–3; in U.S., 4. *See also* specific works
- Vogelsang group, 108
- Volk* (people), 13, 20, 45, 50–53, 107
- Volksbewusstsein* (peoplehood), 52
- Volksidee* (idea of a people), 50–51
- Volksraeume* (areas occupied by the people), 47
- Voltaire, 61, 123
- Volunteer Guard (*Freiwilliges Schutzkorps*), 105, 106
- Von Kluck, Colonel General, 38
- Von Korbatin, Freiherr, 38
- Von Verdross, Professor, 97, 98
- Vorbesetzt* (established), 49
- Warfare, 120–22. *See also* World War I
- Wasserman, Jakob, 38–39
- Weber, Max, 4–8, 41, 44, 138, 142, 144–46, 148, 153, 157
- Wehrverbände*, 104–6
- Weiss, Gilbert, 4
- Weltanschauung*, 102, 107
- Wesen der oesterreichischen Kommunalverfassung* (Redlich), 92
- West Europe, 75, 139. *See also* specific countries
- “What May People Be Allowed to Know?” (Voegelin), 6, 115–19
- Wienerisches Diarium*, 3
- Wiener Zeitung*, 3
- Winkler, Professor, 97
- Wirkenseinheit* (interplay), 142
- Wirtschaft und Gesellschaft* (Weber), 144
- Wissenschaft*, 10
- Work, 123–25
- Workers' compensation, 70, 73
- Working class, 9–10, 79–82, 124
- World War I, 38, 93. *See also* Warfare
- Wundt, Max, 50
- Yugoslavia, 37
- Zita of Bourbon-Parma, Empress of Austria, 38